

DATED

2015

(1) RAIL SAFETY AND STANDARDS BOARD LIMITED

and

(2) [THE SUPPLIER]

AGREEMENT

relating to

IT, Verification and Management Services in relation to the RISQS Scheme



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**BETWEEN:**

- (1) **Rail Safety and Standards Board Limited** of The Helicon, 1 South Place, London, England EC2M 2RB (“RSSB”); and
- (2) **[NAME OF THE SUPPLIER]** a company registered in [England and Wales] under company number [ ] whose registered office is at [ ] (the “Supplier”)

(each a “Party” and together the “Parties”).

**INTRODUCTION**

- (A) RSSB is a not for profit cross-industry membership organisation whose purpose is to support the rail industry to continuously improve the level of safety in the rail industry, drive out unnecessary cost and improve business performance.
- (B) RISQS was developed to assist buyers search for suppliers working or wishing to work within Great Britain’s (GB) Rail Industry by providing a fair, open and transparent third party qualification process.
- (C) Scheme Member Suppliers enter their pre-qualification information into the platform and this is then verified to agreed levels. The information is then published to the RISQS portal and searchable by the buying community. The scheme also includes system assessment audits for suppliers that have indicated they provide services that require audit due to the increased risk the service imports to the infrastructure.
- (D) RISQS provides assurance regarding management systems and corporate legitimacy and also acts a tool to help organisations improve system performance.
- (E) The Railway Industry Supplier Qualification Scheme (RISQS) helps to reduce the duplication of effort that organisations experience from capability checks (e.g. Supplier Questionnaires and systems assessments) carried out by multiple buyers. It gives suppliers of all sizes an equal opportunity to demonstrate their capabilities and market their products and services whilst ensuring compliance to cross industry standards.
- (F) The Supplier will be required to:
  - develop, test, implement, maintain and support the IT solution which shall host the Scheme Member Supplier’s information and facilitate the Buyer searches
  - undertake verification of Scheme Member Supplier’s
  - provide customer support for all aspects of the scheme
  - be responsible for the overall delivery of the scheme and the liaison with the provider of the Audit Services

IT IS AGREED as follows:

## SECTION A - PRELIMINARIES

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) reference to a gender includes the other gender and the neuter;
  - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - (e) the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
  - (f) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
  - (h) unless otherwise expressly provided [and save for references in Annexes 1 to 3 of Schedule 5 (*Software*) and in Schedule 10 (*Guarantee*)], references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
  - (i) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify RSSB and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Clauses and Schedule 1 (*Definitions*);
- (b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
- (c) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes); and
- (d) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any).

1.5 The Schedules and their Annexes form part of this Agreement.

## **2 DUE DILIGENCE**

2.1 The Supplier acknowledges that:

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

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description and/or Authority Responsibilities as applicable.

- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- (a) any unsuitable aspects of the Operating Environment;
  - (b) any misinterpretation of RSSB Requirements; and/or
  - (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

### **3 WARRANTIES**

3.1 RSSB represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this

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;

- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the PQQ and 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 Agreement or to the extent that the Supplier has otherwise disclosed to RSSB in writing prior to the date of this Agreement;
- (i) it has notified RSSB in writing of any Occasions of Tax Non- Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to RSSB which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by RSSB;
- (k) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (l) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.

3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which RSSB may have in respect of breach of that provision by the Supplier.

3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## SECTION B - THE SERVICES

### 4 TERM

#### 4.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (*Termination Rights*), terminate:
  - (i) at the end of the Initial Term; or
  - (ii) if RSSB elects to extend the Initial Term pursuant to Clause 4.2 at the end of the further period referred to in Clause 4.2

#### 4.2 RSSB may extend the duration of this Agreement up to a maximum of 2 years from the expiry of the Initial term by giving the Supplier:

- (a) At least three (3) months written notice before the end of the Initial Term that the duration is to be extended by twelve (12) months; or
- (b) At least three(3) months written notice prior to the end of the twelve (12) month period referred to in clause 4.2(a) that the duration is to be extended for a further twelve (12) months

## 5 SERVICES

### Standard of Services

5.1 The Supplier shall provide:

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

5.2 The Supplier shall ensure that:

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

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

5.3 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
  - (i) all applicable Law;
  - (ii) Good Industry Practice;
  - (iii) the Standards;
  - (iv) the Baseline Security Requirements;
  - (v) the Quality Plans;

- (vi) RSSB's IT Strategy; and
  - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi); and
- (b) deliver the Services using efficient business processes and ways of working having regard to RSSB's need to ensure value for money.
- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify RSSB's Representative in writing of such inconsistency and RSSB's Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

### Supplier covenants

- 5.5 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
  - (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
  - (c) ensure that:
    - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to RSSB which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by RSSB;
    - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify RSSB 3 months before the release of any new Software or Upgrade;
    - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
    - (iv) any products or services recommended or otherwise specified by the Supplier for use by RSSB in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet RSSB's Requirements; and
    - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with RSSB)

and will be Euro Compliant;

- (d) minimise any disruption to the Services, the IT Environment and/or RSSB's operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to RSSB are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to RSSB and/or to any Replacement Supplier;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of RSSB, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that RSSB may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to RSSB on RSSB's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);
- (i) provide RSSB with such assistance as RSSB may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as RSSB may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (k) notify RSSB in writing within 1 month of any change of Control taking place;
- (l) notify RSSB in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses RSSB or otherwise brings RSSB into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in RSSB, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and

- (n) manage closure or termination of Services and end of life of Goods to take account of RSSB disposals requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of RSSB howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by RSSB where practicable or within such other time period as may be agreed with RSSB (taking into account the nature of the breach that has occurred);
  - (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by RSSB; and
  - (c) meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

#### **Specially Written Software warranty**

- 5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of RSSB howsoever arising, the Supplier warrants to RSSB that all components of the Specially Written Software shall:
- (a) be free from material design and programming errors;
  - (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
  - (c) not infringe any Intellectual Property Rights.

#### **Continuing obligation to provide the Services**

- 5.9 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- (a) any withholding of the Service Charges by RSSB pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by RSSB to pay any Charges,
- unless the Supplier is entitled to terminate this Agreement under Clause 33.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

## Optional Services

- 5.10 RSSB may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that RSSB is not obliged to take any Optional Services from the Supplier and that nothing shall prevent RSSB from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.11 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.12 Following receipt of RSSB's notice pursuant to Clause 5.10:
- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
  - (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan (if any);
  - (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 7.1 (*Charges and Invoicing*); and
  - (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

## Power of attorney

- 5.13 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints RSSB as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by RSSB and may vary or revoke such delegation at any time.

## Authority Responsibilities

- 5.14 RSSB shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

## 6 IMPLEMENTATION

### Quality Plans

- 6.1 The Supplier shall develop, within 30 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (“Quality Plans”).
- 6.2 The Supplier shall obtain RSSB Representative’s written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that RSSB’s approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 6.3 Following the approval by RSSB of the Quality Plans:
- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
  - (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

### Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- (a) comply with the Implementation Plan; and
  - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- provided that the Supplier shall be under no obligation to, and shall not, deliver a Milestone shown by the Implementation Plan as falling within the Extension Period until such time as RSSB has elected to extend the Initial Term pursuant to clause 4.1(b)(ii) of this Agreement.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
    - (i) notify RSSB in accordance with Clause 27.1 (*Rectification Plan Process*); and
    - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
    - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
  - (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 28 (*Delay Payments*) shall apply.

## Testing and Achievement of Milestones

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

## 7 PERFORMANCE INDICATORS

7.1 The Supplier shall:

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

### Performance Failures

7.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*);
- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));
- (c) a PI Failure occurs, the Supplier shall notify RSSB of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- (d) a Material PI Failure occurs:
  - (i) the Supplier shall comply with the Rectification Plan Process; and
  - (ii) RSSB may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of RSSB, at which point RSSB shall pay the amount withheld.

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

- (a) the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;
- (b) the KPI Failure:
  - (i) breaches the relevant KPI Service Threshold;
  - (ii) has arisen due to the wilful default by the Supplier or any Supplier

Personnel; and

- (iii) results in:
  - (A) the corruption or loss of any RSSB Data (in which case the remedies under Clause 20.7 (*Authority Data and Security Requirements*) shall also be available); and/or
  - (B) RSSB being required to make a compensation payment to one or more third parties;
- (c) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- (d) RSSB is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 33.1(a) (*Termination by RSSB*).

