

Final Contract

2 April 2019

THE SECRETARY OF STATE FOR DEFENCE
and
Atos IT Services UK Limited

FINAL AGREEMENT

for the delivery of Test Service Partner Services
in relation to Defence as a Platform

Herbert Smith Freehills LLP

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THIS AGREEMENT is made on 2 April 2019

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** ("**Authority**"); and
- (2) **Atos IT Services UK Limited**, a company incorporated in England with registered number 01245534 whose registered office is at Second Floor, MidCity Place, 71 High Holborn, London, EC1V 6EA ("**Contractor**").

BACKGROUND

- (A) The Authority carried out an exempt procurement pursuant to Article 346(1)(a) of the Treaty on the Functioning of the European Union, in which it invited a number of bidders to negotiate for the provision of technical test, integration and transition services to the Authority. The outcome of the procurement resulted in the Contractor being selected as the preferred bidder.
- (B) The Contractor has agreed to supply the Services to the Authority on the terms of this Agreement.
- (C) The Services provided by the Contractor under this Agreement are intended to form part of a wider programme of transformation of the Authority's ICT capability known as 'Defence as a Platform', which is described in the Defence Information Strategy and will involve a number of contractors working together collaboratively to supply a range of technology-related services to the Authority (the "**DaaP Programme**").
- (D) The Authority requires a scalable and flexible solution capable of delivering fully functioning Services in an operational environment in which crises and emergency situations are routine.
- (E) The Contractor has informed the Authority that it has:
 - (i) experience and expertise in the supply of services similar to the Services; and
 - (ii) considered the Services and believes that it is able to provide the Services in accordance with the provisions of this Agreement,and on that basis, the Authority has decided to appoint the Contractor to deliver the Services on the terms of this Agreement.
- (F) The Contractor is aware that it may have access from time to time to information protected under the Official Secrets Acts 1911 to 1989, including information that is to be protected as OFFICIAL to TOP SECRET. The Contractor understands that a breach of security may compromise the safety and security of the Authority's personnel, as well as the people of the United Kingdom and other nations.
- (G) The Contractor recognises that a failure to provide the Services in accordance with this Agreement may:
 - (i) damage the Authority's ability to defend the United Kingdom and its interests, and to strengthen international peace and stability;
 - (ii) result in substantial detriment to the reputation and integrity of Her Majesty's Government; and
 - (iii) result in loss of life.
- (H) In addition, the Contractor understands that it is vital that it seeks to remedy any failures within any of the Services expeditiously, regardless of whether the Contractor believes that the cause(s) of such failure is an act or omission of the Contractor, or otherwise.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the definitions set out in the table in this Clause 1.1 shall apply unless expressly stated to the contrary in a provision of this Agreement.

"Acceptance"	has the meaning given in Clause 6.2 (<i>Acceptance</i>) and " Accepted " and " Acceptable " shall be construed accordingly;
"Ad Hoc Access Request"	means a written request from the Contractor to the Authority requesting access to one or more specific areas of an Authority Premises which is required for the performance of the Services;
"Affected Party"	means the Party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	means, in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of, that body corporate from time to time;
"Agreement"	means this agreement comprising the Recitals, Clauses and Schedules, Appendices and Annexures including all Work Packages;
"Approved Subcontractor"	means a subcontractor of the Contractor (including any of the Contractor's Group Companies) which performs aspects of the Services pursuant to this Agreement or which employs or instructs Personnel engaged in the provision of the Services and which is listed in Schedule 11 (<i>Approved Subcontractors</i>);
"Approved Sub-Licensee"	means any of the following: (a) a Central Government Body; (b) any third party providing services to a Central Government Body; and/or (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by, or on behalf of, the Authority;
"Auditor"	has the meaning given to it in Clause 17.2 (<i>Audit rights</i>)
"Authority Background IPRs"	means: (a) IPRs owned by the Authority before the Contract 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 Contractor otherwise than under this Agreement; but excluding IPRs owned by the Authority subsisting in the Authority Software;

"Authority Commercial Manager"	means the representative(s) appointed by the Authority as the authority commercial manager, as may be changed from time to time by the Authority by written notice to the Contractor;
"Authority Data"	means: (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; and/or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Authority Personal Data;
"Authority Dependencies"	means the dependencies specified in Schedule 2 (<i>Authority Dependencies</i>);
"Authority Personal Data"	has the meaning given to it in Clause 19.6 (<i>Personal Data</i>);
"Authority Premises"	means those premises which are owned, leased or occupied by the Authority from time to time;
"Authority Representative"	means the representative or representatives nominated by the Authority, which as at the Contract Date are the Personnel within the TCT Team with the job title 'Test Assistant Head' or 'TCT Deputy Head' (or equivalent terms) and as may be updated from time to time by the Authority by written notice to the Contractor;
"Authority Service Provider"	means any third party (excluding the Contractor) providing services to the Authority (including services similar to or the same as the Services) or any third party to whom the Authority subcontracts or delegates any of its rights and obligations under this Agreement, or any other activities it undertakes as part of its business from time to time;
"Authority Software"	means software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Contractor for the purposes of providing the Services;
"Authority Standards"	means the standards, policies and regulations set out or referred to in Schedule 5 (<i>Authority Standards</i>), all as updated, amended or replaced from time to time by the Authority;
"Authority's Confidential Information"	means all Authority Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential in accordance with the GSC;

"Bidder"	means a party who (whether directly or indirectly) participates in any competition for the provision to the Authority of any or all the Replacement Services;
"Breach of Security"	means the occurrence of any: (a) unauthorised access to or use or disclosure of; and/or (b) loss and/or unauthorised disclosure of, any aspect of the Services, the Enterprise IT, the Authority Data and all processes associated with delivery of the Services including the Authority Premises, the Services and any IT, information and data (including the Authority's Confidential Information) used by the Authority or the Contractor in connection with this Agreement;
"Business Continuity Plans"	has the meaning given to it in Clause 15.1 (<i>Disaster Recovery and Business Continuity</i>);
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
"Change Control Note" or "CCN"	means a change control note prepared and agreed in accordance with the Change Control Procedure;
"Change Control Procedure"	means the management mechanisms for making Changes to this Agreement, including the purchase of a new Service and or an amendment to an existing Service, as specified in Schedule 9 (<i>Change Control</i>);
"Change of Control"	when applied to any person shall be deemed to have occurred on each occasion on which any person or persons other than those who Control such person at the date of this Agreement subsequently acquire Control of such person;
"Change"	has the meaning given to it in Clause 11.1 (<i>Change Control</i>);
"Charges"	means the charges for the Services, as calculated in accordance with Schedule 4 (<i>Charges and Invoicing</i>) of this Agreement, or as otherwise agreed in writing in a Work Package;
"Collaboration Agreement"	means the agreement known as the 'Collaboration Agreement' between the Authority, the Contractor and certain other Authority Service Providers in relation to collaborative activities and obligations connected with the DaaP Programme, and which is, at the Contract Date, in substantially the form annexed as Annex 1 (<i>Form of Collaboration Agreement</i>) to this Agreement (or as may be amended from time to time in accordance with its terms);

<p>"Commercially Sensitive Information"</p>	<p>means the information listed in Schedule 14 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to the Contractor, its IPR or its business (including information in its final proposal submitted to the Authority prior to the Contract Date) or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;</p>
<p>"Confidential Information"</p>	<p>means the Authority's Confidential Information and/or the Contractor's Confidential Information;</p>
<p>"Configuration Management"</p>	<p>means the process and repository for establishing and maintaining consistency of a product's functional and physical attributes with its requirements, design and operational information through life;</p>
<p>"Contract Date"</p>	<p>means the date on which this Agreement is signed by both Parties;</p>
<p>"Contract Year"</p>	<p>means a period of twelve (12) months (or shorter period in the period immediately prior to the end of the Term) commencing on the Contract Date or on an anniversary of the Contract Date;</p>
<p>"Contractor Background IPRs"</p>	<p>means:</p> <ul style="list-style-type: none"> (a) Intellectual Property Rights owned by the Contractor before the Contract Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's Know-How or generic business methodologies; and/or (b) Intellectual Property Rights created by the Contractor independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services;
<p>"Contractor COTS Background IPRs"</p>	<p>means Contractor Background IPRs that:</p> <ul style="list-style-type: none"> (a) the Contractor makes generally available commercially prior to the Contract Date (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Contractor save as to price; and (b) has a Non-trivial Customer Base;
<p>"Contractor COTS Software"</p>	<p>means Contractor Software that:</p> <ul style="list-style-type: none"> (a) the Contractor makes generally available commercially prior to the Contract Date (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Contractor save as to price; and (b) has a Non-trivial Customer Base;
<p>"Contractor Group"</p>	<p>means the Contractor and all its Group Companies;</p>
<p>"Contractor Non-COTS Background IPRs"</p>	<p>means any embodiments of Contractor Background IPRs that have been delivered by the Contractor to the Authority and that are not Contractor COTS Background IPRs;</p>

"Contractor Non-COTS Software"	means Contractor Software that is not Contractor COTS Software;
"Contractor Personnel"	means all Personnel of the Contractor engaged or involved in the delivery of the Services from time to time, each a "Contractor Person" ;
"Contractor Software"	means software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services including the Software specified as such in Schedule 15 (<i>Contractor Software</i>);
"Contractor System"	means the Contractor's computing environment (including hardware, software and telecommunications networks and equipment) used by the Contractor in connection with this Agreement, which for the avoidance of doubt excludes the Enterprise IT;
"Contractor's Confidential Information"	means any information, which has been designated as confidential by the Contractor in writing or that ought reasonably to be considered as confidential information, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Contractor, including IPR and documentation which is proprietary to the Contractor and its Approved Subcontractors, together with all information clearly designated as being confidential (whether or not it is marked as "confidential") and Commercially Sensitive Information, but in all cases excluding the Authority's Confidential Information;
"Control"	means that a person possesses, directly or indirectly, 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;
"Correction Plan"	means, in respect of an actual or potential Default, a Report setting out a feasible plan for the successful remediation, mitigation and/or avoidance of such Default;
"Crown Body"	means any department, office or agency of the Crown;
"DaaP Programme"	has the meaning given to it in Recital (C) to this Agreement;
"Data Breach"	means any actual or suspected incident of accidental or unlawful destruction, accidental loss, alteration, or unauthorised or accidental disclosure of, or access to Authority Data;
"Data Controller"	has the meaning given to it in the Data Protection Legislation;
"Data Protection Legislation"	means: (a) any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including the Data Protection Act 1998 and the Privacy and Electronic

	<p>Communications (EC Directive) Regulations 2003;</p> <p>(b) from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (the "General Data Protection Regulation"); and</p> <p>(c) any other legislation in force from time to time in the United Kingdom relating to either or both privacy or the Processing of Personal Data;</p>
"Data Subject"	has the meaning given to it in the Data Protection Legislation;
"Default"	means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors 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. In no event shall a failure or delay in the delivery of a Authority Dependency or an activity to be carried out by the Authority or their representatives in accordance with the Authority Standards be considered a Default;
"Defence Information Strategy"	means the Authority's ICT strategy document available at www.gov.uk/government/publications/defence-information-strategy ;
"DEFFORM 30"	means a form relating to the Authority's purchase-to-pay systems, as set out under the Authority's AOF;
"Deliverable"	means a product, item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Contractor at a Deliverable Date or at any other stage during the performance of this Agreement;
"Deliverable Date"	means in respect of a Deliverable, the scheduled date for completion set against that Deliverable in the Work Package;
"Detailed Exit Plan"	has the meaning given to it in Paragraph 2.1.17 of Appendix 1 (<i>Exit Plan Description</i>) to Schedule 12 (<i>Exit Management</i>);
"Dispute"	means any dispute or disagreement between the Parties arising out of or in connection with this Agreement or any document agreed or contemplated as being agreed pursuant to this Agreement (including any Work Package or the Collaboration Agreement) including any question regarding the existence, validity or termination of this Agreement, a Work Package or the Collaboration Agreement;
"Dispute Resolution Procedure"	means the process for resolving a Dispute set out in Clause 34 (<i>Governing Law and Disputes</i>);
"Documentation"	means descriptions of the Services, details of the Contractor System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality

	<p>including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the Contractor to the Authority under this Agreement;</p> <p>(b) is required by the Contractor in order to provide the Services; and/or</p> <p>(c) has been or is required to be generated for the purpose of providing the Services;</p>
"Documents"	means the documents listed at Appendix 1 of Schedule 10 (<i>Records</i>);
"Emergency Forward Work Schedule Amendments"	means an amendment to the Forward Work Schedule proposed by the Contractor (acting in accordance with Good Industry Practice) in order to mitigate any delay or adverse impact on the Authority that may be caused by reason of a delay or non-fulfilment, or anticipated delay or non-fulfilment of a Authority Dependency. Such amendments shall include, as appropriate, revised dates for re-visiting an Authority Premises that the Contractor has not been able to gain access to, as well as revised (and potentially earlier dates) for visiting, and carrying out work at, other Authority Premises in order to optimise use of the Contractor's resources and time;
"Employing Subcontractor"	means an Approved Subcontractor who employs or instructs Personnel engaged in the provision of the Services;
"Employment Liabilities"	means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership, religion or belief or age discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers or fixed-term employees, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation 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), and any legal costs and expenses (including all interest, penalties, legal and other costs), together with any applicable VAT and similar taxes or liability for deduction of PAYE tax properly incurred by the applicable party (and "Employment Liabilities" and cognate terms shall be construed accordingly);
"Employment Regulations"	means in the UK, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (or any regulations they replaced), as amended, superseded or replaced from time to time, and in other countries in Europe,

	the Transfers of Undertakings Directive 2001/23/EC as implemented and enacted into the domestic laws of each country;
"Enterprise IT"	means the Authority's ICT environment from time to time (including all hardware, software, telecommunications networks and similar equipment) which is owned by the Authority or licensed to the Authority by a third party;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"Exit"	means any exit or partial exit from one or more Services (or any part thereof), including any activities associated with the transition from the Contractor to any Replacement Contractor;
"Exit Assistance"	means the activities described in Paragraph 7.4 of Schedule 12 (<i>Exit Management</i>);
"Exit Management Information"	means the information listed in Paragraph 2.1 of Schedule 12 (<i>Exit Management</i>);
"Exit Management Plan"	means a Report which meets the description given in Paragraph 2 of Appendix 1 (<i>Exit Plan Description</i>) to Schedule 12 (<i>Exit Management</i>);
"Exit Period"	means in respect of the Agreement or a Work Package (as appropriate), the period: (a) commencing on either: (i) the date that is three (3) months prior to the expiry of the Agreement; or (ii) the day after the date on which the relevant Termination Notice (or any other notice given with the intent of terminating the Agreement or a Work Package) is served by either Party; and (b) unless otherwise stated in the Work Package, ending on the date falling on the latest of: (i) the expiry or termination of the Agreement or the Work Package (as appropriate); or (ii) the date on which all the activities in the Exit Plans have been completed to the satisfaction of the Authority (including, where there is a Replacement Contractor, transition to such Replacement Contractor has been completed);
"Exit Plans"	means the Exit Management Plan and the Detailed Exit Plan, and "Exit Plan" means any of them;
"Fixed Charge"	has the meaning set out in Paragraph 1.2.1 of Schedule 4 (<i>Charges and Invoicing</i>);
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued

	by the Information Commissioner or relevant Government Department in relation to such legislation;
"Force Majeure Event"	means any cause affecting the performance by a Party of its obligations arising from acts, omissions or events beyond its control, including riot, civil unrest, war, acts of terrorism or a threat or perceived threat of act of terrorism, disaster, earthquake, extraordinary storm, pandemics and epidemics or other analogous event, or strike, lock-out or other industrial dispute, but excluding: <ul style="list-style-type: none"> a) floods; b) fires; c) strikes, lock-outs or industrial action taken by the Contractor Personnel or the employees of an Approved Subcontractor; d) any failure by the Contractor, the Approved Subcontractors and its or their supply chain; and e) Brexit;
"Forward Work Schedule"	means in respect of an Authority Premise, a schedule of all planned works to be carried out by the Contractor at such premises;
"FST Exceptions Report"	means a comprehensive and accurate Report to be delivered by the Contractor that sets out FST Issues and Incoherencies for the Test Capability across ISS Projects;
"FST Issue"	has the meaning given to it in D.4.3 of TSP WP1;
"FST Monthly Report"	means a comprehensive and accurate Report to be delivered by the Contractor that sets out Forward Schedule of Test incoherencies and Issues across ISS Projects;
"FST Recommendations Report"	has the meaning given to it in D.4.4 of TSP WP1;
"FST Remediation Plan"	has the meaning given to it in D.4.5 of TSP WP1;
"FST Remediation Progress Report"	has the meaning given to it in D.4.7 of TSP WP1;
"FST"	means the 'Forward Schedule of Test' as defined in D.4.1 of TSP WP1;
"FTE Exceptions Report"	means a comprehensive and accurate Report to be delivered by the Contractor that sets out FTE Issues and Incoherencies for the Test Capability across ISS Projects;
"FTE Plan"	has the meaning given to it in D.6.1 of TSP WP1;
"FTE Issue"	has the meaning given to it in D.6.3 of TSP WP1;
"FTE Recommendations Report"	has the meaning given to it in D.6.4 of TSP WP1;
"FTE Remediation Plan"	has the meaning given to it in D.6.5 of TSP WP1;
"FTE Remediation Progress Report"	has the meaning given to it in D.6.7 of TSP WP1;

