



DPS AGREEMENT

SCHEDULE D.2.1

SERVICES AGREEMENT

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SCHEDULE D.2.1 (SERVICES AGREEMENT)

Document version control

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V2.2	April 2023	Updated to reflect BLC as managing body of DPS	BLC

DATED

31st March 2025

(1) NHS Counter Fraud Authority

- and -

(2) CY4OR LEGAL LIMITED (t/a CYFOR)

SERVICES AGREEMENT

relating to

the provision of digital forensics services
under the DPS Agreement

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S.1 Definitions

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THIS SERVICES AGREEMENT is made on

21st March 2025

BETWEEN:

- (1) **NHS Counter Fraud Authority** a public body whose principal place of business is at 7th Floor, HM Government Hub, 10 South Colonnade, Canary Wharf, London, E14 4PU ("**Customer**"); and
- (2) **CY4OR LEGAL LIMITED (t/a CYFOR)** a company registered in England and Wales under company number 06295131 whose registered office is at Benjarron House, Greenside Way, Middleton Manchester M24 1SW ("**Contractor**").

INTRODUCTION

- A **CY4OR LEGAL LIMITED (t/a CYFOR)** (the "**Contractor**") entered into an agreement (the "DPS Agreement") on **31st March 2025** with the BlueLight Commercial Limited (the "**Authority**") relating to the supply of certain services.
- B The Authority created the DPS Agreement on behalf of the Contracting Authorities so that Contracting Authorities could access the DPS for the purchase of certain services as defined in the DPS Agreement.
- C The Customer placing the Order is one of the Contracting Authorities and it is placing such Order on the basis that the Terms and Conditions of Services Agreement shall apply to the resulting contract and the Contractor has agreed (in the DPS Agreement) that these terms shall apply to the supply and purchase of such services.

IT IS AGREED as follows:

SERVICES AGREEMENT

This Services Agreement shall incorporate the terms and conditions set out in Part 1 (Services Order Form) and the terms and conditions set out in Part 2 (Terms and Conditions of Services Agreement).

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

SIGNED for and on behalf of

NHS Counter Fraud Authority

SIGNED for and on behalf of **CY4OR LEGAL
LIMITED (t/a CYFOR)**

<div>[Redacted Signature]</div> <div>[Redacted Name]</div> <div>[Redacted Title]</div> <div>[Redacted Address]</div> <div>[Redacted Address]</div> <div>[Redacted Address]</div> <div>[Redacted Address]</div>	<div>[Redacted Signature]</div> <div>[Redacted Name]</div> <div>[Redacted Title]</div> <div>[Redacted Address]</div> <div>[Redacted Address]</div> <div>[Redacted Address]</div> <div>[Redacted Address]</div>
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PART 1 - SERVICES ORDER FORM

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PART 2 - TERMS AND CONDITIONS OF SERVICES AGREEMENT

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Services Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in schedule S.1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Services Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it. The impact of any such amendment, extension or re-enactment on this Services Agreement shall be dealt with in accordance with clause 46 46 (Change in Law);
 - 1.2.5 any reference in this Services Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
 - 1.2.5.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“EU References”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- 1.2.5.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- 1.2.6 the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly.
- 1.3 The headings in this Services Agreement are for ease of reference only and shall not affect the interpretation or construction of this Services Agreement;
- 1.4 References to clauses, schedules and appendices are, unless otherwise provided, references to the clauses of and schedules and appendices to this Services Agreement and references in any Schedule to Paragraphs, Parts and Appendices are, unless otherwise provided, references to the paragraphs, parts and appendices of the Schedule or the Part of the Schedule in which the references appear; and
- 1.5 References to this Services Agreement are references to this Services Agreement as amended from time to time.
- 1.6 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Customer and the Parties shall update this Services Agreement with a reference to the replacement hyperlink.
- 1.7 If there is any conflict between the clauses and the schedules and/or any appendices to the schedules and/or any other documents referred to in this Services Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.7.1 the Special Terms;
 - 1.7.2 the clauses and schedule S.1 (Definitions);

- 1.7.3 schedule S.2.2 (Requirements) and S.2.3. (Service Levels and Performance Monitoring));
- 1.7.4 any other schedules or appendices;
- 1.7.5 any other document referred to in this Services Agreement or any other document attached to this Services Agreement.
- 1.8 The Schedules and their Appendices form part of this Services Agreement.
- 1.9 Save in respect of the Charges (which shall be adjusted in accordance with schedule S.4.1 (Charges and Invoicing)), if an amount or sum is expressed to be "subject to indexation" at a point in time, it shall be adjusted by reference to the percentage change in the Retail Prices Index (all items excluding mortgages) over the most recent 12 months for which published data is available at that point in time.
- 1.10 Neither party to this Services Agreement shall be liable for any Default of its obligations under this Services Agreement to the extent that such Default is caused by a failure or delay by the other party in performing its obligations under this Services Agreement, provided and to the extent that the Affected Party notifies the other party of such failure or delay within 30 days of the Affected Party becoming aware of its occurrence and of its likely impact.

2. DUE DILIGENCE

- 2.1 The Contractor acknowledges that applying commercially reasonable endeavours:
 - 2.1.1 the Customer has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Services Agreement;
 - 2.1.2 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Services Commencement Date of all relevant details relating to; schedule D.2.2 (Services Requirements) of the DPS Agreement and schedule S.2.2 (Requirements);

- 2.1.3.1 the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Services Commencement Date) future Operating Environment;
 - 2.1.3.2 the operating processes and procedures and the working methods of the Customer;
 - 2.1.3.3 the ownership, functionality, capacity, condition and suitability for use in the Services of the Assets; and
 - 2.1.3.4 the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Contractor under this Services Agreement and/or which the Contractor will require the benefit of for the provision of the Services; and
 - 2.1.4 it has advised the Customer in writing of:
 - 2.1.4.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - 2.1.4.2 the actions needed to remedy each such unsuitable aspect; and
 - 2.1.4.3 a timetable for and, to the extent that such costs are to be payable to the Contractor, the costs of those actions, and such actions, timetable and costs are fully reflected in this Services Agreement;
 - 2.1.5 has entered into this Services Agreement in reliance on its own due diligence alone.
- 2.2 The Contractor acknowledges that it has understood the Services Requirements and has advised the Customer of any matter that may impact on the Contractor's ability to provide the Services in accordance with the terms of this Services Agreement and actions to remedy the same together with a timetable for and the costs of those actions have been specified prior to the Services Commencement Date.

- 2.3 If the Contractor has either failed to undertake due diligence or failed to notify the Customer of any required remedial actions in accordance with clauses 2.1 or 2.2 then the Contractor shall not be entitled to recover any additional costs or charges from the Customer relating to any matter which the Contractor ought reasonably to have been aware as at the Services Commencement Date.
- 2.4 The Contractor shall not be excused from the performance of any of its obligations under this Services Agreement on the grounds of, nor, subject to Clause 2.5, shall the Contractor be entitled to recover any additional costs or charges, arising as a result of:
- 2.4.1 any unsuitable aspects of the Operating Environment;
 - 2.4.2 any misinterpretation of the Services Requirements; and/or
 - 2.4.3 any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 2.5 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure.

SECTION B –SERVICE ORDERING AND SERVICES

3. SCOPE OF SERVICES AGREEMENT

This Services Agreement sets out the terms and conditions that shall apply to the provision of the Services by the Contractor to the Customer in accordance with the provisions of the DPS Agreement and this Services Agreement.

4. FORMATION

- 4.1 Each Order that the Customer places pursuant to the DPS Agreement is subject to and shall be deemed to incorporate these Terms and Conditions of Services Agreement which shall form part of the Services Agreement to the exclusion of any terms and conditions which the Contractor may seek to impose under any quotation, confirmation of order, invoice or similar document.
- 4.2 By entering into the DPS Agreement the Contractor agrees to the application of these Terms and Conditions of Services Agreement to the Services Agreement.
- 4.3 The Contractor and Customer agree that any other terms or conditions (whether or not inconsistent with these Terms and Conditions of Services Agreement) contained or referred to in any correspondence or any documentation submitted by the Contractor or elsewhere implied by custom, practice or course of dealing shall not apply.

5. CONTRACT PERIOD

The Services Agreement shall come into effect on the Services Commencement Date and shall remain in force throughout the Contract Period unless it is otherwise terminated in accordance with the provisions of the Services Agreement, or otherwise lawfully terminated or extended.

6. SERVICES

- 6.1 The Contractor shall provide the Services to the Customer from the Services Commencement Date and shall ensure that the Services:
 - 6.1.1 comply in all respects with Schedule S.2.2 (Requirements) of this Services Agreement; and

- 6.1.2 are supplied in accordance with the terms of this Services Agreement; and
- 6.1.3 comply with the requirements set out in the Order.
- 6.2 The Contractor shall perform its obligations under this Services Agreement in accordance with:
 - 6.2.1 Good Industry Practice;
 - 6.2.2 the Contractor's own established procedures and practices;
 - 6.2.3 the requirements of schedule S.2.5 (Security Requirements and Plan);
 - 6.2.4 the provisions of www.ncsc.gov.uk/information/cyber-essentials; and
 - 6.2.5 the Forensic Science Regulator's Codes of Practice and Conduct.
- 6.3 The Contractor shall draw any conflict between any of the requirements of clause 6.1 and the requirements of clause 6.2 to the attention of the Customer and shall comply with the Customer's decision on the resolution of that conflict.
- 6.4 In the event of the Contractor's failure to provide the Services or to comply with its obligations in accordance with this Services Agreement, the Customer may, without prejudice to its other rights, require the Contractor to re-perform the Services or to comply with its obligations.

7. PLACE OF PERFORMING THE SERVICES

- 7.1 The Contractor shall perform the Services in accordance with clause 7 (Place of Performing the Services) of the DPS Agreement.
- 7.2 Subject to clause 7.2, the Contractor shall only provide the Services from a Site unless it has obtained the prior written consent of the Customer (which shall not be unreasonable withheld or delayed), to supply the Services from an alternative location.
- 7.3 The Contractor shall provide the Services at any location which the Customer may reasonably require. In particular the Contractor acknowledges that provision of the Services may require its attendance at crime scenes. The Contractor shall provide all the Equipment necessary for the supply of the Services.

- 7.4 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior approval.
- 7.5 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 7.6 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 7.7 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- 7.7.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the DPS Agreement and/or any Services Agreement; and
- 7.7.2 replace such item with a suitable substitute item of Equipment.
- 7.8 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Contractor Personnel.

8. SERVICE LEVELS

- 8.1 The Contractor shall provide the Services to meet or exceed the Service Levels from the Services Commencement Date. The remaining provisions of this clause 8 (Service Levels) are subject to the provisions of clause 9 (Effect of Customer Cause).

- 8.2 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, the Contractor shall:
- 8.2.1 notify the Customer immediately of the Service Failure or likely Service Failure;
 - 8.2.2 (if requested by the Customer) provide the Customer with a Remedial Plan of the action that it will take to rectify the Service Failure or to prevent the Service Failure from taking place or recurring, within 10 Working Days from the day the Contractor notifies the Customer under clause 8.2.1;
 - 8.2.3 take all remedial action that is reasonable to rectify or to prevent the Service Failure from taking place or recurring; and
 - 8.2.4 carry out the Remedial Plan agreed under clause 8.2.2 in accordance with its terms.
- 8.3 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Customer, then the Customer may, on written notice to the Contractor, withhold a reasonable and proportionate amount of the Charges for those Services until such time as the relevant Service Failure is remedied. Provided that the relevant Service Failure is remedied, the Customer shall resume payment of the relevant part of the Charges, including [subject to clause 8.4] payment of the amount retained.
- 8.4 [Where the Customer has retained sums pursuant to clause 8.3 and the Contractor has since remedied a relevant Service Failure, the Customer shall be entitled to set-off its losses incurred as a result of the Contractor's initial failure to remedy the Service Failure from any payment of such retained amount].

- 8.5 The Customer and the Contractor shall review the Service Levels every six months throughout the Contract Period to ensure that the Service Level Regime(s) continue to achieve the objectives specified in schedule S.2.3 (Service Levels and Performance Monitoring). If as a result of such review either party considers that any change to the Service Level Regime(s) is required, any changes shall be made in accordance with the Change Control Procedure, provided that prior to submitting a Change Request the parties shall refer the matter to the Customer and shall not implement any Contract Changes relating to the Service Level Regime (s) without the prior written consent of the Customer.

9. EFFECT OF CUSTOMER CAUSE

- 9.1 If the Contractor would have provided the Services in accordance with the Service Levels and/or this Services Agreement but has failed to do so as a result of a Customer Cause the Contractor will have the rights and relief set out in clause 9.2.
- 9.2 The Contractor shall:
- 9.2.1 (in measuring the performance of any affected Service) be treated as though the relevant Service had met the relevant Service Level to the extent that the Service Failure is due to any Customer Cause;
 - 9.2.2 not be treated as being in breach of this Services Agreement to the extent that non-performance or breach is due to any Customer Cause; and
 - 9.2.3 be entitled to the Charges for the relevant Services affected by the Customer Cause as if it had not occurred.
- 9.3 If the Contractor claims that clause 9.1 applies, and in order to claim the rights and reliefs in clause 9.2, it shall provide the Customer with details of the Customer Cause within 10 Working Days.
- 9.4 Any Disputes about or arising out of whether a Customer Cause applies to the Contractor's failure to provide the Services in accordance with the Service Levels and/or this Services Agreement shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to resolve the causes of and mitigate the effects of such failure.