### **Unacceptable KPI Failure**

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

- (a) RSSB shall (subject to the Service Credit Cap set out in Clause 25.4(b) (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”); and
- (b) if RSSB withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 7.4 shall be without prejudice to any right which RSSB may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

- (a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- (b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

### **Critical Performance Failure**

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

## Changes to Performance Indicators and Service Credits

- 7.7 Not more than once in each Contract Year RSSB may, on giving the Supplier at least 3 months' notice:
- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
  - (b) convert one or more:
    - (i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
    - (ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event RSSB shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).
- 7.8 The Supplier shall not be entitled to object to any changes made by RSSB under Clause 7.7, or increase the Service Charges as a result of such changes provided that:
- (a) the total number of Key Performance Indicators does not exceed 20;
  - (b) the principal purpose of the change is to reflect changes in RSSB's business requirements and/or priorities or to reflect changing industry standards; and
  - (c) there is no change to the Service Credit Cap.

## **8 SERVICES IMPROVEMENT**

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every 12 months on:
- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and RSSB which the Parties may wish to adopt;
  - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
  - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or RSSB which might result in efficiency or productivity gains or in reduction of operational risk;
  - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to RSSB; and/or
  - (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Supplier shall ensure that the information that it provides to RSSB shall be

sufficient for RSSB to decide whether any improvement should be implemented. The Supplier shall provide any further information that RSSB requests.

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

## **9 EQUIPMENT AND MAINTENANCE**

### **Supplier Equipment**

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

### **Maintenance**

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

## SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

### 10 FINANCIAL AND TAXATION MATTERS

#### Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, RSSB shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein, Clause 29 (*Remedial Adviser*) and Clause 30 (*Step-In Rights*).
- 10.3 If RSSB fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% over the current base lending rate of HSBC Bank Plc, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by RSSB following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify RSSB on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on RSSB at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to RSSB not less than five Working Days before the date upon which the tax or other liability is payable by RSSB.

#### Set-off and Withholding

- 10.6 RSSB may set off any amount owed by the Supplier to RSSB against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and RSSB.
- 10.7 If RSSB wishes to:
- (a) set off any amount owed by the Supplier to RSSB against any amount due to the Supplier pursuant to Clause 10.6; or
  - (b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,
- it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out RSSB's reasons for withholding or retaining the relevant Charges.

## **Benchmarking**

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

## **Financial Distress**

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

## **Promoting Tax Compliance**

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

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

## SECTION D - CONTRACT GOVERNANCE

### 11 GOVERNANCE

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

#### Representatives

11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

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

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

12.1 The Supplier shall comply with the provisions of:

- (a) Schedule 8.4 (*Records Provisions*) in relation to the maintenance and retention of Records; and

Part A of Schedule 7.5 (*Financial Reports and Audit Rights*)

12.2 The Parties shall comply with the provisions of:

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

### 13 CHANGE

#### Change Control Procedure

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

#### Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on

the Services is reasonably foreseeable at the Effective Date.

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

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

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

## SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN

### 14 SUPPLIER PERSONNEL

#### 14.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to RSSB Premises, specifying the capacity in which they require admission and giving such other particulars as RSSB may reasonably require;
- (b) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*); and
  - (iii) comply with all reasonable requirements of RSSB concerning conduct at RSSB and Scheme Member Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);
- (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of RSSB;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate RSSB Premises immediately upon the termination or expiry of this Agreement.

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

- (a) refuse admission to the relevant person(s) to RSSB or Scheme Member Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

#### **Key Personnel**

#### 14.3 The Supplier shall ensure that the Key Personnel fulfill the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the

persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

- 14.4 RSSB may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by RSSB;
  - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - (d) the Supplier obtains RSSB's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- (a) notify RSSB 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 Supplier shall ensure appropriate temporary cover for that Key Role);
  - (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
  - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
  - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
  - (e) ensure that any replacement for a Key Role:
    - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

### **Employment Indemnity**

14.7 The Parties agree that:

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

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

#### **Income Tax and National Insurance Contributions**

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

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

#### **Staff Transfer**

14.9 The Parties agree that:

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
  - (i) where the Relevant Transfer involves the transfer of Transferring RSSB Employees, Part A of Schedule 9.1 (*Staff Transfer*) shall apply;
  - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (*Staff Transfer*) shall apply;
  - (iii) where the Relevant Transfer involves the transfer of Transferring RSSB Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 9.1 (*Staff Transfer*) shall apply; and
  - (iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and
- (c) Part D of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

## 15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

### Appointment of Sub-contractors

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Agreement in the delivery of the Services; and
  - (c) assign, novate or otherwise transfer to RSSB or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify RSSB in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
  - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
  - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of RSSB that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.3 If requested by RSSB within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract; and
  - (b) any further information reasonably requested by RSSB.
- 15.4 RSSB may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (or, if later, receipt of any further information requested pursuant to Clause 15.3), object to the appointment of the relevant Sub-contractor if it considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of RSSB;
  - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - (c) the proposed Sub-contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.

- 15.5 If:
- (a) RSSB has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
    - (i) the Supplier's notice issued pursuant to Clause 15.1; and
    - (ii) any further information requested by the RSSB pursuant to Clause 15.3; and
  - (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.6 (*Appointment of Key Sub-contractors*)),

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

#### **Appointment of Key Sub-contractors**

- 15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of RSSB, such consent not to be unreasonably withheld or delayed. For these purposes, RSSB may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of RSSB;
  - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - (c) the proposed Key Sub-contractor employs unfit persons.
- 15.7 RSSB consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*).
- 15.8 Except where RSSB has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
  - (b) a right under CRTPA for RSSB to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon RSSB;
  - (c) a provision enabling RSSB to enforce the Key Sub-contract as if it were the Supplier;
  - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to RSSB or any Replacement Supplier without restriction (including any need to

- obtain any consent or approval) or payment by RSSB;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
    - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
    - (ii) the obligation not to embarrass RSSB or otherwise bring RSSB into disrepute set out in Clause 5.5(m) (*Services*);
    - (iii) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
    - (iv) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
  - (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on RSSB under Clause 34.4 (*Payments by RSSB*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;
  - (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of RSSB; and
  - (h) a provision enabling the Supplier or RSSB to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 29 (*Remedial Adviser*);
  - (i) a provision enabling the Supplier, RSSB or any other person on behalf of RSSB to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*);
  - (j) a provision requiring the Key Sub-contractor to participate in, and if required by RSSB in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
  - (k) a provision requiring the Key Sub-contractor to:
    - (i) promptly notify the Supplier and RSSB in writing of any of the following of which it is, or ought to be, aware:
      - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
      - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and

- (l) co-operate with the Supplier and RSSB in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and RSSB to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

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

### Supply chain protection

15.10 The Supplier shall ensure that all Sub-contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and
- (b) a right for RSSB to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- (c) requiring the Sub-contractor to include a clause to the same effect as this clause 15.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

15.11 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within 30 days from the receipt of a valid invoice;

### Termination of Sub-contracts

15.12 RSSB may require the Supplier to terminate:

- (a) a Sub-contract where: (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b) (Termination by the Authority);
- (b) (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
- (c) (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
- (d) (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with clause 15.17; and
- (e) (b) a Key Sub-contract where there is a Change of Control of the relevant Key

- Sub-contractor, unless:
- (f) (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control. engaging in any act or omission which is reasonably likely to diminish the trust that the public places in RSSB, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise; and
  - (g) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
    - (i) RSSB has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (ii) RSSB has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which RSSB was given notice of the Change of Control.

### **Competitive Terms**

15.13 If RSSB is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then RSSB may:

- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by RSSB in respect of the relevant item; or
- (b) subject to Clause 15.13, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

15.14 If RSSB exercises either of its options pursuant to Clause 15.14, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

15.15 RSSB's right to enter into a direct agreement for the supply of the relevant items is subject to:

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

### **Retention of Legal Obligations**

15.16 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

## **Exclusion of Sub-contractors**

15.17 Where the Authority considers whether there are grounds for the exclusion of a Subcontractor under Regulation 57 of the Public Contracts Regulations 2015, then:

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

## SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

### 16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

(a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (i) the Supplier Software;
- (ii) the Third Party Software;
- (iii) the Third Party IPRs; and
- (iv) the Supplier Background IPRs;

(b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- (i) the Authority Software;
- (ii) the Authority Data; and
- (iii) the Authority Background IPRs.