"FTE"	means federated test environment;
"GMT"	means Greenwich Mean Time;
"Good Industry Practice"	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
"Government"	means the central government of the United Kingdom;
"Gross Negligence"	means any act or failure to act (whether sole, joint or concurrent) by any person (or its officers, employees, representatives, agents or advisers) which was intended to cause, or which was in reckless disregard of or wanton indifference to, harmful consequences such person knew, or should have known, such act or failure would have on the safety or property of another person;
"Group Company"	means, in relation to a company, any member of that company's Group;
"Group"	means, in relation to a company, the relevant company, its ultimate Holding Company and all Subsidiaries of its ultimate Holding Company;
"Government Security Classification Policy" or "GSC"	means the Government Security Classification Policy, available at the Contract Date at www.gov.uk/government/publications/government-security-classifications and as may be amended, updated or replaced by the Cabinet Office from time to time;
"Holding Company"	means a holding company as defined by sections 1159 and 1160 of the Companies Act 2006;
"ICS"	means information and communication services;
"ICT" or "IT"	means information and communication technology;
"Incoherency"	means any non-trivial defect, deficiency, misalignment, gap, illogicality, conflict, or similar problem or adverse circumstance, opportunity or area for potential improvement and any other issue of non-trivial relevance to the Services, and " Incoherencies " shall be construed accordingly;
"Indemnified Person"	means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licences, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
"Information"	has the meaning given to it under Section 84 of the FOIA;
"Initial Term"	has the meaning given to it under Clause 2.1 (<i>Initial Term</i>);

"Insolvency Event"	means, in respect of a party, that it becomes unable to pay its debts, enters into liquidation (except for the purposes of a solvent amalgamation or reconstruction), makes an arrangement with its creditors, becomes subject to an administration order or a receiver or administrative receiver is appointed over all or any of its assets or takes or suffers to be taken any similar action in consequence of a debt, ceases or threatens to cease trading or is dissolved, or if any procedure equivalent to any of the preceding matters occurs in any other jurisdiction with respect to that party;
"Insurance Policies"	has the meaning given in Clause 23.15 (<i>Repayment in the event of recovery</i>);
"Integration Test" or "Integration Testing"	means the testing of combinations of components and services according to the FST, in a representative end-to-end test environment, with the aim of proving that they work together to provide the overall capability delivery and that they do not adversely affect existing live services and capabilities;
"Intellectual Property Rights" or "IPRs"	means: <ul style="list-style-type: none"> 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 service marks, logos, get-up, rights in internet domain names and website addresses and other rights in trade names, registered and unregistered designs, Know-How, trade secrets and other rights in confidential information; b) any registration of and 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"	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Contractor, in either case in combination with any item not supplied or recommended by the Contractor pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services or the provisions of this Agreement;
"ISS"	means 'Information Systems and Services', the organisation within the Authority responsible for the design, development and operation of Enterprise IT;
"ISS Projects"	means the portfolio of projects and programmes ISS is, or is planning to deliver;

"ISS Services"	means the ICT services and systems delivered and supported by ISS from time to time;
"ISS Ways of Working"	means the framework of processes, procedures and work instructions that direct Authority Personnel and its Contractors in what their role is in delivering the Authority's outputs;
"Issue"	means Incoherency, and "Issues" shall be construed accordingly;
"IT Environment"	means the Enterprise IT and the Contractor System;
"ITIL"	means the Information Technology Infrastructure Library suite of publications, as issued and updated by the Government from time to time;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;
"Knowledge Library"	means a repository of policies, processes, reports, templates and information that is used to deliver the Test Capability;
"Law"	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court or directives or requirements of any Regulatory Authority, delegated or subordinate legislation or notice of any Regulatory Authority and "Laws" means all of them;
"Licensed Software"	means all and any Software licensed by or through the Contractor, its Approved Subcontractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Third Party Software and/or any Specifically Written Software;
"Loss"	means any damages, compensation, costs and expenses (including any legal fees on a solicitor/client basis), disbursements, liabilities, losses, and any award, fines, orders, penalties, payments by way of settlement, and any costs of any actions, claims, demands, proceedings or investigations (including any investigation by any enforcement, regulatory or supervisory body and of implementing any requirements that may arise from any such investigation), arbitration, litigation, settlement, judgment interest, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Malware"	means software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malware is introduced wilfully, negligently or without knowledge of its existence, including any disruptive element, virus, worm, 'Trojan', spyware or other malware;

"Man Day"	means eight (8) Man Hours;
"Man Hour"	means an hour spent by the Contractor Personnel properly working on the Services in accordance with Schedule 4 (<i>Charges and Invoicing</i>);
"Management Information" abbreviated "MI"	means the operational management information and performance reports to be provided by the Contractor to the Authority, as specified: (a) in Paragraph 7 of Schedule 7 (<i>Governance and Reporting</i>); (b) in any Work Packages in force from time to time; and (c) by the Authority from time to time;
"Minimum Service Requirement"	means the minimum requirement(s) to be fulfilled by the Contractor in providing the Services, as specified in the column headed 'Minimum Service Requirements' in each Work Package;
"MSA Offence"	has the meaning given to it in Clause 21.7(<i>Anti-slavery</i>);
"MSP"	means a managed service provider supplying IT services to the Authority;
"Network Operating Authority"	means the part of the Authority's network authority responsible for protecting, operating and defending the Authority's defence network thereby preserving its operational capability and integrity, as more fully described in JSP 604;
"Non-Functional Testing Index"	has the meaning given to it in D.7.2 of TSP WP1;
"Non-trivial Customer Base"	means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
"Object Code"	means software and/or data in machine-readable, compiled object code form;
"Open Book Accounting Data"	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to: <ul style="list-style-type: none"> a) the Contractor's total Charges for the Services (including Fixed Charges and Recurring Charges), broken down for the Authority by volume and unit cost; b) any margins or mark-ups (if applicable) included in that total Charge; c) the actual Charges profile for each month and a summary of the same for each financial year; d) a summary of the construction of each Fixed Charge and/or Recurring Charge; e) in relation to any Fixed Charge: <ul style="list-style-type: none"> (i) details of any manpower costs included in the relevant Fixed Charge, for all project activities to be undertaken; and

	<p>(ii) a monthly and cumulative estimation of the percentage of progress made against the completion of the relevant Deliverable; and</p> <p>f) any additional information as the Authority reasonably requires;</p>
"Open Source"	means computer software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
"Parties"	means the Authority and the Contractor and their respective successors and permitted assigns, and "Party" shall be construed accordingly;
"Personal Data"	has the meaning given to it in the Data Protection Legislation;
"Personnel"	means, in respect of a party, the employees, consultants, agents, servants and subcontractors of that party, and the employees, consultants, agents and servants of such subcontractors;
"Processed"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing (and "Process" and "Processing" shall be construed accordingly);
"Project Specific IPRs"	<p>means:</p> <p>(a) Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) 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 Contractor's obligations under this Agreement; but shall not include the Contractor Background IPRs or the Specifically Written Software;</p>
"Quality Plan"	has the meaning given to it in Paragraph 3.2.2 of Schedule 3 (<i>Work Plan</i>);
"RAID Log"	means the log(s) used to capture, track and manage the risks, assumptions, issues, and dependencies;
"Rate Card"	means the rate card for the provision of Services as set out in Paragraph 7.2 of Schedule 4 (<i>Charges and Invoicing</i>);
"Recurring Charge"	has the meaning set out in Paragraph 1.2.2 of Schedule 4 (<i>Charges and Invoicing</i>);
"Regulatory Authority"	means the National Audit Office, the Information Commissioner's Office, the Treasury, HM Revenue & Customs and any other regulatory or governmental body charged with enforcing the Laws from time to time;
"Regulatory Change"	has the meaning given in Clause 11.2 (<i>Regulatory Changes</i>);

"Relevant IPRs"	means IPRs used to provide the Services or as otherwise provided and/or licensed by the Contractor (or to which the Contractor has provided access) to the Authority or a third party in the fulfilment of the Contractor's obligations under this Agreement including IPRs in the Specifically Written Software, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
"Renewal Period"	has the meaning set out in Clause 2.2 (<i>Renewal</i>);
"Replacement Authority"	means any body which substantially performs any of the functions that previously had been performed by the Authority or ISS (including any private body which takes over the procurement function or the management (or service management) of the Authority's IT services);
"Replacement Contractor"	means 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);
"Replacement Services"	means 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, whether in whole or in part, of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
"Report"	means a comprehensive, intelligible, clear, accurate, up-to-date and reasonably detailed written report prepared by Contractor Personnel in accordance with Good Industry Practice;
"Re-Procurement Assistance"	means the activities described in Paragraph 7.1 of Schedule 12 (<i>Exit Management</i>);
"Re-Procurement Notice"	means a notice in writing served by the Authority to initiate the re-procurement of the Services, one or more Work Packages or part thereof;
"Re-procurement Period"	means, in respect of the procurement of any Replacement Services, the period commencing upon the earlier of: <ul style="list-style-type: none"> (a) the date on which the Authority publishes a notice of its intention to procure such Replacement Services (including in the Official Journal of the European Union, Defence Contracts Bulletin or similar publication); and (b) the date on which the Authority issues a Re-Procurement Notice in relation to such Replacement Services, and ending on the date that a contract award notice is published by the Authority in respect of the Replacement Services;
"Request for Information"	means a request for information or an apparent request under FOIA, the Environmental Information Regulations or

	the Transparency Agenda received by the Authority, the Contractor, the Approved Subcontractors or another relevant Regulatory Authority or public body (as defined by FOIA) or public authority (as defined by the Environmental Information Regulations);
"RTE"	means a representative test environment, being a test environment which is representative of the live capability/service within a live environment;
"Secret Matter"	means any matter connected with this Agreement, or its performance which is designated by the Authority in the Security Aspects Letter or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
"Security Aspects Letter"	means the document issued to the Contractor by the Authority designated by the Authority as the "Security Aspects Letter" and which may be amended and updated from time to time in accordance with its terms;
"Security Confirmation(s)"	means in respect of Contractor Personnel, written and accurate confirmation that each of the Contractor Personnel: <ul style="list-style-type: none"> (a) have appropriate security clearances (giving details of the relevant security clearances and their reference numbers); (b) have signed relevant non-disclosure agreements required by the Authority; (c) have agreed and signed local security instructions; and (d) otherwise comply with the DCNS Enterprise Security Policies;
"Security Requirements"	means any requirements related to security as set out in Clause 14 (<i>Security</i>), the Work Packages, the Work Plan and Schedule 6 (<i>Security Requirements</i>), together with any other security requirements notified by the Authority from time to time;
"Service Commencement Date" or abbreviated "SCD"	means the Contract Date or such other date set out in a Work Package or another part of this Agreement, or as otherwise agreed by the Authority in writing, on which the Contractor is required to start providing a particular Service;
"Service Validation and Test Process"	has the meaning given to it in D.1.1 of TSP WP1;
"Services"	means all of the services and obligations that the Contractor is obliged to provide or fulfil under this Agreement from time to time including under each Work Package;
"Software Supporting Materials"	has the meaning given in Clause 18.4.2 (<i>Specifically Written Software and Project Specific IPRs</i>);
"Software"	means Specifically Written Software and Third Party Software;

"Solvent"	<p>means that an entity:</p> <ul style="list-style-type: none"> (a) has no reasonable expectation that it or its Holding Company will be affected by an Insolvency Event; and (b) is not undergoing an Insolvency Event;
"Source Code"	<p>means the source code of all the modules and components comprised in the relevant software in human-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all tools, technical information and documentation (including all specifications, input and output formats, algorithms and file structures) that are necessary for the use, reproduction, modification, enhancement and compilation of such software or that have been used for such purposes;</p>
"Specifically Written Software"	<p>means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Contractor (or by a Subcontractor or other third party on behalf of the Contractor) specifically for the purposes of this Agreement, including any modifications or enhancements to Third Party Software created specifically for the purposes of this Agreement;</p>
"Subsequent Relevant Transfer"	<p>means a change in the identity of the supplier of the Services as a consequence of the arrangements under the terms of this Agreement, which entails the transfer of any Subsequent Transferring Employee or any other employee (as applicable) from the Contractor or any Approved Subcontractor to the Authority or any Replacement Contractor pursuant to the Employment Regulations;</p>
"Subsequent Transferring Employee"	<p>means any employee of the Contractor or any Approved Subcontractor who is assigned (within the meaning of the Employment Regulations) immediately prior to the applicable Subsequent Transfer Date to providing the same or substantially similar services (or in respect of partial termination, the relevant part of the services) to be provided by the Authority or a Replacement Contractor from and including the applicable Subsequent Transfer Date and whose employment transfers to the Authority or a Replacement Contractor on the applicable Subsequent Transfer Date;</p>
"Subsequent Transfer Date"	<p>means the date on which a Subsequent Relevant Transfer is effected for Subsequent Transferring Employees;</p>
"Subsidiary"	<p>means a subsidiary as defined by sections 1159 and 1160 of the Companies Act 2006;</p>
"System"	<p>means any computer systems supplied or provided by the Contractor (including hardware and software) used by or on behalf of the Contractor to provide all or part of the Services;</p>
"TCT Resourcing Exceptions Report"	<p>has the meaning given to it in D.2.3 of TSP WP1;</p>
"TCT Resourcing Issue"	<p>has the meaning given to it in D.2.3 of TSP WP1;</p>

"TCT Resourcing Plan"	has the meaning given to it in D.2.1 of TSP WP1;
"TCT Resourcing Recommendations Report"	has the meaning given to it in D.2.4 of TSP WP1;
"TCT Resourcing Remediation Plan"	has the meaning given to it in D.2.5 of TSP WP1;
"TCT Resourcing Remediation Progress Report"	has the meaning given to it in D.2.7 of TSP WP1;
"TCT Service Improvement Report"	has the meaning given to it in D.1.5 of TSP WP1;
"TCT Services"	means all services delivered or offered by the TCT Team or the Test Capability from time to time;
"TCT Stakeholder Management Plan"	has the meaning given to it in D.1.2 of TSP WP1;
"TCT Team"	means the 'Test, Change and Transition Team', the organisation within the Authority responsible for testing, technical integration and technical transition of ISS Services;
"Technical Integration Assurance"	has the meaning given to it in D.9.1 of TSP WP1;
"Technical Integration Exceptions Report"	has the meaning given to it in D.9.1 of TSP WP1;
"Technical Integration Issue"	has the meaning given to it in D.9.1 of TSP WP1;
"Technical Integration Recommendations Report"	has the meaning given to it in D.9.2 of TSP WP1;
"Technical Integration Remediation Plan"	has the meaning given to it in D.9.3 of TSP WP1;
"Technical Integration Remediation Progress Report"	has the meaning given to it in D.9.5 of TSP WP1;
"Term"	means the period from the Contract Date until the termination or expiry of this Agreement in accordance with its terms or by operation of law;
"Termination Notice"	means a notice in writing, served by one Party on the other, in accordance with the terms of this Agreement to initiate the termination of this Agreement, one or more Work Packages or parts thereof;
"Test Artefacts"	means the ISS Project Test Strategies, test plans, test schedules, test scripts, test readiness reports, test preparation reports, test evidence, test execution reporting, defect management reports, test summary reports and test completion reports;
"Test Assurance Exceptions Report"	means monitor, report and initiate appropriate actions resulting from Test Artefacts;
"Test Assurance Hotspot"	has the meaning given to it in D.5.1 of TSP WP1;