SECTION C - STANDARDS AND QUALITY

10. STANDARDS

Compliance with Standards

- 10.1 The Contractor shall comply with the Standards in performing its obligations under this Services Agreement in clause 10 (Standards) and Schedule S.2.4 (Standards).
- 10.2 The Contractor shall at all times during the Service Period of this Services Agreement hold and maintain the standards and requirements set out in the Statement of Accreditation Requirements, Codes of Practice and Conduct, published by the Forensic Science Regulator (“Regulator”) of England and Wales. This includes any standards set out in annexes (or documents adopted or endorsed in place of, or in addition to, the annexes) to the Codes of Practice and Conduct specified (by the Forensic Science Regulator) as being applicable to the area of work contemplated by this Services Agreement.
- 10.3 The Contractor shall be required to provide written authorisation to the United Kingdom Accreditation Service (UKAS) to disclose relevant information relating to assessment and accreditation to the Forensic Science Regulator of England and Wales.
- 10.4 In order to be awarded a Services Agreement, the Contractor shall:
 - 10.4.1 possess ISO/IEC 17025/17020 accreditation issued by UKAS, or an equivalent body. The contractor’s scope of accreditation must include work required to deliver Services within any Lot(s) awarded to the Contractor under this DPS Agreement and any Services Agreement, (as described in schedule D.2.2 (Services Requirements) of the DPS Agreement)

- 10.4.2 have accreditation within the relevant discipline of the Services to be provided under this DPS Agreement and any Services Agreement. Where the Contractor does not possess ISO/IEC 17025 accreditation for all Services within the discipline of the awarded Lot(s), it shall deliver all Services in a manner that complies with the validated and verified methods of ISO/IEC 17025; In addition, the Contractor shall work to an agreed timetable to achieve ISO/IEC 17025 accreditation issued by UKAS, or an equivalent body, that covers all scientific Services listed within any awarded Lot(s) (as described in schedule D.2.2 (Services Requirements) of the DPS Agreement). The Customer may at its discretion allow the Contractor to adopt a flexible scope (as defined by UKAS) where appropriate; and
- 10.4.2 The contractor would also be expected to demonstrate compliance with the FSR Codes of Practice and Conduct (Codes) and provide plans of how they have achieved or plan to achieve accreditation to those Codes.
- 10.4.3 for all Lots, (as described in schedule D.2.2 (Services Requirements) of the DPS Agreement) register an interest with UKAS of achieving ISO/IEC 17020 accreditation issue by UKAS, or an equivalent body, for these Services; or have submitted an application for the same.
- 10.5 The Contractor shall promptly notify the Customer and the Forensic Science Regulator (“Regulator”) of any quality/accreditation failures that could impact on any Investigation or otherwise affect the provision of the Services. The Customer may subsequently disclose any such notifications to the Independent Office for Police Conduct (IOPC), Criminal Cases Review Commission (CCRC) or the Crown Prosecution Service (CPS) where appropriate.
- 10.6 All quality assessments and reports shall be disclosed to the Customer and the Forensic Science Regulator when requested.
- 10.7 The Customer reserves the right to exercise some degree of flexibility over scope of accreditation, in order to allow sufficient time for the Contractor to become fully accredited for the Services to be provided.

- 10.8 All Sub-contractors must be able to demonstrate that they meet the minimum standards and / or accreditation specified for all Services provided
- 10.9 The Customer may at its absolute discretion waive, suspend or qualify some or all of the Contractor's obligations under clause 10.
- 10.10 Where the Contractor does not comply with the Standards as at the Services Commencement Date, the Contractor shall, within 20 Working Days of the Services Commencement, develop a plan for the Customer's approval (which shall not be unreasonably withheld or delayed but which may be subject to conditions) by which it shall put the systems in place to comply with the Standards in respect of any Service in respect of which it intends to supply and the details the Standards with which it does not comply and/or does not intend to comply (the "**Standards Accreditation Plan**"). Where the Contractor details Standards it does not intend to comply, the Contractor shall provide justification for such non-compliance as part of the Standards Accreditation Plan. The Contractor shall implement the Standards Accreditation Plan and any failure to do so shall constitute a material Default of this Services Agreement.
- 10.11 The Contractor accepts that unless otherwise agreed by the Customer the Contractor shall not be capable of entering into (and the Customer shall not be required to enter into or invite bids from the Contractor in relation to) any Services Agreement that requires compliance with any Standards with which the Contractor does not comply at the time the Customer issues the invitation pursuant to clause 5.3 of the DPS Agreement.

Standards Testing and Assessment

- 10.12 The Contractor shall disclose to the Customer the results of all quality assurance and proficiency testing carried out by UKAS an equivalent body within 30 days of completion of such tests. The Contractor shall disclose to the Customer any issues arising or reported during such testing within three days of becoming aware of such issues.
- 10.13 The Contractor grants authority for the Customer to approach anybody running a quality assurance regime for details and/or results of the Contractor's performance.

- 10.14 The Contractor shall use reasonable endeavours (including the agreement of any consents, waivers or variations pursuant to any confidentiality agreements or other contractual arrangements) to procure that UKAS or any equivalent body issuing accreditation(s) relevant to this DPS Agreement discloses such information and provides such assistance to the Customer relating to the accreditation(s) of the Contractor as may be reasonably required by the Customer to assess the Contractor's compliance with this clause 10 (Standards).
- 10.15 The Customer reserves the right to undertake blind quality trials. The parties shall agree the basis, including the form, content and frequency of such trials, and the Customer shall notify the Contractor of the outcome of any trials undertaken. In the case of a failure of any blind quality assessment trial the provisions of clause 55 (Remedial Plan Process) shall apply.
- 10.16 The Contractor shall discuss with the Customer any conflict that the Contractor reasonably believes that there is or will be between any of the Standards or between any of the Standards and any other obligation under this DPS Agreement and shall comply with the Customer's decision on the resolution of that conflict.

11. QUALITY ASSURANCE AND PERFORMANCE MONITORING

Quality Monitoring

- 11.1 The Customer may carry out audits of the Contractor's quality management systems (including all relevant quality manuals and procedures) at regular intervals and may carry out other periodic monitoring or spot checks at any other time subject to reasonable notice, and during normal business hours (unless otherwise required for security reasons). In each case, the Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Customer including by providing the Customer with all necessary information and documentation, and access to any relevant Contractor Personnel and/or to any relevant Site, which it reasonably requires in connection with its rights under this clause 11.1 at no additional charge to the Customer.

- 11.2 If the Customer identifies, by an audit or by any other means, that the Contractor has failed to perform its obligations under this Services Agreement in any material manner, the parties shall agree and implement a remedial plan within a reasonable time considering the nature and gravity of the failure.

Performance Monitoring

- 11.3 The Contractor's performance of the Services shall be monitored in accordance with the provisions of clause 11 (Quality Assurance and Performance Monitoring) and schedule S.2.3 (Service Levels and Performance Monitoring) and the Contractor shall comply with the obligations set out in those schedules.
- 11.4 The Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Customer in carrying out the monitoring referred to in clause 11.3 at no additional charge to the Customer.
- 11.5 Without prejudice to any other right of the Customer under this DPS Agreement, if as a result of monitoring the performance of the Services by the Contractor the Customer considers that the Contractor has failed to provide the Services to the required Service Levels and in all respects in accordance with this Services Agreements the Customer may at its discretion impose improvement measures and request that the Contractor prepares a plan to improve the performance of the Services (an "**Improvement Plan**"), which shall set out the actions that the Contractor will take (as appropriate) to:
- 11.5.1 improve the Contractor's performance against the Service Levels in this Services Agreement;
 - 11.5.2 eliminate or minimise the occurrence of Service Failures in all Services Agreements;
 - 11.5.3 improve or ensure the Contractor's ongoing compliance with schedule S.2.5 (Security Requirements and Plan) and schedule S.5.6 (Business Continuity and Disaster Recovery); and/or
 - 11.5.4 otherwise improve the performance of the Services or ensure compliance with this Services Agreement.

- 11.6 Within such timescale as notified by the Customer to the Contractor the Contractor shall provide to the Customer a draft Improvement Plan for approval. The Contractor shall implement the Improvement Plan approved by the Customer and any failure to do so shall constitute a material Default of this Services Agreement.
- 11.7 The Customer shall use its reasonable endeavours to ensure that the conduct of any monitoring does not unreasonably disrupt the Contractor or delay the provision of the Services. If the Contractor believes that the Customer 's monitoring of the Services is unreasonable the Contractor may escalate the issue with the Customer using the Escalation Process.
- 11.8 Any quality or performance monitoring by the Customer shall be subject to its obligations of confidentiality in accordance with this Services Agreement.

12. SERVICES IMPROVEMENT

- 12.1 The Contractor shall have an ongoing obligation throughout the Contract Period to identify, and engage and co-operate with the Customer, in accordance with clause 12 (Services Improvement) in relation to the development of, new or potential improvements to the Services. pursuant to this Services Agreement, including but not limited to:
- 12.2 The emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Contractor which the parties may wish to adopt; and/or
- 12.2.1 new or potential improvements relating to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and/or
- 12.2.2 changes in management processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefit to the Customer.

- 12.3 The Contractor shall ensure that any information that it provides to the Customer for the purposes of clause 12.1 shall be sufficient for the Customer to decide whether any improvement should be implemented. The Contractor shall provide any further information and other assistance that the Customer requests in connection with this clause 12 (Services Improvement).
- 12.4 If the Customer wishes to incorporate any improvement identified by the Contractor, the Customer shall send the Contractor a Change Request and the parties shall:
- 12.4.1 develop a plan for the implementation of the improvement within 20 Working Days of the Customer 's Change Request for the approval of the Customer; and
- 12.4.2 implement the improvement in accordance with the provisions of an implementation plan approved by the Customer. The Customer shall treat any improvement identified by the Contractor as the Contractor's Confidential Information in accordance with clause 38 (Confidentiality).
- 12.5 The Contractor shall engage and co-operate with the Customer to assist in the implementation of programmes for service improvement which will include but may not be limited to:
- 12.5.1 Service digital ordering and catalogues; and
- 12.5.2 the Transforming Forensic Programme.

SECTION D – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

13. CHARGES AND INVOICING

- 13.1 In consideration of the Contractor carrying out its obligations, including the provision of the Services under this Services Agreement, the Customer shall pay the Charges to the Contractor in accordance with the pricing and payment profile and the invoicing procedure specified in schedule S.4.1 (Charges and Invoicing).
- 13.2 The Contractor shall ensure that a term is included in any Sub-contract permitted under this Services Agreement which requires the Contractor to pay any undisputed sums due to the relevant Sub-contractor within a specified period that does not exceed 30 days from the date the Contractor receives the Sub-contractor's invoice.
- 13.3 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Services Agreement under clause 54 Termination Rights for failure to pay undisputed Charges. If the Customer fails to pay any undisputed Charges properly invoiced under this Services Agreement, the Contractor shall have the right to charge interest on the overdue amount at the rate of 2% of the base interest rate of the Bank of England, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

14. TAXATION

- 14.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- 14.2 The Contractor shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Services Agreement. Any amounts due under this clause 14.2 shall be paid in cleared funds by the Contractor to the Customer not less than five Working Days before the date upon which the tax or other liability is payable by the Customer.
- 14.3 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

14.3.1 notify the Customer in writing of such fact within 5 Working Days of its occurrence; and

14.3.2 promptly provide to the Customer:

14.3.2.1 details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

14.3.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

15. SET OFF AND WITHOLDING

15.1 The Customer may retain or set off any amount owed to it by the Contractor against any amount due to the Contractor under this Services Agreement or any other agreement between the Contractor and the Customer.

15.2 If the Customer wishes to:

15.2.1 set off any amount owed by the Contractor to itself against any amount due to the Contractor pursuant to clause 15.1; or

15.2.2 exercise its right pursuant to clause 8 (Service Levels) to withhold payment of a proportion of the Service Charges,

it shall give notice to the Contractor within 30 days of receipt of the relevant invoice, setting out the Customer's reasons for withholding or retaining the relevant Charges.

16. COSTS AND EXPENSES

Except as otherwise provided, each party shall bear its own costs and expenses in connection with the negotiation, preparation and execution of this Services Agreement and in respect of compliance with its obligations therein.

17. VALUE FOR MONEY

The parties shall comply with their obligations set out in schedule S.4.3 (Value for Money).

SECTION E - CONTRACT GOVERNANCE

18. CUSTOMER REPRESENTATIVES

- 18.1 Each party shall appoint the persons named as such in schedule S.6.2 (Key Personnel) as the Customer Representative and the Contractor Representative respectively. The Customer shall notify the Contractor of the identity of the initial Customer Representative within five (5) Working Days of the Services Commencement Date.
- 18.2 The Representatives shall be appropriately skilled, qualified and experienced and have the authority to act on behalf of their respective party on the matters set out in, or in connection with, this Services Agreement.
- 18.3 The respective Representatives shall be sufficiently senior within the organisation of the appointing party, and granted sufficient authority by that party, to ensure full co-operation in relation to the operation and the management of this Services Agreement.

Customer Representative

- 18.4 The Customer Representative shall exercise any functions and powers of the Customer in relation to this Services Agreement which are identified in this Services Agreement as functions or powers to be carried out by the Customer, and such other functions and powers of the Customer under this Services Agreement as may be notified to the Contractor from time to time.
- 18.5 The Customer may, by further written notice to the other Contractor, revoke or amend the authority of the Customer Representative, appoint a new Customer, or appoint more than one Customer Representative.

Contractor Representative

- 18.6 The initial Contractor Representative shall be the person named as such in Schedule S.6.2 (Key Personnel). Any change to the Contractor Representative shall be agreed in accordance with Clause 25 (Contractor Personnel).
- 18.7 The Customer may, require the Contractor to replace the Contractor Representative if the Customer reasonably considers him to be in any respect unsatisfactory.

- 18.8 The Contractor may by written notice to Customer change the Contractor Representative, provided that where the Contractor wishes to do so it shall by written notice to the Customer propose a substitute for approval, taking account of the need for liaison and continuity in respect of this Services Agreement, and the appointment of such substitute shall be subject to the approval of the Customer (not to be unreasonably withheld or delayed).