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

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

16.4 Unless the Authority otherwise agrees in advance in writing:

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

(b) where the Specially Written Software and Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.

### 17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

#### Specially Written Software and Project Specific IPRs

17.1 Subject to Clause 17.16 (Patents) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights in the Specially Written Software and the Project Specific IPRs including):

(a) the Documentation, Source Code and the Object Code of the Specially Written Software;

(b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “Software Supporting Materials”); and

(c) the Project Specific IPRs.

## 17.2 The Supplier:

(a) shall:

(i) inform the Authority of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and

(ii) (deliver to the Authority the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and

(b) acknowledges and agrees that the ownership of the media referred to in Clause 17.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and

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

(d) represents and warrants that it has entered into a multi-user Escrow agreement and shall maintain such Escrow arrangements throughout the Term.

## 17.3 Supplier Software and Supplier Background IPRs 17.3 The Supplier hereby grants to the Authority:

(a) subject to the provisions of Clause 17.16 (Patents) and Clause 34.11(b) (Consequences of expiry or termination), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

(i) the Supplier Non-COTS Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority’s (or any other Central Government Body’s) business or function ;

(ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority’s (or any other Central Government Body’s) business or function; and

(b) a licence to use the Supplier COTS Software and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (Software) and signed by or on behalf of the Parties on or before the

Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.7 and 17.8(b) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs.

17.4 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.3(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.3(a)(ii) by giving 30 days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 17.7 (Authority's right to sub-license) commits any material breach of the terms of Clause 17.3(a)(i) or 17.3(a)(ii) or 17.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

17.5 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.4, the Authority shall:

- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority's right to sub-license

17.6 Subject to Clause 17.16 (Patents) the Authority may sub-license:

- (a) the rights granted under Clause 17.3(a) (Supplier Software and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-licence is on terms no broader than those granted to the Authority;
  - (ii) the sub-licence authorises the third party to use the rights licensed in Clause 17.3(a) (Supplier Software and Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
  - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (Software); and
- (b) the rights granted under Clause 17.3(a) (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPRs provided that:
  - (i) the sub-licence is on terms no broader than those granted to the Authority; and

- (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (Software) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

17.7 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.3(a) (Supplier Software and Supplier Background IPRs) to:

(a) A Central Government Body; or

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

17.8 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.3 (Supplier Software and Supplier Background IPRs). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 17.3 (Supplier Software and Supplier Background IPRs).

17.9 If a licence granted in Clause 17.3 (Supplier Software and Supplier Background IPRs) is novated under Clause 17.7 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Clause 17.8, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

17.10 The Supplier shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:

(a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.3(a) and 17.4 (Supplier Software and Supplier Background IPRs) and Clause 17.7 (Authority's right to assign/novate licences); or

(b) complied with the provisions of Clause 17.11.

17.11 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.10(a), the Supplier shall:

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

17.12 The Supplier shall:

(a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and

(b) unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Clause 17.11(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

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

## Termination and Replacement Suppliers

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

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

(a) grant (or procure the grant) to any Replacement Supplier of:

(i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (Software) duly executed by the Replacement Supplier;

(ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or

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

## Patents

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

## 18 LICENCES GRANTED BY THE AUTHORITY

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

(a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (Confidentiality); and

(b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

18.2. In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

(c) immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);

(d) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and

(e) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

## **19 IPRs INDEMNITY**

19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify RSSB and each other Indemnified Person, and keep RSSB and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for RSSB or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
  - (iii) there is no additional cost to RSSB or relevant Indemnified Person (as the case may be); and
  - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

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

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

## **20 AUTHORITY DATA AND SECURITY REQUIREMENTS**

20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to RSSB Data.

- 20.2 The Supplier shall not store, copy, disclose, or use RSSB Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by RSSB.
- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to RSSB as requested by RSSB in the format specified in Schedule 2.1 (*Services Description*).
- 20.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 20.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to RSSB (or to such other person as RSSB may direct) at all times upon request and are delivered to RSSB at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 20.7 If RSSB Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, RSSB may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Recovery*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of RSSB's notice; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Recovery*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify RSSB immediately and inform RSSB of the remedial action the Supplier proposes to take.
- 20.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 20.10 RSSB shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has

taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

- 20.12 Until and/or unless a change to the Charges is agreed by RSSB pursuant to Clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

### **Malicious Software**

- 20.13 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).

- 20.14 Notwithstanding Clause 20.13, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

- 20.15 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.14 shall be borne by the Parties as follows:

- (a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where RSSB has waived the obligation set out in Clause 20.13) or RSSB Data (whilst RSSB Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by RSSB when provided to the Supplier; and
- (b) otherwise by RSSB.

## **21 CONFIDENTIALITY**

- 21.1 For the purposes of this Clause 21, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- (a) treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner’s prior written consent;
- (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and

- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against RSSB arising out of or in connection with this Agreement;
  - (ii) the examination and certification of RSSB'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 RSSB is making use of any Services provided under this Agreement; or
  - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

21.5 The Supplier may disclose the Confidential Information of RSSB on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

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

21.6 RSSB may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of RSSB or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that RSSB (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 29 (*Remedial Adviser*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on RSSB under this Clause 21.

21.7 [Nothing in this Clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.]

## 22 **FREEDOM OF INFORMATION**

Not used

## 23 **PROTECTION OF PERSONAL DATA**

23.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that RSSB is a Data Controller and that the Supplier is a Data Processor.

23.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from RSSB to perform its obligations under this Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements*);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any

disclosure or transfer of Personal Data to any third party, obtain the prior written consent of RSSB (save where such disclosure or transfer is specifically authorised under this Agreement);

- (d) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause 23 and Clauses 21 (*Confidentiality*) and 20 (*Authority Data and Security Requirements*);
  - (ii) 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 RSSB or as otherwise permitted by this Agreement; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify RSSB within 5 Working Days if it receives:
  - (i) from a Data Subject (or third party on their behalf):
    - (A) a Data Subject Access Request (or purported Data Subject Access Request);
    - (B) a request to rectify, block or erase any Personal Data; or
    - (C) any other request, complaint or communication relating to RSSB's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) 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;
- (f) provide RSSB with full cooperation and assistance (within the timescales reasonably required by RSSB) in relation to any complaint, communication or request made as referred to in Clause 23.2(e), including by promptly providing:
  - (i) RSSB with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by RSSB to enable RSSB to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) RSSB, on request by RSSB, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by RSSB, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause

23 and provide to RSSB copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

23.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together “**Restricted Countries**”). If, after the Effective Date, the Supplier or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Countries, the following provisions shall apply:

- (a) the Supplier shall submit a Change Request to RSSB which, if RSSB agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 23.3(b) to 23.3(d);
- (b) the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in any Restricted Countries;
  - (ii) the Restricted Countries which the Personal Data will be transferred to and/or Processed in; and
  - (iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure RSSB’s compliance with the DPA;
- (c) in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as RSSB may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with RSSB on such terms as may be required by RSSB; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between RSSB and the Sub-contractor relating to the relevant Personal Data transfer,

and in each case which the Supplier acknowledges may include the

incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which RSSB deems necessary for the purpose of protecting Personal Data.

- 23.4 The Supplier shall use its reasonable endeavours to assist RSSB to comply with any obligations under the DPA and shall not perform its obligations under this Agreement in such a way as to cause RSSB to breach any of RSSB's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

## 24 **PUBLICITY AND BRANDING**

- 24.1 The Supplier shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use RSSB's name or the RISQS brand in any promotion or marketing or announcement of orders;

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

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

## SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

### 25 LIMITATIONS ON LIABILITY

#### Unlimited liability

25.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

25.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

25.3 RSSB's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

#### Financial and other limits

25.4 Subject to Clauses 25.1 and 25.2 (*Unlimited Liability*) and Clauses 25.7 and 25.8 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to RSSB Premises or other property or assets of RSSB (including technical infrastructure, assets or equipment but excluding any loss or damage to RSSB's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed **£10 million**;
- (b) the Supplier's aggregate liability in respect of all:
  - (i) Service Credits; and
  - (ii) Compensation for Unacceptable KPI Failure;incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and
- (c) the Supplier's aggregate liability in respect of all other Losses incurred by RSSB under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
  - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to **150%** of the Estimated Year 1 Charges;

- (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to in Clause 25.4(c) have been incurred by RSSB as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 150% shall be deemed to be references to 200%.