Report"	
"Test Assurance"	has the meaning given to it in D.5.1 of TSP WP1;
"Test Capability Management Tool"	means the toolset used by the Authority to store test records and manage the test processes and procedures;
"Test Capability"	means the combined functions, personnel and resources responsible within the TCT for technical integration, Integration Testing, Transition Planning and Support, test tooling and test environments management;
"Test Capability Performance Monitoring Option"	has the meaning given to it in D.3.2 of TSP WP1;
"Test Capability Performance Monitoring Plan"	has the meaning given to it in D.3.3 of TSP WP1;
"Test Capability Performance Monitoring Report"	has the meaning given to it in D.3.2 of TSP WP1;
"Test Policies"	means the test policies specified by ISS, from time to time;
"Test Strategies"	has the meaning given to it in D.1.1 of TSP WP1;
"Test Virtual Private Network" or "Test VPN"	means a virtual encrypted connection inside the network used to connect test environments;
"Test VPN Configuration Status Report"	has the meaning given to it in D.6.8 of TSP WP1;
"Third Party COTS IPRs"	means Third Party IPRs that: (a) the Contractor makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Contractor save as to price; and (b) has a Non-trivial Customer Base;
"Third Party COTS Software"	means Third Party Software (including Open Source software) that: (a) the Contractor makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Contractor save as to price; and (b) has a Non-trivial Customer base;
"Third Party IPRs"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Non-COTS IPRs"	means Third Party IPRs that are not Third Party COTS IPRs;
"Third Party Non-COTS Software"	means software which is proprietary to any third party (other than an Affiliate of the Contractor) or any Open Source Software which in any case is, will be or is proposed to be used by the Contractor for the purposes of providing the Services;
"Third Party Software"	means software which is proprietary to any third party (other

	than an Affiliate of the Contractor) which is or will be used for the purposes of providing the Services;
"TPS Exceptions Report"	has the meaning set out in D8.1 of TSP WP1;
"TPS Recommendations Report"	has the meaning set out in D8.2 of TSP WP1;
"TPS Remediation Plan"	has the meaning set out in D8.3 of TSP WP1;
"TPS Remediation Progress Report"	has the meaning set out in D8.5 of TSP WP1;
"TPS"	has the meaning set out in D8.1 of TSP WP1;
"Training"	means teaching, formal classes, targeted training, technology-based-learning, on-the-job training, shadowing, simulations, lectures, tutorials, case studies, upskilling, coaching, mentoring, and improving knowledge acquisition;
"Transition State"	means a point in time during the design, development and/or operation of a service where all of the required elements of the system and its eco-system required in order to test and assert the premise that it is a 'viable service' hold true. The point at which transition states are assessed can be regular or irregular and are normally defined at points when there are key capability or technology changes are expected;
"Transparency Agenda"	means Her Majesty's Government's transparency agenda, overseen as at the Contract Date by the Public Sector Transparency Board, as such agenda is amended or replaced from time to time;
"TSCM"	means target supply chain model;
"Unexpected Subsequent Transferring Employee"	has the meaning given in Paragraph 3.1 of Part II of Schedule 13 (<i>Employee Transfer</i>);
"VAT"	means value added tax as provided for in the Value Added Tax Act 1994 and any other applicable sales tax;
"Virtual Private Network" abbreviated "VPN"	means a virtual encrypted connection inside the network;
"Wilful Default"	means a breach by a Party of its obligations under this Agreement, where at the time the breach was committed, that Party either knew (or was reckless to the fact) that the breach would arise from its acts or omissions;
"Work Package"	means those individual work packages set out in Schedule 1 (<i>Work Packages</i>) as at the Contract Date and those subsequently agreed which once signed by both parties shall be deemed to form part of Schedule 1 (<i>Work Packages</i>);
"Work Package Effective Date"	means in respect of a Work Package, the date on which the Work Package is executed by both Parties;
"Work Package Term"	means the duration of the Services to be provided under a Work Package as specified in the Work Package and beginning on the Work Package Effective Date and ending at 00.01 on the day after the end date of the Work Package Term;

"Work Package Value"	has the meaning set out in Paragraph 6.1 of Schedule 4 (<i>Charges and Invoicing</i>);
"Work Plan"	means a Report setting out the work plan which covers all Work Packages under this Agreement which is prepared by the Contractor and approved by the Authority in accordance with Clause 3 (<i>Services</i>) and Schedule 3 (<i>Work Plan</i>) from time to time.
"Working Day"	means any day other than a Saturday, Sunday or public holiday in England and Wales, or (in respect of an obligation relating to a Service or thing that is to be received outside of England and Wales) similar local arrangements;

- 1.2 The interpretation and construction of this Agreement shall at all times be subject to the following provisions:
- 1.2.1 references to one gender include all genders and references to the singular include the plural and vice versa;
 - 1.2.2 references to:
 - (i) a person include any natural persons, company, firm, partnership or unincorporated association (whether or not having separate legal personality) and their successors and permitted assigns or transferees; and
 - (ii) a company shall include any company, corporation or any corporate body, wherever incorporated;
 - 1.2.3 references to this Agreement shall include any recitals and schedules to it;
 - 1.2.4 references without further designation to clauses and schedules are to clauses of, and schedules to, this Agreement;
 - 1.2.5 references without further designation to paragraphs and parts are to paragraphs and parts of the schedules;
 - 1.2.6 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - 1.2.7 the words "**includes**", "**including**", "**in particular**", "**for example**" and words of similar effect are to be construed as illustrative without limitation to the generality of the related general words;
 - 1.2.8 references to a Law include:
 - (i) that Law as from time to time amended, modified, re-enacted, reproduced or consolidated whether before or after the date of this Agreement; and
 - (ii) any subordinate legislation made from time to time under that Law;
 - 1.2.9 reference to a Regulatory Authority shall include any successor to that Regulatory Authority;
 - 1.2.10 references to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm;
 - 1.2.11 reference to this Agreement (or to any other document) is a reference to this Agreement (or to that other document) as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement; and
 - 1.2.12 references to times of the day are expressed in GMT in the twenty-four (24) hour clock format.

- 1.3 The Authority shall not be considered to have knowledge of any Government policy, fact, matter or thing unless that Government policy, fact, matter or thing is within the knowledge of a relevant Authority representative.
- 1.4 If there is any conflict, apparent conflict, ambiguity or inconsistency in or between any sections of this Agreement, the sections shall be applied in the following order of precedence with the former sections prevailing over the latter: first the clauses; then the schedules (other than Schedule 1 (*Work Packages*)); then the Work Packages; and then any other document referred to in this Agreement. In the event that the Contractor becomes aware of a conflict between a Work Package and any other part of this Agreement, the Contractor shall promptly notify the Authority of such conflict and shall follow the Authority's instructions in connection with such conflict.
- 1.5 Prompt and expeditious performance of this Agreement is important to the Authority. In all cases therefore where the Contractor is obliged to take action, provide notice or complete a task under this Agreement then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in this Agreement.

2. COMMENCEMENT AND TERM

Initial Term

- 2.1 This Agreement commences on the Contract Date and will expire twenty-four (24) months after the Contract Date (such period being the "**Initial Term**"), unless it is terminated at an earlier date or extended in accordance with its terms.

Renewal

- 2.2 The Authority may extend the Initial Term for one further period of up to twelve (12) months (a "**Renewal Period**") by giving notice in writing to the Contractor at least sixty (60) Working Days before the expiry of the Initial Term. Such notice shall set out the actual duration of the Renewal Period. During the Renewal Period, the terms of this Agreement shall remain unchanged and in full force and effect.

Expiry

- 2.3 This Agreement shall expire at 00:01 on the day after the final date of the Term.

Due diligence

- 2.4 The Contractor acknowledges that it:
 - 2.4.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
 - 2.4.2 has raised all relevant due diligence questions with the Authority before the Contract Date;
 - 2.4.3 has carried out due diligence in accordance with Good Industry Practice with the objective of satisfying itself as to all risks, contingencies and circumstances pertaining to the performance of this Agreement; and
 - 2.4.4 has entered into this Agreement in reliance on its own due diligence.
- 2.5 The Authority gives no warranty, representation or undertaking that any information supplied to the Contractor, whether by or on behalf of the Authority or otherwise (and whether or not such information was provided before or after the Contract Date, including during the tender period for the Services) is complete, relevant, accurate, up-to-date or fit for purpose.

3. SERVICES

Non-exclusive appointment

- 3.1 The Contractor is appointed by the Authority under this Agreement as the non-exclusive provider of the Services and nothing in this Agreement shall prevent the Authority or any persons connected with it from acquiring the Services or services similar to the Services from another supplier or from performing any such services for itself internally.

Service beneficiary

- 3.2 The Contractor shall provide the Services in accordance with this Agreement, and to and for the benefit of, the Authority. The Contractor shall only provide the Services from within the United Kingdom.

Service commencement

- 3.3 The Contractor shall provide each of the Services to the Authority from the applicable Service Commencement Date and shall throughout the term ensure that all Services comply in all respects with:

- 3.3.1 the Minimum Service Requirements;
- 3.3.2 the relevant descriptions set out in the Work Packages; and
- 3.3.3 all other terms of this Agreement.

Scope of Services

- 3.4 The Services shall be deemed to include all activities, functions and services necessary for the proper provision of, or which are, ancillary to or which are customarily included as part of services similar to, the Services.

Work Plan

- 3.5 Within three (3) Working Days of any Service Commencement Date, the Contractor shall meet with the Authority to discuss and demonstrate the readiness and appropriateness of plans, processes, systems, resourcing and any other factors required for the reliable performance and completion of the relevant Services.
- 3.6 The Contractor shall fulfil all its obligations set out in Schedule 3 (*Work Plan*) and shall deliver, implement, maintain and comply with the Work Plan throughout the Term.

Responsibility for Approved Subcontractors and Personnel

- 3.7 Despite the Contractor's subcontracting right pursuant to Clause 32 (*Subcontracting*), the Contractor shall be fully responsible to the Authority for the acts and omissions of its Approved Subcontractors and Contractor Personnel as if they were its own, and the Authority's consent to any subcontracting will not relieve the Contractor of its obligations to the Authority under this Agreement.
- 3.8 Any obligation on the Contractor to do, or refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that the Approved Subcontractors and Contractor Personnel also do, or refrain from doing, such act or thing.
- 3.9 The Contractor shall be deemed to have such knowledge in respect of the Services as is held, or ought reasonably to be held, by its Approved Subcontractors and Contractor Personnel.

New Work Packages

- 3.10 On and from the Contract Date, the Contractor shall perform the Services in accordance with the requirements of the Work Packages set out in Schedule 1 (*Work Packages*). Each additional Work Package shall be agreed by the Parties in the following manner:
- 3.10.1 the Authority shall request the Contractor to provide the Authority with a draft Work Package for the Services required by the Authority in the form set out in Schedule 8 (*Form of Work Package*);
 - 3.10.2 Contractor shall request the Authority to provide any additional information it reasonably requires (if any) in order to prepare a draft Work Package;
 - 3.10.3 Contractor shall provide the Authority with the draft Work Package within ten (10) Working Days of the Authority's request under Clause 3.10.1 (or as otherwise agreed between the Parties in writing); and
 - 3.10.4 if requested by the Authority, the Contractor and the Authority shall discuss the draft Work Package.
- 3.11 If the Authority accepts the new draft Work Package (whether as originally submitted by the Contractor or as amended following discussions under Clause 3.10.4) then the

Authority and the Contractor shall procure that their respective authorised representatives execute, as soon as possible thereafter, two copies of the Work Package, with each Party retaining one copy of the executed Work Package.

- 3.12 Once a Work Package has been agreed and signed in accordance with Clause 3.11 no amendment shall be made to it except in accordance with Clause 11 (*Change Control*).
- 3.13 Each Work Package shall be part of this Agreement and shall not form a separate contract to it.
- 3.14 Each Party shall comply with its obligations under these Clauses 3.10 to 3.13 at its own cost.

4. SERVICE STANDARDS

Services

- 4.1 The Contractor shall perform all Services with all due care, skill and attention and in accordance with:
 - 4.1.1 the Work Plan;
 - 4.1.2 the Quality Plan;
 - 4.1.3 the Authority Standards;
 - 4.1.4 the Collaboration Agreement;
 - 4.1.5 the Laws;
 - 4.1.6 Good Industry Practice; and
 - 4.1.7 the Authority's reasonable instructions.

- 4.2 The Contractor shall ensure that at all times it has adequate capability, capacity and availability necessary for the performance of the Services in accordance with this Agreement.

Deliverables

- 4.3 The Contractor shall ensure that any Deliverables, work or material produced by the Contractor as part of the Services are and shall at all times continue to be:
 - 4.3.1 of satisfactory quality and free from non-trivial defects;
 - 4.3.2 supported by adequate documentation, where applicable; and
 - 4.3.3 compatible with the Authority's existing systems and processes.
- 4.4 The Contractor shall ensure that all of the Deliverables are completed by their respective Deliverable Dates. The Contractor shall monitor progress on the Deliverables and their respective Deliverable Dates in order to identify as soon as reasonably practicable if a Deliverable is unlikely to be completed by the relevant Deliverable Date. Without prejudice to the Contractor's other obligations and the Authority's other rights and remedies under this Agreement or at law, if at any time the Contractor becomes aware that any of the Deliverables will not or are unlikely to be completed by their respective Deliverable Dates, it shall:
 - 4.4.1 inform the Authority of the reasons;
 - 4.4.2 inform the Authority of the consequences of not meeting the relevant Deliverable Date (including any impact on the likelihood of other Deliverables being completed by their respective Deliverable Dates); and
 - 4.4.3 provide to the Authority and fully implement a Correction Plan to mitigate the consequences of not meeting the relevant Deliverable Date.

Agility and scalability

- 4.5 Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:

- 4.5.1 provide Services that are scalable, without major service interruptions and without compromising information assurance, in each case to meet the operational and business requirements of the Authority from time to time; and
- 4.5.2 in designing and implementing its Service provision, ensure that the Services are capable of being transferred to the Authority or any Replacement Contractor (using standard market practices and commercially reasonable levels of resourcing) upon expiry or termination of this Agreement.

Value for money

- 4.6 Without limiting the Contractor's other obligations under this Agreement, the Contractor shall deliver the Services in an economic, efficient and effective manner, consistent with and having regard to the Authority's obligation to ensure value for money.

5. COOPERATION

- 5.1 The Contractor shall, if required by the Authority in connection with the Services, liaise, consult and engage with Authority stakeholders (including staff or contractors acting on behalf of the Authority), any other part of Government (including scrutineers) or the allies of the United Kingdom from time to time, in a courteous, competent and professional manner and in accordance with the instructions of the Authority.

Defence as a Platform

- 5.2 The Contractor acknowledges and agrees that:
 - 5.2.1 the Services provided under this Agreement are intended to form part of the DaaP Programme and that, without limiting the Contractor's other obligations under this Agreement, the Contractor will work with the Authority to achieve the strategic vision and objectives of the DaaP Programme, as further described in the Defence Information Strategy; and
 - 5.2.2 receiving seamless, secure, efficient and cost-effective end-to-end ICT services is vital to the Authority's ability to fulfil its functions and that any failure of the Contractor to engage with Authority Service Providers in an open and co-operative manner in accordance with this Agreement may prejudice the Authority's receipt of such seamless, secure, efficient and cost-effective end-to-end ICT services.

Authority Service Providers

- 5.3 The Contractor shall communicate openly and co-operate with and provide reasonable assistance to Authority Service Providers. Without limiting the Contractor's obligations under the Collaboration Agreement, such communication, cooperation and assistance shall include:
 - 5.3.1 providing such information about the manner in which the Services are provided as is reasonably requested by Authority Service Providers in order to facilitate the provision of their services to the Authority or for carrying out such activities as have been delegated to them by the Authority;
 - 5.3.2 making information available to, or accepting information from, Authority Service Providers;
 - 5.3.3 using its reasonable endeavours to prevent, resolve and limit the impact on the Authority of any disputes or disagreements between it and any Authority Service Provider; and
 - 5.3.4 meeting with the Authority and any Authority Service Providers from time to time to discuss the Services and the services provided by third parties.
- 5.4 Without limiting the Contractor's obligations under Clause 5.3 or the Collaboration Agreement, the Contractor shall inform the Authority of any disputes or disagreements between it and any Authority Service Providers that arise when fulfilling its obligations under this Clause 5.