19. GOVERNANCE

The parties agree to manage this Services Agreement through the governance structure detailed in schedule S.5.1 (Governance).

20. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Sub-contracting

- 20.1 The Authority has consented to the engagement of the Approved Sub-contractors, as stated in Schedule S.3.2 (Approved Sub-contractors), in accordance with the terms contained within clause 20 (Supply Chain Rights and Protections) of the DPS Agreement.
- 20.2 The Contractor shall only sub-contract its obligations under this Services Agreement to an Approved Sub-contractor or, where there is a requirement for an Additional Sub-contractor, with the prior written consent of the Authority in accordance with the provisions of clause 20 (Supply Chain Rights and Protections) of the DPS Agreement.
- 20.3 The Contractor shall notify the Authority if it intends to sub-contract any of its obligations under this Services Agreement and shall follow the process set out in clause 20 (Supply Chain Rights and Protections), of the DPS Agreement.

Retention of Legal Obligations

- 20.4 Notwithstanding the Contractor's right to sub-contract pursuant to clause 20 (Supply Chain Rights and Protections) of the DPS Agreement, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and Sub-contractor's employees, staff and agents also do, or refrain from doing, such act or thing.

21. AUDITS

- 21.1 The Customer shall exercise its rights of audit in a reasonable and proportionate manner and shall:

21.1.1 in the first instance, consider any audit of the Contractor by any third party or any Regulatory Body; and

21.1.2 permit the Contractor the opportunity to demonstrate to the Customer's reasonable satisfaction that it has complied with its obligations before exercising its rights of audit in this clause 21 (Audits).

- 21.2 Notwithstanding clause 21.1, the Customer may conduct audits for purposes that include, but may not be limited:

21.2.1 to review the Contractor's compliance with the Data Protection Legislation, the Freedom of Information Act 2000 in accordance with clause 37 (Transparency and Freedom of Information) and any other legislation applicable to the Services;

21.2.2 to review any books of account kept by the Contractor in connection with the provision of the Services;

- 21.2.3 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Services Agreement), any cost reduction and income generation initiatives carried out pursuant to clause 12 (Services Improvement), and/or the costs of all suppliers (including Sub-contractors) of the Services at the level of detail agreed in schedule S.4.1 (Charges and Invoicing);
 - 21.2.4 to review the integrity, confidentiality and security of the Evidence, Data and Materials;
 - 21.2.5 to carry out the audit and certification of the Customer's accounts;
 - 21.2.6 to review the Contractor's compliance with its obligations under clause 11 (Quality Assurance and Performance Monitoring);
 - 21.2.7 to review the Contractor's compliance with its obligations set out in schedule S.4.3 (Value for Money);
 - 21.2.8 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources, or an audit pursuant to Section 5 of the Audit Commission Act 1988 (as applicable);
 - 21.2.9 to inspect the Sites, equipment and facilities for the purposes of ensuring that the Contractor's Site and internal systems and processes are secure;
 - 21.2.10 to verify the accuracy and completeness of any Management Information delivered or required by this Services Agreement;
 - 21.2.11 to ensure that the Contractor is complying with the Standards; and/or
 - 21.2.12 any other audit that may be required by any Regulatory Body.
- 21.3 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

- 21.4 Subject to the Customer's obligations of confidentiality, the Contractor shall on demand provide the Customer (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 21.4.1 all information requested by the Customer within the permitted scope of the audit;
- 21.4.2 reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- 21.4.3 access to the Contractor Personnel.
- 21.5 The Contractor shall implement all measurement and monitoring tools and procedures reasonably necessary to measure and report on the Contractor's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 21.6 The Customer shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit. The Parties agree that the Customer may, always acting reasonably, have a requirement to conduct an audit urgently without notice of its intention to conduct an audit.
- 21.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 21 (Audits), unless the audit identifies a material error by the Contractor in which case the Contractor shall reimburse the Customer for all the Customer's reasonable costs incurred in the course of the audit.
- 21.8 If an audit identifies that the:
- 21.8.1 Contractor has failed to perform its obligations under this Services Agreement in any material manner, clause 55 (Remedial Plan Process) shall apply;
- 21.8.2 Contractor's failure relates to a failure to provide any information to the Customer about the Charges, proposed Charges or the Contractor's costs, then the Remedial plan shall include a requirement for the provision of all such information;

- 21.8.3 Customer has overpaid any Charges; the Contractor shall pay to Customer the amount overpaid within 20 Working Days. The Customer may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and/or
- 21.8.4 Customer has underpaid any Charges; the Customer shall pay to the Contractor the amount of the under-payment within 20 Working Days.
- 21.9 Without prejudice to any other provision of this clause 21 (Audits), the Contractor shall provide the Customer:
- 21.9.1 as soon as they are available (if produced in accordance with the Contractor's accounting procedures), and in any event within 60 Working Days after the end of the first six months of each financial year of this Services Agreement during the Contract Period, a copy, certified as a true copy by an authorised representative of the Contractor, of its un-audited interim accounts and, if appropriate, of consolidated un-audited interim accounts of the Contractor, its subsidiaries and holding company (if any and as such terms are defined by the Companies Act 2006) which would (if the Contractor were listed on the London Stock Exchange whether or not it is) be required to be sent to shareholders as at the end of and for each such six month period; and
- 21.9.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Contractor, but not later than 130 Working Days after the end of each accounting reference period of the Contractor part or all of which falls during the Contract Period, a copy, certified as a true copy by an authorised representative of the Contractor, of the Contractor's audited accounts and if appropriate, of the consolidated audited accounts of the Contractor and, its associated companies (if any), in respect of that period, prepared in accordance with the Companies Act 2006 and generally accepted accounting principles and bases within the UK, consistently applied together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

22. RECORDS AND REPORTS

- 22.1 The Contractor shall comply with the provisions of Schedule S.5.4 (Records) in relation to the maintenance and retention of Records.
- 22.2 The Contractor shall, during the Contract Period and for a period of 6 years following expiry or termination of this Services Agreement, retain and maintain complete and accurate documents and records in relation to the performance of its obligations under this Services Agreements, including but not limited to the records listed in schedule S.5.4 ("**Records**"):
- 22.2.1 in accordance with the requirements of Good Industry Practice;
- 22.2.2 in chronological order;
- 22.2.3 in a form that is capable of audit; and
- 22.2.4 at its own expense.
- 22.3 The Contractor shall make the Records available for inspection by the Customer on request subject to the Customer giving reasonable notice and the Customer shall be entitled to make copies of any such Records.
- 22.4 The Contractor shall ensure that any Records reasonably required by the Customer are available to the Customer electronically and capable of being printed.

23. CHANGE CONTROL

Any requirement for a Contract Change shall be subject to the provisions of clause 23 (Change Control) and Schedule S.5.2 (Change Control Procedure).

24. DISPUTES

- 24.1 The parties shall resolve Disputes arising out of or in connection with this Services Agreement in accordance with clause 24 (Disputes) and Schedule S.5.3 (Dispute Resolution Procedure).
- 24.2 The Contractor shall continue to provide the Services in accordance with the terms of this Services Agreement and the DPS Agreement until a Dispute has been resolved.

SECTION F - PERSONNEL

25. CONTRACTOR PERSONNEL

25.1 The Contractor shall:

- 25.1.1 ensure that all Personnel are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
- 25.1.2 subject to Schedule S.6.1 (Staff Transfer), retain overall control of the Personnel at all times so that the Contractor Personnel shall not be deemed to be employees, agents or contractors of a Customer;
- 25.1.3 be liable at all times for all acts or omissions of Personnel, so that any act or omission of a member of any Personnel which results in a Default under this Services Agreement shall be a Default by the Contractor;
- 25.1.4 provide in advance of any admission to the Premises a list of the names of all Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require; and
- 25.1.5 use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

- 25.2 The Customer may refuse admission to the Premises and/or direct the Contractor to end the involvement in the provision of the Services of any of the Contractor Personnel whom the Customer believes and acting reasonably in its belief represents a security risk or does not have the required expertise or where the Customer has other reasonable grounds for doing so. The decision of the Customer shall be final and (unless the Contractor is required to deal with any Employee Liabilities arising from any decision of the Customer affecting such Contractor Personnel) it shall not be obliged to provide any reasons.

Relevant Convictions

- 25.3 The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in the provision of any part of the Services being provided pursuant to any Services Agreement without the Customer's prior and express written consent.

Key Personnel

- 25.4 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer and shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period. Schedule S.6.2 (Key Personnel) lists the Key Roles and names of the persons who the Contractor shall appoint to fill those Key Roles at the Services Commencement Date.

- 25.5 The parties may identify:

25.5.1 any further roles as being Key Roles and/or

25.5.2 any of the Contractor Personnel to be named as Key Personnel; and

25.5.3 following agreement, the list of Key Personnel shall be amended by Change Control.

- 25.6 The Contractor shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Customer otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Contractor shall take all reasonable steps to ensure that it retains or promptly replaces the services of all the Key Personnel.
- 25.7 The Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 25.7.1 requested to do so by the Customer;
 - 25.7.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 25.7.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 25.7.4 the Contractor obtains the Customer's prior written consent.
- 25.8 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Contractor or Sub-contractor. The Customer may interview the candidates for Key Personnel positions before they are appointed and, if so required, shall inform the Contractor that it requires to do so, and the parties shall agree any requisite interview arrangements.
- 25.9 The Contractor shall:
- 25.9.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
 - 25.9.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - 25.9.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;

- 25.9.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- 25.9.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 25.9.6 The Customer shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the Customer against all Employee Liabilities that may arise in this respect.

Staffing Security

- 25.10 The Contractor shall comply with the provisions of schedule S.2.5 (Security Requirements and Plan) and the Staff Vetting Procedures in respect of all Contractor Personnel employed or engaged in the provision of the Services. The Contractor shall not provide Services under a Services Agreement until such time as the Contractor Personnel reasonably required for the provision of those Services have successfully complied with the Staff Vetting Procedures.
- 25.11 The Contractor shall provide training on a continuing basis for all Contractor Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- 25.12 The Contractor accepts that unless otherwise agreed by the Customer the Contractor shall not be capable of performing and the Customer shall not be required to enter into any Services Agreement if the Contractor Personnel reasonably required for the provision of the relevant Services have not successfully complied with the Staff Vetting Procedures at the time the Customer enters into a Services Agreement.

26. STATUS OF POLICE OFFICERS

For the purposes of this Services Agreement, any police officer who is a member of the police force which is maintained by the Customer shall be regarded as if he were an employee of the relevant Chief Constable for the purposes of determining the status of such police officer and his actions as regards the Customer's rights and obligations under this Services Agreement, including such police officer's status as an agent or other representative of the Customer.

27. STATUS OF EXPERT WITNESSES

- 27.1 The Contractor acknowledges that the Contractor Personnel may be required to act as Expert Witnesses in respect of the Services provided by it.
- 27.2 The Contractor shall procure that any such Contractor Personnel shall be available to provide such Expert Witness testimony in the English language in accordance with the governing procedural rules, at the dates and times as shall be notified to the Contractor. Where such Contractor Personnel is unavailable by reason of ill-health, conflict of interest or circumstances outside of his reasonable control, the Contractor shall ensure that the Customer and any relevant person is informed of such availability as soon as reasonably practicable and any failure to attend without prior notification shall be deemed an irremediable material Default.
- 27.3 The Contractor acknowledges that the Customer shall not be responsible for the payment of any fees or expenses in respect of the preparation or provision of Expert Witness testimony (including waiting time).
- 27.4 The parties acknowledge that in providing Expert Witness testimony the Contractor and any Contractor Personnel shall owe a duty to act independently as the servant of the court or tribunal and not to the Customer.

28. EMPLOYMENT INDEMNITY

28.1 The Parties agree that:

28.1.1 the Contractor shall, both during and after the Contract Period, indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel; and

28.1.2 the Customer shall, both during and after the Contract Period, indemnify the Contractor against all Employee Liabilities that may arise as a result of any claims brought against the Contractor by any person where such claim arises from any act or omission of the Customer or any of the Customer's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

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

28.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

28.2.2 indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Contractor Personnel.

29. STAFF TRANSFER

The parties acknowledge that the commencement, expiry or termination of this Services Agreement may constitute a relevant transfer for the purposes of the Employment Regulations. The provisions of clause 29 (Staff Transfer) and schedule S.6.1 (Staff Transfer) will apply on such commencement, expiry or termination.

30. HEALTH AND SAFETY

- 30.1 The Contractor shall perform its obligations under this Services Agreement (including those in relation to the Services) in accordance with:
- 30.1.1 all applicable Law regarding health and safety; and
- 30.1.2 the Health and Safety Policy whilst at the Premises.
- 30.2 The Contractor acknowledges that it has been supplied with a copy of the Customer's rules regarding health and safety. The Contractor agrees to comply with these rules, and any additional rules made known to the Contractor from time to time by the Customer together with all applicable statutory rules and regulations regarding these matters. The Customer will be responsible for procuring that its employees and agents also comply with these rules and regulations.
- 30.3 Each party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Premises of which it becomes aware and which relate to or arise in connection with the performance of this DPS Agreement. The Contractor shall instruct the Contractor Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

31. EQUALITY AND DIVERSITY AND SOCIAL VALUE

- 31.1 The Contractor shall, and shall procure that the Contractor Personnel, comply with any applicable anti-discrimination legislation and with the Customer's equality and diversity policy as may be amended from time to time, copies of which will be provided by the Customer to the Contractor at the Contractor's written request.
- 31.2 The Contractor shall:
- 31.2.1 perform its obligations under this Services Agreement (including those in relation to the Services) in accordance with:

- 31.2.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 31.2.1.2 the Customer's equality and diversity policy as provided to the Contractor from time to time; and
 - 31.2.1.3 any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law; and
- 31.2.2 take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 31.3 The Contractor shall identify Social Value options which are appropriate to Customer at contract award stage for the Services Agreement. Any Social Value options selected by Customer at the point of contract award of the Services Agreement, shall be in accordance with the Government's Social Values which are current at that point in time.
- 31.4 The Contractor shall complete annual Corporate Social Responsibility (CSR) assessments upon request from the Customer.
- 31.5 For more information on Social Value please see the following link

<https://www.gov.uk/government/publications/social-value-act-introductory-guide>

32. MODERN SLAVERY

At the Services Commencement Date and annually during the Contract Period (or as required by the Customer) the Contractor shall make available to the Customer its policy pursuant to the Modern Slavery Act 2015 and the steps it has taken and is continuing to take to ensure that modern slavery and/or human trafficking is not taking place within its business or supply chain.