25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4(c).

25.6 Subject to Clauses 25.1 and 25.3 (*Unlimited Liability*) and Clause 25.7(*Consequential Losses*) and without prejudice to RSSB's obligation to pay the Charges as and when they fall due for payment:

- (a) RSSB's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement or by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:
  - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*);
  - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and
- (b) RSSB's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of RSSB shall in no event exceed:
  - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
  - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
  - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

25.7 Subject to Clauses 25.1, 25.2 and 25.3 (*Unlimited Liability*) and Clause 25.8, neither Party shall be liable to the other Party for:

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

25.8 Notwithstanding Clause 25.7 but subject to Clause 25.4, the Supplier acknowledges that RSSB may, amongst other things, recover from the Supplier the following Losses incurred by RSSB to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by RSSB, including costs relating to time spent by or on behalf of RSSB in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (d) any compensation or interest paid to a third party by RSSB;
- (e) any fine or penalty incurred by RSSB pursuant to Law and any costs incurred by RSSB in defending any proceedings which result in such fine or penalty; and
- (f) any anticipated savings identified in Schedule 7.6 (*Anticipated Savings*).

#### **Conduct of indemnity claims**

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

#### **Mitigation**

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

## **26 INSURANCE**

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

## SECTION H - REMEDIES AND RELIEF

### 27 RECTIFICATION PLAN PROCESS

27.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) in any Service Period there has been:
  - (i) a Material KPI Failure; and/or
  - (ii) a Material PI Failure; and/or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

#### Notification

27.2 If:

- (a) the Supplier notifies RSSB pursuant to Clause 27.1 that a Notifiable Default has occurred; or
- (b) RSSB notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

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

#### Submission of the draft Rectification Plan

27.4 The Supplier shall submit a draft Rectification Plan to RSSB for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

- 27.5 The draft Rectification Plan shall set out:
- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
  - (b) the actual or anticipated effect of the Notifiable Default; and
  - (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 27.6 The Supplier shall promptly provide to RSSB any further documentation that RSSB reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

#### **Agreement of the Rectification Plan**

- 27.7 RSSB may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Notifiable Default; and/or
  - (d) will rectify the Notifiable Default but in a manner which is unacceptable to RSSB.
- 27.8 RSSB shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If RSSB rejects the draft Rectification Plan, RSSB shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to RSSB for review within 5 Working Days (or such other period as agreed between the Parties) of RSSB's notice rejecting the first draft.
- 27.9 If RSSB consents to the Rectification Plan:
- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
  - (b) RSSB may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

#### **28 DELAY PAYMENTS**

- 28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

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

- (a) RSSB is entitled to or does terminate this Agreement pursuant to Clause 33.1(a) (*Termination by RSSB*); or
- (b) the Delay exceeds the Delay Deduction Period.

## 29 **REMEDIAL ADVISER**

29.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) RSSB reasonably believes that any of the Intervention Trigger Events are likely to occur,

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

- (i) a meeting between RSSB Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 29.

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

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

- (a) the Remedial Adviser shall be:
  - (i) a person selected by the Supplier and approved by RSSB; or
  - (ii) if none of the persons selected by the Supplier have been approved by RSSB (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by RSSB;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by RSSB; and
- (c) any right of RSSB to terminate this Agreement pursuant to Clause 33.1(a) (*Termination by RSSB*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the “**Intervention Period**”).

29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this

objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to RSSB in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to RSSB and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that RSSB and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

29.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as RSSB and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by RSSB within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of RSSB (such consent not to be unreasonably withheld).

29.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by RSSB and/or the Remedial Adviser pursuant to this Clause 29.

29.6 If:

- (a) the Supplier:
  - (i) fails to perform any of the steps required by RSSB in an Intervention Notice; and/or

- (ii) is in Default of any of its obligations under Clause 29.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), RSSB shall be entitled to terminate this Agreement pursuant to Clause 33.1(a) (*Termination by RSSB*).

### 30 **STEP-IN RIGHTS**

30.1 On the occurrence of a Step-In Trigger Event, RSSB may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 30 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:

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

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

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which RSSB is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of RSSB's rights under this Clause 30.

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

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

- (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
  - (c) RSSB shall pay to the Supplier the Charges after subtracting any applicable Deductions and RSSB's costs of taking the Required Action.
- 30.4 If the Supplier demonstrates to the reasonable satisfaction of RSSB that the Required Action has resulted in:
  - (a) the degradation of any Services not subject to the Required Action; or
  - (b) the non-Achievement of a Milestone,  
beyond that which would have been the case had RSSB not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 30.5 Before ceasing to exercise its step in rights under this Clause 30 RSSB shall deliver a written notice to the Supplier (a “**Step-Out Notice**”), specifying:
  - (a) the Required Action it has actually taken; and
  - (b) the date on which RSSB plans to end the Required Action (the “**Step-Out Date**”) subject to RSSB being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 30.6.
- 30.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for RSSB's approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 30.7 If RSSB does not approve the draft Step-Out Plan, RSSB shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to RSSB for RSSB's approval. RSSB shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 30.8 The Supplier shall bear its own costs in connection with any step-in by RSSB under this Clause 30, provided that RSSB shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by RSSB under:
  - (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
  - (b) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of RSSB serving the Step-In Notice is identified as not being the result of the Supplier's Default).

### 31 AUTHORITY CAUSE

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

- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Operational Services in accordance with the Target Performance Levels; and/or
- (c) comply with its obligations under this Agreement,

(each a “Supplier Non-Performance”),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 31):

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by RSSB Cause;
- (ii) RSSB shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
  - (A) To terminate this Agreement pursuant to Clause 33.1(a) (*Termination by RSSB*); or
  - (B) to take action pursuant Clauses 29 (*Remedial Adviser*) or 30 (*Step-In*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by RSSB Cause;
  - (B) if RSSB, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from RSSB Cause;
  - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by RSSB Cause;
- (iv) where the Supplier Non-Performance constitutes a Performance Failure:

- (A) the Supplier shall not be liable to accrue Service Credits;
- (B) RSSB shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
- (C) RSSB shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*); and

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

- 31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give RSSB notice (a “**Relief Notice**”) setting out details of:
- (a) the Supplier Non-Performance;
  - (b) RSSB Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Agreement;
  - (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
  - (d) the relief and/or compensation claimed by the Supplier.
- 31.3 Following the receipt of a Relief Notice, RSSB shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
- 31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 31.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:
- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
  - (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

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

## **32 FORCE MAJEURE**

- 32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Business Continuity and Disaster Recovery*)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including the BCDR Services, but the Supplier has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

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

- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
  - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 33.1(b) (*Termination by RSSB*) or Clause 33.3(b) (*Termination by the Supplier*); and
  - (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with this Agreement:
  - (i) RSSB shall not be entitled:
    - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (*Remedial Adviser*) as a result of such failure;
    - (B) to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
    - (C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
  - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

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

32.8 Relief from liability for the Affected Party under this Clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 32.7.

## SECTION I - TERMINATION AND EXIT MANAGEMENT

### 33 TERMINATION RIGHTS

#### Termination by RSSB

- 33.1 RSSB may terminate this Agreement by issuing a Termination Notice to the Supplier:
- (a) for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
  - (b) if a Supplier Termination Event occurs; or
  - (c) if a Force Majeure Event endures for a continuous period of more than 90 days,
  - (d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Agreement shall terminate on the date specified in the Termination Notice.
- 33.2 Where RSSB:
- (a) is terminating this Agreement under Clause 33.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
  - (b) has the right to terminate this Agreement under Clause 33.1(b) or Clause 33.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

#### Termination by the Supplier

- 33.3 The Supplier may, by issuing a Termination Notice to RSSB, terminate:
- (a) this Agreement if RSSB fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds **£300,000 (three hundred thousand pounds)** and such amount remains outstanding 40 Working Days after the receipt by RSSB of a notice of non-payment from the Supplier; or
  - (b) This Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice).

## Partial Termination

- 33.4 If the Supplier notifies RSSB pursuant to Clause 33.3 (*Termination by the Supplier*) that it intends to terminate this Agreement in part and RSSB, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of RSSB Requirements, then RSSB shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.4, in assessing the significance of any part of RSSB Requirements, regard shall be had not only to the proportion of that part to RSSB Requirements as a whole, but also to the importance of the relevant part to RSSB.
- 33.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
  - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Agreement and must be reasonable; and
  - (c) the Supplier shall not be entitled to reject the Change.