Collaboration Agreement

- 5.5 The Contractor acknowledges that there are or will be a number of Authority Service Providers who have entered or will enter into agreements with the Authority in relation to delivery of ICT services, including as part of the DaaP Programme. The Contractor further acknowledges that it and one or more Authority Service Providers are or will be parties to the Collaboration Agreement.
- 5.6 The Contractor shall enter into the Collaboration Agreement on or before the Contract Date, and shall at all times:
- 5.6.1 comply with the provisions of the Collaboration Agreement; and
 - 5.6.2 in performing the Services and carrying out its obligations under the Collaboration Agreement, act in accordance with its principles.
- 5.7 Without limiting the Contractor's obligations under this Agreement or the Collaboration Agreement, the Contractor shall, when providing the Services, ensure that where it (and any of its Approved Subcontractors and Contractor Personnel) interacts with Authority Service Providers, such interactions are consistent with the provisions of the Collaboration Agreement and designed to minimise disruption to the Authority and any services being provided to the Authority's end users and to maximise the efficiency and utility of such services.

6. ACCEPTANCE

- 6.1 When the Contractor believes that it has completed any Services or Deliverables for which it proposes to invoice in accordance with this Agreement, it shall notify the Authority of this fact and, at the same time, provide the Authority with all assistance and information reasonably required (or as the Authority may reasonably request) to assess whether or not the relevant Services and Deliverables have been successfully completed.
- 6.2 If the Authority considers that the relevant Services or Deliverables have been successfully completed in accordance with the terms of this Agreement, the Authority Representative shall notify the Contractor of this fact in writing ("**Acceptance**"). Acceptance shall be without prejudice to any of the Authority's rights or remedies under this Agreement.
- 6.3 This Clause 6 shall not preclude the Authority from requiring the Services or Deliverables to be fully completed at a later stage so that they comply with the requirements for such Services or Deliverables under the Agreement provided any failure is raised by the Authority within three (3) months of the date of use by the Authority.
- 6.4 If the Authority, acting reasonably, does not believe that the relevant Services or Deliverables have been successfully completed in accordance with the terms of this Agreement, it shall notify the Contractor of this fact, giving reasons. On receipt of such notification, the Contractor shall, at its own cost, work to remediate the relevant Services or Deliverables and shall re-submit them for Acceptance, within five (5) Working Days of such notification, in accordance with the process set out in this Clause 6. This process shall be repeated until Acceptance takes place.
- 6.5 The Authority shall not unreasonably withhold or delay its Acceptance or notification pursuant to Clause 6.4 (as relevant).

7. DEFAULT

Notification

- 7.1 Without prejudice to the Contractor's other obligations and the Authority's other rights and remedies under this Agreement or at law, the Contractor shall promptly notify the Authority whenever the Contractor has reasonable grounds to believe that any circumstances or development (including failure on the part of the Contractor to carry out its obligations or responsibilities under this Agreement) will have or threatens to have a detrimental effect on all or part of the Services or constitutes or threatens to constitute a Default. At the Authority's request, the Contractor shall take all reasonable steps to prevent such circumstances, development or Default from occurring and to prevent its reoccurrence.

Correction Plans

- 7.2 If the Authority considers that a Contractor Default has occurred or is likely to occur, the Authority may by notice to the Contractor request a Correction Plan. The Contractor shall, at its own cost, deliver a Correction Plan to the Authority within five (5) Working Days following such request by the Authority. If the Authority approves this Correction Plan, the Contractor shall at its own cost promptly implement any Correction Plan at the Authority's request.
- 7.3 If the Authority, acting reasonably, does not believe that the relevant Correction Plan is sufficient for the successful remediation, mitigation and/or avoidance of a Contractor Default, it shall notify the Contractor of this fact, giving reasons, and request the Contractor to, at its own cost, work to amend and submit an updated Correction Plan to the Authority within five (5) Working Days of such request.
- 7.4 The Contractor shall comply with any request made by the Authority pursuant to Clause 7.3.

Remediation of Defaults

- 7.5 If the Contractor fails to remedy, re-perform or prevent the reoccurrence of, any Contractor Default within a reasonable time, the Authority may (or may instruct a third party to) perform the required remediation, re-performance or prevention, the reasonable costs of which shall be borne by the Contractor. Any Dispute with respect to liability for Contractor Defaults shall be referred to the Dispute Resolution Procedure.

Investigation of Defaults

- 7.6 If the Contractor commits a Default, then without prejudice to any other rights or remedies it may have under this Agreement or otherwise, the Authority may require the Contractor by notice in writing to carry out an investigation into the cause of such Default. The Contractor shall carry out such an investigation in accordance with Good Industry Practice, promptly and at its own cost and shall provide a complete and accurate report of that investigation to the Authority.

Remedies not exclusive

- 7.7 The provisions in this Clause 7 are without prejudice to any other obligations of the Contractor or rights of the Authority whether under this Agreement or at law.

8. AUTHORITY DEPENDENCIES

- 8.1 The Parties acknowledge and agree that the Contractor's performance of the Services may depend on the Authority's performance of Authority Dependencies. Therefore, the Contractor shall not be considered to be in breach of its obligations under this Agreement (including its obligations to ensure that each Deliverable is achieved by the relevant Deliverable Date) to the extent that the Contractor can demonstrate to the satisfaction of the Authority that its failure to perform its obligations is caused by a failure by the Authority to fulfil an Authority Dependency in accordance with this Agreement, provided that:
- 8.1.1 the Contractor notifies the Authority as soon as practicable, and in any event within five (5) Working Days, upon becoming aware that any Authority Dependency has not or will not be performed or that its performance will be delayed (as applicable);
 - 8.1.2 the notification referred to in Clause 8.1.1 includes details of the relevant Authority Dependency, together with evidence of its adverse effect on the Contractor's ability to perform its obligations and the action the Contractor proposes to take to mitigate its effect, including the non-exhaustive mitigating steps described in Schedule 2 (*Authority Dependencies*); and
 - 8.1.3 the Contractor uses, and continues to use, reasonable endeavours in accordance with Good Industry Practice to mitigate the effects of, and make good, the non-performance or delay in the performance of the Authority Dependency and to facilitate the Contractor's continued performance of this Agreement.
- 8.2 Any obligations of the Authority not specified in Schedule 2 (*Authority Dependencies*), but specified elsewhere in this Agreement (including any obligations on the Authority set out in a Work Package) shall not be Authority Dependencies. There shall be no obligation on the Authority to provide any advice or assistance to the Contractor save as set out in Schedule

2 (*Authority Dependencies*) and the sole remedy for failing to comply with Authority Dependencies shall be that set out in this Clause 8.

- 8.3 The Contractor shall not propose any new Authority Dependencies or any amendments to Authority Dependencies, except through the Change Control Procedure.

9. CHARGES

- 9.1 In consideration of the Contractor providing the Services, the Contractor shall be entitled to charge the Authority for the Charges and the Authority shall pay such Charges in accordance with the payment profile and the invoicing procedure specified in Schedule 4 (*Charges and Invoicing*).

- 9.2 Except as otherwise provided in this Agreement, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement. In particular, the Parties agree that the Authority is not liable to pay any amount under or in connection with this Agreement or the Services, except as expressly stated in this Agreement.

- 9.3 Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

Payment of Approved Subcontractors

- 9.4 All correctly calculated amounts properly invoiced by an Approved Subcontractor shall be paid by the Contractor in accordance with the payment terms agreed between the Contractor and the relevant Approved Subcontractor.

- 9.5 The Contractor shall ensure that it includes a term in its contracts with each Approved Subcontractor that requires payment to be made to the relevant Approved Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice (as such validity is defined in such contract), unless otherwise previously agreed in writing with the Authority.

Payment not Acceptance

- 9.6 Any payment by the Authority shall not be construed as Acceptance of the Services.

Interest

- 9.7 If either Party has not paid any sums payable by their due date, all sums shall accrue interest at a rate equal to the interest rate under the Late Payment of Commercial Debts (Interest) Act 1998 and this shall constitute a substantial remedy for late payment.

Set off

- 9.8 The Authority may retain and set off any amount owed to it by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Agreement) against any amount due to the Contractor under this Agreement or under any other agreement between the Contractor and the Authority.

- 9.9 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has the Authority's written approval or a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

Disputed Charges

- 9.10 If the Authority disputes its obligation to pay part or all of an invoice submitted by the Contractor under this Agreement, then notwithstanding anything to the contrary in this Agreement:

9.10.1 the Authority shall notify the Contractor of the amount of the invoice which it disputes (the "**Disputed Amount**") and the reasons why it considers it is not obligated to pay the Disputed Amount;

9.10.2 the Authority's failure to pay the Disputed Amount shall not be a breach of this Agreement;

- 9.10.3 the Authority shall pay the undisputed balance of the invoice to the Contractor in accordance with this Agreement;
 - 9.10.4 the due date for payment of the Disputed Amount shall be deemed extended by the period from the date of the notice provided under Clause 9.10.1 to the date thirty (30) Working Days following the date the matter is resolved in accordance with this Agreement;
 - 9.10.5 the Parties shall as soon as reasonably practicable discuss and use their respective reasonable endeavours to agree how much of the Disputed Amount is payable to the Contractor;
 - 9.10.6 the Contractor shall provide the Authority with such information as is reasonably required by the Authority to substantiate the Contractor's position; and
 - 9.10.7 if the Parties are unable to reach agreement pursuant to this Clause 9.10 within ten (10) Working Days, then either Party may refer the matter to the Dispute Resolution Procedure.
- 9.11 If any Disputed Amount which the Parties agree is not payable has already been paid by the Authority, then the Contractor shall apply a credit equal to the Disputed Amount to the amount specified in the next invoice. If no further Charges fall due after such credit accrues then the Contractor shall issue a credit note to the Authority for a sum equal to any such Disputed Amount which the Parties have agreed is not payable but has already been paid by the Authority, and the amount of the credit shall be repayable by the Contractor to the Authority as a debt within the same period as applies to the payment of the Contractor's undisputed invoices under this Agreement.

Overpayments

- 9.12 The Contractor shall notify the Authority promptly (and in any event within five (5) Working Days) if it believes (acting reasonably) that the Authority has overpaid any Charges, giving reasons. The Contractor shall pay to the Authority the amount overpaid within twenty (20) Working Days of determining the existence of such overpayment. Without prejudice to any other rights of the Authority under this Agreement, the Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment in accordance with this Clause 9.12.
- 9.13 If, as the result of any audit, it is found that the Contractor has overcharged the Authority, the Contractor shall within twenty (20) Working Days following a request by the Authority pay to the Authority a sum equal to the amount overcharged by electronic bank transfer and interest accrued on such overcharged amounts at a rate equal to the interest rate under the Late Payment of Commercial Debts (Interest) Act 1998.

10. TAX

- 10.1 The Charges exclude any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of the Services by the Contractor to the Authority.
- 10.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HMRC, the Authority shall pay to the Contractor in addition to the Charges (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of the Services, and all other payments under this Agreement according to the law at the relevant tax point.
- 10.3 The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its client relationship manager or the HMRC enquiries desk (and not the Authority's authorised commercial officer) in cases of doubt. The Contractor shall notify the Authority's authorised commercial officer of the Authority's VAT liability under this Agreement, and any changes to it, within twenty (20) Working Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to

the Authority within three (3) Working Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Working Days of receiving the decision.

- 10.4 If supply of the Services comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Services. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- 10.5 If Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Charges (and any other sum due to the Contractor under this Agreement) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Services within twenty (20) Working Days of a written request for payment of any such sum by the Contractor.
- 10.6 In relation to the Services supplied under this Agreement, the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be paid where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so.
- 10.7 Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 10.2 above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Agreement or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Working Days of a written request from the Authority for such correspondence.

11. CHANGE CONTROL

11.1 Where:

11.1.1 either Party wishes to make a change to this Agreement (other than in respect of the addition of a new Work Package) or any document agreed pursuant to the terms of this Agreement, including the modification of an existing Service or the Charges for an existing Service; or

11.1.2 the Contractor wishes to make a change to the way in which the Services or any part of them are delivered and such change would alter the end user experience of the Authority or other stakeholders in any way,

(each a "**Change**"),

then the provisions of Schedule 9 (*Change Control*) shall apply in respect of that Change. All Changes must be made in accordance with the provisions of Schedule 9 (*Change Control*).

Regulatory Changes

- 11.2 If a change to any Law means a Change to the Services or Charges is required (a "**Regulatory Change**"), the Contractor shall, subject to Clauses 11.3 and 11.4, make that Regulatory Change as soon as reasonably possible.
- 11.3 The Parties shall seek to agree the details and cost of the Regulatory Change in accordance with the Change Control Procedure.
- 11.4 If there is any disagreement between the Parties regarding any Regulatory Change or potential Regulatory Change:
 - 11.4.1 the Authority shall have the right to determine: (a) whether a Regulatory Change is required; and (b) how the Contractor shall implement that Regulatory Change, in

which case the Contractor shall promptly implement the Regulatory Change as determined by the Authority in accordance with this Clause 11.4.1; and

11.4.2 the Authority shall pay to the Contractor the costs of implementing the Regulatory Change which shall be equivalent to the Contractor's reasonable costs, calculated on a time and materials basis in accordance with the Rate Card, save that if the Regulatory Change:

- (i) was known at the Contract Date and the effect of that Regulatory Change was known at the Contract Date, the Authority shall not be charged for any costs of implementing the Regulatory Change;
- (ii) is carried out for other service recipients of the Contractor as well, the Authority shall only bear an equitable proportion of the Contractor's reasonable costs; or
- (iii) is carried out for the Contractor as well, then the Authority shall not be charged for any cost of implementing the Regulatory Change.

12. CONTRACTOR PERSONNEL

Suitability and quality

12.1 The Contractor shall ensure that:

12.1.1 it provides the required number of Contractor Personnel to deliver the Services in accordance with this Agreement; and

12.1.2 all Contractor Personnel:

- (i) are suitably and appropriately qualified, skilled, trained, knowledgeable, capable, competent and experienced to perform the tasks and responsibilities assigned to them;
- (ii) are fluent in English; and
- (iii) provide the Services with all due care and skill in accordance with this Agreement.

Vetting

12.2 The Contractor shall ensure that all Contractor Personnel are thoroughly vetted in accordance with the Security Aspects Letter. The Contractor shall ensure that all Contractor Personnel comply with any security checks or other clearances required by the Authority and sign any confidentiality or security documents (including agreements in respect of the Official Secrets Acts 1911 to 1989) presented by the Authority from time to time.

12.3 The Contractor warrants and represents that all Contractor Personnel employed or engaged by the Contractor or any Approved Subcontractor at the Contract Date were vetted and recruited by reference to criteria no less strict than the vetting requirements in Clause 12.2 and in any event were vetted and recruited in accordance with the relevant Authority Standards.

Employment relationship

12.4 The Contractor Personnel shall not become employees of the Authority and any instruction issued by the Authority is issued to the Contractor and not directly to the Contractor Personnel.

Continuity

12.5 The Contractor shall use all reasonable endeavours to minimise the number of changes in Contractor Personnel.

Removal

12.6 The Authority may refuse admission to Authority Premises, and additionally may direct the Contractor to end the involvement in the provision of the Services, of any of the Contractor Personnel whom the Authority believes:

- 12.6.1 represent a security risk;
- 12.6.2 have breached the Security Requirements;
- 12.6.3 do not have the required levels of training and expertise; or
- 12.6.4 for one or more other reasons which alone or together make it unsuitable or inappropriate for such Contractor Personnel to remain involved in the provision of the Services.

The decision of the Authority in relation to any such refusal or direction shall be final and the Authority shall not be obliged to cite its reasons or provide any supporting evidence.

- 12.7 Following receipt by the Contractor of a direction by the Authority referred to in Clause 12.6, the Contractor shall remove the relevant Contractor Personnel from the provision of the Services immediately and, where required, shall direct the relevant Contractor Personnel to leave the Authority Premises immediately.

Replacement

- 12.8 If any member of the Contractor Personnel is replaced for any reason, the Contractor shall ensure at its own cost that the replacement Contractor Personnel are fully briefed, informed and prepared to continue the activities and work previously carried out by the replaced member of Contractor Personnel, including where possible via a formal and comprehensive handover process, and in each case to ensure the smooth and uninterrupted continuation of the Services.

Non-solicitation

- 12.9 The Contractor shall not at any time during the Term or for twelve (12) months after termination of this Agreement, solicit or endeavour to entice away from or discourage from being employed or hired by the Authority any person who is an employee of the Authority and who, to the Contractor's knowledge, is or was engaged in the Services in the previous twelve (12) months whether or not such person would thereby commit a breach of his contract of service and save that this restriction shall not apply to any person who has received a notice of redundancy or dismissal. The restrictions in this Clause 12.9 shall not apply if a person who is or was an employee of the Authority is employed as a result of a response by that person to a public advertisement.
- 12.10 The Authority may from time to time on giving reasonable notice in writing to the Contractor require Contractor Personnel to visit the premises of MSPs in connection with the Services. The Contractor shall ensure that Contractor Personnel comply with all reasonable requirements of the relevant MSP and/or the Authority concerning conduct at the premises of the MSP.