33. NON-SOLICITATION

Except in respect of any Staff Transfer and any recruitment pursuant to publicly available general recruitment advertisement literature, the Customer and the Contractor shall not, and the Contractor shall procure that any Sub-contractor shall not, during the Contract Period and for 12 months following the termination of this Services Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other party any person employed by such other party in the provision of the Services or (in the case of the Customer) in the receipt and/or administration of the Services.

SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

34. EVIDENCE, MATERIALS AND CUSTOMER PROPERTY

Safekeeping of Evidence

34.1 The Contractor agrees and acknowledges that:

34.1.1 the Customer shall from time to time provide the Contractor with Evidence for the purposes of the Services or in connection with this Services Agreement;

34.1.2 nothing in the Services Agreement shall operate so as to transfer to the Contractor any interest in any such Evidence; and

34.1.3 the Contractor shall not obtain (and shall not permit any other person to obtain) any lien, right of retention or other encumbrance over any Evidence.

34.2 The Contractor shall:

34.2.1 maintain a register of all Evidence gathered or received by it or the Contractor Personnel, setting out:

34.2.1.1 the nature of the Evidence;

34.2.1.2 the matter in relation to which such evidence was submitted; and

34.2.1.3 the date (s) upon which such Evidence was received by or on behalf of the Contractor and it was delivered up to the Customer and its authorised representatives;

34.2.2 keep all Evidence safely and securely so that:

34.2.2.1 no Evidence is lost or contaminated and is not damaged or destroyed except to the extent reasonably necessary in order to perform the Services and does not, other than as a result of naturally occurring processes, deteriorate during the period from it being received by the Contractor, or Contractor Personnel until such time as it is delivered up to the Customer or its authorised representatives or to such other person as the Customer may direct;

- 34.2.2.2 such Evidence meets the requirements of the courts in relation to the admissibility of such Evidence in any case before them; and
- 34.2.2.3 (without prejudice to the generality of sub-paragraphs 34.2.2.1 and 34.2.2.2 above) such Evidence is not kept otherwise than in accordance with the requirements of the Customer notified to the Contractor from time to time in relation to the safekeeping of Evidence;
- 34.2.3 use its best endeavours to maintain continuity of Evidence and, if required by the Customer, provide to the courts such statements and/or assurances as the courts may require in relation to the integrity, and freedom from damage or contamination, of any Evidence;
- 34.2.4 upon the Customer or its authorised representatives requiring the return of any item of Evidence, return the same to them or to such other person as they may direct; and
- 34.2.5 on termination of this Services Agreement, return to the Customer or its authorised representatives all Evidence not previously returned, unless in accordance with the Exit Plan the Contractor is required to continue to perform any Services following the termination of this Services Agreement, in which case the Contractor shall return the Evidence relating to the Services in question forthwith upon those Services being completed.
- 34.3 In the event that the Contractor is unable to complete the performance of any of the Services as a result of it returning Evidence in accordance with clause 34 then the Contractor shall be:
 - 34.3.1 relieved of any liability under this Services Agreement in relation to the performance of those Services; and
 - 34.3.2 entitled to charge the Customer such part of the Charges as may reasonably be considered to relate to the Services actually performed.

- 34.4 The Contractor shall have no liability to the Customer under this Services Agreement or otherwise in relation to the performance of the Services if and to the extent that such liability arises or, but for this clause 34.4, would have arisen as a consequence of any alteration, contamination or other damage suffered by any Evidence prior to such Evidence being delivered up into the control or possession of the Contractor. The Contractor shall use all reasonable endeavours to inspect any Evidence received by it for any such alteration, contamination or other damage and shall inform the Customer as soon as reasonably practicable of any such alteration, contamination or other damage found by it or which the Contractor suspects has occurred.
- 34.5 The Contractor shall, as soon as reasonably practicable, notify the Customer if the Contractor believes that any contamination or damage has occurred to the Evidence within the Contractor's control or possession or on the happening of anything which the Contractor reasonably ought to be aware of might prejudice any investigation or trial using that Evidence.

Materials and other Customer Property

- 34.6 All Materials shall belong to the Customer and title in such Materials shall vest in the Customer upon their creation.
- 34.7 The Contractor shall adopt the Protective Marking Scheme and mark all Service Outputs accordingly.
- 34.8 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Evidence, Data or Materials.
- 34.9 The Contractor shall not store, copy, disclose or use the Evidence, Data or Materials except as necessary for the performance by the Contractor of its obligations under this Services Agreement or as otherwise expressly authorised in writing by the Customer or as required for the licence granted under clause 35.7
- 34.10 The Contractor shall, subject to the licence granted under clause 35.7, deliver up to the Customer or its authorised representatives all Materials and all other property of the Customer in its possession or under its control (or in the possession or under the control of the Contractor Personnel) whether in paper, electronic or other format:

34.10.1 on termination of this Services Agreement, unless the Contractor is required to continue to perform any Services in accordance with the Exit Plan following the termination of this Services Agreement, in which case the Contractor shall return all such items relating to the Services in question forthwith upon those Services being completed; or

34.10.2 if earlier, upon demand by the Customer.

34.11 Notwithstanding clause 34.10 34.10, the Contractor shall be entitled to retain a copy of the Materials to be included with the records to be maintained pursuant to clause 22 (Records and Reports).

34.12 The Contractor shall ensure that no Materials or property of the Customer are lost, destroyed or damaged during such time as it is in its possession or under its control or in the possession or under the control of the Contractor Personnel.

Customer Data

34.13 The Contractor shall perform secure back-ups of all Data in its control or possession and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Customer at all times upon request and are delivered to Customer at no less than six monthly intervals.

34.14 The Contractor shall ensure that any system on which the Contractor holds any Data, including back-up data, is a secure system that complies with the Security Policy.

34.15 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer:

34.15.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Customer Data and the Contractor shall do so as soon as practicable but not later than two weeks; and/or

34.15.2 itself restore or procure the restoration of the Customer Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

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

35. INTELLECTUAL PROPERTY

Customer's Background Intellectual Property

- 35.1 All Customer's Background IPR is and will remain the exclusive property of the Customer (or, where applicable, the third party from whom the Customer's right to use the Customer's Background IPR has derived).
- 35.2 The Customer hereby grants (and shall procure that any necessary third parties grant) to the Contractor a revocable, non-exclusive, royalty-free licence of any of the Customer's Background IPR used in connection with the Services that the Contractor may reasonably require for the purposes of and to the extent necessary to be able to fully comply with its obligations under this Services Agreement.
- 35.3 The Contractor shall not, and shall procure that the Contractor Personnel shall not, (except to the extent required for the performance of its obligations under this Services Agreement) use or disclose any of the Customer's Background IPR without the prior written consent of the Customer.

Contractor's Background Intellectual Property

- 35.4 All Contractor's Background IPR is and will remain the exclusive property of the Contractor (or, where applicable, the third party from whom the Contractor's right to use the Contractor's Background IPR has derived).
- 35.5 The Contractor hereby grants (and shall procure that any necessary third parties grant) to the Customer a non-exclusive worldwide royalty-free licence (with the right to grant sub-licences to others solely for the purposes of validating the Service Outputs) of any of the Contractor's Background IPR used in connection with the Services that the Customer may reasonably require for the purposes of and to the extent necessary to be able to fully enjoy the benefit of the Services and this Services Agreement and/or to be able fully to exploit and develop the Service Outputs.

Services Intellectual Property Rights

- 35.6 In consideration of the sums paid and to be paid to the Contractor by the Customer under this Services Agreement, the Contractor hereby assigns all of the Services Intellectual Property Rights to the Customer with full title guarantee.
- 35.7 It is agreed that all Services Intellectual Property Rights shall vest in the Customer. The Customer grants to the Contractor a revocable, non-exclusive, non-assignable licence to use the Service Intellectual Property Rights for the sole purpose of enabling the Contractor to provide the Services.
- 35.8 The Contractor shall not, and shall procure that the Contractor Personnel shall not, (except to the extent required for the performance of its obligations under this Services Agreement) use or disclose any of the Services Intellectual Property Rights without the prior written consent of the Customer.
- 35.9 The Contractor will take any steps necessary to give effect to clause 35.6 immediately upon being requested to do so by the Customer. The Contractor agrees that it will:
- 35.9.1 at the Contractor's cost, do all acts and execute and swear all documents that are necessary or desirable to vest absolute legal and beneficial ownership of the Intellectual Property Rights in the Service Outputs in the Customer or to perfect the Customer's title thereto anywhere in the world;
 - 35.9.2 at the Contractor's cost, give to the Customer such assistance as it may request in evidencing its title to such Intellectual Property Rights anywhere in the world; and
 - 35.9.3 at the Customer's cost, do all such acts and things as may be necessary or desirable to obtain the grant of registrations in the name of the Customer for any such Intellectual Property Rights.
- 35.10 All Services Intellectual Property Rights shall exclude all Contractor's Background IPR and other Know-How techniques, inventions and methods of analysis (whether created in the course of the provision of the Services or otherwise) and Intellectual Property Rights therein shall remain with the Contractor or its respective licensors (as the case may be).

- 35.11 The Contractor shall waive or procure a waiver of any moral rights in any Intellectual Property Rights assigned to the Customer under this Services Agreement.

Intellectual Property Rights Warranties

- 35.12 The Contractor warrants and undertakes that:

35.12.1 none of the analysis conducted in connection with the provision of the Service will infringe any Intellectual Property Rights of any third party;

35.12.2 it will ensure that the Intellectual Property Rights in the Service Outputs will not infringe the rights of any third party, and warrants that no third party has at the time of the assignment, threatened or, so far as it is aware, is currently threatening proceedings in respect of such infringement;

35.12.3 it has not granted and will not grant or purport to grant any licences, rights or assignments over or relating to the Intellectual Property Rights in the Service Outputs or over or relating to any Intellectual Property Rights relating or which may relate to the Service Outputs;

35.12.4 it has not done nor will do or omit to do any act or thing whereby any Intellectual Property Rights in the Service Outputs may be invalidated, encumbered or otherwise prejudicially affected or the due performance of this Services Agreement hindered or prevented, or whereby the right to apply for registrations for any Intellectual Property Rights in the Service Output (or the conditions, requirements or circumstances affecting the validity of the grant of any such registration) may be jeopardised; and

35.12.5 the above warranties will remain true and accurate in all respects from the Services Commencement Date and shall survive termination or expiry of this Services Agreement for whatever reason.

36. PROTECTION OF PERSONAL DATA

Status of the Controller

- 36.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this DPS Agreement and/or any Services Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- 36.1.1 “Controller” (where the other Party acts as the “Processor”);
 - 36.1.2 “Processor” (where the other Party acts as the “Controller”);
 - 36.1.3 “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
 - 36.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);
- 36.2 With respect to the parties' rights and obligations under this DPS Agreement and/or any Services Agreement, the parties agree that the Chief Constable of the Customer is the Data Controller and that the Customer is the Data Processor.
- 36.3 The Parties agree that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Services Agreement will be carried out in accordance with part 3 of the Data Protection Act 2018, which is applicable as it will be processing for law enforcement purposes, and with clause 36 (Protection of Personal Data) of this DPS Agreement.
- 36.4 The Parties acknowledge that Personal Data shall only be Processed in accordance with this Services Agreement and the provisions of the Data Processing Appendix provided at Schedule S.7.1, which forms a binding part of this Services Agreement.

Where one Party is Controller and the other Party its Processor

36.5 The Processor shall only Process Personal Data on the documented instructions of the Controller and in accordance with this Services Agreement and the DPA provided at Schedule S.7.1.

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

36.7 In relation to Personal Data processed for Law Enforcement Purposes, the Processor shall:

36.7.1 maintain logs for its automated processing systems in respect of:

36.7.1.1 collection;

36.7.1.2 alteration;

36.7.1.3 consultation;

36.7.1.4 disclosure (including transfers);

36.7.1.5 combination; and

36.7.1.6 erasure,

(together the "**Logs**");

36.7.2 ensure that:

36.7.2.1 the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation and as far as possible the identity of the person who consulted the Personal Data;

36.7.2.2 the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure and as far as possible the identity of the person who disclosed the Personal Data and the recipients of the Personal Data; and

36.7.2.3 the Logs are made available to the ICO on request;

- 36.7.3 as far as possible, ensure that the Services make it possible for the Controller to distinguish between Personal Data based on fact and Personal Data based on personal assessments or opinions; and
- 36.7.4 where relevant and as far as possible, ensure that the Services make it possible for the Controller to maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:
 - 36.7.4.1 persons suspected of having committed or being about to commit a criminal offence;
 - 36.7.4.2 persons convicted of a criminal offence;
 - 36.7.4.3 persons who are or maybe victims of a criminal offence; and
 - 36.7.4.4 witnesses or other persons with information about offences.
- 36.8 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 36.8.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 36.8.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 36.8.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 36.8.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 36.9 The Contractor acknowledges that the Customer has obligations relating to the security of data in his control under Data Protection Legislation and ISO7799 (or such other standard as may apply from time to time) and shall, in relation to any Personal Data processed in connection with its obligations under this DPS Agreement and/or any Services Agreement:

- 36.9.1 process that Personal Data only in accordance with clause 36 (Protection of Personal Data), unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- 36.9.2 ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in clause 47 (Customer Data and Security Requirements), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - 36.9.2.1 nature of the data to be protected;
 - 36.9.2.2 harm that might result from a Data Loss Event;
 - 36.9.2.3 state of technological development; and
 - 36.9.2.4 cost of implementing any measures;
- 36.9.3 ensure that:
 - 36.9.3.1 the Processor Personnel do not process Personal Data except in accordance with this Services Agreement;
 - 36.9.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - 36.9.3.2.1 are aware of and comply with the Processor's duties under clauses 38 (Confidentiality) and 47 (Customer Data and Security Requirements);
 - 36.9.3.2.2 are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

- 36.9.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this DPS Agreement; and
- 36.9.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
- 36.9.3.2.5 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- 36.9.3.2.6 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the DPS Agreement and/or any Services Agreement unless the Processor is required by Law to retain the Personal Data.