## 34 CONSEQUENCES OF EXPIRY OR TERMINATION

### General Provisions on Expiry or Termination

- 34.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.4 and 10.5 (*VAT*), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

### Exit Management

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

### Payments by RSSB

- 34.3 If this Agreement is terminated by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*), RSSB shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

(a) the Termination Payment

- 34.4 If this Agreement is terminated (in part or in whole) by RSSB pursuant to Clauses 33.1(a), 33.1(b), 33.1 (c), 33.1 (d) and/or 33.2 (*Termination by RSSB*), or the Term expires, the only payments that RSSB shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

the Termination Payment

- 34.5 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by RSSB*).

**Payments by the Supplier**

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

- 34.7 If this Agreement is terminated (in whole or in part) by RSSB pursuant to Clause 33.1(b) (*Termination by RSSB*) prior to Achievement of one or more CPP Milestones, RSSB may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a “**Milestone Adjustment Payment Notice**”) require the Supplier to repay to RSSB an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

- 34.8 A Milestone Adjustment Payment Notice shall specify:

- (a) each CPP Milestone to which it relates;
- (b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that RSSB wishes to retain, if any (each such Deliverable being a “**Retained Deliverable**”); and
- (c) those Retained Deliverables, if any, the Allowable Price for which RSSB considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an “**Allowable Price Adjustment**”),

and may form part of a Termination Notice.

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

- (a) notify RSSB whether it agrees that the Retained Deliverables which RSSB considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify RSSB of the Supplier’s proposed amount of the Allowable Price Adjustment and the basis for its approval;
- (c) provide RSSB with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant

Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:

- (i) all relevant Milestone Payments; and
  - (ii) the Allowable Price of each Retained Deliverable; and
- (d) provide RSSB with such supporting information as RSSB may require.

34.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

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

- (a) RSSB shall:
  - (i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
  - (ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of RSSB) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,  
in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and
- (b) all licences granted pursuant to Clause 17 (*Licences granted by the Supplier*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

## **SECTION J - MISCELLANEOUS AND GOVERNING LAW**

### **35 COMPLIANCE**

#### **Health and Safety**

- 35.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at RSSB Premises.
- 35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at RSSB Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **Equality and Diversity**

- 35.3 The Supplier shall:
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) RSSB's equality and diversity policy as provided to the Supplier from time to time; and
    - (iii) any other requirements and instructions which RSSB reasonably imposes in connection with any equality obligations imposed on RSSB at any time under applicable equality Law; and
  - (b) take all necessary steps, and inform RSSB 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).

### **36 ASSIGNMENT AND NOVATION**

- 36.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of RSSB.
- 36.2 RSSB may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
  - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by RSSB,

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

- 36.3 A change in the legal status of RSSB shall not (subject to Clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to RSSB.
- 36.4 If RSSB assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds RSSB (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of RSSB under limb (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and references to a Party in the definition of Insolvency Event were references to the Successor Body).

### **37 WAIVER AND CUMULATIVE REMEDIES**

- 37.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 37.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

### **38 RELATIONSHIP OF THE PARTIES**

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

### **39 PREVENTION OF FRAUD AND BRIBERY**

- 39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 39.2 The Supplier shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause RSSB or any of RSSB's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 39.3 The Supplier shall during the term of this Agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to RSSB on request.
- 39.4 The Supplier shall immediately notify RSSB in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 39.5 If the Supplier makes a notification to RSSB pursuant to Clause 39.4, the Supplier shall respond promptly to RSSB's enquiries, co-operate with any investigation, and allow RSSB to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).
- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, RSSB may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Agreement.
- 39.7 Any notice served by RSSB under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who RSSB believes has committed the Prohibited Act and the action that RSSB has elected to take (including, where relevant, the date on which this Agreement shall terminate).

#### 40 **SEVERANCE**

- 40.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*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 Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 40.3.

#### 41 **FURTHER ASSURANCES**

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

#### 42 **ENTIRE AGREEMENT**

- 42.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

#### 43 **THIRD PARTY RIGHTS**

- 43.1 The provisions of Clause 19.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 43.2 Subject to Clause 43.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of RSSB, which may, if given, be given on and subject to such terms as RSSB may determine.
- 43.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**44 NOTICES**

- 44.1 Any notices sent under this Agreement must be in writing.
- 44.2 Subject to Clause 44.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

	Supplier	Authority
Contact	tbc	tbc
Address		
Email		

44.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 44.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 33.3 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

44.6 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

## 45 **DISPUTES**

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

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

## 46 **GOVERNING LAW AND JURISDICTION**

46.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

46.2 Subject to Clause 45 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including RSSB's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

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

**EXECUTED AS A DEED**, but not delivered )  
until the date specified on this deed, by )  
**[name of the Supplier]** by a director in )  
the presence of a witness: ) Signature:

Name (block  
capitals):

**Director**

Witness  
signature:

Witness name  
(block capitals):

Witness address:

**SIGNED** for and on behalf of the Rail Safety and Standards Board Limited

Signature:

Name (block capitals):

Position:

Date:

## SCHEDULE 1

### Definitions

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

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

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

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

- “Affected Party”**
- the Party seeking to claim relief in respect of a Force Majeure Event;

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

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

$$A - B$$

where:

- (a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and

(b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

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

**“Allowable Price Adjustment”**

has the meaning given in Clause 34.8(c) (*Payments by the Supplier*);

**“Annual Contract Report”**

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

<b>“Approved Sub-Licensee”</b>	<p>any of the following:</p> <ul style="list-style-type: none"> <li>(a) a Central Government Body;</li> <li>(b) any third party providing services to a Central Government Body;</li> <li>(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by RSSB; and</li> <li>(d) any body that is a member of RSSB</li> <li>(e) Any body that is a member of the RISQS Scheme</li> </ul>
<b>“Assets”</b>	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding RSSB Assets;
<b>“ATP Milestone”</b>	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
<b>“Audit”</b>	any exercise by RSSB of its Audit Rights pursuant to Clause 12 ( <i>Records, Reports, Audit and Open Book Data</i> ) and Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>“Audit Agents”</b>	<ul style="list-style-type: none"> <li>(a) RSSB’s internal and external auditors;</li> <li>(b) RSSB’s statutory or regulatory auditors;</li> <li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>(d) HM Treasury or the Cabinet Office;</li> <li>(e) any party formally appointed by RSSB to carry out audit or similar review functions; and</li> <li>(f) successors or assigns of any of the above;</li> </ul>
<b>“Audit Rights”</b>	the audit and access rights referred to in Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>“Authority Assets”</b>	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to RSSB and which is

or may be used in connection with the provision or receipt of the Services;

**“Authority Background IPRs”**

- (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures; and/or
- (b) IPRs created by RSSB independently of this Agreement;

But excluding IPRs owned by RSSB subsisting in RSSB Software;

**“Authority Cause”**

any material breach by RSSB of any of RSSB Responsibilities, except to the extent that such breach is:

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

**“Authority Data”**

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (i) supplied to the Supplier by or on behalf of RSSB; and/or

- (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or

- (b) any Personal Data for which RSSB is the Data Controller;

- (c) RISQS Scheme Member Data

**“Authority IT Strategy”**

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

**“Authority Materials”**

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

- (a) are owned or used by or on behalf of

RSSB; and

(b) are or may be used in connection with the provision or receipt of the Services,

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

**“Authority Premises”**

premises owned, controlled or occupied by RSSB (or RISQS Scheme Members) which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);and

**“Authority Representative”**

the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);

**“Authority Requirements”**

the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Indicators*), 2.3 (*Standards*), 2.4 (*Security Management*), 2.5 (*Insurance Requirements*), 6.1 (*Implementation Plan*), 8.4 (*Records Provisions*), 8.5 (*Exit Management*) and 8.6 (*Business Continuity and Disaster Recovery*);

**“Authority Responsibilities”**

the responsibilities of the Authority specified in Schedule 3 (*Authority Responsibilities*);

**“Authority Software”**

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

**“Authority System”**

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

**“Authority to Proceed” or “ATP”**

the authorisation to the Supplier to commence the provision of the relevant Operational Services to RSSB, provided by RSSB in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;

**“Baseline Security Requirements”**

RSSB's baseline security requirements, the current copy of which is contained in Annex 1 of