13. AUTHORITY PREMISES

Compliance with policies

- 13.1 Where the Authority provides access to Authority Premises, the Contractor shall comply with all security and health and safety policies that the Authority notifies to the Contractor from time to time, as well as with any other reasonable instructions of the Authority (including codes of behaviour, rules for conduct and computer security policies). The Contractor shall ensure that all Contractor Personnel shall:
- 13.1.1 produce suitable photographic identification on request; and
 - 13.1.2 display the forms of identification issued by the Authority at all times when at Authority Premises.
- 13.2 If any Contractor Personnel fail to comply with the requirements of this Clause 13:
- 13.2.1 the Contractor shall, on request from the Authority, promptly investigate the incident(s) and take appropriate action to the Authority's reasonable satisfaction; and
 - 13.2.2 the Authority reserves the right to refuse admission to, or to remove, such Contractor Personnel from Authority Premises (permanently or temporarily).

Refusal of admission

- 13.3 Notwithstanding any other provision of this Agreement, the Authority reserves the right to refuse admission to, or instruct the Contractor to remove any Contractor Personnel from any Authority Premises where the Authority believes it is reasonably necessary to preserve the standards and reputation of the Authority or for reasons of incompetence, poor performance, misbehaviour or security and the Contractor shall ensure that the relevant Contractor Personnel promptly comply. The Contractor shall not be excused in the performance of its obligations under this Agreement as a result of its or the Contractor Personnel's compliance with any such instruction.

No property rights

- 13.4 The Contractor shall not acquire any property rights to Authority Premises. If the Contractor stores any property or equipment on the Authority's Premises, that property or equipment shall remain there at the sole risk and responsibility of the Contractor.

Repairs

- 13.5 The Contractor shall make good, or at the Authority's option, reimburse the Authority for all damage occurring to any Authority Premises or to any other property owned by Her Majesty's Government (including land or buildings) caused by or arising from an act or omission of any Contractor Personnel.

14. SECURITY

- 14.1 The Authority shall have the rights set out in Schedule 6 (*Security Requirements*).
- 14.2 The Contractor shall comply with the obligations set out in Schedule 6 (*Security Requirements*).
- 14.3 The Contractor shall comply with and meet the requirements of, and shall ensure that any Approved Subcontractors comply with and meet the requirements of, the Security Aspects Letter including, without limitation, by ensuring that the performance of the Services, and any activities or obligations under or in connection with this Agreement and the Collaboration Agreement is in accordance with the applicable security classification requirements stated at Annex A to the Security Aspects Letter.

15. DISASTER RECOVERY AND BUSINESS CONTINUITY

- 15.1 The Contractor warrants, represents and undertakes that it has and shall continue to have in place up-to-date disaster recovery plans and business continuity plans ("**Business Continuity Plans**"):
- 15.1.1 in accordance with the minimum standards prescribed from time to time by any Regulatory Authority; and
 - 15.1.2 without limiting the generality of the foregoing, in accordance with Good Industry Practice.
- 15.2 The Contractor shall provide a copy of the then current Business Continuity Plans to the Authority within twenty (20) Working Days of the Contract Date and thereafter promptly on request by the Authority from time to time. The Contractor shall promptly amend the Business Continuity Plans in accordance with any reasonable recommendations made by the Authority (and shall provide a copy of the amended Business Continuity Plans to the Authority).
- 15.3 Should a disaster or any other event envisaged in the Business Continuity Plan occur, the Contractor shall:
- 15.3.1 promptly notify the Authority;
 - 15.3.2 implement the Business Continuity Plan in full as expeditiously as possible in the circumstances (and in doing so, the Contractor shall not treat the Authority any less favourably than any other customer of the Contractor); and
 - 15.3.3 comply with instructions from the Authority as to the order of priority in which Services should be restored.

16. GOVERNANCE AND REPORTING

16.1 The Contractor shall comply with its obligations set out in Schedule 7 (*Governance and Reporting*).

Authorised representatives

16.2 The Contractor acknowledges that only the Authority's relevant and authorised commercial officer(s) may make or communicate to the Contractor any decision on behalf of the Authority in relation to issues that affect the rights, remedies or obligations of the Authority or the Contractor under this Agreement, any CCN or any Work Package. The Contractor shall ensure that, where it seeks such decisions, those decisions are referred promptly to the relevant and authorised commercial officer(s) for the Authority.

Information on request

16.3 During the Term, the Contractor shall:

16.3.1 provide oral or written reports to the Authority and liaise with the Authority on the progress and management of the Services as and when reasonably required by the Authority;

16.3.2 provide to the Authority any information, reports or assistance requested by a Regulatory Authority in the exercise of its powers under the Laws, in an open and co-operative manner and in accordance with any timing and format requirements set by Regulatory Authority; and

16.3.3 attend and report to meetings with the Authority and its nominees to discuss any aspect of the Services as and when reasonably required by the Authority.

17. DOCUMENTS AND AUDIT

Retention of documents

17.1 The Contractor shall comply with its obligations as set out in Schedule 10 (*Records*).

Audit rights

17.2 The Contractor shall permit the Authority or its designated representatives (the "**Auditor**") to audit it and/or its Approved Subcontractors:

17.2.1 up to once in any calendar year to carry out a financial, quality and/or value for money audit; and

17.2.2 at any time in the event that the Authority has a demonstrable concern over the provision of the Services or any security or data Processing matters.

Notice of audits

17.3 The Authority will (except where the purpose of the audit would be frustrated by doing so or where a Regulatory Authority or Laws prohibit the Authority from doing so) endeavour to give the Contractor at least ten (10) Working Days' notice of each audit, except that the Authority shall not be required to give the Contractor prior notice of any audit which has as its main purpose the verification of the Contractor's compliance with its obligations under Clause 14 (*Security*) or Clause 20 (*Confidentiality*) or where the Authority reasonably believes that the Contractor is in material breach of this Agreement.

Audit co-operation

17.4 The Contractor shall ensure that it provides all reasonable assistance to, and co-operate with, the Auditor, including providing access to the Documents and any other relevant information.

Audit costs

17.5 Each Party shall bear its own costs of any of the audits set out in Clause 17.2 (*Audit rights*), except where the Auditor finds that the Contractor has acted in breach of this Agreement or where the Contractor has failed to comply with its obligations under Clause 17.4 (*Audit co-operation*), in which case the Contractor shall bear all costs of the audit.

Audits by Regulatory Authorities

- 17.6 Subject to Clause 21.4 (*Contact with Regulatory Authorities*), the Contractor shall attend any meetings requested by a Regulatory Authority. The Contractor shall: (i) permit any Regulatory Authority or its designated representatives access to the Contractor's facilities to audit the Contractor's provision of the Services and provide such information and assistance as the Regulatory Authority may require; and (ii) provide the Authority with a copy of the results of any report relating to any inspection visit by the Regulatory Authority.

Additional audits

- 17.7 In the event that the Authority wishes to conduct further audits additional to those set out in this Clause 17, then the Authority may do so and the Contractor shall be entitled to make a reasonable additional charge in respect of any costs incurred in complying or assisting with such audit.

18. INTELLECTUAL PROPERTY

Intellectual Property Rights

- 18.1 Except as expressly set out in this Agreement:
- 18.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, namely:
- (i) the Contractor Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Contractor Background IPRs;
- 18.1.2 the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
- (i) the Authority Software;
 - (ii) the Authority Data; and
 - (iii) the Authority Background IPRs; and
- 18.1.3 Specially Written Software and Project Specific IPRs (except for any Know How, trade secrets or Contractor Confidential Information contained therein) shall be the property of the Authority.
- 18.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 18.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 18.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Transfers and Licences Granted by the Contractor

Specifically Written Software and Project Specific IPRs

- 18.4 Subject to Clause 18.19 (*Patents*) the Contractor hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights in the Specifically Written Software and the Project Specific IPRs including:
- 18.4.1 the Documentation, Source Code and the Object Code of the Specifically Written Software; and
- 18.4.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specifically Written Software (together the "**Software Supporting Materials**"), but not including any Know-How, trade secrets or Contractor Confidential Information.
- 18.5 The Contractor:
- 18.5.1 shall:

- (i) inform the Authority of all Specifically Written Software that constitutes a modification or enhancement to Contractor Software or Third Party Software; and
- (ii) deliver to the Authority the Specifically Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of Acceptance of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specifically Written Software, in each case on media that is reasonably acceptable to the Authority;

18.5.2 acknowledges and agrees that the ownership of the media referred to in Clause 18.5.1(ii) shall vest in the Authority upon their receipt by the Authority; and

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

Contractor Software and Contractor Background IPRs

18.6 The Contractor hereby grants to the Authority:

18.6.1 subject to the provisions of Clause 18.19 (*Patents*) and Clause 27 (*Consequences of Termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (i) the Contractor Non-COTS Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's business or function;
- (ii) the Contractor Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's business or function; and

18.6.2 a licence to use the Contractor COTS Software and Contractor COTS Background IPRs on the licence terms substantially in the form set out in Appendix 1 to Schedule 15 (*Contractor Software*) and signed by or on behalf of the Parties on or before the Contract Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Contractor COTS Software and Contractor COTS Background IPRs on equivalent terms to those set out in Clauses 18.10 and 18.11 (*Authority's right to assign/novate licences*) in relation to the Contractor Non-COTS Software and Contractor Non-COTS Background IPRs.

18.7 At any time during the life of this Agreement, including any extensions, or following termination or expiry of this Agreement, the Contractor may terminate the licence granted in respect of the Contractor Non-COTS Software under Clause 18.6.1(i) or in respect of the Contractor Non-COTS Background IPRs under Clause 18.6.1(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 18.9 (*Authority's right to sub-licence*) commits any material breach of the terms of Clause 18.6.1(i) or 18.6.1(ii) or 18.9.1(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Contractor gives the Authority written notice specifying the breach and requiring its remedy.

18.8 In the event the licence of the Contractor Non-COTS Software or the Contractor Non-COTS Background IPRs is terminated pursuant to Clause 18.7, the Authority shall:

18.8.1 immediately cease all use of the Contractor Non-COTS Software or the Contractor Non-COTS Background IPRs (as the case may be);

18.8.2 at the discretion of the Contractor, return or destroy documents and other tangible materials to the extent that they contain any of the Contractor Non-COTS Software and/or the Contractor Non-COTS Background IPRs, provided that if the Contractor has not made an election within six (6) months of the termination of the licence, the

Authority may destroy the documents and other tangible materials that contain any of the Contractor Non-COTS Software and/or the Contractor Non-COTS Background IPRs (as the case may be); and

- 18.8.3 ensure, so far as reasonably practicable, that any Contractor Non-COTS Software and/or Contractor Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Contractor Non-COTS Software and/or Contractor Non-COTS Background IPRs.

Authority's right to sub-license

- 18.9 Subject to Clause 18.19 (*Patents*) the Authority may sub-license:

- 18.9.1 the rights granted under Clause 18.6.1 (*Contractor Software and Contractor Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Contractor) provided that:
- (i) the sub-licence is on terms no broader than those granted to the Authority;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Clause 18.6.1 (*Contractor Software and Contractor Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's business or function; and
 - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Contractor in or substantially in the form set out in Appendix 2 (*IPR NDA*) to Schedule 15 (*Contractor Software*), and

- 18.9.2 the rights granted under Clause 18.6.1 (*Contractor Software and Contractor Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPRs provided that:
- (i) the sub-licence is on terms no broader than those granted to the Authority; and
 - (ii) the Contractor has received a confidentiality undertaking in or substantially in the form set out in Appendix 2 (*IPR NDA*) to Schedule 15 (*Contractor Software*), duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

- 18.10 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 18.6.1 (*Contractor Software and Contractor Background IPRs*) to:

18.10.1 a Central Government Body; or

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

- 18.11 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 18.6 (*Contractor Software and Contractor Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 18.6 (*Contractor Software and Contractor Background IPRs*).

- 18.12 If a licence granted in Clause 18.6 (*Contractor Software and Contractor Background IPRs*) is novated under Clause 18.10 or there is a change of the Authority's status pursuant to Clause 18.11, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

- 18.13 The Contractor shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:
- 18.13.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 18.6.1 and 18.7 (*Contractor Software and Contractor Background IPRs*) and Clause 18.10 (*Authority's right to assign/novate licences*); or
 - 18.13.2 complied with the provisions of Clause 18.14.
- 18.14 If the Contractor cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 18.13.1, the Contractor shall:
- 18.14.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Contractor could seek to use; and
 - 18.14.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.
- 18.15 The Contractor shall:
- 18.15.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - 18.15.2 unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause 18.14.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 18.16 Without prejudice to the Contractor's other obligations and the Authority's other rights and remedies under this Agreement or at law, should the Contractor become aware at any time, including after termination, that the Specifically Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a licence, then the Contractor must notify the Authority within ten (10) days of what those rights are and which parts of the Specifically Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Contractors

- 18.17 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Contractor or relevant third party pursuant to or as contemplated by this Clause 18.
- 18.18 The Contractor shall, if requested by the Authority in accordance with Schedule 12 (*Exit Management*) and at the Contractor's cost:
- 18.18.1 grant (or procure the grant) to any Replacement Contractor of:
 - (i) a licence to use any Contractor Non-COTS Software, Contractor Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Contractor and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 18 subject to receipt by the Contractor of a confidentiality undertaking in its favour in or substantially in the form set out in Appendix 2 (*IPR NDA*) to Schedule 15 (*Contractor Software*), duly executed by the Replacement Contractor;
 - (ii) a licence to use any Contractor COTS Software and/or Contractor COTS Background IPRs, on terms no less favourable (including as to

indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Contractor; and/or

- 18.18.2 use all reasonable endeavours to procure the grant to any Replacement Contractor of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

- 18.19 Without prejudice to Clause 18.22 (*IPRs Indemnity*), where a patent owned by the Contractor is necessarily infringed by the use of the Specifically Written Software or Project Specific IPRs by the Authority or any Replacement Contractor, the Contractor hereby grants to the Authority and the Replacement Contractor a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

Licences Granted by the Authority

- 18.20 The Authority hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term of this Agreement, including any Renewal Period, to use the Authority Software, the Authority Background IPRs, the Specifically Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Approved Subcontractors provided that:
- 18.20.1 any relevant Approved Subcontractor has entered into a confidentiality undertaking with the Contractor on substantially the same terms as set out in Clause 20 (*Confidentiality*); and
- 18.20.2 the Contractor shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.21 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.20 and any sub-licence granted by the Contractor in accordance with Clause 18.20 shall terminate automatically on the date of such termination or expiry and the Contractor shall:
- 18.21.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
- 18.21.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
- 18.21.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Contractor computer, word processor, voicemail system or any other Contractor device containing such Authority Software, Authority Background IPRs and/or Authority Data.

IPRs Indemnity

- 18.22 The Contractor shall at all times, during and after this Agreement, including any extensions, 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.

- 18.23 Without prejudice to Clause 18.22, if an IPRs Claim is made, or the Contractor anticipates that an IPRs Claim might be made, the Contractor may, at its own expense and sole option, either:
- 18.23.1 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
 - 18.23.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 18.24 If the Contractor elects to procure a licence in accordance with Clause 18.23.1 or to modify or replace an item pursuant to Clause 18.23.2, but this has not avoided or resolved the IPRs Claim, then:
- 18.24.1 the Authority may terminate this Agreement or part hereof (if subsisting) with immediate effect by written notice to the Contractor; and
 - 18.24.2 without prejudice to the indemnity set out in Clause 18.22, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
- 18.25 The indemnity at Clause 18.22 shall not apply in respect of a claim that arises from:
- 18.25.1 any use by or for the Indemnified Person of Third Party IPRs in combination with any item not supplied or approved by the Contractor where, were it not for that use in combination, a claim would not have arisen; or
 - 18.25.2 the use of Contractor Background IPRs or Third Party IPRs by the Indemnified Person otherwise than in accordance with the terms of this Agreement and any applicable licence or sub-licence conditions provided that these have been notified to the Contractor on the grant of the applicable licences or sub-licence; or
 - 18.25.3 any modification, updating or development carried out by or for the Authority to any item supplied by the Contractor under this Agreement, where such modification, updating or development is not authorised or approved by the Contractor.