- 36.10 The Processor shall notify the Controller immediately if it:
- 36.10.1 receives a Data Subject Request (or purported Data Subject Request);
 - 36.10.2 receives a request to rectify, block or erase any Personal Data;
 - 36.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 36.10.4 receives any communication from the Information Authority or any other regulatory authority in connection with Personal Data processed under this DPS Agreement and/or any Services Agreement;
 - 36.10.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
or
 - 36.10.6 becomes aware of a Data Loss Event.
- 36.11 The Processor's obligation to notify under clause 36.6 shall include the provision of further information to the Controller in phases, as details become available.
- 36.12 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 36.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 36.12.1 the Controller with full details and copies of the complaint, communication or request;
 - 36.12.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 36.12.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 36.12.4 assistance as requested by the Controller following any Data Loss Event;
and/or

- 36.12.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 36.13 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 36 (Protection of Personal Data).
- 36.14 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 36.15 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 36.16 Before allowing any Sub-processor to process any Personal Data related to this Services Agreement, the Processor must:
- 36.16.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 36.16.2 obtain the written consent of the Controller;
 - 36.16.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 36 such that they apply to the Sub-processor; and
 - 36.16.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 36.17 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 36.18 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Services Agreement).
- 36.19 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Services Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 36.20 The Contractor shall disclose to the Criminal Cases Review Commission (CCRC) any Personal Data held by the Contractor within the time and in a format reasonably requested by the CCRC for the purposes of any review by it, without prejudice to any specific instructions of the Customer in respect of such disclosure.

37. TRANSPARENCY AND FREEDOM OF INFORMATION

Transparency

- 37.1 The Contractor shall provide to the Customer such assistance as the Customer may reasonably require to comply with its obligations under the Transparency Regulations. The Parties acknowledge that

37.1.1 the Transparency Reports; and

37.1.2 the content of this Services Agreement, including any changes to this Services Agreement agreed from time to time, except for:

37.1.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and

37.1.2.2 Commercially Sensitive Information;

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

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

- 37.3 The Contractor shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule S.5.4 (Records).

- 37.4 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.
- 37.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Services Agreement is being performed, having regard to the context of the wider commercial relationship with the Contractor.
- 37.6 The Contractor agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information and Open Book Data) publish such Information. The Contractor shall provide to the Customer within 5 working days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

Freedom of Information

- 37.7 The Contractor acknowledges that the Customer is subject to the requirements of FOIA and the EIRs. The Contractor shall, and shall procure that its Sub-contractors will:
- 37.7.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
- 37.7.2 transfer to the Customer all Requests for Information relating to this Services Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

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

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

37.8 The Contractor acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Customer shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this DPS Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

37.9 The Contractor acknowledges that the Commercially Sensitive Information listed in schedule S.3.1 (Commercially Sensitive Information) is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 37 (Transparency and Freedom of Information).

38. CONFIDENTIALITY

38.1 For the purposes of this clause 38, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information. Except to the extent set out in this clause 38 or where disclosure is expressly permitted elsewhere in this Services Agreement, each party shall:

- 38.1.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored, and the nature of the Confidential Information contained in those materials); and
 - 38.1.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Services Agreement or without obtaining the Disclosing Party's prior written consent;
 - 38.1.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Services Agreement; and
 - 38.1.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 38.2 Clause 38.1 shall not apply to the extent that:
- 38.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Transparency Regulations or under FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 37 (Transparency and Freedom of Information);
 - 38.2.2 such Confidential Information was in the possession of the Disclosing Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 38.2.3 such Confidential Information was obtained from a third party without obligation of confidentiality;
 - 38.2.4 such Confidential Information was already in the public domain at the time of disclosure otherwise than by a breach of this DPS Agreement; or
 - 38.2.5 the information is independently developed without access to the Disclosing Party's Confidential Information.

- 38.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party in the following circumstances:
- 38.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that clause 37 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- 38.3.2 the need for such disclosure arises out of or in connection with:
- 38.3.2.1 any legal challenge or potential legal challenge against the Customer arising out of or in connection with this DPS Agreement;
- 38.3.2.2 the examination and certification of the Customer '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 Customer is making use of any Services provided under this Services Agreement; or
- 38.3.2.3 the conduct of a Central Government Body review in respect of this Services Agreement; or
- 38.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office; or
- 38.3.4 to the extent required for the purpose of the continued provision of the Services (or similar replacement services) in the event of suspension, expiry or termination of particular Services.
- 38.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

- 38.5 The Contractor may only disclose the Customer's Confidential Information to the Contractor Personnel, auditors and professional advisors who are directly involved in the provision of the Services and who need to know the Confidential Information, and shall ensure that such Contractor Personnel, auditors and professional advisors are aware of these obligations of confidentiality and shall comply with those obligations.
- 38.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Services Agreement.
- 38.7 At the written request of the Customer, the Contractor shall procure that those members of the Contractor Personnel identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Services Agreement.
- 38.8 Nothing in this Services Agreement shall prevent the Customer from disclosing the Contractor's Confidential Information:
- 38.8.1 to any Crown Body, Parliament and Parliamentary Committees and/or Other Contracting Authority. All Crown Bodies, Parliament and Parliamentary Committees or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies, Parliament and Parliamentary Committees or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body, or any Contracting Authority;
- 38.8.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review (or any equivalent audit or review carried out by a public body) provided that such disclosure shall not be made to any such person who may reasonably be regarded as a competitor to the Contractor;
- 38.8.3 for the purpose of the examination and certification of the Customer's accounts; or

38.8.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources, or an audit pursuant to Section 5 of the Audit Commission Act 1988 (as applicable).

38.9 The Customer shall notify the Contractor of the recipient, and the scope of such Contractor's Confidential Information as soon as reasonably practicable prior to its disclosure and use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 38 (Confidentiality) is made aware of the Customer 's obligations of confidentiality.

38.10 Nothing in this clause 38 (Confidentiality) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Services 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.

SECTION H - CONTRACTOR AND CUSTOMER PROTECTIONS

39. GENERAL OBLIGATIONS OF THE PARTIES

Contractor's Obligations

39.1 The Contractor shall:

39.1.1 at all times allocate sufficient resources to provide the Services in accordance with the terms of this Services Agreement;

39.1.2 subject to clause 46 (Change in Law) obtain, and maintain throughout the duration of this Services Agreement, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require, and which are necessary to enable the provision of the Services;

39.1.3 provide to the Customer's other suppliers as are notified to the Contractor from time to time, such reasonable co-operation, information (including any Documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Services Agreement for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Contractor; and

39.1.4 provide the Customer with such assistance as the Customer may require during the Contract Period in respect of the supply of the Services.

39.2 Any change in the way in which the Contractor provides the Services which would materially increase the Customer's risk or reduce the effect of the governance provisions of this Services Agreement shall require the Customer's prior written approval.

40. FUNCTIONS AS POLICING AUTHORITY

Nothing in this Services Agreement shall prejudice or affect the Customer's rights, powers, duties and obligations in the exercise of its functions as a Policing Authority and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Customer under all public and private statutes, by-laws, orders and regulations and statutory regulations and statutory instruments may at all times be fully and effectually exercised as if the Customer was not a party to this Services Agreement and as if this Services Agreement had not been made.

41. WORKING WITH THE CRIMINAL JUSTICE SYSTEM

41.1 The Contractor will work and co-operate with all Criminal Justice Organisations to achieve the objectives of the Criminal Justice System.

41.2 The Contractor will work and co-operate with all Criminal Justice Organisations to establish effective and efficient communication systems between all such organisations.

42. CONFLICT OF INTEREST AND REPUTATION OF THE CUSTOMER

42.1 In providing the Services, the Contractor shall (and shall procure that Contractor Personnel shall) not do any act or thing nor permit any situation to arise whereby a conflict or a potential conflict arises or may arise between the interests of the Customer and the interests of the Contractor and/or bring the Customer into disrepute.

42.2 The Contractor shall notify the Customer in writing as soon as reasonably practicable, and in any event within 10 Working Days, of:

42.2.1 any actual or potential conflict of interest arising from its involvement in this Services Agreement;

42.2.2 a Reputational Concern Event. The Contractor shall provide details of:

42.2.2.1 the identity of any person;

42.2.2.2 the details of the Reputational Concern Event; and

42.2.2.3 the Contractor shall regularly update the Customer until the conclusion of the Reputational Concern Event.

42.3 The Contractor shall comply with any reasonable instructions of the Customer to:

42.3.1 end, avoid or mitigate the effect of any actual or potential conflict of interest;
and

42.3.2 end, avoid or mitigate the effect of the Reputational Concern Event.

43. WARRANTIES

43.1 Each party warrants, represents and undertakes that:

43.1.1 it has full capacity and authority to enter into and to perform this Services Agreement;

43.1.2 this Services Agreement is executed by a duly authorised representative of that party;

43.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal 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 Services Agreement;
and

43.1.4 once duly executed this Services Agreement will constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

43.2 The Contractor warrants, represents and undertakes for the duration of the Contract Period that:

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

43.2.2 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards;

- 43.2.3 it has and will continue to hold all necessary consents and regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Services Agreement;
- 43.2.4 it shall at all times comply with Law in carrying out its obligations under this Services Agreement;
- 43.2.5 as at the Services Commencement Date
- 43.2.5.1 all statements and representations in any submissions made by the Contractor as part of the procurement process, including without limitation the Contractor's response to the ITT, its tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Services Agreement or to the extent that the Contractor has otherwise disclosed to the Customer in writing prior to the date of this Services Agreement; and
- 43.2.5.2 it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- 43.2.6 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 Services Agreement;
- 43.2.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 43.2.8 its execution, delivery and performance of its obligations under this Services Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

43.2.9 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Services Agreement; and

43.2.10 in entering into this Services Agreement, it has not committed a Prohibited Act.

43.2.11 in the three years prior to the Services Commencement Date:

43.2.11.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and

43.2.11.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established.

43.2.11.3 it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

43.2.11.4 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-contractor) to the Customer which are necessary for the performance of the Contractor's obligations under this Services Agreement and/or the receipt of the Services by the Customer;

43.3 As at the Services Commencement Date, the Contractor warrants that it holds all standards accreditations necessary to enable it to perform the Services under this Services Agreement.

43.4 The representations and warranties set out in clause 43.2 shall be deemed to be repeated by the Contractor on the Services Commencement Date (if later than the date of signature of this Services Agreement) by reference to the facts then existing.

- 43.5 Each of the representations and warranties shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Services Agreement.
- 43.6 If at any time a Party becomes aware that a representation or warranty set out in clauses 43.1, 43.2, 43.3 [or 43.4] has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 43.7 Except as expressly stated in this Services Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 43.8 For the avoidance of doubt the fact that any provision within this Services Agreement is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Contractor.

44. FINANCIAL DISTRESS

- 44.1 The Contractor shall notify the Customer in writing as soon as practicable and in any event within two Working Days of the occurrence of a Financial Distress Event.
- 44.2 With effect from the occurrence of a Financial Distress Event (whether or not the event has been notified to the Customer by the Contractor pursuant to clause 44.1) the Customer may exercise its rights pursuant to clause 44 and schedule S.4.4 (Financial Distress).
- 44.3 The parties agree to comply with their respective obligations pursuant to schedule S.4.4 (Financial Distress).

45. EMERGENCY OVERFLOW SERVICE PROVISION

- 45.1 In order to ensure the continued provision of Services in an Emergency Situation the Customer shall be entitled to procure an Emergency Overflow Service Provision.

- 45.2 The Contractor shall provide the Emergency Overflow Service Provision and such Services shall be "Services" for the purposes of this Services Agreement and the Charges for such Emergency Overflow Service Provision shall be no greater than those set out in schedule S.4.1 (Charges and Invoicing).
- 45.3 The Contractor shall comply with the requirements of the Customer and/or the Forensic Science Regulator in relation to any Emergency Situation. These requirements will include but are not limited to rapid provision of information relating to capacity, regularly updated information of Service Levels, rapid transition of Emergency Overflow Service Provision to and from the Contractor with little or no notice.

46. CHANGE IN LAW

- 46.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Services Agreement nor be entitled to an increase in the Charges as the result of:
- 46.1.1 a General Change in Law; or
- 46.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Services Commencement Date.
- 46.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than those referred to in clause 46.1.2), the Contractor shall notify the Customer of the likely effects of that change, including:
- 46.2.1 whether any Contract Change is required to the Services, the Charges or this Services Agreement; and
- 46.2.2 whether any relief from compliance with the Contractor's obligations is required, including any obligation to meet the Service Levels at any time.
- 46.3 As soon as practicable after any notification in accordance with clause 46.2, the parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law.
- 46.4 To support the discussions pursuant to clause 46.3, the Contractor shall provide to the Customer all reasonable assistance and information as requested by the Customer, which shall include but not be limited to:

- 46.4.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - 46.4.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - 46.4.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 46.4.4 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 12 (Services Improvement), has been taken into account in amending the Charges.
- 46.5 Any variation in the Charges or relief from the Contractor's obligations agreed by the parties pursuant to clause 46 (Change in Law) shall be implemented in accordance with the Change Control Procedure.