	Schedule 2.4 ( <i>Security Management</i> ), as updated from time to time by RSSB and notified to the Supplier;
“BCDR Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 ( <i>Business Continuity and Disaster Recovery</i> ), as may be amended from time to time;
“BCDR Services”	the business continuity and disaster recovery services set out in Schedule 8.6 ( <i>Business Continuity and Disaster Recovery</i> );
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 ( <i>Payments on Termination</i> );
“Central Government Body”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>(a) Government Department;</li> <li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>(c) Non-Ministerial Department; or</li> <li>(d) Executive Agency;</li> </ul>
“Certificate of Costs”	has the meaning given in Schedule 7.1 ( <i>Charges and Invoicing</i> );
“Change”	any change to this Agreement;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 ( <i>Change Control Procedure</i> );
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.2 ( <i>Change Control Procedure</i> );
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 ( <i>Change Control Procedure</i> );
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with

Schedule 7.1 (*Charges and Invoicing*), including any Milestone Payment or Service Charge;

**“Commercially Sensitive Information”** the information listed in Schedule 4.2 (*Commercial Sensitive Information*) comprising the information of a commercially sensitive nature relating to the Supplier, its IPRs or its business or which the Supplier has indicated to RSSB that, if disclosed by RSSB, would cause the Supplier significant commercial disadvantage or material financial loss;

**“Comparable Supply”** the supply of services to another customer of the Supplier that are the same or similar to any of the Services;

**“Compensation for Unacceptable KPI Failure”** has the meaning given in Clause 7.4(a) (*Unacceptable KPI Failure*);

**“Confidential Information”**

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

- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
  1. performance under this Agreement; or
  2. failure to pay any Sub-contractor as required pursuant to Clause 15.11(a) (*Supply Chain Protection*);

**“Contract Change”** any change to this Agreement other than an Operational Change;

**“Contract Year”**

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

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

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

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

**“CPP Milestone”** a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (*Testing Procedures*);

<b>“Critical Performance Failure”</b>	<ul style="list-style-type: none"> <li>(a) the Supplier accruing in aggregate [<i>insert number</i>] or more Service Points (in terms of the number of points allocated) in any period of [<i>insert number</i>] months; or</li> <li>(b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;</li> </ul>
<b>“CRTPA”</b>	the Contracts (Rights of Third Parties) Act 1999;
<b>“Data Controller”</b>	has the meaning given in the DPA;
<b>“Data Processor”</b>	has the meaning given in the DPA;
<b>“Data Subject”</b>	has the meaning given in the DPA;
<b>“Data Subject Access Request”</b>	a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>“Deductions”</b>	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to RSSB under this Agreement;
<b>“Default”</b>	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> <li>(a) in the case of RSSB, of its employees, servants, agents; or</li> <li>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</li> </ul> <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
<b>“Defect”</b>	<ul style="list-style-type: none"> <li>(a) any error, damage or defect in the manufacturing of a Deliverable; or</li> <li>(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>(c) any failure of any Deliverable to provide the</li> </ul>

	performance, features and functionality specified in RSSB Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or
	(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in RSSB Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
<b>“Delay”</b>	(a) a delay in the Achievement of a Milestone by its Milestone Date; or  (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
<b>“Delay Deduction Period”</b>	the period of 30 days commencing on the relevant Milestone Date;
<b>“Delay Payments”</b>	the amounts payable by the Supplier to RSSB in respect of a Delay in Achieving a Key Milestone as specified in Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>“Deliverable”</b>	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
<b>“Design Services”</b>	the design services described as such in the Services Description;
<b>“Design Services Commencement Date”</b>	<b>[the Effective Date];</b>
<b>“Detailed Implementation Plan”</b>	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 ( <i>Implementation Plan</i> );
<b>“Disclosing Party”</b>	has the meaning given in Clause 21.1 ( <i>Confidentiality</i> );
<b>“Disclosing Party Group”</b>	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier;

and

(b) where the Disclosing Party is RSSB, RSSB and any Central Government Body with which RSSB or the Supplier interacts in connection with this Agreement;

**“Dispute”**

any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

**“Dispute Notice”**

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

**“Dispute Resolution Procedure”**

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

**“Documentation”**

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

- (a) is required to be supplied by the Supplier to RSSB under this Agreement;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by RSSB to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

<b>“DOTAS”</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>“DPA”</b>	the Data Protection Act 1998 and any other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Central Government Body in relation to such Laws;
<b>“Due Diligence Information”</b>	any information supplied to the Supplier by or on behalf of RSSB prior to the Effective Date;
<b>“Effective Date”</b>	(a) the date on which this Agreement is signed by both Parties; [and]
<b>“EIRs”</b>	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issues by the Information Commissioner or any Central Government Body in relation to such Regulations;
<b>“Emergency Maintenance”</b>	ad hoc and unplanned maintenance provided by the Supplier where: <ul style="list-style-type: none"> <li>(a) RSSB reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or</li> <li>(b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have</li> </ul>

developed a fault;

**“Employee Liabilities”**

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

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**“Employment Regulations”**

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

**“Estimated Year 1 Charges”**

the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;

**“Estimated Initial Service Charges”**

the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as

## **“Euro Compliant”**

set out in the Financial Model;

means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect RSSB’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- (a) be able to perform all such functions in any number of currencies and/or in euros;
- (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
- (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (d) incorporate protocols for dealing with rounding and currency conversion;
- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (f) permit the input of data in euro and display an outcome in euro where such data, supporting RSSB’s normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

## **“Exit Management”**

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

<b>“Exit Plan”</b>	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 ( <i>Exit Management</i> );
<b>“Expedited Dispute Timetable”</b>	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Expert”</b>	has the meaning given in Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Expert Determination”</b>	the process described in Paragraph 6 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Extension Period”</b>	a period of 2 x 1years from the end of the Initial Term;
<b>“Financial Distress Event”</b>	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 ( <i>Financial Distress</i> );
<b>“Financial Distress Service Continuity Plan”</b>	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
<b>“Financial Reports”</b>	has the meaning given in Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>“Financial Transparency Objectives”</b>	has the meaning given in Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>“FOIA”</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
<b>“Force Majeure Event”</b>	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local

government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;

**“Force Majeure Notice”**

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

**“Former Supplier”**

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

**“General Anti-Abuse Rule”**

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

**“General Change in Law”**

a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

**“Good Industry Practice”**

at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like RSSB, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

**“Goods”**

has the meaning given in Clause 9.7 (*Supply of Goods*);

**“Halifax Abuse Principle”**

the principle explained in the CJEU Case C-255/02

	Halifax and others;
“Health and Safety Policy”	the health and safety policy of RSSB and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 8.2 ( <i>Change Control Procedure</i> );
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by RSSB pursuant to Paragraph 3 of Schedule 6.1 ( <i>Implementation Plan</i> )) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6.1 ( <i>Implementation Plan</i> ) from time to time;
“Implementation Services”	the implementation services described as such in the Services Description;
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Implementation Services;
“Indemnified Person”	RSSB and each and every person to whom RSSB (or any direct or indirect sub-licensee of RSSB) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period of <b>48months</b> from and including the Effective Date;
“Insolvency Event”	(a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits

inability to pay its debts, or:

- (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
  - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
  - (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
  - (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
  - (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - (f) where the other Party is a company, a LLP or a partnership:
    - (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole

purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;

(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or

(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

**“Intellectual Property Rights” or “IPRs”**

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

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

**“Intervention Cause”**

has the meaning given in Clause Clause 29.1(b) (Remedial Adviser);

<b>“Intervention Notice”</b>	has the meaning given in Clause 29.1(b) ( <i>Remedial Adviser</i> );
<b>“Intervention Period”</b>	has the meaning given in Clause 29.2(c) ( <i>Remedial Adviser</i> );
<b>“Intervention Trigger Event”</b>	<ul style="list-style-type: none"> <li>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</li> <li>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</li> <li>(c) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or</li> <li>(d) the Supplier not Achieving a Key Milestone within 75 days of its relevant Milestone Date;</li> </ul>
<b>“IPRs Claim”</b>	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of RSSB Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
<b>“IT”</b>	information and communications technology;
<b>“IT Environment”</b>	RSSB System and the Supplier System;
<b>“Key Milestone”</b>	the Milestones identified in the Implementation Plan as key milestones and in respect of which

Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;

**“Key Performance Indicator”**

the key performance indicators set out in Table 1 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*);

**“Key Personnel”**

those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (*Key Personnel*);