Conduct of IPR Claims

- 18.26 In the event that the Indemnified Person intends to make any claim subject to the indemnity at Clause 18.22 (*IPRs Indemnity*), the Indemnified Person shall notify the Contractor of the relevant claim as soon as reasonably practicable, giving full particulars of the claim.
- 18.27 In the event of a claim under Clause 18.22 (*IPRs Indemnity*), the Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim brought against the Indemnified Person provided always that the Contractor:
- 18.27.1 shall consult the Indemnified Person on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 18.27.2 shall take due and proper account of the interests of the Indemnified Person; and

- 18.27.3 shall not settle or compromise any claim without the prior written consent of the Indemnified Contractor (such consent not to be unreasonably withheld or delayed).
- 18.28 The Indemnified Person shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any IPR Claim and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitors and clients basis) incurred in so doing.
- 18.29 The Indemnified Person shall not make any admissions which may be prejudicial to the defence or settlement of any IPR Claim.

Ongoing Use

- 18.30 Subject to the Contractor's obligations as to security and confidentiality under this Agreement, nothing in this Clause 18 shall prevent a Party 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 other Party's confidential information or an infringement of Intellectual Property Rights.

Branding

- 18.31 Notwithstanding anything to the contrary in this Agreement (including in this Clause 18), the Contractor shall not be entitled to use any trademarks, brands or any other promotional materials of the Authority without the prior written approval of the Authority. Upon receipt of such approval, the Contractor shall use such trademarks, branding or promotional material only in the manner and for the purposes specifically approved in writing by the Authority.

19. DATA AND TRANSPARENCY

Authority Data

- 19.1 All Authority Data shall remain owned by the Authority at all times.
- 19.2 The Contractor shall not store, copy, disclose or use Authority Data except as necessary for the performance by (as applicable) the Contractor or Approved Subcontractor of its obligations under this Agreement or as otherwise expressly authorised in advance in writing by the Authority.
- 19.3 To the extent that Authority Data is held, accessed or Processed by the Contractor, the Contractor shall preserve the integrity, confidentiality and (where applicable) availability of Authority Data and prevent the corruption or loss of Authority Data (including of any copy of such Authority Data).

Rectification of data

- 19.4 If Authority Data is corrupted, lost, or degraded as a result of the Contractor's Default, the Authority may do any or all of the following:
- 19.4.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data, in which case the Contractor shall do so as soon as possible; and
- 19.4.2 itself restore or procure the restoration of Authority Data, in which case the Authority shall be repaid by the Contractor any reasonable expenses incurred in restoring Authority Data.
- 19.5 Without prejudice to the Contractor's other obligations and the Authority's other rights and remedies under this Agreement or at law, if at any time the Contractor suspects or has reason to believe that Authority Data or any copy thereof has, or may, become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority in writing immediately and inform the Authority of the remedial action the Contractor proposes to take. The Authority may rely upon such report in relation to any action it then takes under this Agreement.

Personal Data

- 19.6 With respect to Personal Data for which the Authority is the Data Controller and which are Processed by the Contractor or any Approved Subcontractor pursuant to or in connection

with this Agreement (the "**Authority Personal Data**"), the Parties agree that the Contractor is acting as a Data Processor.

19.7 The Contractor shall:

- 19.7.1 process Authority Personal Data only in accordance with documented instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Contractor during the Term) to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Authority. To the extent the Contractor is required by law to Process Authority Personal Data otherwise than in accordance with the Authority's instructions, it must inform the Authority prior to such Processing unless notification of the same is prohibited by law on public interest grounds;
- 19.7.2 not disclose or transfer any Authority Personal Data to any Approved Subcontractor, Affiliate or third party without prior written approval from the Authority:
 - (i) other than when specifically authorised under this Agreement or directed to do so in writing by the Authority; and
 - (ii) unless there is a written contract in place with the Approved Subcontractor or third party which requires such Approved Subcontractor or third party to:
 - (a) carry out processing of such Authority Personal Data only as may be necessary from time to time for the purposes of such Approved Subcontractor or third party's engagement by the Contractor in connection with this Agreement; and
 - (b) comply with obligations equivalent to those imposed on the Contractor in this Clause 19 (or anywhere else in this Agreement to the extent such obligations relate to Authority Personal Data);
- 19.7.3 ensure that all Contractor Personnel required to access Authority Personal Data:
 - (i) are informed of the confidential nature of Authority Personal Data and comply with the obligations set out in Clause 17 (*Documents and Audit*) this Clause 19;
 - (ii) have undergone all adequate training in the care, protection and handling of Authority Personal Data; and
 - (iii) perform their duties in relation to this Agreement strictly in compliance with the Data Protection Legislation;
- 19.7.4 ensure that none of the Contractor Personnel publish, disclose or divulge any of Authority Personal Data to any third party unless specifically authorised under this Agreement or directed in writing to do so by the Authority;
- 19.7.5 implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk and to ensure and to be able to demonstrate that Processing is performed in accordance with the Data Protection Legislation. These measures shall be appropriate to the likelihood and severity of risk to the rights and freedoms of natural persons and have regard to the current state of technology and best practice, the costs of implementation and the nature, scope, context and purposes of Processing;
- 19.7.6 always use the most secure commercially reasonable method of Processing Authority Personal Data (for example, by using dummy data rather than live Authority Personal Data where possible, and not downloading Authority Personal Data onto portable media or devices or removing it from secure premises where it would be possible to carry out the activity required under this Agreement without doing so);
- 19.7.7 notify the Authority (in writing within five (5) Working Days or such other period as required by the Authority) if it receives any request, complaint or communication

- from a Data Subject, Regulatory Authority or third party relating to any Authority Personal Data or the Authority's obligations under the Data Protection Legislation;
- 19.7.8 notify the Authority immediately of any actual or suspected Data Breach and provide the Authority with all relevant details reasonably available;
- 19.7.9 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request referred to in Clause 19.7.7, or any Data Breach;
- 19.7.10 assist the Authority with undertaking an assessment of the impact of Processing any Authority Personal Data, and with any consultations with a Regulatory Authority, if and to the extent an assessment or consultation is required to be carried under Data Protection Legislation;
- 19.7.11 permit the Authority or Authority Representative (subject to reasonable confidentiality undertakings) to inspect and audit, in accordance with Clause 17 (*Documents and Audit*), the Contractor's data Processing activities (and those of its agents and Approved Subcontractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify or, if relevant, procure that the Contractor is in full compliance with its obligations under this Agreement;
- 19.7.12 where applicable, appoint a designated data protection officer within the Contractor's organisation in accordance with the requirements of the Data Protection Legislation; and
- 19.7.13 not transfer Authority Personal Data outside the United Kingdom without the approval of the Authority and, where the Authority approves such a transfer, comply with all reasonable instructions of the Authority in relation to such transfer, including any instructions to enable compliance with Data Protection Legislation.

Data security information

- 19.8 The Authority may, at reasonable intervals, request a written description of technical and organisational measures taken in accordance with this Clause 19 and the Contractor shall provide the Authority with written details of the same within thirty (30) Working Days of such request (such written details to contain sufficient information to allow the Authority to assess whether the Contractor has complied with its obligations under this Clause 19).

Requests for Information

- 19.9 The Contractor acknowledges that the Authority is subject to the requirements of FOIA, the Environmental Information Regulations and the Transparency Agenda and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure and publication obligations and commitments. In particular, the Contractor understands that the Authority may publish Information to the general public in accordance with the guidance set out in the Transparency Agenda.
- 19.10 The Contractor shall at the Authority's reasonable cost:
- 19.10.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within three (3) Working Days of receiving a Request for Information;
- 19.10.2 provide the Authority with a copy of all Information in response to a Request for Information in its possession or power in the form that the Authority requires as soon as practicable on a rolling daily basis and in any event completely within ten (10) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- 19.10.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to any Request for Information within the time for compliance set out in section 10 of the FOIA, regulation 5 of the Environmental Information Regulations or by Transparency Agenda guidance.
- 19.11 The Authority shall be responsible for determining in its absolute discretion whether any information (whether held by or on behalf of the Authority or the Contractor) is exempt from

disclosure or publication in accordance with the provisions of FOIA, the Environmental Information Regulations or the Transparency Agenda. Subject to Clause 19.3, the Authority shall use reasonable endeavours to notify the Contractor in advance of any disclosure and shall use reasonable endeavours to provide the Contractor with an opportunity to respond where such disclosure may involve the Contractor's Commercially Sensitive Information.

- 19.12 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so in writing by the Authority.
- 19.13 The Contractor acknowledges that the Authority may be required to disclose Information without consulting or obtaining consent from the Contractor, or despite having taken the Contractor's views into account.

20. CONFIDENTIALITY

Duty of confidentiality

- 20.1 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 20.1.1 treat the other Party's Confidential Information as confidential and safeguard it from loss or disclosure accordingly;
 - 20.1.2 not use or exploit the other Party's Confidential Information in any way except for the purposes anticipated under this Agreement, or if not anticipated by this Agreement, not disclose the other Party's Confidential Information to any other person without the owner's prior written consent; and
 - 20.1.3 immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party's Confidential Information.
- 20.2 The Authority IPR is the Authority's (and not the Contractor's) Confidential Information.
- 20.3 Clause 20.1 above shall not apply to the extent that:
- 20.3.1 such disclosure is a requirement of Law placed upon the Authority provided that Clause 20.20 shall apply for disclosure under the FOIA or the Environmental Information Regulations;
 - 20.3.2 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 Regulatory Authority review in respect of this Agreement;
 - 20.3.3 a Party has reasonable grounds to believe that the other 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;
 - 20.3.4 such information was in the possession of the Party making the disclosure without restriction as to its disclosure before its disclosure by the information owner;
 - 20.3.5 such information was obtained from a third party who acquired it lawfully and who was and is under no obligation restricting its disclosure;
 - 20.3.6 such information was already in the public domain at the time of disclosure otherwise than by a Default; or

- 20.3.7 such information is developed independently, without access to the other Party's Confidential Information.
- 20.4 If a Party is required by Law to make a disclosure of Confidential Information, that Party shall as soon as reasonably practicable and to the extent permitted by Law notify the other party of the full circumstances of the required disclosure including the relevant Law and Regulatory Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 20.5 The Contractor may disclose the Authority's Confidential Information on a confidential basis only to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and comply with these obligations as to confidentiality. Where the Contractor discloses the Authority's Confidential Information pursuant to this Clause 20.5, 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.
- 20.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Authority's Confidential Information other than for the purposes of this Agreement.
- 20.7 Nothing in this Agreement shall permit the Contractor to, and therefore the Contractor shall not, monitor the Services (or any part of them) or intercept or disclose any data relating to the Services (or any part of them), other than as expressly required (rather than permitted) by the Service or by a mandatory provision of Laws of England and Wales. The Contractor acknowledges that the nature of the Authority's operations means that disclosures of such data required by Laws other than the Laws of the England and Wales must not be complied with (and the Contractor shall not comply with such Laws and requirements, except with Approval (such Approval to refer expressly to this Clause 20.7) so as not to jeopardise the security of the United Kingdom and its citizens.
- 20.8 In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Agreement, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the Contractor shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Contractor is taking appropriate steps to comply with this Clause 20.8, including copies of any written communications to and from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 20.9 In order to ensure that no unauthorised person gains access to any of the Authority's Confidential Information or any data obtained in performance of this Agreement, the Contractor undertakes to maintain adequate security arrangements that meet the Security Requirements, and undertakes to act in accordance with the Security Requirements and as otherwise specified in this Agreement.
- 20.10 The Contractor will immediately notify the Authority of any Breach of Security in relation to the Authority's Confidential Information obtained in the performance of this Agreement and will keep a record of such Breaches of Security. The Contractor will use its best endeavours to recover such the Authority's Confidential Information however it may be recorded.
- 20.11 In addition to the Contractor's obligations under Clauses 20.1 to 20.8 above, the Contractor shall take all reasonable steps required by the Authority to remedy and prevent any Breach of Security in relation to the Authority's Confidential Information including co-operating with the Authority in any investigation that the Authority considers necessary to undertake as a result of any Breach of Security in relation to any of the Authority's Confidential Information.
- 20.12 The Contractor shall, at its own expense, alter any security systems used in connection with the performance of this Agreement at any time during the Term at the Authority's

- request if the Authority believes (acting reasonably) the Contractor has failed to comply with Clauses 20.9 or 20.11.
- 20.13 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 20.13.1 subject to Clause 20.14 below, to a Replacement Provider, or potential Replacement Provider, in relation to the re-tendering or transfer of the Services who is subject to confidentiality obligations with the Authority broadly equivalent to those set out in this Clause 20;
 - 20.13.2 for the purpose of fulfilling the Authority's obligations to support contingent operations overseas and military operations in the United Kingdom (including the provision of military aid to the civil authorities) as required by the Authority's publication, British Defence Doctrine (JDP 0-01 Fifth Edition), as set out in the Authority Standards;
 - 20.13.3 where such disclosure is made pursuant to the Transparency Agenda;
 - 20.13.4 to a tax authority in connection with the tax affairs of the Authority;
 - 20.13.5 to a Regulatory Authority at the request of such Regulatory Authority;
 - 20.13.6 subject to Clause 20.14 below, to any Authority Service Providers (including any consultant, contractor or other person engaged by the Authority) and that person is subject to confidentiality obligations with the Authority broadly equivalent to those set out in this Clause 20;
 - 20.13.7 to any Replacement Authority or potential Replacement Authority;
 - 20.13.8 for the purposes of the examination and certification of the Authority's accounts;
 - 20.13.9 for any 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; and
 - 20.13.10 for the purpose of responding to any Parliamentary questions that the Authority may be required to respond to from time to time or if required by any Parliamentary reporting requirement.
- 20.14 The Authority shall use its reasonable endeavours to ensure that any person to whom the Contractor's Confidential Information is disclosed pursuant to Clause 20.13 above is made aware of the Authority's obligations of confidentiality.
- 20.15 Nothing in this Clause 20 shall prevent either Party 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 other Party's Confidential Information or an infringement of IPR.
- 20.16 The Contractor shall not and shall procure that its Approved Subcontractors and the Contractor Personnel shall not:
- 20.16.1 do anything which may damage the reputation of the Authority or bring the Authority into disrepute; or
 - 20.16.2 make any press announcements or publicise this Agreement in any way without the Authority's prior written approval. Where the Contractor or its Holding Company is required to make a public announcement by the applicable rules of any regulated securities exchange, it may do so, but shall notify the Authority in writing and in advance of the announcement it intends to release and shall make any reasonable changes requested by the Authority.
- 20.17 The Authority may publicise this Agreement in accordance with any legal obligation upon the Authority, including any examination of this Agreement by an auditor or otherwise.
- 20.18 The Contractor acknowledges to the Authority that nothing in this Agreement either expressly or by implication constitutes an endorsement of any goods or services of the Contractor (including the Services) and the Contractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

- 20.19 The Parties acknowledge that the content of this Agreement is Confidential Information.
- 20.20 Subject to Clause 19.11 (*Requests for Information*), and notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement in its entirety, including from time to time agreed changes to this Agreement, to the general public.

21. REGULATIONS AND LAWS

Compliance with Laws

- 21.1 The Contractor shall ensure that the Services are performed so that the Authority complies with all Laws to the extent the Authority's compliance with the Laws is dependent on the Services.
- 21.2 Without prejudice to the generality of the foregoing, the Contractor shall comply with and ensure its Contractor Personnel comply with:
- 21.2.1 the Official Secrets Acts 1911 to 1989; and
 - 21.2.2 section 182 of the Finance Act 1989.

Notification of non-compliance

- 21.3 The Contractor shall advise the Authority immediately, and the Authority shall endeavour to notify the Contractor as soon as reasonably practicable, if that Party becomes aware of any non-compliance or suspected non-compliance by the Contractor with the provisions of Clause 21.1 or Clause 21.2 (*Compliance with Laws*) in connection with the performance of the Services. If such an event occurs, the Contractor shall promptly make available to the Authority any information that the Authority reasonably requires for the purposes of any further investigation of such non-compliance or suspected non-compliance.

Contact with Regulatory Authorities

- 21.4 If the Contractor receives any correspondence from any Regulatory Authority (save to the extent in respect of: (i) corporation tax; or (ii) national insurance for employees of the Contractor) that relates to the Services, it shall promptly provide a copy of that correspondence to the Authority unless it is prevented from doing so by the Laws or a Regulatory Authority. The Contractor shall give the Authority a reasonable opportunity to discuss and make representations on the practical and written response to such correspondence, and shall only respond to the Regulatory Authority if:
- 21.4.1 the terms of the response have been approved by the Authority (such approval not to be unreasonably withheld or delayed); or
 - 21.4.2 the Contractor is required by Laws to respond to the Regulatory Authority without the Authority's consent.