SECTION I - RISK PROTECTION

47. CUSTOMER DATA AND SECURITY REQUIREMENTS

- 47.1 The Contractor shall comply with the requirements of clause 47 (Customer Data and Security Requirements and schedule S.2.5 (Security Requirements and Plan), and shall procure the compliance of the Contractor Personnel, with any security-related instructions issued by the Customer from time to time.
- 47.2 The Contractor accepts that unless otherwise agreed by the Customer the Contractor shall not be capable of performing and the Customer shall not be required to enter into any Services Agreement unless it complies fully with the requirements of this clause 47 (Customer Data and Security Requirements) at the Services Commencement Date.
- 47.3 The Customer shall notify the Contractor of any changes or proposed changes to the Security Requirements.
- 47.4 If the Contractor believes that a change or proposed change to the Security Requirements will have a material and unavoidable cost implication to the Services, it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 47.5 Until and/or unless a change to the Charges is agreed by the Customer pursuant to clause 47.4 the Contractor shall continue to perform the Services in accordance with its existing obligations.
- 47.6 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 47.7 The Contractor shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Contractor of its obligations under this Services Agreement or as otherwise expressly authorised in writing by the Customer.
- 47.8 To the extent that Customer Data is held and/or processed by the Contractor, the Contractor shall supply that Customer Data to the Customer as requested by the Customer in the format specified in Schedule S. 2.2 (Services Requirements).

- 47.9 The Contractor shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data at all times that the relevant Customer Data is under its control or the control of any Sub-contractor.
- 47.10 The Contractor shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Contractor shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 47.11 The Contractor shall ensure that any system on which the Contractor holds any Customer Data, including back-up data, is a secure system that complies with the Security Requirements.
- 47.12 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor 's Default so as to be unusable, the Customer may:
- 47.12.1 require the Contractor (at Contractor's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Schedule S.5.6 (Business Continuity and Disaster Recovery) and the Contractor shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Customer's notice; and/or
- 47.12.2 itself restore or procure the restoration of Customer Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule S.5.6 (Business Continuity and Disaster Recovery).
- 47.13 If at any time the Contractor suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Customer immediately and inform the Customer of the remedial action the Contractor proposes to take.

48. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 48.1 The parties shall comply with the provisions of the BCDR Plan and the provisions of clause 48 and schedule S.5.6 (Business Continuity and Disaster Recovery).

- 48.2 Prior to the Services Commencement Date, the Contractor shall provide evidence of compliance to the BCDR provisions of schedule S.5.6. Where the Contractor cannot provide evidence, it must provide detail of any noncompliance issue or improvement actions that the Customer has invoked. The Customer shall have the right to invoke any of their own improvement actions necessary and has the right to suspend work with the Contractor until compliance can be demonstrated
- 48.3 The Contractor shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.
- 48.4 The Contractor shall undertake regular risk assessments in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Customer promptly in writing following each review.
- 48.5 The Contractor shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

49. FORCE MAJEURE

- 49.1 Subject to the provisions of clause 49 (Force Majeure) of the DPS Agreement, (and, in relation to the Contractor, subject to its compliance with its obligations in Schedule S.5.7 (Business Continuity and Disaster Recovery), either party to this Services Agreement may claim relief from liability for failing to meet its obligations under this Services Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.
- 49.2 In particular, the Charges shall be reduced to the extent that the Customer does not receive the Services as a result of the Force Majeure Event.
- 49.3 A party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 49.4 Any failure or delay by the Contractor in performing its obligations under this Services Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- 49.5 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause 49 (Force Majeure) to the extent that consequences of the relevant Force Majeure Event:
- 49.5.1 are capable of being mitigated by any of the Services including the BCDR Services (unless this failure is also due to a Force Majeure Event affecting the operation of the BCDR Plan), but the Contractor has failed to do so;
 - 49.5.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Services Agreement;
 - 49.5.3 and/or to the extent that it is required to comply with the BCDR Plan but has failed to do so (unless this failure is also due to a Force Majeure Event affecting the operation of the BCDR Plan).
- 49.6 The Affected Party shall immediately give the other party a Force Majeure Notice, which 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.
- 49.7 As soon as practicable following the Force Majeure Notice, and at regular intervals thereafter, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

- 49.8 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 49.9 Where, as a result of a Force Majeure Event:
- 49.9.1 an Affected Party fails to perform its obligations in accordance with this Services Agreement, then during the continuance of the Force Majeure Event:
- 49.9.1.1 the other Party shall not be entitled to exercise any rights to terminate this Services Agreement in whole or in part as a result of such failure other than pursuant to clause 54.1 (Termination for Cause) or clause 54.16 (Termination by the Contractor); and
- 49.9.1.2 neither Party shall be liable for any Default arising as a result of such failure;
- 49.9.2 the Contractor fails to perform its obligations in accordance with this Services Agreement:
- 49.9.2.1 the Customer shall not be entitled:
- 49.9.2.1.1 during the continuance of the Force Majeure Event to exercise its rights under clause 55 (Remedial Plan Process) and/or clause 60 (Step-in Rights) as a result of such failure; and
- 49.9.2.1.2 the Contractor shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Services Agreement during the occurrence of the Force Majeure Event.

- 49.10 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Services Agreement. Following such notification, this Services Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 49.11 Relief from liability for the Affected Party under this clause 49 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Services Agreement and shall not be dependent on the serving of notice under clause 49.6.

SECTION J - INDEMNITIES, LIABILITY AND INSURANCE

50. IPR INDEMNITY

50.1 The Contractor shall at all times, during and after the Contract Period, on written demand indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from an IPR Claim.

50.2 The Customer agrees that:

50.2.1 it will promptly notify the Contractor in writing of any IPR Claim;

50.2.2 it will allow the Contractor to conduct all negotiations and proceedings and will provide the Contractor with such reasonable assistance required by the Contractor, each at the Contractor's cost, regarding the IPR Claim; and

50.2.3 it will not, without the agreement of the Contractor, make an admission relating to the IPR Claim.

50.3 The Contractor shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute.

50.4 The Contractor shall not settle or compromise any IPR Claim without the Customer's prior written consent (not to be unreasonably withheld or delayed).

50.5 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor may, at its own expense and sole option, either:

50.5.1 procure for the Customer the right to continue using the relevant Service Output which is subject to the IPR Claim; or

50.5.2 replace or modify the relevant Service Output with non-infringing substitutes provided that:

50.5.2.1 the quality of the replaced or modified Service Output is at least equivalent to the quality of the original Service Output;

50.5.2.2 there is no additional cost to the Customer; and

50.5.2.3 the terms of this Services Agreement shall apply to the replaced or modified Service Output.

50.6 If the Contractor elects to modify or replace the Service Output pursuant to clause 50.5.2 or to procure a licence in accordance with clause 50.5.1, but this has not avoided or resolved the IPR Claim, then the Customer may terminate this Services Agreement by written notice with immediate effect and, without prejudice to the indemnity set out in clause 50.5.1, 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.

50.7 The provisions of clauses 50.1 to 50.6 (inclusive) shall not apply in respect of any IPR Claim caused by the use by the Customer of the Service Output in a manner not reasonably to be inferred from the provisions of this Services Agreement.

51. LIMITATIONS ON LIABILITY

Unlimited Liability

51.1 Neither party limits or excludes its liability for:

51.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable); or

51.1.2 fraud or fraudulent misrepresentation by it or its employees, agents or Sub-contractors (as applicable); or

51.1.3 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

51.1.4 any liability to the extent it cannot be limited or excluded by Law.

51.2 The Contractor's total aggregate liability in respect of the indemnity in clauses 28 (Employment Indemnity) and 50 (IPR Indemnity) shall be unlimited.

Financial and other Limits

51.3 Subject to clauses 51.1, 51.2 (Unlimited Liability) and 51.7 (Consequential Losses) the Contractor's total aggregate liability in respect of loss of or damage to the, property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) that is caused by the Contractor's Default occurring in each and any Contract Year shall in no event exceed the following (subject to indexation);

- Employers (Compulsory) Liability Insurance: £5,000,000 (five million)
- Public Liability Insurance: £5,000,000 (five million)
- Professional Indemnity Insurance: £5,000,000 (five million)
- Cyber Liability Insurance: £10,000,000 (ten million)

51.4 Subject to clauses 51.1 and 51.2 (Unlimited Liability) the Contractor's aggregate liability in respect of:

51.4.1 All losses incurred by the Customer under or in connection with this Services Agreement as a result of Defaults by the Contractor:

51.4.1.1 in relation to Defaults occurring in the first Contract Year, equal to 150% of the Estimated Year 1 Charges;

51.4.1.2 in relation to Defaults occurring during any subsequent Contract Year, equal to 150% of the Charges paid and/or due to be paid to the Contractor under this Services Agreement in the Contract Year immediately preceding the occurrence of the Default; and

51.4.1.3 in relation to Defaults occurring after the end of the Contract Period, equal to 150% of the Charges paid and/or due to be paid to the Contractor in the 12-month period immediately prior to the last day of the Contract Period, provided that where any Losses have been incurred by the Customer as a result of the Contractor's abandonment of this Services Agreement or the Contractor's wilful default, wilful breach of a fundamental term of this Services Agreement or wilful repudiatory breach of this Services Agreement, the references in such Clause to 150% shall be deemed to be references to 200%.

51.5 All other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Services Agreement, shall in no event exceed an amount equivalent to 150% of the aggregate Charges paid, due or would have been payable in the future (prior to the calculation of any reduction of those Charges pursuant to this Services Agreement) under that Services Agreement.

51.6 Subject to clause 51.1, the Customer's total aggregate liability:

51.6.1 for all Defaults by the Customer resulting in loss of or damage to the property or assets (including technical infrastructure, assets or equipment) of the Contractor shall in no event exceed £500,000 (five hundred thousand) (subject to indexation provided that the Customer shall not, and no other Policing Authority shall, be liable to compensate the Contractor for any claim, loss or damage under the Riot (Compensation) Act 2016, unless such damage was caused by the negligence of such Policing Authority);

51.6.2 for the Termination Payment shall not exceed £20,000 (twenty thousand) (subject to indexation) and for the Compensation Payment shall not exceed £20,000 (twenty thousand) (subject to indexation); and

51.6.3 in respect of all other Defaults by the Customer shall in no event exceed the greater of an amount equivalent to the total Charges paid or properly invoiced and due to be paid under this Services Agreement in the 12-month period immediately preceding the event giving rise to the liability.

Consequential Loss

51.7 Subject to clauses 51.1 and 51.8, (Unlimited Liability) neither party will be liable to the other party for:

51.7.1 any indirect, special or consequential loss or damage; or

51.7.2 any loss of profits, turnover, savings, business opportunities or damage to goodwill (whether direct or indirect).

51.8 Notwithstanding Clause 51.7 the Contractor acknowledges that the Customer may, amongst other things, recover from the Contractor the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Contractor:

51.8.1 any reasonable and necessary additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Contractor's Default;

51.8.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Contractor's Default; and

51.8.3 the additional reasonable and necessary cost of procuring Replacement Services for the remainder of the Contract Period.

51.8.4 any compensation or interest paid to a third party by the Customer; and

51.8.5 any fine, penalty or costs incurred by the Customer pursuant to Law.

51.9 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 51 (Limitations on Liability) 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 51 (Limitations on Liability).

Mitigation

- 51.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Services Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Services Agreement.
- 51.11 Nothing in this clause 51 (Limitations on Liability) shall act to reduce or affect a party's general duty to mitigate its loss.

52. INSURANCE

- 52.1 The Contractor shall take out and maintain or procure the maintenance of the Insurances in accordance with the provisions of clause 52 (Insurance) and schedule S.2.6 (Insurance Requirements) in relation to obtaining and maintaining insurance.
- 52.2 The Contractor shall take out and maintain or procure the maintenance of the Insurances sufficient to meet its insurable risks and liabilities under this Services Agreement.

SECTION K - TERM, TERMINATION AND EXIT MANAGEMENT

53. TERM

- 53.1 This Services Agreement will begin on the Services Commencement Date.
- 53.2 Unless terminated at an earlier date by operation of Law or in accordance with clause 54 (Termination Rights):
 - 53.2.1 the provisions of this Services Agreement will expire at the end of the Contract Period (except for any provisions which are stated to survive termination).

54. TERMINATION RIGHTS

Termination for Cause

- 54.1 The Customer may terminate this Services Agreement by issuing a Termination Notice to the Contractor in accordance with clauses 54.1 of the DPS Agreement.
- 54.2 Where the Customer is terminating this DPS Agreement and/or any Services Agreement for a material Default of this Services Agreement or one of the specific provisions in clause 54.3 of the DPS Agreement it may rely on:
 - 54.2.1 a single material Default; or
 - 54.2.2 a number of Defaults that taken together constitute a material Default; or
 - 54.2.2 repeated Defaults that taken together constitute a material Default.
- 54.3 The circumstances giving rise to the Customer's right to terminate are:
 - 54.3.1 the Contractor commits a material breach of this a Services Agreement;
 - 54.3.2 as provided at clause 65 (Prevention of Corruption, Fraud and Bribery);
 - 54.3.3 pursuant to clause 11.6;
 - 54.3.4 the Contractor is in material Default of:
 - 54.3.4.1 clause 36 (Protection of Personal Data);
 - 54.3.4.2 clause 37 (Transparency and Freedom of Information); or

54.3.4.3 clause 38 (Confidentiality);

54.3.4.4 clause 27.2;

54.3.4.5 schedule S.2.5 (Security Requirements and Plan);

54.3.4.6 schedule S.5.6 (Business Continuity and Disaster Recovery); and

54.3.4.7 schedule S.2.4 (Standards);

provided that the Customer shall within a reasonable time of becoming aware of such Default, provide a written notice to the Contractor indicating whether it intends to exercise its right to terminate this Services Agreement for such Default or whether it shall exercise its rights to waive such Default, subject, at its discretion, to any reasonable conditions it may impose to prevent a repetition of such Default;

54.3.5 an Insolvency Event affecting the Contractor occurs;

54.3.6 in the reasonable opinion of the Customer, there is an actual or potential conflict between the interests of the Contractor and the duties owed to the Customer under this Services Agreement and the Contractor has failed to comply with its obligations under clause 42.3;

54.3.7 a Reputational Concern Event occurs;

54.3.8 if the Contractor undergoes a Financial Distress Event at any point during the Contract Period which may have a material effect on its ability to provide the Services under any Services Agreement(s) and either of the conditions in paragraph 4 of schedule S.4.4 (Financial Distress) has been satisfied;

54.3.9 the Contractor committing a Default (other than as a consequence of a Default by the Customer) which results in the criminal investigation, prosecution and/or conviction of the Contractor or any Sub-contractor under the Health and Safety Legislation;

54.3.10 as a result of the Contractor's Default the Contractor incurs losses or damages that are equal to the aggregate value of the liability cap as set out in clause 51 (Limitations on Liability);

54.3.11 as a result of the Contractor's Default the Customer suffers damages that exceed the aggregate value of the liability caps as set out in clause 51 (Limitations on Liability);

54.3.12 there has been a disaster and the Contractor has not acted in accordance with its obligations under the BCDR Plan and such failure to act is in itself a material Default or the result of such failure to act has a material adverse impact on the Customer;

54.3.13 the Contractor makes any public announcement or a director of the board of directors of the Contractor advises an officer of the Customer that the Contractor is no longer going to continue to develop or to offer the provision of services similar to the Services and there is evidence that such announcement will materially adversely impact the ability of the Contractor to provide the Services; or

54.3.14 this Services Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure.

54.4 In determining whether to exercise any right of termination pursuant to clause 54 (Termination Rights) of the DPS Agreement the Customer shall:

54.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and

54.4.2 give all due consideration, where appropriate, to action other than termination of this Services Agreement;

54.5 The rights of the Customer (to terminate or otherwise) under this clause 54 (Termination Rights) are in addition (and without prejudice) to any other right or remedy which the Customer may have to claim the amount of loss or damage suffered by the Customer on account of the acts or omissions of the Contractor (or to take any action other than termination of this Services Agreement).

- 54.6 Where the Customer has the right to terminate this Services Agreement, prior to or instead of terminating the whole of this Services Agreement, the Customer may serve a Termination Notice requiring the partial termination of this Services Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances

Termination for Convenience

- 54.7 The Customer may terminate this Services Agreement, by issuing a Termination Notice to the Contractor, for convenience at any time, including where the Services Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- 54.8 The Contractor may, at any time, make written representations to the Customer setting out its reasons for wishing to terminate this Services Agreement.
- 54.9 The Customer shall consider and respond to the Contractor's representations within one month of receiving the Contractor's representations and may, in its sole discretion, terminate this Services Agreement by giving written notice to the Contractor.
- 54.10 If the Customer chooses to terminate this Services Agreement in accordance with clause 54.9 it shall not be obliged to make either a Termination Payment or a Compensation Payment under clause 58 (Payments on Termination), unless otherwise agreed between the parties in writing.
- 54.11 Subject to any obligation to provide the Services in accordance with the Exit Plan and subject to clause 57.4, the Contractor's obligation to provide the Services shall end on the date set out in the Termination Notice.
- 54.12 Unless otherwise stipulated by the Customer, any Services that have not commenced at the date of the Customer's notice shall be cancelled automatically and irrevocably.
- 54.13 This right of termination is in addition to any other rights of the Customer under this Services Agreement and its exercise shall be without prejudice to any claim, remedy or right of action that either party may have in relation to this Services Agreement.

Termination for Change of Control

54.14 The Customer may terminate this Services Agreement immediately or at a date specified in a Termination Notice without penalty if there is a Change of Control to which the Customer reasonably objects except where the Customer:

54.14.1 has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

54.14.2 has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

54.15 The Contractor shall notify the Customer in writing at least one month prior to any Change of Control taking place.

Termination by the Contractor

54.16 The Contractor may by issuing a Termination Notice to the Customer, terminate this Services Agreement only if:

54.16.1 the Customer is in material Default which it has failed to remedy within 30 Working Days following receipt of written notice of such Default;

54.16.2 the Customer fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds amount equivalent to 6 month's average Charges and such amount remains outstanding 40 Working Days after the receipt by the Customer of a notice of non-payment from the Contractor;
or

54.17 This Services Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice).

54.18 The Contractor's right of termination under clause 54.16 shall not apply to non-payment of the Charges by the Customer where such non-payment is due to the Customer exercising its rights under clause 15 (Set Off and Withholding) of the Services Agreement.

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

Partial Termination

54.20 The Customer may require the partial termination of this Services Agreement pursuant to clause 54.16 of this Services Agreement immediately or at a date stated within the Termination Notice.

54.21 If the Contractor notifies the Customer pursuant to Clause 54.16 (Termination by the Contractor) that it intends to terminate this Services Agreement in part and the Customer, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Services Requirements, then the Customer shall be entitled to terminate the remaining part of this Services Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Contractor's Termination Notice.

54.22 In assessing the significance of any part of the Services Requirements, regard shall be had not only to the proportion of that part to the Services Requirements as a whole, but also to the importance of the relevant part to the Customer.

54.23 The parties shall endeavour to agree the effect of any Contract Change made necessary to this Services Agreement by the Partial Termination, including the effect the Partial Termination may have on any other Services and the Charges, in accordance with the Change Control Procedure, provided that:

54.23.1 the Contractor shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to one or more of the circumstances set out in clause 54.3;

54.23.2 any increase to the Charges (if any) shall not be unreasonable and in any event shall be calculated in accordance with the Contractor's financial model in schedule S.4.1 (Charges and Invoicing) of the DPS Agreement; and

54.23.3 the Contractor shall not be entitled to reject the Contract Change.

Termination for Continuing Force Majeure Event

54.24 Either party may terminate this any Services Agreement by issuing a Termination Notice to the other if any Services are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days.

55. REMEDIAL PLAN PROCESS

Without prejudice to any right of the Customer to terminate this Services Agreement pursuant to clause 54 (Termination Rights), if the Contractor commits a material Default and the Default is capable of remedy, the Customer may at its discretion operate the Remedial Plan Process.

55.1 The Remedial Plan Process is as follows:

55.1.1 The Customer notifies the Contractor that it considers that the Contractor is in material Default and that it requires a Remedial Plan. The notice may specify the matters complained of in outline but must contain sufficient detail so that it is reasonably clear what the Contractor has to remedy.

55.1.2 The Contractor shall serve a draft Remedial Plan within 10 Working Days (or any other period agreed by the parties) even if the Contractor disputes that it is responsible for the matters complained of.

55.1.3 If the Customer considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Escalation Process.

55.1.4 If despite the measures taken under clause 55.2 a Remedial Plan cannot be agreed within 10 Working Days of the date of its submission, then the Customer may elect to end the Remedial Plan Process at the end of the escalation period set out in the Dispute Resolution Procedure and serve a Termination Notice which will take effect unless the Contractor remedies the Default within a period specified in the Termination Notice.

55.1.5 If a Remedial Plan is agreed between the parties but the Contractor fails to implement the Remedial Plan the Customer may either give the Contractor a further opportunity to resume full implementation of the Remedial Plan or escalate any issues arising out of the failure to implement the Remedial Plan using the Escalation Process.

55.1.6 If the reasons for the Contractor's failure to implement the Remedial Plan have not been resolved despite the use of the Escalation Process in accordance with clauses 55.2.3 or 55.1.5, and the Contractor has not otherwise remedied the Default, then the Customer may serve a Termination Notice and this DPS Agreement and/or Services Agreement shall terminate on the last day of the period specified by the Customer in the Termination Notice.

56. SUSPENSION OF CONTRACTOR'S ENGAGEMENT

56.1 Without prejudice to the Customer's rights to terminate this Services Agreement pursuant to clause 54 (Termination Rights), the Customer may suspend the Contractor's engagement to supply Services to the Customer by giving notice in writing to the Contractor if:

56.1.1 a right to terminate this Services Agreement arises in accordance with clause 54 (Termination Rights); or

56.1.2 the Contractor has failed to implement or comply with the terms of any Improvement Plan.

56.2 If the Customer provides notice to the Contractor in accordance with this clause 56 (Suspension of Contractor's Engagement), the Contractor's engagement shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Customer in writing from time to time.

56.3 For such time as the Contractor's engagement is suspended pursuant to clause 56:

56.3.1 the Customer shall not be required to enter into or invite bids from the Contractor in relation to any Services Agreement; and

56.3.2 unless otherwise agreed by the Customer, the Contractor shall not provide any Services pursuant to any Services Agreement.

CONSEQUENCES OF EXPIRY OR TERMINATION

- 57.1 Following the service of a Termination Notice for any reason the Contractor shall continue to be under an obligation to provide the Services to the required Service Levels and to ensure that there is no degradation in the standards of the Services until the date of the termination.
- 57.2 In the event of termination or expiry, the Contractor shall:
- 57.2.1 repay to the Customer all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination;
 - 57.2.2 unless otherwise directed (and without prejudice to any continuing obligation to retain Evidence or Materials in accordance with this Services Agreement), cease to use the Evidence, Data and Materials, and at the direction of the Customer:
 - 57.2.2.1 provide the Customer and/or the Replacement Contractor with such Evidence, Data and Materials in a format and timescale agreed with the Customer and/or the Replacement Contractor; or
 - 57.2.2.2 on receipt of the Customer's written instructions return or destroy all copies of the Evidence, Data and Materials;
 - 57.2.2.3 comply with its obligations contained in the Exit Plan; and
 - 57.2.2.4 provide access during Core Hours to the Customer and/or the Replacement Contractor that may be reasonably necessary for the proper handover of responsibility for the provision of the Services and/or Replacement Services for up to 12 months after expiry or termination to:
 - 57.2.2.4.1 such information relating to the Services as remains in the possession or control of the Contractor pursuant to the Exit Plan; and

57.2.2.4.2 such members of the Contractor Personnel as have been involved in the provision of the Services and who are still employed by the Contractor, provided that the Customer and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually and properly incurred in responding to requests for access under this clause 57.2.

57.3 [Subject to clause 54.12], the termination or expiry of the DPS Agreement shall not cause any Services Agreements to terminate automatically. For the avoidance of doubt, all Services Agreements shall remain in force unless and until they are terminated or expire in accordance with their own terms.

57.4 The provisions of clauses 19 (Governance), 21 (Audits), 22 (Records and Reports) 33 (Non-Solicitation), 35 (Intellectual Property Rights), 36 (Protection of Personal Data), 37 (Transparency and Freedom of Information), 38 (Confidentiality), 50 (IPR Indemnity), 51 (Limitations on Liability), 57 (Consequences of Expiry or Termination), 59 (Exit Management), 66 (Publicity and Branding) 67 (Severance), 69 (Entire Agreement), 70 (Third Party Rights) 71 (Notices) and 72 (Governing Law and Jurisdiction) and the provisions of schedules S.1 (Definitions), S.4.1 (Charges and Invoicing), S.5.1 (Governance), S.5.3 (Dispute Resolution Procedure), S.5.4 (Records), S.5.5 (Exit Management) and S.6.1 (Staff Transfer), and any other schedules referred to in those provisions shall survive the termination or expiry of this Services Agreement.

58. PAYMENTS ON TERMINATION

58.1 Save for any payments in respect of any assets made in accordance with schedule S.5.5 (Exit Management), the Customer shall not make a payment to the Contractor:

58.1.1 on the expiry of the Contract Period;

58.1.2 for Termination for Cause clause 54.1 or for Partial Termination in accordance with clause 54.6;

58.1.3 for termination for Change of Control in accordance with clause 54.14; or

- 58.1.4 for termination for convenience proposed by the Contractor in accordance with clause 54.8, subject to any agreement to the contrary in accordance with clause 54.10.
- 58.2 The Customer shall pay the Contractor the Termination Payment if this Services Agreement is terminated by Customer pursuant to clause 54.7 or by the Contractor pursuant to clause 54.16.
- 58.3 If:
- 58.3.1 the Termination Notice given by the Customer pursuant to clause 54.7 takes effect earlier than the first anniversary of the Services Commencement Date or is less than six months; or
- 58.3.2 the period between the date of the material breach by the Customer referred to in clause 54.16.1 and 54.16.2 and the date on which termination pursuant to clause 54.16.1 and 54.16.2 takes effect is less than 12 months; or
- 58.3.3 the Contractor can demonstrate to the Customer's reasonable satisfaction that the period of time prior to notice given by the Customer pursuant to clause 54.7 has not enabled the Contractor to recover the incurred capital costs of implementing any Scale-Up Plan,
- the Customer shall also make the Compensation Payment calculated in accordance with schedule S.4.2 (Payments on Termination).
- 58.4 The costs of termination incurred by the parties shall lie where they fall if either party terminates or partially terminates this Services Agreement pursuant to clause 54.24.
- 58.5 The Compensation Payment and/or the Termination Payment shall be the Contractor's sole remedy for the Customer termination of this Services Agreement in accordance with clause 54.7 or the Contractor's termination of this Services Agreement in accordance with clause 54.16.

59. EXIT MANAGEMENT

- 59.1 The Customer and the Contractor shall comply with the Exit Management requirements set out in clause 59 (Exit Management) and schedule S.5.5 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Customer and/or the or a Replacement Supplier.
- 59.2 Notwithstanding any other provision of this DPS Agreement the Customer shall have the rights set out in clause 59.2:
- 59.2.1 if an Insolvency Event occurs, the Customer's rights under clause 59.2 shall be exercisable by the Customer at any time before the winding up of the Contractor or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;
- 59.2.2 in the event of termination of this Services Agreement for any reason; and/or
- 59.2.3 upon the expiry of this Services Agreement.
- 59.3 The Contractor shall not, without the Customer 's consent, encumber any Contractor Equipment in any way which would require the consent of a third party to the exercise by the Customer of its rights under schedule S.5.5 (Exit Management) or which would in some other way restrict the exercise by the Customer of its rights under that schedule. For the purposes of this clause 59.3 "encumber" does not include any leasing agreement but shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement (except for a floating charge attaching generally to the assets and undertaking of the Contractor which has not crystallised) or which otherwise restricts the Contractor's ability to use and deal with the relevant item of Contractor Equipment.
- 59.4 Unless the Customer otherwise requires, during the time between service of a notice of termination of this DPS Agreement, or for Partial Termination in accordance with clause 54.6, and such termination or exercise taking effect, the Contractor shall take all steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Contractor may incur as a result of the termination, including:

- 59.4.1 to the extent possible in the circumstances cancel all capital and recurring cost commitments in connection with an implementation plan being undertaken pursuant to clause 12.3.2 and/or the provision of Services on the most cost-effective terms;
 - 59.4.2 to the extent possible in the circumstances terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Customer whether such contracts are required to be transferred to the Customer or Replacement Contractor instead;
 - 59.4.3 reduce labour costs by the redeployment or release of Contractor Personnel other than Key Personnel to the extent possible in the circumstances; and
 - 59.4.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in clauses 59.4.1 to 59.4.3 (inclusive).
- 59.5 If the Contractor does not fulfil its obligations in accordance with clause 59.4, the Customer shall not pay any sums in excess of those which the Customer would have paid had such action been taken.

60. STEP-IN RIGHTS

- 60.1 The Customer:
- 60.1.1 in circumstances where clause 60.2 applies, and where the Contractor has failed:
 - 60.1.1.1 to confirm within 10 Working Days of a notice served pursuant to clause 60.3.1 that it is willing to comply with that notice; or
 - 60.1.1.2 to work with a person appointed in accordance with clause 60.3.2;
or
 - 60.1.1.3 to take the steps notified to it by the Customer pursuant to clause 60.3.3, or

- 60.1.1.4 otherwise having failed to demonstrate its ability to provide the Services as required by clause 60.2; or,
- 60.1.2 in circumstances where clause 60.2 does not apply, without any period of notice or the satisfaction of any conditions,
 - may take action under this clause either through itself or with the assistance of agents or contractors.
- 60.2 If the Customer takes action pursuant to clause 60.5, the Customer shall serve notice ("**Step-in Notice**") on the Contractor. The Step-in Notice shall set out the following:
 - 60.2.1 the action the Customer wishes to take and in particular the Services it wishes to control (the "Required Action");
 - 60.2.2 the reason for and the objective of taking the Required Action;
 - 60.2.3 the date it wishes to commence the Required Action (which, for the avoidance of doubt, may be the same date as the Step-in Notice);
 - 60.2.4 the time period which it believes will be necessary for the Required Action;
 - 60.2.5 whether the Customer will require access to the Contractor's premises and/or the Sites;
 - 60.2.6 to the extent practicable, and on an indicative basis only, the impact that the Customer anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 60.3 Following service of a Step-in Notice, the Customer shall:
 - 60.3.1 take the Required Action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve the action set out in the Step-in Notice.
 - 60.3.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

- 60.3.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide any Services in relation to which the Customer is not assuming control; and
- 60.3.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Customer 's rights under this clause 60 (Step-In Rights).
- 60.4 For so long as and to the extent that the Required Action is continuing, then:
 - 60.4.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 60.4.2 subject to clause 60.9, the Customer shall pay to the Contractor the Charges after the deduction of the Customer's costs of taking the Required Action.
 - 60.4.3 the Contractor shall provide to the Customer and any of its agents or contractors (a) full and unrestricted access to all and any premises from which the Contractor ordinarily provides the Services and (b) full and unlimited use of all and any equipment, machinery, devices, computer programmes and other items ordinarily used in the provision of the Services (including, but not limited to, case management systems and data storage repositories), and (c) all Evidence, Materials and Data requested by the Customer or any of its agents or contractors
- 60.5 If the Required Action results in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the Customer not taken the Required Action, then the Contractor shall be entitled to an agreed adjustment of the Charges, provided that the Contractor can demonstrate to the reasonable satisfaction of the Customer that the Required Action has led to the degradation.
- 60.6 Before ceasing to exercise its step-in rights under this clause the Customer shall deliver a written notice to the Contractor ("Step-Out Notice"), specifying:
 - 60.6.1 the Required Action it has actually taken; and

- 60.6.2 the date on which the Customer plans to end the Required Action ("Step-Out Date") subject to the Customer being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 60.11.
- 60.7 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Customer 's approval a draft plan ("Step-Out Plan") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Services Agreement.
- 60.8 If the Customer does not approve the draft Step-Out Plan, the Customer shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Customer for the Customer's approval. The Customer shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 60.9 The Contractor shall bear its own costs in connection with any step-in by the Customer under this clause 60 (Step-In Rights), provided that the Customer reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Customer under:
- 60.9.1 clauses 60.1.3; or
- 60.9.2 clauses 60.1.8 (insofar as the primary cause of the Customer serving the Step-In Notice is identified as not being the result of a Contractor's Default).

SECTION L - MISCELLANEOUS AND GOVERNING LAW

61. COMPLIANCE

Official Secrets Act and Finance Act

61.1 The Contractor shall comply with the provisions of:

61.1.1 the Official Secrets Acts 1911 to 1989; and

61.1.2 section 182 of the Finance Act 1989.

62. ASSIGNMENT AND NOVATION

62.1 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 Services Agreement without the prior written consent of the Customer.

62.2 The Customer may at its discretion:

62.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Services Agreement and any associated licences to any:

62.2.1.1 other Contracting Authority or Central Government Body; or

62.2.1.2 third party acting on behalf of a Contracting Authority or Central Government Body; or

62.2.1.3 to a body other than a Contracting Authority or Central Government Body which substantially performs any of the functions that previously had been performed by the Customer;

and the Contractor shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 62.2

62.3 If this transfer increases the burden of the Contractor's obligations under this Services Agreement the Contractor shall be entitled to any additional Charges that are reasonable and which are agreed through the Change Control Procedure.

- 62.4 A change in the legal status of the Customer shall not (subject to clause 62.5) affect the validity of this Services Agreement and this Services Agreement shall be binding on any successor body to the Customer.
- 62.5 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Services Agreement to a body which is not a Customer or Central Government Body or if a body which is not a Customer or Central Government Body succeeds the Customer (both "**Transferee**" in the rest of this clause 62 (Assignment and Novation) the Contractor shall be entitled to exercise a right of termination if:
- 62.5.1 the Transferee suffers an Insolvency Event; or
- 62.5.2 the Transferee commits:
- 62.5.2.1 a material Default which Default is not remedied within 20 Working Days after notice of Default from the Contractor to the transferee requiring its remedy; or
- 62.5.2.2 a material Default which is irremediable;
- 62.6 The Transferee may only assign, novate or otherwise dispose of its rights and obligations under this Services Agreement (or any part) with the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed).
- 62.7 The Contractor shall notify the Customer of any proposed assignment, transfer or disposal by the Contractor in accordance with this clause 62 (Assignment and Novation). The Contractor shall provide the Customer with all relevant information as the Customer may reasonably request in connection with any assignment, transfer or disposal by the Contractor in accordance with this clause 62 (Assignment and Novation).

63. WAIVER AND CUMULATIVE REMEDIES

- 63.1 The rights and remedies provided by this Services Agreement may be waived only in writing by the relevant Representative 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.

- 63.2 Unless a right or remedy of the Customer is expressed to be an exclusive right or remedy, the exercise of it by the Customer is without prejudice to the Customer's other rights and remedies. 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.
- 63.3 A failure or delay by a party in ascertaining or exercising any right or remedy provided under this Services Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Services Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
- 63.4 Unless otherwise provided in this Services Sgreement, the rights and remedies provided under this Services Agreement are cumulative and, unless otherwise provided in this Services Agreement, are in addition to, and not exclusive of any right or remedies provided by Law or in equity or otherwise under this Services Agreement.

64. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise nothing in this Services Agreement, nor any actions taken by the Party pursuant to this Services Agreement, is intended to, or shall be deemed to, create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

65. PREVENTION OF CORRUPTION, FRAUD AND BRIBERY

- 65.1 The Contractor shall during the term of this Services Agreement comply with clause 65 (Prevention of Corruption, Fraud and Bribery) of the DPS Agreement.

The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Services Commencement Date:

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

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

65.2 The Contractor shall during the term of this Services Agreement:

65.2.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the "Relevant Requirements");

65.2.2 not commit any Prohibited Act or engage in any activity, practice or conduct which would constitute a Prohibited Act by it if such activity, practice or conduct had been carried out in the United Kingdom;

65.2.3 devise, implement and enforce, and require that its Sub-contractors devise, implement and enforce, throughout the Term its own written policies and procedures, including adequate procedures under the Bribery Act 2010, in order to ensure compliance by:

65.2.3.1 the Contractor;

65.2.3.2 the Contractor Personnel; and

65.2.3.3 any other associated persons of the Contractor,

with the Relevant Requirements and clause 65.1.2, and prevent the occurrence of a Prohibited Act and the Contractor shall produce to the Customer copies of such written policies and procedures within seven days of signature of this Services Agreement and at any time upon request by the Customer;

- 65.2.4 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Contractor do not commit tax evasion facilitation offences as defined under that Act;
 - 65.2.5 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017;
 - 65.2.6 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Services Agreement;
 - 65.2.7 immediately notify the Customer in writing if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor, and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the Services Commencement Date; and
 - 65.2.8 within 2 months of the Services Commencement Date, and annually thereafter, certify to the Customer in writing signed by an officer of the Contractor, compliance with this clause 65.165.1 by the Contractor and all persons associated with it under clause 65.2. The Contractor shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 65.3 The Contractor shall ensure that any person associated with the Contractor who is performing services in connection with this Services Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause 65 (Prevention of Corruption, Fraud and Bribery) (the "Relevant Terms"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

65.4 If the Contractor (including any Contractor employee, Sub-contractor or agent, in all cases whether or not acting with the Contractor's knowledge) engages in conduct prohibited by this clause 65 (Prevention of Corruption, Fraud and Bribery) or commits any offence under the Bribery Act 2010, the Customer may:

65.4.1 terminate this Services Agreement with immediate effect by issuing a Termination Notice and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; or

65.4.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of the conditions set out in this clause 65 (Prevention of Corruption, Fraud and Bribery).

65.5 For the purpose of this clause 65 (Prevention of Corruption, Fraud and Bribery):

65.5.1 the meaning of "adequate procedures" and "foreign public official" and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and

65.5.2 a person associated with the Contractor includes but is not limited to any Sub-contractor of the Contractor.

66. PUBLICITY AND BRANDING

66.1 The Contractor shall not:

66.1.1 make any press announcements or publicise this Services Agreement or its contents in any way; or

66.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Customer, unless such disclosure is made pursuant to a court order or required by applicable Law in which case it shall promptly notify the Customer of such disclosure.

66.2 Each party acknowledges to the other that nothing in this Services Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Services) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

67. SEVERANCE

67.1 If any provision of this Services Agreement (or part of any provision) is or becomes invalid, illegal or unenforceable, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Services Agreement are valid, legal and unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Services Agreement shall not be affected.

67.2 In the event that any deemed deletion under Clause 67.1 is so fundamental as to prevent the accomplishment of the purpose of this Services Agreement or materially alters the balance of risks and rewards in this Services Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Services Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Services Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

67.3 If the Parties are unable to agree on the revisions to this Services Agreement within 5 Working Days of the date of the notice given pursuant to Clause 67.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule S.5.3 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Services Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Services Agreement is terminated pursuant to this Clause 67.3.

68. FURTHER ASSURANCES

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

69. ENTIRE AGREEMENT

69.1 This Services Agreement, together with the schedules, appendices and documents annexed to it or otherwise referred to in it constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

69.2 Each of the parties acknowledges and agrees that in entering into this Services Agreement and the documents referred to in it, it does not rely on, and it shall have no remedies in respect of any statement, representation, assurance, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Services Agreement. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Services Agreement.

69.3 Nothing in this clause 69 (Entire Agreement) shall operate to exclude any liability for fraud or fraudulent misrepresentation.

70. THIRD PARTY RIGHTS

70.1 Subject to clause 38.8 38.6, clause 70.2 and schedule S.6.1 (Staff Transfer), a person who is not a party to this Services Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Services Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

71. NOTICES

71.1 Any notices given under or in relation to this Services Agreement shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post to the address and for the attention of the other party's Representative or to such other address as that party may have stipulated in accordance with this clause 71.1. Notices may be sent by e-mail.

71.2 A notice shall be deemed to have been received:

71.2.1 if delivered personally, at the time of delivery; and

71.2.2 if sent by email, at the time of delivery; and

71.2.3 in the case of pre-paid first-class post, three Working Days from the date of posting.

71.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address previously notified for the receipt of notices (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first-class post, recorded delivery, registered post or airmail letter.

72. GOVERNING LAW AND JURISDICTION

This Services Agreement and all matters (including, without limitation, any contractual or non-contractual disputes or claims) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with English law and without prejudice to clause 24 and the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of or in connection with this Services Agreement, its subject matter or formation (including non-contractual disputes or claims).

73. COUNTERPARTS

This Services Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.