**“Key Roles”**

a role described as a Key Role in Schedule 9.2 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 14.4 (*Key Personnel*);

**“Key Sub-contract”**

each Sub-contract with a Key Sub-contractor;

**“Key Sub-contractor”**

any Sub-contractor:

- (a) which, in the opinion of RSSB, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement;

**“Know-How”**

all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;

**“KPI Failure”**

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

**“KPI Service Threshold”**

shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of

Annex 1 of Schedule 2.2 (*Performance Levels*);

<b>“Law”</b>	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Licensed Software”</b>	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to RSSB for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;
<b>“Losses”</b>	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
<b>“Maintenance Schedule”</b>	shall have the meaning set out in Clause 9.4 ( <i>Maintenance</i> );
<b>“Malicious Software”</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>“Management Information”</b>	the management information specified in Schedule 2.2 ( <i>Performance Levels</i> ), Schedule 7.1 ( <i>Charges and Invoicing</i> ) and Schedule 8.1 ( <i>Governance</i> ) to be provided by the Supplier to RSSB;
<b>“Material KPI Failure”</b>	(a) a Serious KPI Failure; (b) a Severe KPI Failure; or (c) a failure by the Supplier to meet a KPI

Service Threshold;

**“Measurement Period”**

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

**“Milestone”**

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

**“Milestone Achievement Certificate”**

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

**“Milestone Adjustment Payment Amount”**

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

$$A - B$$

where:

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

**“Milestone Adjustment Payment Notice”**

has the meaning given in Clause 34.7 (*Payments by the Supplier*);

<b>“Milestone Date”</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>“Milestone Payment”</b>	a payment identified in Schedule 7.1 ( <i>Charges and Invoicing</i> ) to be made following the issue of a Milestone Achievement Certificate;
<b>“Milestone Retention”</b>	has the meaning given in Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>“Minor KPI Failure”</b>	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>“month”</b>	a calendar month and <b>“monthly”</b> shall be interpreted accordingly;
<b>“Multi-Party Dispute Resolution Procedure”</b>	has the meaning given in Paragraph 9.1 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Multi-Party Procedure Initiation Notice”</b>	has the meaning given in Paragraph 9.2 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“New Releases”</b>	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>“Non-trivial Customer Base”</b>	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
<b>“Non-retained Deliverables”</b>	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to RSSB which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;
<b>“Notifiable Default”</b>	shall have the meaning given in Clause 27.1( <i>Rectification Plan Process</i> );
<b>“Object Code”</b>	software and/or data in machine-readable, compiled object code form;

<b>“Occasion of Tax Non-Compliance”</b>	<ul style="list-style-type: none"> <li>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</li> </ul> </li> <li>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</li> </ul>
<b>“Open Source Software”</b>	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
<b>“Operating Environment”</b>	RSSB System and the Sites;
<b>“Operational Change”</b>	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"> <li>(a) will not affect the Charges and will not result in any other costs to RSSB;</li> <li>(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;</li> </ul>

		(c) will not adversely affect the interfaces or interoperability of the Services with any of RSSB's IT infrastructure; and
		(d) will not require a change to this Agreement;
<b>“Operational Service Commencement Date”</b>		in relation to an Operational Service, the later of: <ul style="list-style-type: none"> <li>(a) the date in the Extension Period identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and</li> <li>(b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date in the Extension Period upon which the Supplier Achieves the relevant ATP Milestone;</li> </ul>
<b>“Operational Services”</b>		the operational services described as such in the Services Description;
<b>“Optional Services”</b>	the	services described as such in Schedule 2.1 ( <i>Services Description</i> ) which are to be provided by the Supplier if required by RSSB in accordance with Clause 5.10 ( <i>Optional Services</i> );
<b>“Optional Services Implementation Plan”</b>		the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by RSSB;
<b>“Other Supplier”</b>	any	supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
<b>“Outline Implementation Plan”</b>		the outline plan set out at Annex 1 of Schedule 6.1 ( <i>Implementation Plan</i> );
<b>“Partial Termination”</b>	the	partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 33.2(b) ( <i>Termination by RSSB</i> ) or 33.3(b) ( <i>Termination by the Supplier</i> );
<b>“Parties” and “Party”</b>		have the meanings respectively given on page 1 of this Agreement;

<b>“Performance Failure”</b>	a KPI Failure or a PI Failure;
<b>“Performance Indicators”</b>	the Key Performance Indicators and the Subsidiary Performance Indicators;
<b>“Permitted Maintenance”</b>	has the meaning given in Clause 9.4 ( <i>Maintenance</i> );
<b>“Performance Monitoring Report”</b>	has the meaning given in Schedule 2.2 ( <i>Performance Levels</i> );
<b>“Personal Data”</b>	personal data (as defined in the DPA) which is Processed by the Supplier or any Sub-contractor on behalf of RSSB or a Central Government Body pursuant to or in connection with this Agreement;
<b>“PI Service Threshold”</b>	shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part I of Annex 1 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>“Preceding Services”</b>	has the meaning given in Clause 5.2(b) ( <i>Standard of Services</i> );
<b>“Process”</b>	has the meaning given to it under the DPA and “ <b>Processed</b> ” and “ <b>Processing</b> ” shall be construed accordingly;
<b>“Programme Board”</b>	the body described in Paragraph 5 of Schedule 8.1 ( <i>Governance</i> );
<b>“Prohibited Act”</b>	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by RSSB a financial or other advantage to:</p> <p style="margin-left: 40px;">(i) induce that person to perform improperly a relevant function or activity; or</p> <p style="margin-left: 40px;">(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this</p>

Agreement;

(c) an offence:

- (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) defrauding, attempting to defraud or conspiring to defraud RSSB; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**“Project Specific IPRs”**

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

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

**“Quality Plans”**

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

**“Quarter”**

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

**“Recipient”**

has the meaning given in Clause 21.1 (*Confidentiality*);

**“Records”**

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

**“Rectification Plan”**

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

**“Rectification Plan Failure”**

- (a) the Supplier failing to submit or resubmit a

draft Rectification Plan to RSSB within the timescales specified in Clauses 27.4 (*Submission of the draft Rectification Plan*) or 27.8 (*Agreement of the Rectification Plan*);

- (b) RSSB, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.7 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:
  - (i) 30 Working Days of a notification made pursuant to Clause 27.2 (*Notification*); and
  - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

**“Rectification Plan Process”**

the process set out in Clauses 27.4 (*Submission of the Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*);

**“Registers”**

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

<b>“Relevant IPRs”</b>	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to RSSB or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in RSSB Software, RSSB Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
<b>“Relevant Preceding Services”</b>	has the meaning given in Clause 5.2(b) ( <i>Standard of Services</i> );
<b>“Relevant Requirements”</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>“Relevant Tax Authority”</b>	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relief Notice”</b>	has the meaning given in Clause 31.2 ( <i>Authority Cause</i> );
<b>“Remedial Adviser”</b>	the person appointed pursuant to Clause 29.2 ( <i>Remedial Adviser</i> );
<b>“Remedial Adviser Failure”</b>	has the meaning given in Clause 29.6 ( <i>Remedial Adviser</i> );
<b>“Replacement Services”</b>	any services which are the same as or substantially similar to any of the Services and which RSSB receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by RSSB internally and/or by any third party;
<b>“Replacement Supplier”</b>	any third party service provider of Replacement

	Services appointed by RSSB from time to time (or where RSSB is providing replacement Services for its own account, RSSB);
<b>“Request For Information”</b>	a Request for Information under the FOIA or the EIRs;
<b>“Required Action”</b>	has the meaning given in Clause 30.1(a) ( <i>Step-In Rights</i> );
<b>“Restricted Countries”</b>	has the meaning given in Clause 23.3 ( <i>Protection of Personal Data</i> );
<b>“Retained Deliverables”</b>	has the meaning given in Clause 34.8(b) ( <i>Payments by the Supplier</i> );
<b>“Risk Register”</b>	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>“Security Management Plan”</b>	the Supplier's security plan as attached as Annex 2 of Schedule 2.4 ( <i>Security Management</i> ) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 2.4 ( <i>Security Management</i> );
<b>“Serious KPI Failure”</b>	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of (Schedule 2.2 ( <i>Performance Levels</i> ));
<b>“Service Charges”</b>	the periodic payments made in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ) in respect of the supply of the Operational Services;
<b>“Service Credit Cap”</b>	(a) in the period of 12 months from the first Operational Service Commencement Date to occur after the Effective Date, <b>15%</b> of the Estimated Initial Service Charges; and  (b) during the remainder of the Term, 15% of the Service Charges paid and/or due to be paid to the Supplier under this Agreement in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;
<b>“Service Credits”</b>	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in

accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);