Equality and discrimination

- 21.5 The Contractor shall comply with the Laws relating to discrimination in employment or service provision (whether in relation to race, gender, age, disability, religion, equal opportunities or otherwise).
- 21.6 The Contractor shall notify the Authority of any prosecution or proceedings brought against the Contractor, any Approved Subcontractor or any Contractor Personnel relating to discrimination in employment or service provision, promptly after becoming aware of such prosecution or proceedings (except where such notification would result in a breach of a duty of confidence between the Contractor and its employees).

Anti-slavery

- 21.7 The Contractor undertakes, warrants and represents that neither the Contractor nor any of its Personnel:
- 21.7.1 has committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**");
 - 21.7.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

21.7.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

Health and safety

21.8 The Contractor shall ensure that it provides the Services in accordance with the Authority's rules regarding health and safety and all applicable health and safety Laws, including any Laws requiring appropriate environmental and fire prevention protections to be put in place for building works.

21.9 The Contractor shall notify the Authority in writing as soon as practicable of any health and safety hazards at Authority Premises of which it becomes aware. The Contractor shall draw these hazards to the attention of the Contractor Personnel and will instruct those persons in connection with any necessary associated safety measures.

Environment

21.10 The Contractor shall implement a sound environmental management policy so that its activities comply with the relevant Authority Standards and all applicable environmental Laws and that its Services and Deliverables are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.

Indemnity

21.11 The Contractor shall indemnify the Authority against any and all losses arising from or in connection with any breach by the Contractor of this Clause 21.

22. WARRANTIES

Mutual warranties

22.1 Each Party represents, warrants and undertakes at the Contract Date that:

22.1.1 it has the legal right and full capacity and authority to enter into and to perform its obligations under this Agreement;

22.1.2 this Agreement is executed by a duly authorised representative of that Party;

22.1.3 there are no actions, lawsuits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement; and

22.1.4 once duly executed this Agreement will constitute its legal, valid and binding obligations.

Contractor warranties

22.2 The Contractor represents, warrants and undertakes to the Authority on a continuous basis throughout the Term that:

22.2.1 it is duly constituted, organised and validly existing under the laws of the country of its incorporation;

22.2.2 it is Solvent and will remain Solvent throughout the Term;

22.2.3 nothing contained in this Agreement will result in a breach of any provisions of its constitutional documents or result in a breach of any agreement, licence or other instrument, order, judgment or decree of any court, governmental agency or Regulatory Authority to which it is bound;

22.2.4 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Agreement;

22.2.5 all statements, information, warranties and representations provided to the Authority or its representatives by or on behalf of the Contractor:

- (i) prior to the Contract Date in connection with or for the purposes of the Authority selecting the Contractor as the supplier of the Services (including all responses to the Authority's pre-qualification questionnaire and invitation to negotiate);
 - (ii) during the Term in connection with or for the purposes of the Authority selecting the Contractor as the supplier of additional Services; and
 - (iii) otherwise contained in any documents not marked as draft and which have not subsequently been replaced or updated by the Contractor,
are prepared in accordance with Good Industry Practice and are provided to the best of its knowledge, information and belief, and are true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement, information, warranty or representation to be false or misleading;
- 22.2.6 it has and will continue to hold all regulatory approvals, permits, licences, authorisations and consents necessary to enter into this Agreement and perform the Services;
- 22.2.7 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights in and to all materials made available by the Contractor or any Approved Subcontractor to the Authority in connection with this Agreement, or otherwise necessary for the performance of its obligations under this Agreement and shall maintain the same in full force and effect;
- 22.2.8 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the:
- (i) introduction, creation or propagation of any Malware within or affecting the Enterprise IT; and
 - (ii) unauthorised use of any codification or access to the Enterprise IT;
- 22.2.9 it shall take all measures necessary to avoid and prevent any and all data loss and data corruption;
- 22.2.10 all Contractor Personnel are appropriately skilled, qualified, vetted, trained, and experienced to provide the Services in accordance with this Agreement;
- 22.2.11 the Contractor is expert and experienced in and capable of providing the Services; and
- 22.2.12 it shall at all times comply with the Law in carrying out its obligations under this Agreement.

23. LIMITATIONS ON LIABILITY

Unlimited liability

- 23.1 Neither Party limits its liability for:
- 23.1.1 death or personal injury caused by its negligence, or that of its employees, agents or subcontractors (as applicable);
 - 23.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 23.1.3 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
 - 23.1.4 any liability to the extent it cannot be limited or excluded by law.
- 23.2 The Contractor's liability shall be unlimited in relation to the following:
- 23.2.1 the indemnities in:
 - (i) Clause 18 (*Intellectual Property*);
 - (ii) Clause 21 (*Regulations and Laws*); and
 - (iii) Schedule 13 (*Employee Transfer*);

- 23.2.2 breach by the Contractor of Clause 19 (*Data and Transparency*) or Clause 20 (*Confidentiality*);
 - 23.2.3 its Gross Negligence or Wilful Default or wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement;
 - 23.2.4 breach by the Contractor of its obligations in Schedule 5 (*Authority Standards*); and
 - 23.2.5 breach by the Contractor of its obligations in Schedule 6 (*Security Requirements*).
- 23.3 The Authority's liability shall be unlimited in relation to the following:
- 23.3.1 its obligation to pay the Charges that have become due in accordance with Schedule 4 (*Charges and Invoicing*); and
 - 23.3.2 the indemnities in Schedule 13 (*Employee Transfer*).

Financial limits

- 23.4 Subject to Clauses 23.1, 23.2 and 23.3 (*Unlimited liability*) and to the maximum extent permitted by law the Contractor's total liability (in aggregate) in respect of all other liabilities whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Agreement during the Term, shall be limited to the higher of fifteen million pounds (£15,000,000) or one hundred and fifty per cent (150%) of the total Charges paid and payable during the Term.
- 23.5 Subject to Clauses 23.1 and 23.3 (*Unlimited liability*) and to the maximum extent permitted by law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or connection with this Agreement shall in respect of all liabilities (taken together) in respect of any and all claims in a Contract Year be limited to the Charges paid by the Authority in that Contract Year.
- 23.6 Clause 23.5 above shall not exclude or limit the Contractor's right under the Agreement to claim for the Charges.

Consequential loss

- 23.7 Subject to Clauses 23.1, 23.2 and 23.3 (*Unlimited liability*) and Clause 23.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
- 23.7.1 any indirect, special or consequential loss; or
 - 23.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 23.8 The provisions of Clause 23.7 shall not restrict the Authority's ability to recover any of the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 23.8.1 any additional operational and administrative costs and expenses, including any costs paid or payable by the Authority: (i) to all third parties (which may include contractors, consultants, partners and other advisers to the Authority) with which the Authority contracts, or to which the Authority delegates (or tasks to act in pursuance of) any of its rights or obligations; and (ii) for putting in place workarounds for the Services and other services that are reliant on the Services, including any other costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 23.8.2 wasted expenditure;
 - 23.8.3 the additional cost of procuring and maintaining in place Replacement Services for the remainder of the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the charges for the Replacement Services over and above the Charges that would have been payable for the relevant Services);
 - 23.8.4 any Losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority Data, or other data or software, including, to the extent

the Authority Data, other data or software can be recovered or reconstituted, the costs of, and expenses and charges for reconstituting such Authority Data, data or software;

- 23.8.5 damage to property and tangible assets, including damage to Authority Premises or premises where the Contractor is instructed to perform the Services;
- 23.8.6 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Contractor's Default (including the extension or replacement of such contracts); or
- 23.8.7 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.

Invalidity

- 23.9 If any limitation or provision contained or expressly referred to in this Clause 23 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 23.

Third Party claims or Losses

- 23.10 Without prejudice to any other rights or remedies the Authority may have under this Agreement (including any indemnity claim under Clause 18 (*Intellectual Property*)) or at law, the Authority shall be entitled to make a claim under this Agreement against the Contractor in respect of any Losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - 23.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Services or failure to perform any obligations under the Agreement; and
 - 23.10.2 is a type of claim or Loss that would have been recoverable under the Agreement if the third party were a party to the Agreement (whether as the Authority or the Contractor).

Other Contractor Remedies

- 23.11 If and to the extent that the Contractor has an express remedy under this Agreement in respect of any breach, act or omission that remedy shall be exhaustive of its rights in respect of that breach, act or omission (or failure by the Authority to fulfil an Authority Dependency as the case may be).

No double recovery

- 23.12 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same Losses, but the Authority shall be entitled to use (singly or together) such rights and remedies available to it so as to recover the full extent of any recoverable Losses suffered or incurred.

Repayment in the event of recovery

- 23.13 If either Party pays to the other an amount in respect of Losses and the other Party subsequently recovers (whether by payment, discount, credit, insurance, saving, relief or other benefit or otherwise howsoever and whether such recovery occurs under a term of the Agreement or otherwise) a sum which is referable to the fact, matter, event or circumstances giving rise to those Losses, the relevant Party shall as soon as practicable repay to the other Party the lesser of:
 - 23.13.1 an amount equal to the sum recovered (or the value of the savings or benefit obtained) less any costs and expenses incurred by the relevant Party in recovering the same; and
 - 23.13.2 the amount paid by the relevant Party to the other in respect of the Losses.
- 23.14 The Contractor shall, at its own expense, maintain in effect at all times during the performance of this Agreement such insurance policies with a reputable third party

insurance company as it is required to hold under the Laws and such other policies, at such coverage limits, as a prudent business conducting similar operations in accordance with Good Industry Practice would maintain (the “**Insurance Policies**”). The Contractor shall at the Authority's request and within a reasonable period of time provide evidence of such policies.

- 23.15 The Contractor shall at all times comply with the terms of the Insurance Policies (including paying all premiums and other moneys payable, notifying circumstances which might give rise to claims, and making claims), and shall not do or permit to be done anything which might render any Insurance Policy void or voidable or entitle the insurer to refuse to pay any claim or part of a claim.
- 23.16 Nothing in this Clause 23 shall restrict or limit any Party's general obligation at law to mitigate any loss it may incur as a result of an event that may give rise to a claim under this Agreement.

24. FORCE MAJEURE

- 24.1 Subject to the remaining provisions of this Clause 24, each Party shall be relieved from liability under this Agreement (including for late performance or non-performance of any obligations under this Agreement and Authority Dependencies) to the extent that, due to the occurrence of a Force Majeure Event, the Affected Party is unable to perform its obligations (or in the case of the Authority, Authority Dependencies) under this Agreement, provided that:
- 24.1.1 the Affected Party shall as soon as reasonably practicable give the other Party written notice of the Force Majeure Event. Such notification shall include details of the Force Majeure Event, together with evidence of its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect; and
- 24.1.2 where the Contractor is the Affected Party, the Contractor has used all reasonable endeavours and acted in accordance with Good Industry Practice to:
- (i) resume full performance of its obligations under this Agreement; and
 - (ii) overcome or mitigate the consequences of the Force Majeure Event on the performance of the obligations under this Agreement.
- 24.2 As soon as practicable after the Affected Party's notification has been received by the other Party and in any event within one (1) Working Day, the Parties shall consult with each other and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 24.3 Where the provision of the Services or part thereof is prevented or affected by a Force Majeure Event, then the Authority's obligation to pay the Charges shall, to the extent that those Charges relate to the part of the Services whose provision is prevented or affected by the Force Majeure Event, be reduced by an equitable amount (which in the case of total suspension would be an amount equal to the total Charges for the period of suspension), until the Contractor resumes full performance of the Services (or the relevant part of them) in accordance with the terms of this Agreement.
- 24.4 Notwithstanding the generality of this Clause 24:
- 24.4.1 a Party shall not be able to rely on this Clause 24 to claim relief from liability:
- (i) if the relevant Force Majeure Event is caused by its Default, wilful act or omission, neglect or failure to take reasonable precautions against the relevant Force Majeure Event;
 - (ii) where the Contractor is the Affected Party, if the relevant Force Majeure Event has arisen because an Approved Subcontractor has failed to perform, or is delayed in performing, its obligations under a contract with the Party (unless that Approved Subcontractor is itself prevented from, or delayed in, complying with its obligations as a result of a Force Majeure Event); or

- (iii) where the Contractor is the Affected Party, to the extent the consequences of the relevant Force Majeure Event 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; and

- 24.4.2 the Contractor shall not be able to rely on this Clause 24 to claim relief from liability to the extent that the failure to comply with its obligations as set out under this Agreement results from a failure to implement the Business Continuity Plans (except to the extent that the Force Majeure Event prevented the Contractor from implementing the Business Continuity Plans).
- 24.5 The Affected Party shall notify the other Party promptly after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 24.6 The relief from liability under this Clause 24 shall only last for the shorter of the duration of the relevant Force Majeure Event or the time at which 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 24.5.
- 24.7 Where the Contractor is affected by a Force Majeure Event, it shall provide regular update reports to the Authority in relation to its status (and the status of affected Services) for the duration of the Force Majeure Event.

25. SUSPENSION

- 25.1 Without prejudice to any other right that the Authority may have to suspend all or part of the Services pursuant to this Agreement, the Contractor shall suspend all or part of the Services promptly upon receiving the Authority's written request to do so, provided that where such request for suspension has not resulted from a Contractor Default, the Authority shall continue to pay for the suspended Services during the period of suspension.

26. TERMINATION

Preparation for termination

- 26.1 The Contractor shall comply with its obligations set out in Schedule 12 (*Exit Management*) and any current Exit Plan.

Termination for convenience

- 26.2 The Authority may at any time and for any reason serve a Termination Notice on the Contractor initiating termination of all or part of this Agreement, one or more Work Packages, or any part thereof. If the Authority serves a Termination Notice under this Clause 26.2:
 - 26.2.1 this Agreement, such Work Package(s) or part(s) thereof will terminate on the date specified in such Termination Notice, such date not to be earlier than thirty (30) Working Days from the date of the Termination Notice; and
 - 26.2.2 if expressly required and specified in the relevant Work Package, the Authority will pay the Contractor's direct, reasonable, verifiable and unmitigated costs incurred in preparing to deliver the relevant Services being terminated.

Termination for cause

- 26.3 The Authority may at any time serve a Termination Notice on the Contractor initiating termination of all or part of this Agreement, one or more Work Packages, or any part thereof without any further liability to the Contractor:
 - 26.3.1 if there is a material Default, or series of Defaults the combination of which is material, by the Contractor and (if capable of remedy) the Contractor has failed to remedy the Default(s) within twenty (20) Working Days after receipt of written notice giving particulars of the Default(s) and requiring them to be remedied;
 - 26.3.2 if due to the Contractor's fault a Deliverable has not been completed by its Deliverable Date and if the Deliverable has not been completed by a subsequently agreed alternative date;

- 26.3.3 if a Default, or series of Defaults, by the Contractor results in the Authority not being able to comply with all Laws as set out in Clause 21 (*Regulations and Laws*) and results in a Regulatory Authority stating that it shall take action against the Authority;
- 26.3.4 if a Default, or series of Defaults, by the Contractor results in significant damage to the reputation of the Authority as a result of: (a) publications in national newspapers or on websites of national newspapers; or (b) broadcasts on national radio or national television, that are materially factually correct as to the nature of the relevant Default(s) and such disclosure has not been made by a Government department, the Authority, its employees, agents and subcontractors in breach of their obligations of confidentiality under this Agreement;
- 26.3.5 pursuant to Clause 18.24.1 (*IPRs Indemnity*);
- 26.3.6 if the Contractor is in breach of any:
- (i) obligation under Schedule 6 (*Security Requirements*); or
 - (ii) secrecy or security obligation imposed by any other contract with the Crown,
- where the Authority considers the circumstances of the breach jeopardise the secrecy or security of any Secret Matter.
- 26.3.7 if expressly permitted by Clause 30.5 (*Prevention of Fraud and Corruption*);
- 26.3.8 if there is a Change of Control of the Contractor and the Authority has not previously consented to such Change of Control in relation to the relevant Services;
- 26.3.9 if (in the reasonable opinion of the Authority), there is a material detrimental change in the financial standing or the credit rating of the Contractor which adversely impacts on the Contractor's ability to supply the Services, or could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Services; or
- 26.3.10 if an Insolvency Event occurs in respect of the Contractor.
- 26.4 The Authority may exercise any right of termination under Clause 26.3 without first instigating the Dispute Resolution Procedure or without awaiting its final outcome. Where the Authority does not do so, the Parties' obligations under Clause 34 (*Governing Law and Disputes*) shall continue to apply. The foregoing does not preclude the Contractor from disputing that the Authority is entitled to terminate this Agreement.