**“Service Period”**

a calendar month, save that:

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

**“Service Points”**

in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 2.2 (*Performance Levels*);

**“Services”**

any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (*Services Description*);

**“Service Transfer Date”**

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

**“Services Description”**

the services description set out in Schedule 2.1 (*Services Description*);

**“Severe KPI Failure”**

shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*);

**“Sites”**

any premises (including RSSB Premises, the Supplier’s premises or third party premises):

(a) from, to or at which:

- (i) the Services are (or are to be) provided; or
- (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

- (i) any part of the Supplier System is situated; or

- (ii) any physical interface with RSSB System takes place;

<b>“Software”</b>	Specially Written Software, Supplier Software and Third Party Software;
<b>“Software Supporting Materials”</b>	has the meaning given in Clause 17.1(b) ( <i>Specially Written Software and Project Specific IPRs</i> );
<b>“Source Code”</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>“Specially Written Software”</b>	<p>any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including:</p> <ul style="list-style-type: none"><li>(a) any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of such software; and</li><li>(b) any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement;</li></ul>
<b>“Specific Change in Law”</b>	a Change in Law that relates specifically to the business of RSSB and which would not affect a Comparable Supply;
<b>“Staffing Information”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“Standards”</b>	the standards, polices and/or procedures identified in Schedule 2.3 ( <i>Standards</i> );
<b>“Step-In Notice”</b>	has the meaning given in Clause 30.1 ( <i>Step-In Rights</i> );
<b>“Step-In Trigger Event”</b>	<ul style="list-style-type: none"><li>(a) any event falling within the definition of a Supplier Termination Event;</li><li>(b) a Default by the Supplier that is materially</li></ul>

preventing or materially delaying the performance of the Services or any material part of the Services;

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

**“Step-Out Date”** has the meaning given in Clause 30.5(b) (*Step-In Rights*);

**“Step-Out Notice”** has the meaning given in Clause 30.5 (*Step-In Rights*);

**“Step-Out Plan”** has the meaning given in Clause 30.6 (*Step-In Rights*);

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

**“Sub-contractor”** any third party with whom:

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

	Sub-contract, or the servants or agents of that third party;
<b>“Subsidiary Performance Indicator”</b>	the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2.2 ( <i>Performance Levels</i> );
<b>“Successor Body”</b>	has the meaning given in Clause 36.4 ( <i>Assignment and Novation</i> );
<b>“Supplier Background IPRs”</b>	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
<b>“Supplier COTS Background IPRs”</b>	<p>Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
<b>“Supplier COTS Software”</b>	<p>Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p>

	(b) has a Non-trivial Customer Base;
<b>“Supplier Equipment”</b>	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from RSSB) for the provision of the Services;
<b>“Supplier Non-COTS Background IPRs”</b>	Supplier Background IPRs that are not Supplier COTS Background IPRs;
<b>“Supplier Non-COTS Software”</b>	Supplier Software that is not Supplier COTS Software;
<b>“Supplier Non-Performance”</b>	has the meaning given in Clause 31.1 ( <i>Authority Cause</i> );
<b>“Supplier Personnel”</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
<b>“Supplier Representative”</b>	the representative appointed by the Supplier pursuant to Clause 11.3 ( <i>Representatives</i> );
<b>“Supplier Software”</b>	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 ( <i>Software</i> );
<b>“Supplier Solution”</b>	the Supplier’s solution for the Services set out in Schedule 4.1 ( <i>Supplier Solution</i> ) including any Annexes of that Schedule;
<b>“Supplier System”</b>	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding RSSB System);
<b>“Supplier Termination Event”</b>	(a) the Supplier’s level of performance

- constituting a Critical Performance Failure;
- (b) the Supplier committing a material Default which is irremediable;
  - (c) as a result of the Supplier's Default, RSSB incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 25.6(a) (*Financial Limits*);
  - (d) a Remedial Adviser Failure;
  - (e) a Rectification Plan Failure;
  - (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
    - (i) Clause 19 (*IPRs Indemnity*);
    - (ii) Clause 39.6(b) (*Prevention of Fraud and Bribery*); and/or
    - (iii) Paragraph 4 of Schedule 7.4 (*Financial Distress*);
  - (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (*Warranties*) being materially untrue or misleading;
  - (h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of RSSB are acceptable;
  - (i) the Supplier committing a material Default under any of the following Clauses:
    - (i) Clause 5.5(j) (*Services*);
    - (ii) Clause 23 (*Protection of Personal Data*);
    - (iii) Clause 22 (*Freedom of Information*);
    - (iv) Clause 21 (*Confidentiality*); and
    - (v) Clause 35 (*Compliance*); and/or
- in respect of any security requirements set out in Schedule 2.1 (*Services Description*),

- Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or
- in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
- (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (*Benchmarking*);
  - (k) an Insolvency Event occurring in respect of the Supplier
  - (l) a change of Control of the Supplier unless:
    - (i) RSSB has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (ii) RSSB has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which RSSB was given notice of the Change of Control; or
  - (m) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by RSSB that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by RSSB pursuant to Clause 15.6 (*Appointment of Key Sub- contractors*); or
  - (n) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (*Staff Transfer*).

**“Target Performance Level”**

the minimum level of performance for a Performance Indicator which is required by RSSB, as set out against the relevant

Performance Indicator in the tables in Annex 1 of Schedule 2.2 (*Performance Levels*);

<b>“Term”</b>	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
<b>“Termination Assistance Notice”</b>	has the meaning given in Paragraph 5.10 of Schedule 8.5 ( <i>Exit Management</i> );
<b>“Termination Assistance Period”</b>	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 ( <i>Exit Management</i> );
<b>“Termination Date”</b>	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
<b>“Termination Notice”</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
<b>“Termination Payment”</b>	the payment determined in accordance with Schedule 7.2 ( <i>Payments on Termination</i> );
<b>“Termination Services”</b>	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 ( <i>Exit Management</i> ), and any other services required pursuant to the Termination Assistance Notice;
<b>“Test Issues”</b>	has the meaning given in Schedule 6.2 ( <i>Testing Procedures</i> );
<b>“Tests” and “Testing”</b>	any tests required to be carried out under this Agreement, as further described in Schedule 6.2 ( <i>Testing Procedure</i> ) and “Tested” shall be construed accordingly;
<b>“Test Success Criteria”</b>	has the meaning given in Schedule 6.2 ( <i>Testing Procedures</i> );
<b>“Third Party Beneficiary”</b>	has the meaning given in Clause 43.1 ( <i>Third Party</i>

	<i>Rights</i> );
<b>“Third Party COTS IPRs”</b>	Third Party IPRs that: <ul style="list-style-type: none"> <li>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</li> <li>(b) has a Non-trivial Customer Base;</li> </ul>
<b>“Third Party COTS Software”</b>	Third Party Software (including open source software) that: <ul style="list-style-type: none"> <li>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</li> <li>(b) has a Non-trivial Customer base;</li> </ul>
<b>“Third Party IPRs”</b>	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
<b>“Third Party Non-COTS IPRs”</b>	Third Party IPRs that are not Third Party COTS IPRs;
<b>“Third Party Non-COTS Software”</b>	Third Party Software that is not Third Party COTS Software;
<b>“Third Party Provisions”</b>	has the meaning given in Clause 43.1 ( <i>Third Party Rights</i> );
<b>“Third Party Software”</b>	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 ( <i>Software</i> );
<b>“Transferring Assets”</b>	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 ( <i>Exit Management</i> );
<b>“Transferring Authority Employees”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );

<b>“Transferring Former Supplier Employees”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“Transferring Supplier Employees”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“UK”</b>	the United Kingdom;
<b>“Unacceptable KPI Failure”</b>	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
<b>“Unrecovered Payment”</b>	has the meaning given in Schedule 7.2 ( <i>Payments on Termination</i> );
<b>“Updates”</b>	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
<b>“Upgrades”</b>	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
<b>“VAT”</b>	value added tax as provided for in the Value Added Tax Act 1994; and
<b>“Working Day”</b>	any day other than a Saturday, Sunday or public holiday in England and Wales.