Date of termination

- 26.5 If the Authority serves a Termination Notice under this Clause 26, the relevant parts of this Agreement or Work Package(s) shall (at the Authority's option, stated in the Termination Notice) terminate: (i) immediately; or (ii) on a date up to three (3) months after the Authority serves a further notice stating that this Agreement or the relevant Work Package(s) shall terminate (and, for the avoidance of doubt, such notice may be served at any time following the service of a Termination Notice under Clause 26.3 (*Termination for cause*)).

Termination by Contractor

- 26.6 The Contractor may serve on the Authority a Termination Notice to initiate termination of this whole Agreement if the Authority fails to pay three (3) or more consecutive undisputed invoices and such invoices remain unpaid forty (40) Working Days after receipt by the Authority of a written notice requiring the Authority to pay such invoices and stating the Contractor's intention to terminate this Agreement (such notice to be delivered after the due date for payment of the invoices). If the Contractor serves a Termination Notice under this Clause 26.6, this Agreement shall terminate after a period of three (3) months from the notice being served.
- 26.7 The Contractor's right of termination under Clause 26.6 shall not apply to non-payment of the Charges by the Authority where such non-payment is due to the Authority exercising its rights under Clauses 9.8 (*Set Off*) or 9.10 (*Disputed Charges*).

26.8 The Contractor shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

Termination for continuing Force Majeure Event

26.9 The Authority may, by written notice to the Contractor, terminate all or part of this Agreement with immediate effect, if a Force Majeure Event occurs which affects the Services (or any single Service) for a continuous period of more than twenty (20) Working Days.

Rights not exclusive

26.10 The rights of the Authority under this Clause 26 are in addition (and without prejudice) to any other right or remedy which the Authority may have.

27. CONSEQUENCES OF TERMINATION

Survival

27.1 Termination or expiry of this Agreement (whether in whole or in part and howsoever arising) shall not affect:

27.1.1 the accrued rights or liabilities of either Party which may have accrued or become due prior to the date of termination or expiry; or

27.1.2 the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue to be in force on or after termination, including for the avoidance of doubt Clause 28 (*Exit and Re-Procurement*).

Payments

27.2 It is agreed:

27.2.1 the Contractor's sole remedy following termination in accordance with Clause 26.2 (*Termination for convenience*) shall be payment by the Authority of any sums due to the Contractor at the date of termination in accordance with Clause 26.2.2 (*Termination for convenience*);

27.2.2 without prejudice to the Contractor's other obligations and the Authority's other rights and remedies under this Agreement or at law, the Authority shall not make any payment to the Contractor:

(i) by reason of the expiry of the Term; or

(ii) by reason of termination by the Authority in accordance with Clause 26.3 (*Termination for cause*); and

27.2.3 the costs of termination incurred by the Parties shall lie where they fall if the Authority terminates, or partially terminates, this Agreement pursuant to Clause 26.9 (*Termination for continuing Force Majeure Event*).

Repayments

27.3 Upon termination or expiry of this Agreement (whether in whole or in part and howsoever arising), the Contractor shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of such expiry or termination (save to the extent that such Services are provided after such date pursuant to Schedule 12 (*Exit Management*)).

Return of Confidential Information

27.4 Without prejudice to the Authority's rights and the Contractor's obligations under Schedule 12 (*Exit Management*) and the Exit Plan, within twenty (20) Working Days following the date of termination or expiry of this Agreement for whatever reason, the Contractor shall at no additional cost to the Authority at the Authority's election, either:

27.4.1 provide to the Authority a copy of all Confidential Information held, possessed or controlled by the Contractor, in such format(s) and structure(s) reasonably specified by the Authority; or

27.4.2 destroy or return any additional copies of the Confidential Information held, possessed or controlled by the Contractor,
and certify that it does not retain the Authority's Confidential Information, provided that the Contractor may retain one copy of such information as it is expressly required to retain by Law and subject to the confidentiality obligations set out in Clause 20 (*Confidentiality*).

28. EXIT AND RE-PROCUREMENT

28.1 During any Exit Period, the Contractor shall perform its obligations in accordance with Schedule 12 (*Exit Management*), the Exit Plan most recently approved by the Authority and the requirements of the relevant Work Packages.

29. EMPLOYEE ENTRY AND EXIT

29.1 The Parties shall comply with the provisions of Schedule 13 (*Employee Transfer*) in relation to arrangements for the transfer of employees upon entry, termination or expiry of this Agreement.

30. PREVENTION OF FRAUD AND CORRUPTION

30.1 The Contractor shall not commit any acts of fraud, and shall ensure that it has measures in accordance with Good Industry Practice to prevent acts of fraud by any Contractor Personnel or Approved Subcontractors in respect of the Services, the Authority or otherwise under or in connection with this Agreement. The Contractor shall notify the Authority immediately if it has reason to suspect that an act of fraud has occurred or is likely to occur in connection with this Agreement.

30.2 In this Clause 30, "**Associated Person**" means any person (including any employee, agent, Approved Subcontractor or Group Company) who performs services for and on behalf of the Authority under this Agreement.

30.3 The Contractor shall, and shall ensure that its Associated Persons shall, comply with and not through their acts or omissions put the Authority in breach of the UK Bribery Act 2010, the US Foreign Corrupt Practices Act of 1977 and all similar national laws intended to prevent corruption and bribery.

30.4 The Contractor warrants and represents to the Authority on a continuous basis throughout the Term that it, and its Associated Persons have not, and are not, the subject of any actual or threatened legal proceedings involving allegations of bribery or corruption; and are not currently the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

30.5 If the Contractor commits a breach of this Clause 30, the Authority shall be entitled to serve a Termination Notice and/or recover in full from the Contractor any loss suffered by the Authority in consequence of a breach of this Clause 30.

31. ASSIGNMENT AND NOVATION

31.1 The Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written approval of the Authority.

31.2 The Authority may at its discretion assign, novate or otherwise dispose of any of its rights, obligations and liabilities under this Agreement and any associated licences (including any third party licences) to any Replacement Authority or Replacement Contractor, and the Contractor 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 31.2.

31.3 A change in the legal status of the Authority shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

32. SUBCONTRACTING

No subcontracting without consent

- 32.1 The Contractor shall not, without the Authority's prior written consent, subcontract any of its rights and obligations under this Agreement.
- 32.2 If the Authority provides such consent, the Contractor shall demonstrate to the Authority that its Approved Subcontractors are reliable and are able to comply with the obligations under this Agreement.
- 32.3 The Contractor shall maintain full details of its Approved Subcontractors (including the services they provide and how they are managed) and shall make such details available to the Authority upon request.

Subcontracting information

- 32.4 In making a request for approval of a subcontractor pursuant to Clause 32.1 (*No subcontracting without consent*), the Contractor shall provide the Authority with the following information about the subcontractor:
- 32.4.1 its name, registered office and company registration number;
- 32.4.2 a copy of the proposed subcontract, including details of the value of the proposed subcontract;
- 32.4.3 details of the method by which the proposed subcontract will be procured;
- 32.4.4 the purposes for which the proposed subcontractor will be employed, including the scope of any services to be provided by the subcontractor;
- 32.4.5 where the subcontractor is also a member of the Contractor's Group, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed subcontract has been agreed on "arms-length" terms; and
- 32.4.6 any further information reasonably requested by the Authority (including its long term credit ratings).

Approved Subcontractors

- 32.5 The Parties acknowledge and agree that those subcontractors listed in Schedule 11 (*Approved Subcontractors*) are Approved Subcontractors. If the Contractor wishes to remove any Approved Subcontractors or add any more subcontractors to the list of the Approved Subcontractors in Schedule 11 (*Approved Subcontractors*), it must obtain the prior written approval of the Authority.

Removal of Subcontractors

- 32.6 The Authority may in its sole discretion withhold, delay or revoke its consent to the Contractor subcontracting any of its obligations under this Agreement. If for any reason the Authority considers that an Approved Subcontractor should cease to be approved by the Authority, such Approved Subcontractor shall be deemed to be removed from the list of Approved Subcontractors, and on notification by the Authority to the Contractor, the Contractor shall take all steps necessary to ensure that no Services continue to be provided by such subcontractor.
- 32.7 Without prejudice to Clause 32.6, if the Authority at any time reasonably considers that:
- 32.7.1 an Approved Subcontractor's performance of its obligations is unsatisfactory; or
- 32.7.2 the relationship between the Authority and an Approved Subcontractor is adversely affecting the relationship between the Authority and the Contractor,
- then the Authority may require the Parties to meet to discuss the Authority's concerns and the Contractor shall use all reasonable endeavours to address those concerns.
- 32.8 Without prejudice to Clause 32.6, the Authority may require the Contractor to cease using an Approved Subcontractor if that Approved Subcontractor:
- 32.8.1 is the subject of a Change of Control and the Authority has not previously consented to such Change of Control in relation to the relevant Service(s);

- 32.8.2 commits a material breach of its subcontract or causes the Contractor to be in material Default of this Agreement;
- 32.8.3 suffers an Insolvency Event;
- 32.8.4 commits an act of fraud; or
- 32.8.5 is subject to a recommendation from a Regulatory Authority that they should not be involved in the Services.

Transparency of subcontracts

- 32.9 Upon written request by the Authority from time to time, the Contractor shall promptly provide the Authority with a copy of any subcontract, including visibility over the value of the relevant subcontract, with any Approved Subcontractor.

33. GENERAL

Third party rights

- 33.1 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except for: (i) a person who is a permitted successor or assignee of the rights or benefits of a Party that may enforce such rights or benefits; and (ii) a Replacement Contractor. The Parties agree that no consent from the persons referred to in this Clause 33.1 is required for the Parties to vary or rescind this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such Third Parties).

Entire agreement

- 33.2 This Agreement constitutes the entire agreement between the Parties with respect to the subject of this Agreement and (to the extent permissible by law) supersedes all prior representations or oral or written agreements between the Parties with respect to that subject matter, provided that neither Party is attempting to exclude any liability for fraudulent statements (including fraudulent pre-contractual misrepresentations on which the other Party can be shown to have relied). Each Party agrees, having considered this Agreement as a whole, that the provisions of this Agreement are fair and reasonable.

Brand and reputation

- 33.3 The Contractor shall not:
 - 33.3.1 do anything which may damage the reputation of the Authority or bring the Authority into disrepute;
 - 33.3.2 conduct itself in such a way as to imply or express any approval or endorsement by the Authority of any of the Contractor's or its Subcontractors' products and services; or
 - 33.3.3 make any public announcement (including to representatives of the press, television, radio or other communications media), or issue any circular, relating to this Agreement or the Services without the prior written approval of the Authority. No facilities to photograph or film in or upon any property used in relation to the Services shall be given or permitted by the Contractor unless the Authority has given its prior written approval.

Waiver

- 33.4 The rights and remedies provided by this Agreement may be waived only in writing by the relevant authorised representative of the Contractor (as notified to the Contractor from time to time) in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 33.5 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies provided at law or in equity or otherwise under this Agreement. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies. 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.

- 33.6 A waiver by either Party of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

Cumulative remedies

- 33.7 The Authority's rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

Variation

- 33.8 Subject to the provisions of Clause 3.13 (*New Work Packages*) in respect of new Work Packages, any amendment of this Agreement will not be binding on the Parties unless the amendment has been agreed following the procedures set out in Schedule 9 (*Change Control*).

Notices

- 33.9 Any notice or other communication in connection with this Agreement (each, a "**Notice**") shall be:

33.9.1 in writing, authenticated by signature or by another agreed method;

33.9.2 marked in a prominent position with the relevant contract number; and

33.9.3 delivered by email, personal delivery, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery.

33.9.4 Notices must be addressed in accordance with the details set out in Schedule 7 (*Governance and Reporting*). A Notice shall be effective upon delivery and shall be deemed to have been delivered as per the table below:

Manner of delivery	Deemed time of delivery	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 and with an acknowledgment of receipt by the recipient
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
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

Severance

- 33.10 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the Parties shall seek to agree any deletions or modifications necessary

so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties. To the extent that the Parties do not agree to delete or modify the provision, in whole or in part, under this Clause 33.10, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under this Clause 33.10, not be affected.

Counterparts

- 33.11 This Agreement may be entered into in any number of counterparts all of which, when taken together, shall constitute one and the same instrument. Any Party may enter into this Agreement by executing any such counterpart.

No partnership etc.

- 33.12 This Agreement does not set up or create an employer employee relationship, a partnership of any kind, an association or trust between the Parties, each Party being individually responsible only for its obligations as set out in this Agreement and, in addition, the Parties agree that their relationship is one of independent contractors. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

Crown contracts

- 33.13 If the Contractor is party to any other contract with a Crown Body relating in any way to the subject-matter of this Agreement, then no breach by that Crown Body of that other contract, nor any other act or omission, nor any written or oral statement nor any representation whatsoever of or by that Crown Body its servants or agents or other contractors relating to or connected with any other contract shall, regardless of any negligence on its part or their part, affect the Parties rights, obligations and liabilities under this Agreement.

Further assurance

- 33.14 The Contractor undertakes at the request of the Authority to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement.

34. GOVERNING LAW AND DISPUTES

Internal escalation

- 34.1 The Parties shall resolve any Dispute by first attempting to resolve such Dispute informally through discussion between appropriate representatives of the Authority and the Contractor, who shall meet promptly with a view to resolving resolve the Dispute.
- 34.2 If the individuals specified in Clause 34.1 cannot resolve the Dispute completely within five (5) Working Days of the Dispute being referred to them then the Dispute shall promptly be referred by either Party to the Authority's ISS Head of and the Chief Operating Officer of the Contractor (or other such person accepted by the Authority to be of sufficient seniority within the Contractor's business) who shall meet promptly with a view to resolving the Dispute.
- 34.3 The Contractor shall have no right to suspend or terminate any Service in connection with a Dispute.

Optional mediation

- 34.4 If, within twenty (20) Working Days of the Dispute having been referred to the individuals specified in Clause 34.2 (*Internal escalation*) no agreement has been reached, the Authority (at its option) may refer the relevant Dispute to mediation in accordance with the model procedure of the Centre for Effective Dispute Resolution ("**CEDR**"). The identity of the mediator shall be:
- 34.4.1 agreed between the Parties acting reasonably; or
- 34.4.2 if the Parties fail to reach such agreement within ten (10) Working Days, determined by CEDR,

provided that the mediator shall have no power to make any determination or otherwise bind the Parties.

34.5 If the Authority has:

34.5.1 opted to refer the relevant Dispute to mediation in accordance with Clause 34.4, and no agreement between the Parties has been reached within thirty (30) Working Days of signature of the CEDR mediation agreement; or

34.5.2 confirmed to the Contractor in writing that it does not wish to refer the relevant Dispute to mediation, and no agreement between the Parties has been reached within thirty (30) Working Days of such confirmation,

then the Dispute Resolution Procedure shall be deemed to have been exhausted in respect of the Dispute, and each Party shall be free to pursue the rights granted to it by this Agreement in respect of such Dispute without further reference to the Dispute Resolution Process.

Arbitration

34.6 If a Dispute has not been resolved using the internal escalation process pursuant to Clauses 34.1 and 34.2 (*Internal escalation*) or mediation pursuant to Clause 34.4 (*Optional mediation*), each of the Parties irrevocably agrees that such Dispute shall be resolved by arbitration in accordance with this Clause 34.6. Unless otherwise agreed in writing (such form of writing to refer expressly to this Clause 34.6) between the Parties:

34.6.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("**LCIA**") procedural rules shall be applied and are deemed to be incorporated into this Agreement (save that in the event of any conflict between those rules and this Agreement, this Agreement shall prevail);

34.6.2 the decision of the arbitrator shall be final and binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);

34.6.3 the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA;

34.6.4 the arbitration proceedings shall be conducted in the English language and take place in London;

34.6.5 the arbitrator shall be and remain independent and impartial of each Party; and

34.6.6 the Parties agree to waive any right of appeal against the arbitration award.

34.7 Nothing in this Agreement shall prevent either Party from seeking injunctive relief at any time or instituting proceedings to ensure that the relevant claim falls within the relevant limitation period.

Governing law

34.8 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 governed by and construed in accordance with the laws of England. The Parties agree that, subject always to the arbitration agreement in Clause 34.6 (Arbitration), the courts of England 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.

Execution

IN WITNESS of which this Agreement has been duly executed by the Parties.

Signed duly authorised for and on behalf of **THE SECRETARY OF STATE FOR DEFENCE**:

Signature:

Name:

Position:

Date:

and

Signed for and on behalf of the Contractor, **Atos IT Services UK Limited**

Signature:

Name:

Position:

Date: