

HIGHWAYS ENGLAND
FRAMEWORK AGREEMENT
SCHEDULE 13
CALL-OFF TERMS

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SECTION A - PRELIMINARIES

OPERATIVE PROVISIONS

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. If a capitalised term or phrase used in this Agreement is not defined within Schedule 1 (Definitions) or any other Schedule it shall have the meaning as set out in the Framework Agreement.
- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
 - 1.2.5.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("EU References") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - 1.2.5.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
 - 1.2.6 any references to "re-enacted" in respect of any statute or statutory provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland;
 - 1.2.7 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";
 - 1.2.8 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.9 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - 1.2.10 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

- 1.2.11 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 The Customer shall not be deemed to be in Default pursuant to this Agreement to the extent that any such Default is due to the Default of the Service Provider.
- 1.4 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 Service Provider shall notify the Customer Relationship Manager and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.5 If there is any conflict between the clauses and the Schedules and/or any annexes to the schedules and/or any conflict between the Schedules and/or between annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.5.1 the Framework Agreement;
 - 1.5.2 the Task Order (except for the Service Provider Solution);
 - 1.5.3 the clauses and Schedule 1 (Definitions) of this Agreement;
 - 1.5.4 the Services Description and Schedule 2 (Performance Levels);
 - 1.5.5 any other Schedules and their annexes (except for the Service Provider Solution);
 - 1.5.6 the Service Provider Solution; and
 - 1.5.7 any other document referred to in this or any other document attached to this Agreement.
- 1.6 The Schedules and their Annexes form part of this Agreement.

2. **DUE DILIGENCE**

- 2.1 The Service Provider acknowledges that:
 - 2.1.1 the Customer has delivered or made available to the Service Provider all of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call-Off Effective Date) of all relevant details relating to:
 - 2.1.3.1 the Customer Requirements;
 - 2.1.3.2 the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call-Off Effective Date) future Operating Environment;
 - 2.1.3.3 the operating processes and procedures and the working methods of the Customer;

- 2.1.3.4 the ownership, functionality, capacity, condition and suitability for use in the Services of the Customer Assets; and
- 2.1.3.5 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 Service Provider under this Agreement and/or which the Service Provider will require the benefit of for the provision of the Services; and
- 2.1.4 it has advised the Customer Relationship Manager in writing of:
 - 2.1.4.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - 2.1.4.2 the actions needed to remedy each such unsuitable aspect; and
 - 2.1.4.3 a timetable for and, to the extent that such costs are to be payable to the Service Provider, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Task Order.
- 2.2 The Service Provider shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Service Provider be entitled to recover any additional costs or charges, arising as a result of:
 - 2.2.1 any unsuitable aspects of the Operating Environment;
 - 2.2.2 any misinterpretation of the Customer Requirements; and/or
 - 2.2.3 any failure by the Service Provider to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. **SPIRIT OF TRUST AND CO-OPERATION**

- 3.1 The Customer, the Customer Relationship Manager, the Service Provider and the Service Provider Representative shall act as stated in this Agreement and in a spirit of mutual trust and cooperation.
- 3.2 The Service Provider shall act in a spirit of mutual trust and cooperation with the Other Service Providers to the extent reasonably necessary in connection with its obligations under this Agreement.

4. **WARRANTIES**

- 4.1 The Customer represents and warrants that:
 - 4.1.1 it has full capacity and authority to enter into and to perform this Agreement;
 - 4.1.2 this Agreement is executed by its duly authorised representative;
 - 4.1.3 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
 - 4.1.4 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).

4.2 The Service Provider represents and warrants that:

- 4.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 4.2.2 it has full capacity and authority to enter into and to perform this Agreement;
- 4.2.3 this Agreement is executed by its duly authorised representative;
- 4.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
- 4.2.5 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;
- 4.2.6 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;
- 4.2.7 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);
- 4.2.8 all written statements and representations in any written submissions made by the Service Provider as part of the Ordering Procedure relating to this Agreement, including in the Task Order as provided by the Service Provider, 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 Service Provider has otherwise disclosed to the Customer in writing prior to the date of this Agreement;
- 4.2.9 it has notified the Customer Relationship Manager 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;
- 4.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Service Provider Background IPRs and any other materials made available by the Service Provider (and/or any Sub-contractor) to the Customer which are necessary for the performance of the Service Provider's obligations under this Agreement and/or the receipt of the Services by the Customer;
- 4.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Service Provider Profit Margin forecast by the Service Provider and the Service Provider does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- 4.2.12 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;
- 4.2.13 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 Service Provider 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 Service Provider's assets or revenue;

- 4.2.14 within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist; and
- 4.2.15 the Service Provider Solution and the Software are, save as and to the extent explicitly provided otherwise in the Task Order, COTS based and not bespoke.
- 4.3 The representations and warranties set out in clause 4.2 shall be deemed to be repeated by the Service Provider on the Call-Off Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 4.4 Each of the representations and warranties set out in clauses 4.1 and 4.2 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.
- 4.5 If at any time a Party becomes aware that a representation or warranty given by it under clause 4.1 or 4.2 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.
- 4.6 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 the Customer may have in respect of breach of that provision by the Service Provider.
- 4.7 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

5. TERM

- 5.1 This Agreement shall come into force on the Call-Off Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with clause 31 (Termination Rights), shall terminate:
 - 5.1.1 at the end of the Initial Term;
 - 5.1.2 if the Customer elects to extend the Initial Term by giving the Service Provider at least six (6) months' notice before the end of the Initial Term, at the end of the Extension Period; or
 - 5.1.3 if the Customer elects to extend any Extension Period by giving the Service Provider at least six (6) months' notice before the end of an Extension Period, at the end of the final Extension Period,

provided that the aggregate duration of all Extension Periods shall be no longer than the Maximum Extension Period.

6. HARDWARE

- 6.1 To the extent that the Services Description identifies Hardware, the provisions of clause 6 will apply in relation to such Hardware.
- 6.2 The Service Provider will:

- 6.2.1 deliver the Hardware to the relevant Customer Premises as set out in the applicable Project Plan; and
 - 6.2.2 if following inspection or testing the Customer Relationship Manager considers that any Hardware does not comply with clause 6.4, the Customer Relationship Manager shall inform the Service Provider and the Service Provider shall, notwithstanding the fact that risk may have already passed to the Customer pursuant to clause 6.3, at its own cost immediately take such remedial action as is necessary to ensure compliance.
- 6.3 Title to and risk in each item of Hardware will pass to the Customer on delivery of that Hardware to the relevant Customer's Premises.
- 6.4 The Service Provider warrants and represents that, in performing its obligations under this Agreement, the Hardware will:
- 6.4.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 6.4.2 be free from material defects in design, materials and workmanship;
 - 6.4.3 conform with the relevant specification;
 - 6.4.4 provide the functionality set out in the Service Description and the Service Provider Solution; and
 - 6.4.5 perform in accordance with the warranty set out in the Service Requirements.

7. **SERVICES**

Standard of Services

- 7.1 The Service Provider shall provide the System and the Services from the Effective Date in accordance with the timescales set out in the Project Plan.
- 7.2 The Service Provider shall provide the Operational Services from (and including) the relevant Operational Service Commencement Date.
- 7.3 The Service Provider shall ensure that the System and the Services:
- 7.3.1 comply in all respects with the Services Description; and
 - 7.3.2 are supplied in accordance with the Service Provider Solution and the provisions of this Agreement.
- 7.4 The Service Provider shall:
- 7.4.1 perform its obligations under this Agreement, including in relation to the supply of the System, the Services and any Hardware in accordance with:
 - 7.4.1.1 all applicable Law;
 - 7.4.1.2 Good Industry Practice;
 - 7.4.1.3 the Standards;
 - 7.4.1.4 the Baseline Security Requirements;
 - 7.4.1.5 the Quality Plans;

- 7.4.1.6 the Service Provider's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 7.4.1.1 to 7.4.1.5; and
- 7.4.1.7 deliver the Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money.

7.5 In the event that the Service Provider becomes aware of any inconsistency between the requirements of clauses 7.4.1.1 to 7.4.1.5, the Service Provider shall immediately notify the Customer Relationship Manager in writing of such inconsistency and the Customer Relationship Manager shall, as soon as practicable, notify the Service Provider which requirement the Service Provider shall comply with.

Service Provider covenants

7.6 The Service Provider shall:

- 7.6.1 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;
- 7.6.2 save to the extent that obtaining and maintaining the same are Customer Responsibilities and subject to clause 15 (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;
- 7.6.3 ensure that the Service Provider Solution and the Software shall, save as and to the extent explicitly provided otherwise in the Task Order, continue to be COTS based and not bespoke (unless otherwise agreed by the Customer Relationship Manager);
- 7.6.4 ensure that it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Service Provider Background IPRs and any other materials made available by the Service Provider (and/or any Sub-contractor) to the Customer which are necessary for the performance of the Service Provider's obligations under this Agreement and/or the receipt of the Services by the Customer;
- 7.6.5 minimise any disruption to the Services, the IT Environment and/or the Customer's operations when carrying out its obligations under this Agreement;
- 7.6.6 ensure that any Documentation and training provided by the Service Provider to the Customer and/or Customer Relationship Manager are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 7.6.7 co-operate with the Customer, Customer Relationship Manager and any Other Service Providers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Service Provider to enable such Other Service Provider to create and maintain technical or organisational interfaces with the Services;
- 7.6.8 to the extent it is legally able to do so, hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Customer Relationship Manager may notify from time to time to the Service Provider;

- 7.6.9 unless it is unable to do so, assign to the Customer on the Customer Relationship Manager's written request and at the cost of the Service Provider any such warranties and/or indemnities as are referred to in clause 7.6.8;
 - 7.6.10 provide the Customer and Customer Relationship Manager with such assistance as the Customer and/or Customer Relationship Manager may reasonably require during the Term in respect of the supply of the Services;
 - 7.6.11 gather, collate and provide such information and co-operation as the Customer and/or the Customer Relationship Manager may reasonably request for the purposes of ascertaining the Service Provider's compliance with its obligations under this Agreement;
 - 7.6.12 notify the Customer Relationship Manager in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
 - 7.6.13 ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Service Provider's obligations under this Agreement.
- 7.7 An obligation on the Service Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Service Provider to procure that all Sub-contractors and Service Provider Personnel also do, or refrain from doing, such act or thing.
- 7.8 Without prejudice to clauses 22.2 and 22.3 (IPRs Indemnity) and any other rights and remedies of the Customer howsoever arising, the Service Provider shall:
- 7.8.1 remedy any breach of its obligations in clauses 7.6.2 to 7.6.5 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Customer Relationship Manager where practicable or within such other time period as may be agreed with the Customer Relationship Manager (taking into account the nature of the breach that has occurred);
 - 7.8.2 remedy any breach of its obligations in clause 7.6.1 and clauses 7.6.6 to 7.6.11 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Customer Relationship Manager; and
 - 7.8.3 meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Service Provider to comply with its obligations under clause 7.8.1 or clause 7.8.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Software warranty

- 7.9 Without prejudice to clauses 7.6 (Service Provider Covenants) and 7.8 (Services) and any other rights and remedies of the Customer howsoever arising, the Service Provider warrants to the Customer that all components of the Software shall:
- 7.9.1 be free from material design and programming errors;
 - 7.9.2 provide the functionality set out in, and perform in all material respects in accordance, with the relevant specifications contained in the Services Description, Service Provider Solution and the Documentation;
 - 7.9.3 interface with the Customer System as set out in the Services Description and the Service Provider Solution; and

7.9.4 not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

7.10 The Service Provider shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:

7.10.1 any withholding of the Service Charges by the Customer pursuant to clause 9.2.4.2;

7.10.2 the existence of an unresolved Dispute; and/or

7.10.3 any failure by the Customer to pay any Charges,

unless the Service Provider is entitled to terminate this Agreement under clause 31.3.1 (Termination by the Service Provider) for failure to pay undisputed Charges.

Optional Services

7.11 The Customer may require the Service Provider to provide any or all of the Optional Services at any time by the Customer Relationship Manager giving notice to the Service Provider in writing. The Service Provider acknowledges that the Customer is not obliged to take any Optional Services from the Service Provider and that nothing shall prevent the Customer from receiving services that are the same as or similar to the Optional Services from any third party.

7.12 If a Change Request is submitted, the Service Provider shall, as part of the Change Request Information provided by the Service Provider in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.

7.13 Following receipt of the Customer Relationship Manager's notice pursuant to clause 7.11:

7.13.1 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 Service Provider shall provide the relevant Optional Services have already been agreed;

7.13.2 the Service Provider shall implement and Test the relevant Optional Services in accordance with the Optional Services Project Plan;

7.13.3 any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 7 (Charges and Invoicing); and

7.13.4 the Service Provider shall, from the date agreed in the Optional Services Project 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 (Performance Levels).

Power of attorney

7.14 By way of security for the performance of its obligations under clauses 7.6.8 and 7.6.9 (Service Provider covenants) the Service Provider hereby irrevocably appoints the Customer as its agent and attorney to act with full power and authority in the Service Provider'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 7.14 (other than the power to delegate) to officer(s) appointed

for that purpose by the Customer (including the Customer Relationship Manager) and may vary or revoke such delegation at any time.

Customer Responsibilities

- 7.15 The Customer shall comply with its responsibilities set out in the Task Order.
- 7.16 The Service Provider acknowledges and agrees that it shall have no claim against the Customer and that the Customer shall be deemed not to be in Default, to the extent that the Default of the Customer is a failure to comply with the Customer's Responsibilities and such failure is caused or contributed to by the Service Provider, any Affiliate of the Service Provider or any Service Provider Party under this Agreement or any other contract with the Customer or otherwise.

Business Continuity

- 7.17 Within forty (40) Working Days following the Call-Off Effective Date, the Service Provider shall prepare and deliver to the Customer for the Customer's written approval a Business Continuity Plan which shall detail (in sufficient detail as reasonably required by the Customer) the processes and arrangements that the Service Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including any loss of Customer Data or any failure or disruption caused by an Insolvency Event of the Service Provider or any Key Sub-contractor).
- 7.18 The Service Provider will, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover. The Business Continuity Plan will be created and maintained in accordance with Good Industry Practice. The Customer shall be entitled to review the latest version of the Business Continuity Plan on five (5) days' prior notice.
- 7.19 The Service Provider will update the Business Continuity Plan at least once during each rolling period of twelve (12) months during the Term. The Service Provider will also update the Business Continuity Plan (i) within fourteen (14) days of a Financial Distress Event; and (ii) if at any time an amendment to it is reasonably required in order to reflect any Change or any other change to this Agreement, the Services or any other material matters that have occurred since agreement of the last Business Continuity Plan. Not more than ten (10) days after each such update the Service Provider will permit the Customer to review the updated Business Continuity Plan if the Customer wishes to do so. The Service Provider will amend the revised Business Continuity Plan so as to take into account the Customer's reasonable comments. The Service Provider will retain business continuity readiness in accordance with the last approved version of the Business Continuity Plan.
- 7.20 The Service Provider will comprehensively test the Business Continuity Plan on a regular basis and in any event at least once in every rolling twelve (12) month period during the Term and will within twenty (20) Working Days following any test provide the Customer with a written report detailing the results of that test and any remedial actions it proposes to take to address those results.
- 7.21 The Service Provider will implement the Business Continuity Plan in the event that a material part of the Services are impaired or unavailable (or appear likely to be impaired or unavailable) as a result of any occurrence envisaged in the Business Continuity Plan. The Service Provider will notify the Customer in writing each time the Business Continuity Plan is, or should be, implemented.

8. TESTING

Testing

- 8.1 When the Service Provider has completed the Services in respect of a Milestone, the Parties shall follow the applicable provisions of Schedule 6 (Testing Procedures).

Delays

- 8.2 If the Service Provider becomes aware that there is, or there is reasonably likely to be, a Delay:
- 8.2.1 it shall:
 - 8.2.1.1 notify the Customer Relationship Manager in accordance with clause 26.1 (Rectification Plan Process);
 - 8.2.1.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - 8.2.1.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
- 8.3 If there is a Delay relating to a Key Milestone, the provisions of clause 27 (Delay Payments) shall apply.

9. PERFORMANCE INDICATORS

- 9.1 The Service Provider shall:
- 9.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Operational Service Commencement Date; and
 - 9.1.2 comply with the provisions of Schedule 2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

- 9.2 If in any Service Period:
- 9.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7 (Charges and Invoicing);
 - 9.2.2 a Material KPI Failure occurs, the Service Provider shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with clause 9.2.1);
 - 9.2.3 a PI Failure occurs, the Service Provider shall notify the Customer of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
 - 9.2.4 a Material PI Failure occurs:
 - 9.2.4.1 the Service Provider shall comply with the Rectification Plan Process; and
 - 9.2.4.2 the Customer may withhold a proportionate amount of the Service Charges in accordance with the process set out in clause 11.7 (Set Off and Withholding) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Customer Relationship Manager, at which point the Customer shall pay the amount withheld.
- 9.3 Service Credits shall be the Customer's exclusive financial remedy for a KPI Failure except where:
- 9.3.1 the Service Provider has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap;

- 9.3.2 the KPI Failure:
 - 9.3.2.1 breaches the relevant KPI Service Threshold;
 - 9.3.2.2 has arisen due to the wilful default by the Service Provider or any Service Provider Personnel; or
 - 9.3.2.3 results in:
 - (a) the corruption or loss of any Customer Data (in which case the remedies under clause 23.8 (Customer Data and Security Requirements) shall also be available); and/or
 - (b) the Customer being required to make a compensation payment to one or more third parties;
 - 9.3.2.4 the Service Provider has fraudulently misreported its performance against any Performance Indicator; and/or
 - 9.3.2.5 the Customer is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to clause 31.1.2 (Termination by the Customer).

Critical Performance Failure

- 9.4 If a Critical Performance Failure occurs, the Customer may exercise its rights to terminate this Agreement in whole or in part pursuant to clause 31.1 or 31.2 (Termination by the Customer).

Changes to Performance Indicators and Service Credits

- 9.5 Not more than once in each Contract Year the Customer Relationship Manager may, on giving the Service Provider at least three (3) months' notice:
 - 9.5.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
 - 9.5.2 convert one or more:
 - 9.5.2.1 Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - 9.5.2.2 Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Customer Relationship Manager 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).
- 9.6 The Service Provider shall not be entitled to object to any changes made by the Customer Relationship Manager under clause 9.5, or increase the Service Charges as a result of such changes provided that:
 - 9.6.1 the total number of Key Performance Indicators does not exceed twenty (20);
 - 9.6.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and
 - 9.6.3 there is no change to the Service Credit Cap.

10. **EQUIPMENT AND MAINTENANCE**

Service Provider Equipment

- 10.1 The Service Provider shall be solely responsible for the cost of carriage of Service Provider Equipment to the Sites, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Service Provider shall be responsible for the removal and safe disposal of all relevant Service Provider Equipment from the Sites, including the cost of packing, carriage and making good the Sites following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements. For the avoidance of doubt, the Service Provider shall ensure that all Service Provider Equipment is (as applicable) collected, delivered, treated, recovered and disposed of in accordance with the Waste Electrical and Electronic Equipment Regulations 2013 ("**WEEE**") and that all Service Provider Equipment shall be supplied inclusive of any costs or charges for compliance with the collection, delivery, treatment, recovery and environmentally sound disposal of such Service Provider Equipment as required by WEEE.
- 10.2 All the Service Provider's property, including Service Provider Equipment, shall remain at the sole risk and responsibility of the Service Provider.
- 10.3 Subject to any express provision of the Business Continuity Plan to the contrary, the loss or destruction for any reason of any Service Provider Equipment shall not relieve the Service Provider of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.
- 10.4 The Service Provider shall:
- 10.4.1 comply with the provisions of Annex 1 of the Crown Commercial Service's Procurement Policy Note 7/14 entitled "Implementing Article 6 of the Energy Efficiency Directive" ("**PPN7/14**");
 - 10.4.2 ensure that any new products purchased by it for use partly or wholly in the performance of its obligations under this Agreement comply with the standard for products in Directive 2012/27/EU; and
 - 10.4.3 demonstrate to the Customer how any new products purchased by it for use partly or wholly in the performance of its obligations under this Agreement comply with the requirements of PPN7/14.

Maintenance

- 10.5 The Service Provider shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Customer Relationship Manager. Once the Maintenance Schedule has been agreed with the Customer Relationship Manager, the Service Provider shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 10.6 The Service Provider shall give as much notice as is reasonably practicable to the Customer Relationship Manager prior to carrying out any Emergency Maintenance.
- 10.7 The Service Provider 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 AND TAXATION

11. FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 11.1 In consideration of the Service Provider carrying out its obligations under this Agreement, including the provision of the Services, the Customer shall pay the Charges to the Service Provider in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7 (Charges and Invoicing).
- 11.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.
- 11.3 If the Customer fails to pay any undisputed Charges properly invoiced under this Agreement, the Service Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 11.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- 11.5 The Service Provider shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Customer at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under this Agreement. Any amounts due under this clause 11.5 shall be paid in cleared funds by the Service Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 11.6 Where under this Agreement any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment. For the avoidance of doubt, the Service Provider shall not be entitled, without the Customer Relationship Manager's consent, to recover any greater sum than those set out in the Financial Model in the event that it has erroneously excluded the application of VAT to any sum or sums payable by the Customer.

Set-off and Withholding

- 11.7 The Customer may set off any amount owed by the Service Provider:
- 11.7.1 to the Customer against any amount due to the Service Provider under:
- 11.7.1.1 this Agreement; or
- 11.7.1.2 any other agreement between the Service Provider and the Customer; or
- 11.7.2 if the Agreement is transferred (by any means) to any Crown Body, to any Crown Body (including the Customer) against any amount due to the Service Provider under:
- 11.7.2.1 this Agreement; or
- 11.7.2.2 any other agreement between the Service Provider and any Crown Body (including the Customer).

- 11.8 If the Customer wishes to:
- 11.8.1 set off any amount pursuant to clause 11.7; or
 - 11.8.2 exercise its right pursuant to clause 9.2.4.2 (Performance Failures) to withhold payment of a proportion of the Service Charges,
- the Customer Relationship Manager shall give notice to the Service Provider within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for withholding or retaining the relevant Charges.

SECTION D – CONTRACT GOVERNANCE

12. GOVERNANCE

- 12.1 The Parties shall comply with the provisions of Schedule 6 (Governance) of the Framework Agreement in relation to the management and governance of this Agreement.

Representatives

- 12.2 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.
- 12.3 The initial Service Provider Representative shall be the person named as such in the Task Order. Any change to the Service Provider Representative shall be agreed in accordance with clause 16 (Service Provider Personnel).
- 12.4 The initial Customer Relationship Manager and initial Customer Representatives (if any) shall be the individuals named as such in the Task Order. The Customer may, by written notice to the Service Provider, revoke or amend the authority of the Customer Relationship Manager or Customer Representative or appoint a new Customer Relationship Manager (or Customer Representative).
- 12.5 The Customer Relationship Manager may delegate any of his or her actions or functions under this Agreement and may cancel such delegation and will notify the Service Provider in writing of such delegation or cancellation.
- 12.6 The Service Provider shall not act on instructions given by an employee or officer of the Customer (including any instructions to implement a change to the Services) unless the employee or officer is a Customer Relationship Manager or Customer Representative, as appropriate acting within the limits of his or her contractual and financial delegation authority specified in the Task Order or has been notified to the Service Provider in accordance with clause 12.5 above.

Approvals

- 12.7 Clauses 12.8 to 12.10 below shall be without prejudice to paragraphs 2.1 and 2.2 of Schedule 6 (Testing Procedures).
- 12.8 The giving of any Approval or the knowledge of the terms of any agreement or document or the review of any document or course of action by or on behalf of the Customer, its servants or agents shall not relieve the Service Provider of any of its obligations under this Agreement nor relieve the Service Provider of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the Approval, knowledge or review.
- 12.9 Without limitation to clause 12.8, no examination or lack of examination by the Customer, his servants or agents of the Service Provider's drawings, documents, specifications, calculations or other data or details relating to the Services or otherwise nor any comment, rejection or Approval expressed by such person in regard thereto, either with or without modifications, shall in any respect relieve or absolve the Service Provider from any

obligations or liability under or in connection with this Agreement whether in relation to accuracy, safety, suitability, adequacy of performance or practicality of its design work or other services or howsoever otherwise arising.

- 12.10 Without limitation to clause 12.8, notwithstanding any inspection by the Customer, his servants or agents under this Agreement or the failure of such persons to make any inspection under this Agreement, the Service Provider's responsibility under this Agreement shall not be relieved or absolved or otherwise modified.

Rights and obligations under the Framework Agreement

- 12.11 Subject to clause 12.13 below, the Service Provider agrees to comply, and shall ensure and procure that its Sub-contractors comply, with the following rights and obligations set out in more detail in the Framework Agreement as at the Framework Effective Date:

- 12.11.1 clause 4 (Governance and Service Provider Personnel);
- 12.11.2 clause 10 (Prevention of Bribery) of the Framework Agreement;
- 12.11.3 clause 16 (Confidentiality) of the Framework Agreement;
- 12.11.4 clause 17 (Transparency and Freedom of Information) of the Framework Agreement;
- 12.11.5 clause 18 (Protection of Personal Data) of the Framework Agreement;
- 12.11.6 clause 19 (Publicity) of the Framework Agreement;
- 12.11.7 clause 25 (Guarantee) of the Framework Agreement;
- 12.11.8 clause 36 (Dispute Resolution) of the Framework Agreement;
- 12.11.9 Schedule 3 (Commercially Sensitive Information) of the Framework Agreement;
- 12.11.10 Schedule 6 (Governance) of the Framework Agreement;
- 12.11.11 Schedule 7 (Guarantee) of the Framework Agreement; and
- 12.11.12 Schedule 8 (Financial Distress) of the Framework Agreement; and
- 12.11.13 Schedule 12 (Key Personnel) of the Framework Agreement,

and any other relevant clauses and/or schedules which expressly or by implication are stated to confer a benefit on the Customer under any Call-Off Contract.

- 12.12 Where the Service Provider and/or its Sub-contractors breach any obligation under the Framework Agreement cited in clause 12.11 above or which expressly or by implication are stated to confer a benefit on the Customer under any Call-Off Contract, clause 24 (Limitations on Liability) shall apply when calculating the extent of the Service Provider's liability to the Customer under this Agreement.

- 12.13 Any change to the rights and obligations set out in the clauses and/or schedules of the Framework Agreement cited in clause 12.11 above or which expressly or by implication are stated to confer a benefit on the Customer under any Call-Off Contract shall take effect as a Change to this Agreement unless the Customer specifies otherwise by notice in writing to the Service Provider.

13. RECORDS, REPORTS AND AUDITS

Records

- 13.1 The Service Provider shall, during the Term and for a period of at least seven (7) years following the expiry or termination of this Agreement, maintain or cause to be maintained, in accordance with Good Industry Practice, complete and accurate documents and records in relation to the provision of the Services, including the document and records specified as required in the Task Order.

Audit

- 13.2 The Customer or its agent shall have the right during the Term and for a period of eighteen (18) months thereafter to conduct an audit to assess compliance by the Supplier and/or its Key Sub-contractors with the Supplier's obligation under this Agreement, including for the following purposes:
- 13.2.1 to verify the Service Provider's and each Key Sub-contractor's compliance with the Service Provider's obligations under this Agreement and with applicable Law;
 - 13.2.2 to verify the accuracy of the Charges and any other amounts payable by the Customer under this Agreement;
 - 13.2.3 to review any records or information relation to Testing;
 - 13.2.4 to verify the accuracy and completeness of any information delivered or required by this Agreement; and
 - 13.2.5 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 13.3 Except where an audit is imposed on the Customer by a regulatory body or where the Customer has reasonable grounds for believing that the Service Provider has not complied with its obligations under this Agreement, the Customer may not conduct an audit of the Service Provider or of the same Key Sub-contractor more than twice in any Contract Year.
- 13.4 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Service Provider and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
- 13.5 The Customer or Customer Relationship Manager shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 13.6 The Service Provider shall on demand provide the Customer or Customer Relationship Manager with all reasonable cooperation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit.
- 13.7 The Customer or Customer Relationship Manager shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 13.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses 13.2 to 13.7, unless the audit identifies a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for all the Customer's reasonable costs incurred in connection with the audit.
- 13.9 If an audit identifies that:

- 13.9.1 the Service Provider has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a Rectification Plan in accordance with the Rectification Plan Process. If the Service Provider's failure relates to a failure to provide any information to the Customer about the Charges, proposed Charges or the Service Provider's costs, then the Rectification Plan shall include a requirement for the provision of all such information;
- 13.9.2 the Customer has overpaid any Charges, the Service Provider shall pay to the Customer the amount overpaid within thirty (30) days; and
- 13.9.3 the Customer has underpaid any Charges, the Customer shall pay to the Service Provider the amount of the under-payment (less any costs for which the Service Provider is liable pursuant to clause 13.8) within thirty (30) days.

14. **EARLY WARNING**

14.1 The Service Provider Representative shall and the Customer Relationship Manager may give an early warning by notifying the other as soon as possible after either becomes aware of any matter which could:

- 14.1.1 increase or reduce the Charges;
- 14.1.2 adversely affect implementation and/or the performance of the Services;
- 14.1.3 impair the Customer's ability to use the IT Environment or otherwise adversely affect the Customer's business operations; or
- 14.1.4 lead to a Service Failure, likely Service Failure, KPI Failure or likely KPI Failure.

14.2 If either the Service Provider Representative or the Customer Relationship Manager considers that a matter notified is sufficiently important to require an early warning meeting, he may instruct the other to attend such a meeting. Either the Service Provider Representative or the Customer Relationship Manager may instruct other people to attend the meeting if the other agrees.

14.3 At an early warning meeting those who attend will cooperate in:

- 14.3.1 making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced;
- 14.3.2 seeking solutions that will bring advantage to all those who will be affected; and
- 14.3.3 deciding upon actions which they will take and who, in accordance with this Agreement, will take them.

14.4 The Service Provider Representative will record the proposals considered and decisions taken at an early warning meeting and will give a copy of his record to the Customer Relationship Manager.

15. **CHANGE**

Change Control Procedure

15.1 Save to the extent expressly specified otherwise in clauses 28.8 and 28.9 (Framework Variations) of the Framework Agreement, any requirement for a Change shall be subject to the Change Control Procedure. Subject to clauses 28.8 and 28.9 (Framework Variations) of the Framework Agreement, no change to the Framework Agreement shall be deemed to take effect as a Change to this Agreement unless and until agreed by the Parties in accordance with this clause 15.1.

15.2 Unless otherwise stated in this Agreement, any Change shall be made only in accordance with this clause 15.

- 15.3 Either Party may at any time request in writing any Change.
- 15.4 The Parties shall deal with Contract Change as follows:
- 15.4.1 either Party may issue a Change Request to the other Party at any time during the Term;
 - 15.4.2 the Customer Relationship Manager shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in clause 15.6;
 - 15.4.3 the Service Provider shall have the right to reject a Change Request solely in the manner set out in clause 15.7; and
 - 15.4.4 in any preparation of a Change Request each Party will be liable for their own costs.
- 15.5 The Service Provider shall (in good faith) submit to the Customer in writing, within ten (10) Working Days (or such longer period as may be agreed) of receipt of a written Change Request from the Customer Relationship Manager (or at the same time as any written Change Request that the Service Provider may submit):
- 15.5.1 a full written quotation including a detailed breakdown and such supporting evidence of its costs and resources as the Customer shall reasonably require for such Change;
 - 15.5.2 particulars of any changes which would be required to the Requirements in order to implement the proposed Change;
 - 15.5.3 particulars of the other changes (if any) which would be required to this Agreement in order to implement the proposed Change; and
 - 15.5.4 the full cost and risk implications for the Customer that would result from the Change, including any proposed amendment to the Charges, provided that any such amendment to the Charges must be reasonable and proportionate in the circumstances and comply with the principles set out in Schedule 7 (Charges and Invoicing),
- (together, the "**Change Request Information**").
- 15.6 Upon receipt of the Change Request Information:
- 15.6.1 the Customer may elect to, subject to clause 15.8, approve the proposed Contract Change, in which case this Agreement will be amended accordingly and the Parties shall forthwith complete and sign a change control notice in such form as the Customer Relationship Manager shall reasonably require recording the Change that shall include the Change Request Information; or
 - 15.6.2 the Customer Relationship Manager may, in his/her/its absolute discretion reject the Contract Change, in which case he/she/it shall notify the Service Provider of the rejection; or
 - 15.6.3 where the Customer Relationship Manager reasonably considers that the Service Provider has not complied with clause 15.5, he/she/it may require the Service Provider to resubmit the Change Request Information, in which event the Service Provider shall make such modifications as are necessary to comply with clause 15.5 and resubmit the same to the Customer Relationship Manager within five (5) Working Days of the Customer Relationship Manager's request and the provisions of this clause 15.6 shall apply thereto.
- 15.7 Following a Change Request if:

- 15.7.1 the Service Provider reasonably believes that any proposed Contract Change which is requested by the Customer Relationship Manager would:
 - 15.7.1.1 materially and adversely affect the risks to the health and safety of any person; and/or
 - 15.7.1.2 require the Services to be performed in a way that infringes any Law; and/or
- 15.7.2 the Service Provider demonstrates to the Customer Relationship Manager's reasonable satisfaction that:
 - 15.7.2.1 the proposed Contract Change is technically impossible to implement; and
 - 15.7.2.2 neither the Service Provider Solution nor the Services Description state that the Service Provider does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Service Provider shall be entitled to reject the proposed Contract Change and shall notify the Customer Relationship Manager of its reasons for doing so within five (5) Working Days.

- 15.8 Until such time as any Change is formally accepted in accordance with clause 15.6.1 and the applicable change control notice has been signed by two representatives of the Customer having the necessary delegated financial and contractual authority respectively, the same shall not be binding on the Customer and the Service Provider will, unless otherwise agreed in writing, continue to perform and be paid as if no Change had been required.

Change in Law

- 15.9 The Service Provider 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:
 - 15.9.1 a General Change in Law; or
 - 15.9.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Call-Off Effective Date.
- 15.10 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 15.9.2), the Service Provider shall:
 - 15.10.1 notify the Customer Relationship Manager as soon as reasonably practicable of the likely effects of that change, including:
 - 15.10.1.1 whether any Change is required to the Services, the Charges or this Agreement; and
 - 15.10.1.2 whether any relief from compliance with the Service Provider's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
 - 15.10.2 provide the Customer Relationship Manager with evidence:
 - 15.10.2.1 that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

15.10.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and

15.10.2.3 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 3.7 (Service Improvement) of the Framework Agreement, has been taken into account in amending the Charges.

15.11 Any variation in the Charges or relief from the Service Provider's obligations resulting from a Specific Change in Law (other than as referred to in clause 15.9.2) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SERVICE PROVIDER PERSONNEL AND SUPPLY CHAIN

16. SERVICE PROVIDER PERSONNEL

16.1 The Service Provider shall:

16.1.1 provide in advance of any admission to the Customer Premises a list of the names of all Service Provider Personnel and prospective Service Provider Personnel it intends to engage in the provision of the Services or performance of the Service Provider's obligations under this Agreement, and shall promptly update the list as necessary. In particular, the list shall specify the names of all Service Provider Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer Relationship Manager may reasonably require;

16.1.2 ensure that all Service Provider Personnel:

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

16.1.2.2 comply with all reasonable requirements of the Customer Relationship Manager and, where the Customer Premises are owned or controlled by an Other Service Provider, any reasonable requirements of that Other Service Provider, concerning conduct at the Customer Premises, including the security requirements as set out in Schedule 4 (Security Management); and

16.1.3 be liable at all times for all acts or omissions of Service Provider Personnel, so that any act or omission of a member of any Service Provider Personnel which results in a Default under this Agreement shall be a Default by the Service Provider.

16.2 If the Customer Relationship Manager reasonably believes that any of the Service Provider Personnel are unsuitable to undertake work in respect of this Agreement, it may:

16.2.1 refuse admission to the relevant person(s) to the Customer Premises; and/or

16.2.2 direct the Service Provider to end the involvement in the provision of the Services of the relevant person(s).

Employment Indemnity

16.3 The Parties agree that:

16.3.1 the Service Provider shall both during and after the Term indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Service Provider or any Service Provider Personnel; and

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

Income Tax and National Insurance Contributions

- 16.4 Where the Service Provider or any Service Provider Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Service Provider shall:
- 16.4.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 16.4.2 indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Service Provider or any Service Provider Personnel.

Staff Transfer

- 16.5 The Parties agree that the commencement of the provision of the Services (or any part) will not be a transfer of employment to which Employment Regulations applies in relation to the employees of the Customer and/or any former supplier to the Customer of services that are the same or substantially the similar to the Services (or any part) ("**Former Service Provider**").
- 16.6 If there is an Unintended Transferring Employee, the parties will notify each other promptly upon becoming aware of his claim. In such circumstances the Service Provider will have the option of providing notice to the Unintended Transferring Employee of the termination of his or her employment within twenty-one (21) days of the Service Provider becoming aware of such a claim. In such circumstances the Customer will indemnify the Service Provider for any payment in lieu of notice, payment in lieu of holiday pay or statutory or contractual redundancy payment paid by the Service Provider to the Unintended Transferring Employee or any Employee Liabilities incurred by the Service Provider, to the extent that any contractual entitlement or Employee Liabilities arise as a result of an arrangement which was in place or any act or omission which occurred prior to the Transfer Date or as a result of the operation of TUPE and save to the extent that any contractual entitlement or Employee Liabilities arise as a result of any discriminatory act or omission of the Service Provider.
- 16.7 If the Service Provider does not terminate the employment of the Unintended Transferring Employee in accordance with clause 16.6, the Unintended Transferring Employee and all liabilities associated with the Unintended Transferring Employee arising after the Transfer Date will become the sole responsibility of the Service Provider.

Exit

- 16.8 The Parties do not anticipate that any employees will transfer from the Service Provider to the Customer or any Replacement Service Provider at any time in connection with the transactions contemplated by the Agreement or their termination (whether in whole or in part), whether by operation of TUPE or otherwise.
- 16.9 If there is an Unintended Exiting Employee, the Parties will notify each other promptly upon becoming aware of his/her claim. The Customer or a Replacement Service Provider may terminate (or purport to terminate) the contract of employment of the Unintended Exiting Employee at any time within twenty-one (21) days (or such longer period as the Service Provider and the Customer or a Replacement Service Provider agree) of the Customer, or a Replacement Service Provider becoming aware of his/her claim.

- 16.10 Subject to compliance with Clause 16.6 above, the Service Provider will indemnify the Customer and any Replacement Service Provider against all Employee Liabilities which the Customer and any Replacement Service Provider may incur on account of or arising from:
- 16.10.1 terminating (or purporting to terminate) the employment of any Unintended Exiting Employee;
 - 16.10.2 employment of any Unintended Exiting Employee up to the date of termination of employment in accordance with clause 16.9; and
 - 16.10.3 any claim by any Unintended Exiting Employee or by a representative of such an Unintended Exiting Employee, in respect of which the Customer or a Replacement Service Provider incurs or is alleged to incur responsibility or liability as a result of the operation of TUPE.

17. **SUPPLY CHAIN RIGHTS AND PROTECTIONS**

Advertising Sub-contract Opportunities

- 17.1 The Service Provider shall:
- 17.1.1 subject to Clause 17.3 and 17.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the SVD System and/or Services above a minimum threshold of £25,000 that arise during the Term;
 - 17.1.2 within 90 days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
 - 17.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - 17.1.4 provide reports on the information at Clause 17.1.3 to the Customer in the format and frequency as reasonably specified by the Customer; and
 - 17.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 17.2 Each advert referred to in Clause 17.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Service Provider.
- 17.3 The obligation at Clause 17.1 shall only apply in respect of Sub-contract opportunities arising after the Call-Off Effective Date.
- 17.4 Notwithstanding Clause 17.1 the Customer may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

- 17.5 The Service Provider shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Service Provider is able to:
- 17.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 17.5.2 comply with its obligations under this Agreement in the delivery of the Services; and
 - 17.5.3 assign, novate or otherwise transfer to the Customer or any Replacement Service Provider any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

- 17.6 Prior to sub-contracting any of its obligations under this Agreement, the Service Provider shall:
- 17.6.1 notify the Customer Relationship Manager in writing of:
 - 17.6.1.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 17.6.1.2 the scope of any Services to be provided by the proposed Sub-contractor and where the proposed Sub-contractor is an Affiliate of the Service Provider, evidence that demonstrates to the reasonable satisfaction of the Customer Relationship Manager that the proposed Sub-contract has been agreed on "arm's-length" terms; and
 - 17.6.2 provide the Customer Relationship Manager with a copy of:
 - 17.6.2.1 the proposed Sub-contract; and
 - 17.6.2.2 the proposed Sub-contractor's European Single Procurement Document.
- 17.7 The Service Provider shall ensure that all Sub-contracts:
- 17.7.1 contain obligations no less onerous on the Sub-contractor than those imposed on the Service Provider under this Agreement in respect of data protection requirements set out in clauses 23 (Customer Data and Security Requirements) and 18 (Protection of Personal Data) of the Framework Agreement;
 - 17.7.2 (which in this sub-clause includes any contract in the Service Provider's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain obligations requiring each Subcontractor to:
 - 17.7.2.1 comply with the provisions of PPN7/14;
 - 17.7.2.2 ensure that any new products purchased by it for use partly or wholly in the performance of its obligations under the Subcontract comply with the standard for products in Directive 2012/27/EU;
 - 17.7.2.3 demonstrate to the Service Provider how any new products purchased by it for use partly or wholly in the performance of its obligations under the Sub-contract comply with the requirements of PPN7/14; and
 - 17.7.3 contain a provision enabling the Service Provider or the Customer to appoint a Remedial Adviser on substantially the same terms as are set out in clause 28 (Remedial Adviser).
- 17.8 If requested by the Customer Relationship Manager within ten (10) Working Days of receipt of the Service Provider's notice issued pursuant to clause 17.6, the Service Provider shall also provide any further information reasonably requested by the Customer Relationship Manager.
- 17.9 The Customer Relationship Manager may, within ten (10) Working Days of receipt of the Service Provider's notice issued pursuant to clause 17.6 (or, if later, receipt of any further information requested pursuant to clause 17.8), object to the appointment of the relevant Sub-contractor if it considers that:
- 17.9.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Customer;

- 17.9.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 17.9.3 the proposed Sub-contractor employs unfit persons;
- 17.9.4 the proposed Sub-contractor should be excluded in accordance with clause 17.25; and/or
- 17.9.5 the proposed Sub-contractor's European Single Procurement Document does not confirm that it meets the requirements of the Public Contracts Regulations,

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

17.10 If:

- 17.10.1 the Customer Relationship Manager has not notified the Service Provider that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
 - 17.10.1.1 the Service Provider's notice issued pursuant to clause 17.6; and
 - 17.10.1.2 any further information requested by the Customer Relationship Manager pursuant to clause 17.8; and
- 17.10.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Customer Relationship Manager in accordance with clause 17.11 (Appointment of Key Sub-contractors),

the Service Provider may proceed with the proposed appointment.

Appointment of Key Sub-contractors

- 17.11 Where the Service Provider wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Customer Relationship Manager, such consent not to be unreasonably withheld or delayed. For these purposes, the Customer Relationship Manager may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
 - 17.11.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Customer;
 - 17.11.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 17.11.3 the proposed Key Sub-contractor employs unfit persons; and/or
 - 17.11.4 the proposed Key Sub-contractor should be excluded in accordance with clause 17.25.
- 17.12 The Customer Relationship Manager consents to the appointment of the Key Sub-contractors listed on the Task Order.
- 17.13 In the event that the Customer Relationship Manager has not been provided with a copy of a Key Sub-contract in respect of any Key Sub-contractor listed on the Task Order, then the consent referred to at clause 17.12 above shall be conditional upon the Customer Relationship Manager's receipt of such Key Sub-contract and its approval of the terms thereof.
- 17.14 Except where the Customer Relationship Manager has given its prior written consent, the Service Provider shall ensure that each Key Sub-contract shall include:

- 17.14.1 provisions which will enable the Service Provider to discharge its obligations under this Agreement;
- 17.14.2 a right under CRTPA for the Customer to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Customer;
- 17.14.3 a provision enabling the Customer to enforce the Key Sub-contract as if it were the Service Provider;
- 17.14.4 a provision enabling the Service Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Customer or any Replacement Service Provider without restriction (including any need to obtain any consent or approval) or payment by the Customer;
- 17.14.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Service Provider under this Agreement in respect of:
 - 17.14.5.1 data protection requirements set out in clauses 23 (Customer Data and Security Requirements) and 18 (Protection of Personal Data) of the Framework Agreement;
 - 17.14.5.2 FOIA requirements set out in clause 17 (Transparency and Freedom of Information) of the Framework Agreement;
 - 17.14.5.3 the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in clause 7.6.13 (Services);
 - 17.14.5.4 the keeping of records in respect of the services being provided under the Key Sub-contract; and
 - 17.14.5.5 the conduct of Audits;
- 17.14.6 provisions enabling the Service Provider to terminate the Key Sub-contract on notice on terms no more onerous on the Service Provider than those imposed on the Customer under clauses 31.1.1 (Termination by the Customer) and 32.4 (Payments by the Customer) and Schedule 8 (Payments on Termination) of this Agreement;
- 17.14.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Service Provider under the Key Sub-contract without first seeking the written consent of the Customer Relationship Manager;
- 17.14.8 a provision requiring the Key Sub-contractor to:
 - 17.14.8.1 promptly notify the Service Provider and the Customer Relationship Manager in writing of any of the following of which it is, or ought to be, aware:
 - (a) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (b) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - 17.14.8.2 co-operate with the Service Provider and the Customer Relationship Manager in order to give full effect to the provisions

of Schedule 8 (Financial Distress) of the Framework Agreement, including meeting with the Service Provider and the Customer Relationship Manager to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, contributing to and complying with the Financial Distress Remediation Plan and providing the information specified at paragraph 4.3.2.2 of Schedule 8 (Financial Distress).

- 17.14.9 provisions which require the Key Sub-contractor to notify the Customer promptly in writing of any material non-payment or late payment of any sums properly due to the Key Sub-contractor from the Service Provider under the Key Sub-contract, under a specified valid invoice and not subject to a genuine dispute;
 - 17.14.10 a provision obliging the Key Sub-contractor to test its own service continuity plan on a regular basis and in any event not less than once in every Contract Year; and
 - 17.14.11 a provision requiring the Key Sub-contractor to have in place an appropriate exit and migration plan which enables it to comply (and will enable the Service Provider to comply) with the requirements of this Agreement, to put such plan into effect on any termination (however arising) or expiry of the Key Sub-contract, and otherwise to ensure that any such termination or expiry will not affect the continuity of the Services.
- 17.15 The Service Provider shall not terminate or materially amend the terms of any Key Sub-contract without the Customer Relationship Manager's prior written consent, which shall not be unreasonably withheld or delayed.

Other Sub-contracting Provisions

- 17.16 Except where the Customer Relationship Manager has given its prior written consent, the Service Provider shall ensure that each Sub-contract shall include, where the Sub-contractor is an SME:
- 17.16.1 an obligation to supply the information referred to in clause 17.17;
 - 17.16.2 a term allowing the Customer to pass the information supplied under clause 17.17 to any government departments or agencies;
 - 17.16.3 a term allowing the Customer to publish the information supplied under clause 17.17;
 - 17.16.4 a term allowing another government department or agency to publish the information supplied under of clause 17.17;
 - 17.16.5 provisions similar to those set out in clause 16 (Confidentiality) of the Framework Agreement; and
 - 17.16.6 a requirement that the conditions of contract for any sub-subcontractor engaged by the Sub-contractor who is an SME include obligations substantially similar to those set out in clauses 17.16.1 to 17.16.5.
- 17.17 For all Sub-contractors who are SMEs the Service Provider shall report to the Customer Relationship Manager each quarter from the Effective Date until the date of expiry or earlier termination of this Agreement and then on each anniversary thereof until all SME accounts are finalised:
- 17.17.1 the name of the SME;
 - 17.17.2 the class of the SME (medium, small or micro);
 - 17.17.3 the value of the contract undertaken by the SME;

17.17.4 the monthly amounts paid to the SME in the quarter; and

17.17.5 the aggregated value paid to the SME since the Effective Date.

Supply chain protection

17.18 The Service Provider shall ensure that all Sub-contracts (which in this sub-clause and sub-clause 17.19 includes any contract in the Service Provider's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement, and Sub-contractor shall be construed accordingly) contain provisions:

17.18.1 giving the Service Provider a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;

17.18.2 requiring the Service Provider or other party receiving goods or services under the Sub-contract to consider and verify invoices under that Sub-contract in a timely fashion;

17.18.3 stating that if the Service Provider or other party fails to consider and verify an invoice in accordance with clause 17.18.2, the invoice shall be regarded as valid and undisputed for the purpose of clause 17.18.4 after a reasonable time has passed;

17.18.4 requiring the Service Provider or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days from verifying that the invoice is valid and undisputed;

17.18.5 giving the Customer a right to publish the Service Provider's or other party's compliance with its obligation to pay undisputed invoices within the specified payment period; and

17.18.6 requiring the Sub-contractor to include a clause to the same effect as this clause 17.7.1 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 the Sub-contract.

17.19 The Service Provider shall:

17.19.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;

17.19.2 ensure each Sub-contractor pays any undisputed sums which are due from it to the other party to the relevant Sub-contract within thirty (30) days of verifying that the invoice is valid and undisputed; and

17.19.3 include within the Balanced Scorecard Report produced by it pursuant to Schedule 2 (Performance Levels) a summary of its and each Sub-contractors compliance with clause 17.19.1, such data to be certified each Quarter by a director of the Service Provider as being accurate and not misleading.

Notwithstanding any provision of clauses 16 (Confidentiality) and 19 (Publicity) of the Framework Agreement, if the Service Provider notifies the Customer Relationship Manager (whether in a Balanced Scorecard Report or otherwise) that the Service Provider has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Customer Relationship Manager otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 17.20 The Customer Relationship Manager may require the Service Provider to terminate:
- 17.20.1 a Sub-contract where:
 - 17.20.1.1 the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Customer's right of termination pursuant to clause 31.1.2 (Termination by the Customer);
 - 17.20.1.2 the relevant Sub-contractor or any of its Affiliates have embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - 17.20.1.3 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
 - 17.20.1.4 the Customer has found grounds for exclusion of the Sub-contractor in accordance with clause 17.25; and
 - 17.20.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
 - 17.20.2.1 the Customer Relationship Manager has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - 17.20.2.2 the Customer Relationship Manager has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Customer was given notice of the change of Control.

Competitive Terms

- 17.21 If the Customer 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 Service Provider or the Service Provider Personnel in the supply of the Services, then the Customer Relationship Manager may:
- 17.21.1 require the Service Provider to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
 - 17.21.2 subject to clause 17.23, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 17.22 If the Customer exercises either of its options pursuant to clause 17.21, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 17.23 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 17.23.1 the Customer making the relevant item available to the Service Provider where this is necessary for the Service Provider to provide the Services; and
 - 17.23.2 any reduction in the Charges taking into account any unavoidable costs payable by the Service Provider in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 17.24 Notwithstanding the Service Provider's right to sub-contract pursuant to this clause 17, the Service Provider shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Service Provider Personnel and/or which are Sub-contracted by the Service Provider, an obligation on the Service Provider to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Service Provider to procure that the Service Provider Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

- 17.25 If specified in the Task Order that this clause applies, where the Customer considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations, then:
- 17.25.1 if the Customer finds there are mandatory grounds for exclusion, the Service Provider shall replace or shall not appoint the Sub-contractor; or
- 17.25.2 if the Customer finds there are discretionary grounds for exclusion, the Customer may require the Service Provider to replace or not to appoint the Sub-contractor and the Service Provider shall comply with such a requirement.

Data processing supply chain

- 17.26 The provisions of this clause 17 are subject to clause 18 (Protection of Personal Data) of the Framework Agreement in respect of any sub-contracts relating to data processing.

SECTION F – INTELLECTUAL PROPERTY

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 Except as expressly set out in this Agreement:

- 18.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Service Provider or its licensors, namely:
- 18.1.1.1 the Service Provider Software;
 - 18.1.1.2 the Third Party Software;
 - 18.1.1.3 the Third Party IPRs; and
 - 18.1.1.4 the Service Provider Background IPRs;
- 18.1.2 the Service Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
- 18.1.2.1 the Project Specific IPRs;
 - 18.1.2.2 the Customer Software;
 - 18.1.2.3 the Customer Data; and
 - 18.1.2.4 the Customer Background IPRs; and
- 18.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Customer.

- 18.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 18.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 18.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 18.4 Unless the Customer stipulates otherwise in writing:
 - 18.4.1 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 Customer as Open Source; and
 - 18.4.2 where the Specially Written Software and Project Specific IPRs are written in a format that requires conversion before publication as Open Source, the Service Provider shall also provide the converted format to the Customer.

19. **TRANSFER AND LICENCES GRANTED BY THE SERVICE PROVIDER**

Specially Written Software and Project Specific IPRs

- 19.1 Subject to clause 19.17 and save as specified otherwise in the Task Order, the Service Provider hereby agrees to transfer to the Customer, or shall procure the transfer to the Customer of, all rights in the Specially Written Software and the Project Specific IPRs including:
 - 19.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software; and
 - 19.1.2 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**"),

but not including any Know-How, trade secrets or Confidential Information.
- 19.2 The Service Provider:
 - 19.2.1 shall:
 - 19.2.1.1 inform the Customer Relationship Manager of all Specially Written Software and any element of Project Specific IPRs that constitutes modification or enhancement to Service Provider Software or Third Party Software;
 - 19.2.1.2 deliver to the Customer Relationship Manager the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) 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 Customer Relationship Manager; and
 - 19.2.1.3 without prejudice to clause 19.11 (Third Party Software and Third Party IPRs), provide full details to the Customer of any Service Provider Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

- 19.2.2 acknowledges and agrees that the ownership of the media referred to in clause 19.2.1 shall vest in the Customer upon their receipt by the Customer Relationship Manager;
- 19.2.3 shall execute or shall procure the execution of 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 Customer; and
- 19.2.4 waives or shall procure a waiver of any moral rights in any copyright works assigned to the Customer under this Agreement.

Service Provider Software and Service Provider Background IPRs

- 19.3 The Service Provider shall not use any Service Provider Non-COTS Software or Service Provider Non-COTS Background IPR in the provision of the Services or in the SVD System unless it is detailed in the Task Order or approval is otherwise granted by the Customer.
- 19.4 The Service Provider hereby grants to the Customer:
 - 19.4.1 subject to the provisions of clauses 19.17 and 32 (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)):
 - 19.4.1.1 the Service Provider Non-COTS Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or any other Central Government Body's) business or function; and
 - 19.4.1.2 the Service Provider 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 Customer's (or any other Central Government Body's) business or function;
 - 19.4.2 a licence to use the Service Provider COTS Software and Service Provider COTS Background IPRs signed by or on behalf of the Parties on or before the Call-Off Effective Date, provided always that the Customer shall remain entitled to sub-license and to assign and novate the Service Provider COTS Software and Service Provider COTS Background IPRs on equivalent terms to those set out in clauses 19.7 and 19.8 in relation to the Service Provider Non-COTS Software and Service Provider Non-COTS Background IPRs; and
 - 19.4.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 19.5 At any time during the Term or following termination or expiry of this Agreement, the Service Provider may terminate the licence granted in respect of the Service Provider Non-COTS Software under clause 19.4.1.1 or in respect of the Service Provider Non-COTS Background IPRs under clause 19.4.1.2 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Customer or any person to whom the Customer grants a sub-licence pursuant to clause 19.7 (Customer's right to sub-license) commits any material breach of the terms of clause 19.4.1.1 or 19.4.1.2 or 19.7.1.2 (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Customer Relationship Manager receives written notice from the Service Provider specifying the breach and requiring its remedy.
- 19.6 In the event the licence of the Service Provider Non-COTS Software or the Service Provider Non-COTS Background IPRs is terminated pursuant to clause 19.5, the Customer shall:

- 19.6.1 immediately cease all use of the Service Provider Non-COTS Software or the Service Provider Non-COTS Background IPRs (as the case may be);
- 19.6.2 at the discretion of the Service Provider, return or destroy documents and other tangible materials to the extent that they contain any of the Service Provider Non-COTS Software and/or the Service Provider Non-COTS Background IPRs, provided that if the Service Provider has not made an election within six (6) months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Service Provider Non-COTS Software and/or the Service Provider Non-COTS Background IPRs (as the case may be); and
- 19.6.3 ensure, so far as reasonably practicable, that any Service Provider Non-COTS Software and/or Service Provider 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 Customer) from any computer, word processor, voicemail system or any other device containing such Service Provider Non-COTS Software and/or Service Provider Non-COTS Background IPRs.

Customer's right to sub-license

19.7 Subject to clause 19.17, the Customer may sub-license:

- 19.7.1 the rights granted under clause 19.3 (Service Provider Software and Service Provider Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Service Provider) who shall also have the right to grant sub-licences provided that:
 - 19.7.1.1 the sub-licence is on terms no broader than those granted to the Customer (including, for the avoidance of doubt, in the Customer's absolute discretion, permitting the sub- licensee to further sub- licence the sub-licensed rights);
 - 19.7.1.2 the sub-licence authorises the third party to use the rights licensed in clause 19.4.1 (Service Provider Software and Service Provider Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or any other Central Government Body's) business or function; and
 - 19.7.1.3 the sub- licensee shall have executed a confidentiality undertaking in favour of the Service Provider on the same terms as set out in clause 16 (Confidentiality) of the Framework Agreement; and
- 19.7.2 the rights granted under clause 19.4.1 (Service Provider Software and Service Provider Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - 19.7.2.1 the sub-licence is on terms no broader than those granted to the Customer; and
 - 19.7.2.2 either:
 - (a) the Service Provider has received a confidentiality undertaking in its favour on the same terms as set out in clause 16 (Confidentiality) of the Framework Agreement duly executed by the Approved Sub-Licensee; or
 - (b) a confidentiality undertaking in the Service Provider's favour on the same terms as set out in clause 16 (Confidentiality) of the

Framework Agreement duly executed by the Approved Sub-Licensee has been received by the Customer Relationship Manager, who, without prejudice to the validity of the relevant sub-licence, will issue a copy of such confidentiality undertaking to the Service Provider within ten (10) Working Days of its receipt.

Customer's right to assign/novate licences

- 19.8 The Customer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to clause 19.4.1 (Service Provider Software and Service Provider Background IPRs) to:
- 19.8.1 a Central Government Body; or
 - 19.8.2 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 Customer.
- 19.9 Any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in clause 19.4 (Service Provider Software and Service Provider Background IPRs). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in clause 19.4 (Service Provider Software and Service Provider Background IPRs).
- 19.10 If a licence granted in clause 19.4 (Service Provider Software and Service Provider Background IPRs) is novated under clause 19.8 (Customer's right to assign/novate licences) or there is a change of the Customer's status pursuant to clause 19.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Customer.

Third Party Software and Third Party IPRs

- 19.11 The Service Provider shall not use in the provision of the Services or in the SVD System (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless it is detailed in the Task Order or approval is otherwise granted by the Customer and in each case it has either:
- 19.11.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Customer on a royalty-free basis to the Customer and on terms:
 - 19.11.1.1 no less favourable to the Customer than those set out in clauses 19.4.1 and 19.5 (Service Provider Software and Service Provider Background IPRs) and clause 19.8 (the Customer's right to assign/novate licences); and
 - 19.11.1.2 which allow the Customer to be able to sub-licence the rights granted to it to any Replacement Service Provider, provided that:
 - (a) the sub-licence is on terms no broader than those granted to the Customer;
 - (b) the sub-licence authorises the Replacement Service Provider to use the rights licensed in this clause 19.11 only for the purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's or any Central Government Body's business or functions; and

- (c) the Replacement Service Provider shall have executed a confidentiality undertaking in favour of the Service Provider on the same terms as set out in clause 16 (Confidentiality) of the Framework Agreement; or
 - 19.11.2 complied with the provisions of clause 19.12.
- 19.12 If the Service Provider cannot obtain for the Customer 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 19.11.1, the Service Provider shall:
 - 19.12.1 notify the Customer Relationship Manager 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 Service Provider could seek to use;
 - 19.12.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Customer Relationship Manager has first approved in writing the terms of the licence from the relevant third party; and
 - 19.12.3 if the Service Provider cannot obtain for the Customer licence terms for the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs acceptable to the Customer Relationship Manager, consult with the Customer Relationship Manager on alternatives to the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs. Any alternative software approved by the Customer Relationship Manager in accordance with this clause 19.12.3 shall be substituted for the relevant Third Party Software originally listed in the Task Order and shall be henceforth Third Party Software for the purposes of this Agreement, to which the provisions of clauses 19.11 to 19.13 (as applicable) shall apply.
- 19.13 The Service Provider shall:
 - 19.13.1 notify the Customer Relationship Manager 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
 - 19.13.2 unless instructed otherwise in writing by the Customer Relationship Manager in any case within twenty (20) Working Days of notification pursuant to clause 19.13.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Customer on a royalty-free basis to the Customer and 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.
- 19.14 Notwithstanding and without prejudice to the other provisions of clauses 18 and 19, should the Service Provider 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 Customer does not have a suitable licence, then the Service Provider must:
 - 19.14.1 notify the Customer within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in; and
 - 19.14.2 as soon as reasonably practicable procure that the Customer has all rights in such Intellectual Property Rights, to satisfy the Service Provider's obligations under this clause 19.

Termination and Replacement Service Providers

- 19.15 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 Service Provider or relevant third party pursuant to or as contemplated by this clause 19.
- 19.16 The Service Provider shall, if requested by the Customer Relationship Manager in accordance with Schedule 9 (Exit Management) and at the Service Provider's cost:
- 19.16.1 grant (or procure the grant) to any Replacement Service Provider of:
- 19.16.1.1 a licence to use any Service Provider Non-COTS Software, Service Provider Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Service Provider and on terms no less favourable than those granted to the Customer in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this clause 19 subject to receipt by the Service Provider of a confidentiality undertaking in its favour on the same terms as set out in clause 16 (Confidentiality) of the Framework Agreement duly executed by the Replacement Service Provider; and
- 19.16.1.2 a licence to use any Service Provider COTS Software and/or Service Provider 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 Service Provider; and
- 19.16.2 use all reasonable endeavours to procure the grant to any Replacement Service Provider 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

- 19.17 Where a patent owned by the Service Provider is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Customer or any Replacement Service Provider, the Service Provider hereby grants to the Customer and the Replacement Service Provider 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.

20. LICENCES GRANTED BY THE CUSTOMER

- 20.1 The Customer hereby grants to the Service Provider, a royalty-free, non-exclusive, non-transferable licence during the Term to use the Customer Software, the Customer Background IPRs and the Customer Data, the Specially Written Software and the Project Specific IPRs 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:
- 20.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Service Provider on the same terms as set out in clause 16 (Confidentiality) of the Framework Agreement; and
- 20.1.2 the Service Provider shall not, without the Customer Relationship Manager's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 20.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to clause 20.1 and any sub-licence granted by the Service Provider in accordance with clause 20.1 shall terminate automatically on the date of such termination or expiry and the Service Provider shall:

- 20.2.1 immediately cease all use of the Customer Software, the Customer Background IPRs and the Customer Data (as the case may be);
- 20.2.2 at the discretion of the Customer Relationship Manager, return or destroy documents and other tangible materials that contain any of the Specific IPRs, the Customer Software, the Customer Background IPRs and the Customer Data, provided that if the Customer Relationship Manager has not made an election within six (6) months of the termination of the licence, the Service Provider may destroy the documents and other tangible materials that contain any of the Specific IPRs, the Customer Software, the Customer Background IPRs and the Customer Data (as the case may be); and
- 20.2.3 ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPRs and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Service Provider computer, word processor, voicemail system or any other Service Provider device containing such Customer Software, Customer Background IPRs and/or Customer Data.

21. **ESCROW AND OPEN SOURCE SOFTWARE**

Escrow

- 21.1 The Service Provider shall, and shall procure that each owner of the Deposited Software shall, not less than ten (10) Working Days following the Operational Service Commencement Date or such other periods as the Customer Relationship Manager may require deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with the National Computing Centre ("NCC") or its equivalent on the basis of their standard licensee escrow agreement including entry level verification. The Service Provider shall ensure that (and shall procure that each owner of the Deposited Software shall ensure that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Service Provider shall pay, or shall procure that each owner of Deposited Software pays, the initial storage fees and the annual fees under the escrow agreement and the Customer shall pay the release fees.
- 21.2 Where the Service Provider is unable to procure compliance with the provisions of clause 21.1 in respect of any Third Party Software that is Deposited Software, it shall provide the Customer Relationship Manager with written evidence of its inability to comply with these provisions and shall agree with the Customer Relationship Manager a suitable alternative to escrow that affords the Customer the nearest equivalent protection. The Service Provider shall be excused from its obligations under clause 21.1 only to the extent that the parties have agreed on a suitable alternative.
- 21.3 In circumstances where the Customer obtains the release of the Source Code from escrow, the Service Provider hereby grants (and shall procure that any owner of Deposited Software grants) to the Customer a perpetual, assignable, royalty-free, irrevocable and non-exclusive licence to use and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services or the Customer's normal business undertakings. For the avoidance of doubt the licence granted under this clause 21.3 shall survive the termination or expiry of the Agreement and cannot be terminated by the Service Provider or its assignees.

Open Source Software

- 21.4 The Service Provider shall ensure that the Software (excluding the OSS):
 - 21.4.1 is provided aggregated with the OSS;
 - 21.4.2 does not contain any Open Source Software other than the OSS; and

- 21.4.3 remains separable from or merely links or binds by name to the interfaces of the OSS.
- 21.5 The Service Provider shall not at any time during the Term without the express written consent of the Customer Relationship Manager include in or aggregate with the Software any Open Source Software other than the OSS, or make any changes to the Software which require it to be aggregated with or operated in conjunction with any Open Source Software other than the OSS.
- 21.6 The Service Provider warrants that the OSS is licensed upon terms which permit the use of such Open Source Software by the Service Provider, the Customer and the Customer's end users for all purposes contemplated by this Agreement.

22. IPRs INDEMNITY

22.1 The Service Provider shall at all times, during and after the Term, on written demand indemnify the Customer and each other Indemnified Person, and keep the Customer 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.

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

- 22.2.1 procure for the Customer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

- 22.2.2 replace or modify the relevant item with non-infringing substitutes provided that:

- 22.2.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

- 22.2.2.2 the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

- 22.2.2.3 there is no additional cost to the Customer or relevant Indemnified Person (as the case may be); and

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

22.3 If the Service Provider elects to procure a licence in accordance with clause 22.2.1 or to modify or replace an item pursuant to clause 22.2.2, but this has not avoided or resolved the IPRs Claim, then:

- 22.3.1 the Customer may terminate this Agreement (if subsisting) with immediate effect by written notice to the Service Provider; and

- 22.3.2 without prejudice to the indemnity set out in clause 22.1, the Service Provider 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.

23. CUSTOMER DATA AND SECURITY REQUIREMENTS

23.1 The Service Provider shall not:

- 23.1.1 in respect of Customer Data classified as Official or higher in accordance with "Government Security Classifications", dated April 2014 (or any later revision or replacement), store such Customer Data;

- 23.1.1.1 at an Offshore location; or
 - 23.1.1.2 in any way that it could be accessed from an Offshore location,
- until either:
- (a) the Customer has gained approval in accordance with the CO Offshoring Policy Document and the Customer Relationship Manager has confirmed in writing to the Service Provider that such approval has been gained by the Customer. The Customer and the Customer Relationship Manager may request the Service Provider to provide any information required to support the approvals process for storing or accessing information; or
 - (b) the Customer Relationship Manager has confirmed in writing to the Service Provider that approval for offshoring information in accordance with the CO Offshoring Policy Document, is not required; or
- 23.1.2 delete or remove any proprietary notices contained within or relating to the Customer Data.
- 23.2 The Service Provider shall provide the Customer and the Customer Relationship Manager with any information required to allow the Customer to pursue approval for storing information at or allowing access to information from an Offshore location in accordance with clause 23.1.1, or for any risk assessment being carried out in respect thereof (including the Customer's Risk Assessment).
- 23.3 The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under this Agreement or as otherwise expressly authorised in writing by the Customer Relationship Manager.
- 23.4 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer Relationship Manager as requested by the Customer Relationship Manager in the format specified in the Services Description.
- 23.5 The Service Provider shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data at all times that the relevant Customer Data is under its control or the control of any Sub-contractor.
- 23.6 The Service Provider shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BC or ITSC Plans. The Service Provider shall ensure that such back-ups are available to the Customer Relationship Manager (or to such other person as the Customer Relationship Manager may direct) at all times upon request and are delivered to the Customer Relationship Manager at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 23.7 The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the Security Requirements.
- 23.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Customer Relationship Manager may:
- 23.8.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in the Business Continuity Plan and the Service Provider shall do so as soon as practicable but not later than five (5) Working

Days from the date of receipt of the Customer Relationship Manager's notice;
and/or

- 23.8.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity Plan.
- 23.9 If at any time the Service Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer Relationship Manager immediately and inform the Customer Relationship Manager of the remedial action the Service Provider proposes to take.
- 23.10 The Service Provider shall comply with the requirements of Schedule 4 (Security Management).
- 23.11 The Customer Relationship Manager shall notify the Service Provider of any changes or proposed changes to the Baseline Security Requirements.
- 23.12 If the Service Provider reasonably 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 Service Provider 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.
- 23.13 Unless and/or until any reasonable Change Request submitted pursuant to clause 23.12 is agreed by the Customer Representatives, the Service Provider shall continue to perform the Services in accordance with its existing obligations.
- 23.14 Where the Service Provider and/or any Sub-contractor receives any request for Customer Data (whether from any government agency, law enforcement agency or otherwise and in or from whatever jurisdiction) the Service Provider shall and shall procure that its Sub-contractors shall:
- 23.14.1 properly and robustly assess such request to ensure it is lawful, valid, from a body with competent jurisdiction in the circumstances to compel disclosure under the request and compliance with which is not voluntary but required by law; and
- 23.14.2 where, to the extent and as soon as lawfully possible, inform the Customer Relationship Manager of such request with all relevant details,
- but if the Service Provider and/or a Sub-contractor is compelled to deal with the request following such assessment by it, it shall only disclose Customer Data to the extent strictly necessary and shall not disclose it otherwise or further.

Malicious Software

- 23.15 The Service Provider 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 by the Customer Relationship Manager) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Customer Relationship Manager).
- 23.16 Notwithstanding clause 23.15, 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 Customer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

23.17 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 23.16 shall be borne by the Parties as follows:

23.17.1 by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software supplied by the Service Provider (except where the Customer Relationship Manager has waived the obligation set out in clause 23.15) or the Customer Data (whilst the Customer Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Service Provider; and

23.17.2 otherwise by the Customer.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

24. LIMITATIONS ON LIABILITY

Unlimited liability

24.1 Neither Party limits its liability for:

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

24.1.2 fraud or fraudulent misrepresentation by it or its employees;

24.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

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

24.2 The Service Provider's liability in respect of the indemnities in clause 11.5 (VAT), clause 16.3 (Employment Indemnity), clause 16.4 (Income Tax and National Insurance Contributions), clause 16.10 (Staff Transfer) and clause 22 (IPRs Indemnity) shall be unlimited.

24.3 The Customer's liability in respect of the indemnities in clause 16.3 (Employment Indemnity) and clause 16.6 (Staff Transfer) shall be unlimited.

Financial and other limits

24.4 Subject to clauses 24.1 and 24.2 (Unlimited Liability) and clauses 24.8 and 24.9 (Consequential losses):

24.4.1 the Service Provider's aggregate liability in respect of loss of or damage to the Customer Premises or other property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) that is caused by Defaults of the Service Provider occurring in each and any Contract Year shall in no event exceed £10 million;

24.4.2 the Service Provider's aggregate liability in respect of all Service Credits incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap;

24.4.3 the Service Provider's aggregate liability in respect of loss of or damage to Customer Data or breach of the Data Protection Legislation that is caused by Default of the Service Provider occurring in each and any Contract Year shall in no event exceed £10 million, or such other amount as specified in the Task Order; and

- 24.4.4 the Service Provider's aggregate liability in respect of all other Losses incurred by the Customer under or in connection with this Agreement as a result of Defaults by the Service Provider shall in no event exceed:
- 24.4.4.1 in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges; or
 - 24.4.4.2 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 Service Provider under this Agreement in the Contract Year immediately preceding the occurrence of the Default; or
 - 24.4.4.3 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 Service Provider in the twelve (12) month period immediately prior to the last day of the Term,
- provided that where any Losses referred to in clause 24.4.4 have been incurred by the Customer as a result of the Service Provider's abandonment of this Agreement or the Service Provider'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%.
- 24.5 Deductions from Charges shall not be taken into consideration when calculating the Service Provider's liability under clause 24.4.4.
- 24.6 Subject to clauses 24.1 and 24.3 (Unlimited Liability) and clause 24.8 (Consequential Losses) and without prejudice to the Customer's obligation to pay the Charges as and when they fall due for payment:
- 24.6.1 the Customer's total aggregate liability in respect of all Losses incurred by the Service Provider under or in connection with this Agreement as a result of early termination of this Agreement by the Customer pursuant to clause 31.1.1 (Termination by the Customer) or by the Service Provider pursuant to clause 31.3.1 (Termination by the Service Provider) shall in no event exceed the following amounts set out in the Task Order in relation to:
 - 24.6.1.1 the Unrecovered Payment;
 - 24.6.1.2 the Breakage Costs Payment;
 - 24.6.1.3 the Compensation Payment; and
 - 24.6.1.4 the Customer's aggregate liability in respect of all Losses incurred by the Service Provider under or in connection with this Agreement as a result of Defaults of the Customer shall in no event exceed an amount equal to the total Charges paid and/or due to be paid under this Agreement.
- 24.7 For the avoidance of doubt:
- 24.7.1 any liability of a party which falls within clause 24.1 or of the Service Provider which falls within clause 24.2 or of the Customer which falls within clause 24.3 will not be taken into account in assessing whether the financial limits in clauses 24.4 and/or 24.6 (as applicable) have been reached;
 - 24.7.2 the financial limits in clauses 24.4.1, 24.4.2, 24.4.3, 24.4.4.1, 24.4.4.2 and 24.4.4.3 are separate not cumulative and any liability of the Service Provider which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached; and

- 24.7.3 the financial limits in clause 24.6.1.1, 24.6.1.2, 24.6.1.3 and 24.6.1.4 are separate not cumulative and any liability of the Customer which falls within one sub-clause in clause 24.6 shall not be taken into account in assessing whether the financial limits in any of the other sub-clauses have been reached.

Consequential Losses

- 24.8 Subject to clauses 24.1, 24.2 and 24.3 (Unlimited Liability) and clause 24.9, neither Party shall be liable to the other Party for:
- 24.8.1 any indirect, special or consequential Loss; or
- 24.8.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 24.9 Notwithstanding clause 24.8 but subject to clause 24.4, the Service Provider acknowledges that the Customer may, amongst other things, recover from the Service Provider the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Service Provider:
- 24.9.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- 24.9.2 any wasted expenditure or charges;
- 24.9.3 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;
- 24.9.4 any compensation or interest paid to a third party by the Customer; and
- 24.9.5 any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.

Mitigation

- 24.10 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.

25. INSURANCE

- 25.1 The Service Provider shall comply with the provisions of clause 24 (Insurance) of the Framework Agreement in relation to obtaining and maintaining insurance.
- 25.2 The Service Provider shall comply with any additional insurance requirements of the Customer as set out in the Task Order.

SECTION H – REMEDIES AND RELIEF

26. RECTIFICATION PLAN PROCESS

- 26.1 In the event that:
- 26.1.1 there is, or is reasonably likely to be, a Delay;
- 26.1.2 in any Service Period there has been:

- 26.1.2.1 a KPI Failure;
- 26.1.2.2 a Material KPI Failure; and/or
- 26.1.2.3 a Material PI Failure;
- 26.1.3 the Service Provider fails to Achieve a Test; and/or
- 26.1.4 the Service Provider 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 Service Provider shall notify the Customer Relationship Manager of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Service Provider Termination Event, the Customer 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

- 26.2 If:
 - 26.2.1 the Service Provider notifies the Customer Relationship Manager pursuant to clause 26.1 that a Notifiable Default has occurred; or
 - 26.2.2 the Customer Relationship Manager notifies the Service Provider that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Service Provider has to rectify),

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

- 26.3 The “**Rectification Plan Process**” shall be as set out in clauses 26.4 (Submission of the draft Rectification Plan) to 26.9 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan

- 26.4 The Service Provider shall submit a draft Rectification Plan to the Customer Relationship Manager for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to clause 26.2 (Notification). The Service Provider shall submit a draft Rectification Plan even if the Service Provider disputes that it is responsible for the Notifiable Default.
- 26.5 The draft Rectification Plan shall set out:
 - 26.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
 - 26.5.2 the actual or anticipated effect of the Notifiable Default; and
 - 26.5.3 the steps which the Service Provider 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).

- 26.6 The Service Provider shall promptly provide to the Customer Relationship Manager any further documentation that the Customer Relationship Manager reasonably requires to assess the Service Provider'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 in accordance with the Dispute Resolution Procedure.

Agreement of the Rectification Plan

- 26.7 The Customer Relationship Manager may reject the draft Rectification Plan by notice to the Service Provider if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

26.7.1 is insufficiently detailed to be capable of proper evaluation;

26.7.2 will take too long to complete;

26.7.3 will not prevent reoccurrence of the Notifiable Default; and/or

26.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Customer Relationship Manager.

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

- 26.9 If the Customer Relationship Manager consents to the Rectification Plan:

26.9.1 the Service Provider shall immediately start work on the actions set out in the Rectification Plan; and

26.9.2 the Customer may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

27. DELAY PAYMENTS

- 27.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7 (Charges and Invoicing) shall apply in relation to the payment of Delay Payments.

- 27.2 Delay Payments shall be the Customer's exclusive financial remedy for the Service Provider's failure to Achieve a Key Milestone by its Milestone Date except where:

27.2.1 the Customer is entitled to or does terminate this Agreement pursuant to clause 31.1.2 (Termination by the Customer);

27.2.2 the Delay exceeds the Delay Deduction Period; or

27.2.3 no Delay Payments are specified in the Task Order or the Delay Payment is £0,

and, without prejudice to clause 36.2, nothing in this Agreement will prevent the Customer from claiming damages for breach of contract if for any reason the obligation of the Service Provider to pay Delay Payments is or becomes unenforceable.

28. REMEDIAL ADVISER

- 28.1 If:

- 28.1.1 any of the Intervention Trigger Events occur; or
- 28.1.2 the Customer Relationship Manager reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Customer Relationship Manager may give notice to the Service Provider (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

- 28.1.2.1 a meeting between the Customer Relationship Manager and the Service Provider Representative to discuss the Intervention Cause; and/or
- 28.1.2.2 the appointment as soon as practicable by the Service Provider of a Remedial Adviser, as further described in this clause 28.

For the avoidance of doubt, if the Intervention Cause is also a Service Provider Termination Event, the Customer Relationship Manager has no obligation to exercise its rights under this clause 28.1 prior to or instead of exercising its right to terminate this Agreement.

- 28.2 If the Customer Relationship Manager gives notice that it requires the appointment of a Remedial Adviser:

- 28.2.1 the Remedial Adviser shall be:

- 28.2.1.1 a person selected by the Service Provider and approved by the Customer Relationship Manager; or

- 28.2.1.2 if none of the persons selected by the Service Provider have been approved by the Customer Relationship Manager (or no person has been selected by the Service Provider) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Customer Relationship Manager;

- 28.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Customer Relationship Manager; and

- 28.2.3 any right of the Customer to terminate this Agreement pursuant to clause 31.1.2 (Termination by the Customer) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the "**Intervention Period**").

- 28.3 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 Service Provider's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one (1) or more of the following actions:

- 28.3.1 observe the conduct of and work alongside the Service Provider Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;

- 28.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;

- 28.3.3 write reports and provide information to the Customer Relationship Manager in connection with the steps being taken by the Service Provider to remedy the Intervention Cause;

- 28.3.4 make recommendations to the Customer Relationship Manager and/or the Service Provider as to how the Intervention Cause might be mitigated or avoided in the future; and/or
 - 28.3.5 take any other steps that the Customer Relationship Manager and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 28.4 The Service Provider shall:
- 28.4.1 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;
 - 28.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
 - 28.4.3 submit to such monitoring as the Customer Relationship Manager and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
 - 28.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Customer Relationship Manager within the timescales given by the Remedial Adviser; and
 - 28.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Customer Relationship Manager (such consent not to be unreasonably withheld).
- 28.5 The Service Provider shall be responsible for:
- 28.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
 - 28.5.2 its own costs in connection with any action required by the Customer Relationship Manager and/or the Remedial Adviser pursuant to this clause 28.
- 28.6 If:
- 28.6.1 the Service Provider:
 - 28.6.1.1 fails to perform any of the steps required by the Customer Relationship Manager in an Intervention Notice; and/or
 - 28.6.1.2 is in Default of any of its obligations under clause 28.4; and/or
 - 28.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,
- (each a "**Remedial Adviser Failure**"), the Customer shall be entitled to terminate this Agreement pursuant to clause 31.1.2 (Termination by the Customer).

29. **CUSTOMER CAUSE**

- 29.1 Notwithstanding any other provision of this Agreement, if:
- 29.1.1 there is a Delay; and/or
 - 29.1.2 the Service Provider has failed to:
 - 29.1.2.1 provide the Operational Services in accordance with the Target Performance Levels; and/or

29.1.2.2 comply with its obligations under this Agreement,

(each a "**Service Provider Non-Performance**"),

and can demonstrate that the Service Provider Non-Performance would not have occurred but for an Customer Cause, then (subject to the Service Provider fulfilling its obligations in this clause 29):

29.1.2.3 the Service Provider shall not be treated as being in breach of this Agreement to the extent the Service Provider can demonstrate that the Service Provider Non-Performance was caused by the Customer Cause;

29.1.2.4 the Customer shall not be entitled to exercise any rights that may arise as a result of that Service Provider Non-Performance:

(a) to terminate this Agreement pursuant to clause 31.1.2 (Termination by the Customer); or

(b) to take action pursuant clause 28 (Remedial Adviser);

29.1.2.5 where the Service Provider constitutes a failure to Achieve a Milestone by its Milestone Date:

(a) the Milestone Date shall be postponed by a period equal to the period of Delay that the Service Provider can demonstrate was caused by the Customer Cause;

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

(c) the Service Provider shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7 (Charges and Invoicing); and/or

29.1.2.6 where the Service Provider Non-Performance constitutes a KPI Failure:

(a) the Service Provider shall not be liable to accrue Service Credits;

(b) the Customer shall not be entitled to withhold any of the Service Charges pursuant to clause 9.2.4.2 (Performance Failures); and

(c) the Service Provider shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Customer Cause,

in each case, to the extent that the Service Provider can demonstrate that the KPI Failure was caused by the Customer Cause.

29.2 In order to claim any of the rights and/or relief referred to in clause 29.1, the Service Provider shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that a Customer Cause has caused, or is reasonably likely to cause, a Service Provider Non-Performance, give the Customer Relationship Manager notice (a "**Relief Notice**") setting out details of:

29.2.1 the Service Provider Non-Performance;

- 29.2.2 the Customer Cause and its effect, or likely effect, on the Service Provider's ability to meet its obligations under this Agreement;
 - 29.2.3 any steps which the Customer Relationship Manager can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - 29.2.4 the relief and/or compensation claimed by the Service Provider.
- 29.3 Following the receipt of a Relief Notice, the Customer Relationship Manager shall as soon as reasonably practicable consider the nature of the Service Provider Non-Performance and the alleged Customer Cause and whether it agrees with the Service Provider's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief and/or compensation, consulting with the Service Provider where necessary.
- 29.4 The Service Provider shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Service Provider may incur and the duration and consequences of any Delay or anticipated Delay.
- 29.5 Without prejudice to clause 7.10 (Continuing obligation to provide the Services), if a Dispute arises as to:
- 29.5.1 whether a Service Provider Non-Performance would not have occurred but for a Customer Cause; and/or
 - 29.5.2 the nature and/or extent of the relief and/or compensation claimed by the Service Provider,

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 Service Provider Non-Performance.

30. **FORCE MAJEURE**

- 30.1 Subject to the remaining provisions of this clause 30 (and, in relation to the Service Provider, subject to its compliance with its obligations in the Business Continuity Plan), a Party may claim relief under this clause 30 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 Service Provider 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 Service Provider.
- 30.2 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.
- 30.3 If the Service Provider is the Affected Party, it shall not be entitled to claim relief under this clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated by any of the Services including the BC Services, but the Service Provider has failed to do so; and/or
 - 30.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 30.4 Subject to clause 30.5, 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.

- 30.5 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 Service Provider 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.
- 30.6 Where, as a result of a Force Majeure Event:
- 30.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
- 30.6.1.1 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 31.3.2 (Termination by the Customer) or clause 31.1.3 31.3.2 (Termination by the Service Provider); and
- 30.6.1.2 neither Party shall be liable for any Default arising as a result of such failure;
- 30.6.2 the Service Provider fails to perform its obligations in accordance with this Agreement:
- 30.6.2.1 the Customer shall not be entitled:
- (a) during the continuance of the Force Majeure Event to exercise its rights under clause 28 (Remedial Adviser) as a result of such failure;
- (b) to receive Delay Payments pursuant to clause 27 (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 9.2.4.2 to the extent that a Performance Failure has been caused by the Force Majeure Event; and
- 30.6.2.2 the Service Provider 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.
- 30.7 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.
- 30.8 Relief from liability for the Affected Party under this clause 30 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 30.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

31. TERMINATION RIGHTS

Termination by the Customer

31.1 The Customer may terminate this Agreement (or part thereof) by issuing a Termination Notice to the Service Provider:

31.1.1 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;

31.1.2 if a Service Provider Termination Event occurs;

31.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

31.1.4 if the Agreement has been amended to the extent that the Public Contracts Regulations require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

31.2 Where the Customer:

31.2.1 is terminating this Agreement under clause 31.1.2 due to the occurrence of either limb (b) and/or (i) and/or (j) of the definition of Service Provider 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

31.2.2 wishes to terminate this Agreement under clause 31.1.1 it may, prior to or instead of terminating the whole of the Agreement, serve a Termination Notice requiring the partial termination of this Agreement; and/or

31.2.3 has the right to terminate this Agreement under clause 31.1.2 or clause 31.1.3, 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 Service Provider

31.3 The Service Provider may, by issuing a Termination Notice to the Customer, terminate:

31.3.1 this Agreement if the Customer fails to pay an undisputed sum due to the Service Provider under this Agreement which in aggregate exceeds the relevant amount specified in the Task Order for the purposes of this clause 31.3.1, and such amount remains outstanding forty (40) Working Days after the receipt by the Customer of a notice of non-payment from the Service Provider; or

31.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of clause 31.3.2 would result in a Partial Termination, the provisions of clause 31.4 (Partial Termination) shall apply.

Partial Termination

- 31.4 If the Service Provider notifies the Customer pursuant to clause 31.3.2 (Termination by the Service Provider) that it intends to terminate this Agreement in part and the Customer Relationship Manager, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Customer Requirements, then the Customer shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Service Provider within one (1) month of receiving the Service Provider's Termination Notice. For the purpose of this clause 31.4, in assessing the significance of any part of the Customer Requirements, regard shall be had not only to the proportion of that part to the Customer Requirements as a whole, but also to the importance of the relevant part to the Customer.
- 31.5 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:
- 31.5.1 the Service Provider 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 Service Provider Termination Event;
 - 31.5.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
 - 31.5.3 the Service Provider shall not be entitled to reject the Change.

32. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 32.1 The provisions of clauses 7.9 (Software warranty), 11.4 and 11.5 (VAT), 11.7 (Set-off and Withholding), 13 (Records, Reports and Audits), 16.3 (Employment Indemnity), 16.4 (Income Tax and National Insurance Contributions), 16.5 to 16.10 (Staff Transfer), 18 (Intellectual Property Rights), 19 (Transfer and Licences Granted by the Service Provider), 22.1 (IPRs Indemnity), 24 (Limitations on Liability), 32 (Consequences of Expiry or Termination), 38 (Severance), 40 (Entire Agreement), 41 (Third Party Rights), 43 (Disputes) and 44 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7 (Charges and Invoicing), 8 (Payments on Termination) and 9 (Exit Management), paragraph 2.1 of Schedule 2 (Service Requirements and Service Provider Service Descriptions) of the Framework Agreement shall survive the termination or expiry of this Agreement.

Exit Management

- 32.2 The Parties shall comply with the provisions of Schedule 9 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Customer or a Replacement Service Provider.

Payments by the Customer

- 32.3 If this Agreement is terminated by the Customer pursuant to clause 31.1.1 (Termination by the Customer) or by the Service Provider pursuant to clause 31.3.1 (Termination by the Service Provider), the Customer shall pay the Service Provider the following payments (which shall be the Service Provider's sole remedy for the termination of this Agreement):
- 32.3.1 the Termination Payment; and
 - 32.3.2 the Compensation Payment, if either of the following periods is less than 365 days:
 - 32.3.2.1 the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1.1 of Part D of Schedule

7 (Charges and Invoicing) applies, deemed given) by the Customer pursuant to clause 31.1.1 (Termination by the Customer to (and including) the Termination Date; or

32.3.2.2 the period from (and including) the date of the non-payment by the Customer referred to in clause 31.3.1 (Termination by the Service Provider) to (and including) the Termination Date.

32.4 If this Agreement is terminated (in part or in whole) by the Customer pursuant to clauses 31.1.2, 31.1.3 and/or 31.2 (Termination by the Customer), or the Term expires, the only payments that the Customer shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

32.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 9 (Exit Management); and

32.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date.

32.5 Unless otherwise set out in this Agreement and/or a relevant Schedule, the costs of termination incurred by the Parties shall lie where they fall if:

32.5.1 either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to clauses 31.1.3 or 31.2.3 (Termination by the Customer) or 31.3.2 (Termination by the Service Provider); or

32.5.2 the Customer terminates this Agreement under clause 31.1.4.

Payments by the Service Provider

32.6 In the event of termination or expiry of this Agreement, the Service Provider shall repay to the Customer all Charges it has been paid in advance in respect of Services not provided by the Service Provider as at the date of expiry or termination.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

33. COMPLIANCE

Health and Safety

33.1 The Service Provider shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

33.1.1 all applicable Law regarding health and safety;

33.1.2 the HSEA Requirements; and

33.1.3 the Health and Safety Policy whilst at the Customer Premises.

33.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Service Provider shall instruct the Service Provider Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

33.3 The Service Provider shall:

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

- 33.3.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 33.3.1.2 the Customer's equality and diversity policy as provided to the Service Provider from time to time; and
 - 33.3.1.3 any other requirements and instructions which the Customer and/or Customer Relationship Manager reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law; and
 - 33.3.2 take all reasonable steps to secure the observance of clause 33.3.1 above by its employees, agents, representatives and Sub-contractors; and
 - 33.3.3 take all necessary steps, and inform the Customer Relationship Manager 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).
- 33.4 The Service Provider acknowledges that the Customer is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination (on the grounds of a Relevant Protected Characteristic), to advance equality of opportunity, and to foster good relations, between persons who share a Relevant Protected Characteristic and persons who do not share it. In performing its obligations under this Agreement, the Service Provider shall assist and co-operate with the Customer where possible in satisfying this duty.

Official Secrets Act and Finance Act

33.5 The Service Provider shall comply with the provisions of:

33.5.1 the Official Secrets Acts 1911 to 1989; and

33.5.2 section 182 of the Finance Act 1989.

34. **RECYCLED PAPER**

The Service Provider will ensure that any paper it uses in connection with this Agreement contains 100% post-consumer waste and is printed on both sides where appropriate.

35. **ASSIGNMENT AND NOVATION**

35.1 The Service Provider shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Customer Relationship Manager.

35.2 The Customer 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:

35.2.1 any Central Government Body; or

35.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Customer,

and the Service Provider shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this clause 35.2.

- 35.3 A change in the legal status of the Customer such that it ceases to be a Central Government Body shall not (subject to clause 35.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Customer.
- 35.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Customer (any such body a "**Successor Body**"), the Service Provider shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Customer under limb (k) of the definition of Service Provider Termination Event (as if references in that limb (k) to the Service Provider and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).
- 35.5 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a Central Government Body which is acting as part of the Crown or if a Central Government Body which is part of the Crown succeeds the Customer, clauses 11.7 and 11.8 shall be replaced with the following:
- "11.7 The Customer may set off any amount owed by the Service Provider to the Crown or any part of the Crown (including the Customer) against any amount due to the Service Provider under this Agreement or under any other agreement between the Service Provider and the Customer.
- 11.8 If the Customer wishes to:
- 11.8.1 set off any amount owed by the Service Provider to the Crown or any part of the Crown (including the Customer) against any amount due to the Service Provider pursuant to clause 11.7;
- 11.8.2 exercise its right pursuant to clause 9.2.4.2 (Performance Failures) to withhold payment of a proportion of the Service Charges,
- the Customer Relationship Manager shall give notice to the Service Provider within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for withholding or retaining the relevant Charges."

36. **WAIVER AND CUMULATIVE REMEDIES**

- 36.1 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.
- 36.2 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.

37. **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.

38. **SEVERANCE**

- 38.1 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.

38.2 In the event that any deemed deletion under clause 38.1 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.

38.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to clause 38.2, the matter shall be dealt with in accordance with the Dispute Resolution Procedure, except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 38.3.

39. **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.

40. **ENTIRE AGREEMENT**

40.1 This Agreement (including the Task Order) 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.

40.2 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.

40.3 Nothing in this clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41. **THIRD PARTY RIGHTS**

41.1 The provisions of clause 16.10 (Exit), clause 22.1 (IPRs Indemnity) and the provisions of Paragraph 6.9 of Schedule 9 (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.

41.2 Subject to clause 41.1, 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.

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

41.4 Any amendments or modifications to this Agreement may be made, and any rights created under clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

42. **NOTICES**

42.1 Any notices sent under this Agreement must be in writing.

- 42.2 All notices or other communications (except for Termination Notices (to which clauses 42.3 to 42.6 (Notices) shall apply), from one Party to the other under this Agreement shall be served by sending it through the Contract Management System. Any such notice which is to be given by either Party to the other shall be deemed to have been received at the time of submitting it in the Contract Management System.
- 42.3 Subject to clause 42.5, the following table sets out the method by which Termination 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 email to the correct email address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed for 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 42.4 Termination Notices shall be sent to the addresses specified in the Task Order or to such other address as the relevant Party may give notice to the other Party and, where applicable and in the case of the Service Provider, to the Customer Relationship Manager for the purpose of service of notices under this Agreement.
- 42.5 Termination Notices may 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 42.3.
- 42.6 Failure to send any Termination Notice by personal delivery or recorded delivery in accordance with clause 42.5 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 Termination Notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in clause 42.3) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the Termination Notice.
- 42.7 This clause 42 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.

43. **DISPUTES**

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

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

44. **GOVERNING LAW AND JURISDICTION**

44.1 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.

44.2 Subject to clause 43 (Disputes) and clause 36 (Dispute Resolution) of the Framework Agreement, 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.

45. **COUNTERPARTS/DUPLICATES**

45.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.

45.2 This Agreement may be executed in duplicate, each of which shall constitute an original.

SIGNED BY or on behalf of the Parties on the date stated at the beginning of this document.

EXECUTED AS A DEED by)
[*name of the Service Provider*])
by a director in)
the presence of a witness:) Signature:

Name (block capitals):

Director

Witness
signature:

Witness name
(block capitals):

Witness address:

OPTION 1a [*execution by a Highways*)
England under seal])
Executed as a deed by **HIGHWAYS**
ENGLAND COMPANY LIMITED by
affixing his common seal in the presence
of:

Director

Director/Secretary

OPTION 1b [*execution by a Highways*)
England under seal])
Executed as a deed by **HIGHWAYS**
ENGLAND COMPANY LIMITED by
affixing his common seal in the presence
of:

Authorised Signatory

Authorised Signatory

OPTION 2a Executed as a deed by)
HIGHWAYS ENGLAND COMPANY)
LIMITED acting by:

Director

Director/Secretary

OPTION 2b Executed as a deed by)
HIGHWAYS ENGLAND COMPANY)
LIMITED acting by:

Authorised Signatory

Authorised Signatory

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, the completion of Testing in accordance with the provisions of Schedule 6 (Testing Procedures), (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 (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;
"Agreement"	the Task Order, the clauses of these Call-Off Terms together with the Schedules, appendices and annexes to it and any documents referred to it or attached to it;
"Anticipated Contract Life Profit Margin"	has the meaning given in Schedule 7 (Charges and Invoicing);
"Approval"	the prior written consent or approval of the Customer or Customer Relationship Manager (as applicable) and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	any of the following: (a) a Central Government Body; (b) any third party providing services to a Central Government Body; and/or (c) any body (including any private sector body) which performs or carries on any of the functions

		and/or activities that previously had been performed and/or carried on by the Customer;
"Assets"		all assets and rights used by the Service Provider to provide the Services in accordance with this Agreement but excluding the Customer Assets;
"Audit"		any exercise by the Customer of its Audit Rights pursuant to clause 13 (Records, Reports and Audit);
"Audit Agents"		<ul style="list-style-type: none"> (a) the Customer's internal and external auditors; (b) the Customer's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Customer to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Audit Rights"		the audit and access rights referred to in clause 13 (Records, Reports and Audit);
"Balanced Scorecard Report"		has the meaning given in Paragraph 1.1.2 of Part B of Schedule 2 (Performance Levels);
"Baseline Security Requirements"		the Customer's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 4 (Security Management), as updated from time to time by the Customer and notified to the Service Provider;
"Business Continuity Plan" or "BCP"		the business continuity and disaster recovery plan to be maintained and implemented by the Service Provider in accordance with clauses 7.17 to 7.21 (Business Continuity);
"Breakage Costs Payment"		has the meaning given in Schedule 8 (Payments on Termination);
"Call-Off Effective Date"		the date specified as such on the Task Order;
"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:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal);
- (c) Non-Ministerial Department; OR
- (d) Executive Agency,

and any body corporate that is a wholly owned subsidiary of one of the above;

"Change"	any change to this Agreement;
"Change Control Procedure"	the procedure for changing this Agreement set out in clauses 15.1 to 15.8 (Change Control Procedure);
"Change in Law"	any change in Law which impacts on the performance of the Services which comes into force after the Call-Off Effective Date;
"Change Request"	a written request for a Contract Change;
"Change Request Information"	has the meaning given to it in clause 15.5 (Change Control Procedure);
"Charges"	the charges for the provision of the Services set out in the Task Order and derived in accordance with or otherwise calculated in accordance with Schedule 4 (Charges) of the Framework Agreement;
"Commencement Date"	the date on which the Services start, as set out in the Task Order;
"Commercially Sensitive Information"	the information listed in Schedule 3 (Commercially Sensitive Information) of the Framework Agreement comprising the information of a commercially sensitive nature relating to the pricing of the Services, details of the Service Provider's IPRs or its business and investment plans or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of services to another customer of the Service Provider that are the same or similar to any of the Services;
"Compensation Payment"	has the meaning given in Schedule 8 (Payments on Termination);

"Contract Change"	any change to this Agreement other than an Operational Change;
"Contract Inception Report"	the initial Financial Model in a form agreed by the Service Provider and the Customer in writing on or before the Call-Off Effective Date;
"Contract Year"	<p>(a) a period of twelve (12) months commencing on the Call-Off Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Call-Off Effective Date,</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
"Contracts Finder"	the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations;
"Costs"	has the meaning given in Schedule 7 (Charges and Invoicing);
"COTS"	commercial off the shelf, being software or hardware that is ready-made, readily available for sale, lease, or license and can be used without development;
"CO Offshoring Policy Document"	the Cabinet Office document "Policy: Offshoring information assets classified at OFFICIAL" version 1.1 dated November 2015, or any subsequent update or replacement therefor;
"Critical Performance Failure"	has the meaning given to it on the Task Order;
"Crown Body"	any department, office or agency of the Crown;
"CRTPA"	the Contracts (Rights of Third Parties) Act 1999;
"Customer Assets"	the Customer Materials, the Customer infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision or receipt of the Services;
"Customer Background IPRs"	(a) IPRs owned by the Customer before the Effective Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures;

- (b) IPRs created by the Customer independently of this Agreement; and/or
- (c) Crown Copyright which is not available to the Service Provider otherwise than under this Agreement;

but excluding IPRs owned by the Customer subsisting in the Customer Software;

“Customer Cause”

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

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

“Customer Data”

has the meaning given to it in the Framework Agreement;

“Customer IT Strategy”

the Customer's IT policy in force as at the Call-Off Effective Date (a copy of which has been supplied to the Service Provider), as updated from time to time in accordance with the Change Control Procedure;

“Customer Materials”

the Customer Data together with any materials, documentation, information, programs and codes supplied by the Customer to the Service Provider, the IPRs in which:

- (a) are owned or used by or on behalf of the Customer; 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, Service Provider Software, Third Party Software and Documentation relating to Service Provider Software or Third Party Software;

“Customer Premises”

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

“Customer Relationship Manager”

the relationship manager appointed by the Customer pursuant to clause 12.4 (Representatives);

"Customer Representative"	the representative appointed by the Customer pursuant to clause 12.4 (Representatives);
"Customer Requirements"	the requirements of the Customer set out in Schedules 2 (Performance Levels), 3 (Standards), 4 (Security Management), 9 (Exit Management);
"Customer Responsibilities"	the responsibilities of the Customer specified in Schedule 5 (Customer Responsibilities) and in the Task Order;
"Customer's Risk Assessment"	the full risk assessment and security review carried out by the Customer which is in line with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51 and ICT Offshoring (International Sourcing) Guidance dated July 2011 or, in each case, as later amended or replaced;
"Customer Software"	software which is owned by or licensed to the Customer (other than under or pursuant to this Agreement) and which is or will be used by the Service Provider for the purposes of providing the Services;
"Customer Staff"	staff members of the Customer, or the Customer's nominated representative;
"Customer System"	the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Service Provider in connection with this Agreement which is owned by the Customer or licensed to it by a third party and which interfaces with the Service Provider System or which is necessary for the Customer to receive the Services;
"Deductions"	all Service Credits, Delay Payments or any other deduction which is paid or payable to the Customer under this Agreement;
"Default"	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Customer, of its employees, servants, agents; or (b) in the case of the Service Provider, of its Sub-contractors or any Service Provider Personnel,

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;

“Defect”

- (a) any error, damage or defect in the manufacturing of a Deliverable; or
- (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
- (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Customer 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 the Customer 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;

“Delay”

- (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 Project Plan;

“Delay Deduction Period”

the period of one hundred (100) days commencing on the relevant Milestone Date;

“Delay Payments”

the amounts payable by the Service Provider to the Customer in respect of a Delay in Achieving a Key Milestone as specified in the Task Order;

“Deliverable”

an item or feature delivered or to be delivered by the Service Provider at any stage during the performance of this Agreement;

“Deposited Software”

the Software the Source Code of which is to be placed in escrow as listed in the Task Order;

"Disclosed Data"	information relating to the Project disclosed to the Service Provider and its advisors prior to the Call-Off Effective Date including the information specified in the Task Order;
"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 clause 36 (Dispute Resolution) of the Framework Agreement;
"Documentation"	<p>descriptions of the Services and Performance Indicators, details of the Service Provider 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:</p> <ul style="list-style-type: none"> (a) is required to be supplied by the Service Provider to the Customer under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Service Provider in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;

“Due Diligence Information”

any information supplied to the Service Provider by or on behalf of the Customer prior to the Call-Off Effective Date;

“Emergency Maintenance”

ad hoc and unplanned maintenance provided by the Service Provider where:

- (a) the Customer 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 Service Provider of the same; or
- (b) the Service Provider 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;

“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 Customer during the first Contract Year, as set out in the Task Order;

“Euro Compliant”

means that:

- (a) 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 the Customer’s business;
- (b) 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
- (c) 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):
 - (i) be able to perform all such functions in any number of currencies and/or in euros;
 - (ii) 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;
 - (iii) 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;

(iv) incorporate protocols for dealing with rounding and currency conversion;

(v) 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

(vi) permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

"European Single Procurement Document"

a European Single Procurement Document as detailed in Article 80(3) of Directive 2014/25/EU consisting of an updated self-declaration confirming that the Relevant Sub-Contractor fulfils the Selection Criteria;

"Exit Date"

the date or dates on which an Exiting Employee transfers (or will transfer) from the Service Provider to a Replacement Service Provider;

"Exit Day"

shall have the meaning in the European Union (Withdrawal) Act 2018;

"Exit Management"

services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Service Provider to the Customer and/or a Replacement Service Provider, as set out or referred to in Schedule 9 (Exit Management);

"Exit Plan"

the plan produced and updated by the Service Provider during the Term in accordance with Paragraph 4 of Schedule 9 (Exit Management);

“Extension Period”	a period of no greater than twelve (12) months from the end of the Initial Term or subsequent Extension Period, as applicable;
“Financial Distress Remediation Plan”	a plan setting out how the Service Provider will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
“Financial Model”	the Contract Inception Report, as may be amended from time to time in accordance with this Agreement subject to the Customer’s prior written approval;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Service Provider or the Service Provider Personnel or any other failure in the Service Provider’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 Service Provider”	has the meaning given in clause 16.5 (Staff Transfer);
“Framework Agreement”	the framework agreement entered into between the Customer and the Service Provider dated [insert date];
“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 Service Provider) 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 the Customer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Hardware”	the items of hardware that will be supplied by the Service Provider to the Customer in

accordance with this Agreement, as set out in the Service Provider Solution;

“Health and Safety Policy”

the health and safety policy of the Customer and/or other relevant Central Government Body as provided to the Service Provider on or before the Call-Off Effective Date and as subsequently provided to the Service Provider 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;

“HSEA Requirements”

the health and safety, quality and environmental requirements set out in Annex 1 of Schedule 3 (Standards);

“Indemnified Person”

the Customer and each and every person to whom the Customer (or any direct or indirect sub-licensee of the Customer) sub-licenses, assigns or novates any Relevant IPRs, or rights in Relevant IPRs in accordance with this Agreement;

“Initial Term”

the period specified in the Task Order;

“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 an 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 fourteen (14) days;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where the other Party is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;

	(iii)	(being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
	(iv)	(being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or
	(g)	any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
"Intellectual Property Rights" or "IPRs"	(a)	copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
	(b)	applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
	(c)	all other rights having equivalent or similar effect in any country or jurisdiction;
"Intervention Cause"		has the meaning given in clause 28.1.2 (Remedial Adviser);
"Intervention Notice"		has the meaning given in clause 28.1.2 (Remedial Adviser);
"Intervention Period"		has the meaning given in clause 28.2.3 (Remedial Adviser);
"Intervention Trigger Event"	(a)	any event falling within limb (a), (b), (c), (e), (f) or (g) of the

	definition of a Service Provider Termination Event;
	(b) a Default by the Service Provider that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
	(c) the Service Provider accruing in aggregate the number of Service Points (in terms of the number of the points allocated) specified on the Task Order in the period specified on the Task Order for the purposes of this term; and/or
	(d) the Service Provider accruing Service Credits which meet or exceed 75% of the Service Credit Cap;
"IPRs Claim"	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Customer Software by or on behalf of the Service Provider, in either case for a purpose not reasonably to be inferred from the Task Order or the provisions of this Agreement;
"IT"	information and communications technology;
"IT Environment"	the Customer System and the Service Provider System;
"Key Milestone"	the Milestones identified in the Project 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 (Charges and Invoicing) if the Service Provider 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 1 of Annex 1 of Schedule 2 (Performance Levels) insofar as they relate to the Services, as specified in of Table 1 of Annex 4 (Performance Levels) of the Task Order;
"Key Sub-contract"	each Sub-contract with a Key Sub-contractor;
"Key Sub-contractor"	any Sub-contractor;

- (a) which, in the opinion of the Customer Relationship Manager, 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 any Call-Off Contract (as set out in the Financial Model for that Call-Off Contract);

“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 1 of Annex 1 of Schedule 2 (Performance Levels) or as otherwise specified in Table 1 of Annex 4 of the Task Order;

“Law”

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 Service Provider is bound to comply;

“Licensed Software”

all and any Software licensed by or through the Service Provider, its Sub-contractors or any third party to the Customer for the purposes of or pursuant to this Agreement, including any Service Provider Software, Third Party Software and/or in any Service Provider Background IPRs;

“Losses”

losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

"Maintenance Schedule"	shall have the meaning set out in clause 10.5 (Maintenance);
"Malicious Software"	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;
"Material KPI Failure"	<ul style="list-style-type: none"> (a) a Serious KPI Failure; (b) a Severe KPI Failure; or (c) a failure by the Service Provider to meet a KPI Service Threshold;
"Material PI Failure"	<ul style="list-style-type: none"> (a) a failure by the Service Provider to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or (b) a failure by the Service Provider to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;
"Maximum Extension Period"	the maximum permitted period of any extension(s) of this Agreement, as specified on the Task Order;
"Measurement Period"	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Service Provider's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually);
"Milestone"	an event or task described in the Project Plan which, if applicable, shall be completed by the relevant Milestone Date;
"Milestone Certificate"	Achievement the certificate to be granted by the Customer when the Service Provider has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 2 of Schedule 6 (Testing Procedures);
"Milestone Date"	the target date set out against the relevant Milestone in the Project Plan by which the Milestone must be Achieved;

“Milestone Payment”	a payment identified in Part 2 of Annex 6 of the Call-Off Form to be made following the issue of a Milestone Achievement Certificate;
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Annex 1 of Schedule 2 (Performance Levels) or as otherwise specified in Table 1 of Annex 4 of the Task Order;
“month”	a calendar month and “monthly” shall be interpreted accordingly;
“Non-trivial Customer Base”	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;
“Notifiable Default”	shall have the meaning given in clause 26.1 (Rectification Plan Process);
“Object Code”	software and/or data in machine-readable, compiled object code form;
“Offshore”	outside the United Kingdom;
“Open Source”	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;
“Operating Environment”	the Customer System and the Sites;
“Operational Change”	any change in the Service Provider's operational procedures which in all respects, when implemented: <ul style="list-style-type: none"> (a) will not affect the Charges and will not result in any other costs to the Customer; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Customer's IT infrastructure; and (d) will not require a change to this Agreement;
“Operational Phase”	the phase in which the Service Provider will deliver the Operational Services commencing

		from the Operational Service Commencement Date;
"Operational Commencement Date"	Service	in relation to an Operational Service, the later of: <ul style="list-style-type: none"> (a) the date identified in the Project Plan upon which the Operational Service is to commence; and (b) where the Project Plan states that the Service Provider must have Achieved the applicable Tests before it can commence the provision of that Operational Service, the date upon which the Service Provider Achieves the relevant Tests;
"Operational Services"		the operational services described as such in the Task Order;
"Optional Services"		such of the services described as such in the Services Description which are to be provided by the Service Provider if required by the Customer in accordance with clause 7.11 (Optional Services) and as are prescribed on the Task Order;
"Optional Services Project Plan"		that section of the Project Plan applicable to the provision of any Optional Services;
"OSS"		the Open Source listed in the Task Order;
"Other Service Provider"		any supplier to the Customer (other than the Service Provider) which is notified to the Service Provider from time to time and/or of which the Service Provider should have been aware, including the suppliers operating under the "Smart Motorways Alliance and the Collaborative Delivery Framework";
"Partial Termination"		the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in clause 31.2.3 (Termination by the Customer) or 31.3.2 (Termination by the Service Provider);
"Parties" and "Party"		have the meanings respectively given on page 1 of this Agreement;
"Performance Failure"		a KPI Failure or a PI Failure;
"Performance Indicators"		the Key Performance Indicators and the Subsidiary Performance Indicators;
"Permitted Maintenance"		has the meaning given in clause 10.5 (Maintenance);

"Performance Report"	Monitoring	has the meaning given in Schedule 2 (Performance Levels);
"PI Failure"		a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
"PI Service Threshold"		shall be as set out against the relevant Subsidiary Performance Indicator in Annex 4 of the Task Order;
"PPN7/14"		has the meaning given in clause 10.4.1 (Service Provider Equipment);
"Project Plan"		the plan set out at Annex 5 (Project Plan) of the Task Order, as may be amendment from time to time by the Customer by giving written notice to the Service Provider;
"Project Specific IPRs"		<p>(a) Intellectual Property Rights in items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Service Provider's obligations under this Agreement;</p> <p>but shall not include the Service Provider Background IPRs or the Specially Written Software;</p>
"Public Contracts Regulations"		the Public Contracts Regulations 2015 (as amended from time to time);
"Quarter"		the first three (3) Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
"Recipient"		has the meaning given in clause 16 (Confidentiality) of the Framework Agreement;
"Rectification Plan"		a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
"Rectification Plan Failure"		(a) the Service Provider failing to submit or resubmit a draft Rectification Plan to the Customer within the timescales specified in clauses 26.4 (Submission of the draft Rectification Plan) or 26.8 (Agreement of the Rectification Plan);

- (b) the Customer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Service Provider pursuant to clause 26.7 (Agreement of the Rectification Plan);
- (c) the Service Provider failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to clause 26.2 (Notification); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Service Provider can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Service Provider must rectify the material Default;
- (d) the Service Provider not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (e) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in clauses 26.4 (Submission of the Rectification Plan) to 26.9 (Agreement of the Rectification Plan);

“Registers”

has the meaning given in Schedule 9 (Exit Management);

“Reimbursable Expenses”

has the meaning given in Schedule 7 (Charges and Invoicing);

“Relevant IPRs”

IPRs used to provide the Services or as otherwise provided and/or licensed by the Service Provider (or to which the Service Provider has provided access) to the Customer or a third party in the fulfilment of the Service Provider’s obligations under this Agreement including IPRs in the Specially Written Software, the Service Provider Project Specific IPRs, the Service Provider

		Non-COTS Software, the Service Provider Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Customer Software, the Customer Background IPRs, the Service Provider COTS Software, the Service Provider COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
"Relevant Characteristic"	Protected	has the meaning given in section 149 (7) of the Equality Act 2010;
"Relevant Sub-Contractor(s)"		any sub-contractors engaged or to be engaged by the Service Provider in relation to the delivery of its obligations under this Agreement where the sub-contractors are engaged or will be engaged for the provision of works or in relation to the provision of services at a facility under the direct oversight of the Customer;
"Relevant Tax Authority"		HMRC, or, if applicable, a tax authority in the jurisdiction in which the Service Provider is established;
"Relief Notice"		has the meaning given in clause 29.2 (Customer Cause);
"Remedial Adviser"		the person appointed pursuant to clause 28.2 (Remedial Adviser);
"Remedial Adviser Failure"		has the meaning given in clause 28.6 (Remedial Adviser);
"Replacement Services"		any services which are the same as or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Service Provider"		any third party service provider of Replacement Services appointed by the Customer from time to time (or where the Customer is providing replacement Services for its own account, the Customer). For the avoidance of doubt there may be more than one Replacement Service Provider appointed at different times during the Term;
"Security Management Plan"		the Service Provider's security plan as shown in Annex 2 to Schedule 4 (Security Management) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 4 (Security Management);

"Selection Criteria"	has the meaning given to it in the Framework Agreement;
"Serious KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Annex 1 of Schedule 2 (Performance Levels) or as otherwise specified in Table 1 of Annex 4 (Performance Levels) of the Task Order;
"Service Charges"	the periodic payments made in accordance with Schedule 7 (Charges and Invoicing) of this Agreement in respect of the supply of the Operational Services, as specified in Part 2 of Annex 6 of the Task Order;
"Service Credit Cap"	<p>(a) in the period of twelve (12) months from the first Operational Service Commencement Date to occur after the Call-Off Effective Date, the agreed percentage of the Estimated Initial Service Charges as is identified on the Task Order; and</p> <p>(b) during the remainder of the Term, the agreed percentage of the Service Charges paid and/or due to be paid to the Service Provider under this Agreement in the period of twelve (12) months immediately preceding the Service Period in respect of which Service Credits are accrued,</p> <p>provided that for the purposes of this definition the "agreed percentage" shall be the relevant percentage specified in the Task Order;</p>
"Service Credits"	credits payable by the Service Provider due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Schedule 7 (Charges and Invoicing) and the Task Order;
"Service Failure"	any defect in or failure of the Service Provider System and/or any Service which results (or would result if end users were, at the relevant time, using that Service) in a failure to provide the Service Provider System and/or that Service in accordance with the requirements of this Agreement or which results in the provision of the Service Provider System and/or any Service not complying with the requirements of this Agreement;
"Service Period"	the meaning given to it in Schedule 2 (Performance Levels);
"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 tables in Part 1 of Annex 1 of Schedule 2

(Performance Levels), as specified in Annex 4 (Performance Levels) of the Task Order;

"Service Provider Background IPRs"

- (a) Intellectual Property Rights owned by the Service Provider before the Call-Off Effective Date, for example those subsisting in the Service Provider's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider 's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Service Provider independently of this Agreement,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Service Provider subsisting in the Service Provider Software;

"Service Provider COTS Background IPRs"

any embodiments of Service Provider Background IPRs that:

- (a) the Service Provider 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 Service Provider save as to price; and
- (b) has a Non-trivial Customer Base;

"Service Provider COTS Software"

Service Provider Software (including Open Source) that:

- (a) the Service Provider 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 Service Provider save as to price; and
- (b) has a Non-trivial Customer Base;

"Service Provider Equipment"

the hardware, computer and telecoms devices and equipment used by the Service Provider or its Sub-contractors (but not hired, leased or loaned from the Customer) for the provision of the Services, but excluding any Hardware;

"Service Provider Non-COTS Background IPRs"	any embodiments of Service Provider Background IPRs that have been delivered by the Service Provider to the Customer and that are not Service Provider COTS Background IPRs;
"Service Provider Non-Performance"	has the meaning given in clause 29.1 (Customer Cause);
"Service Provider Non-COTS Software"	Service Provider Software that is not Service Provider COTS Software;
"Service Provider Personnel"	all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-contractor engaged in the performance of the Service Provider's obligations under this Agreement;
"Service Provider Profit"	has the meaning given in Schedule 7 (Charges and Invoicing);
"Service Provider Profit Margin"	has the meaning given in Schedule 7 (Charges and Invoicing);
"Service Provider Representative"	the representative appointed by the Service Provider pursuant to clause 12.3 (Representatives);
"Service Provider Software"	software which is proprietary to the Service Provider (or an Affiliate of the Service Provider) and which is or will be used by the Service Provider for the purposes of providing the Services, including the software specified as such in the Task Order but excluding any Specifically Written Software;
"Service Provider Solution"	the Service Provider's solution for the Services set out in the relevant sections (as referenced in the Task Order) of Schedule 2 (Service Requirements and Service Provider Service Descriptions) of the Framework Agreement;
"Service Provider System"	the information and communications technology system used by the Service Provider in implementing and performing the Services including the Software, the Service Provider Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Service Provider Termination Event"	<p>(a) the Service Provider's level of performance constituting a Critical Performance Failure;</p> <p>(b) the Service Provider committing a material Default which is irremediable;</p>

- (c) as a result of the Service Provider's Default, the Customer incurring Losses which exceed 50% of the value of the aggregate liability cap as set out in clause 24.6.1 (Financial and other 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 22 (IPRs Indemnity);
 - (ii) clause 10 (Prevention of Bribery) of the Framework Agreement; and/or
 - (iii) paragraph 4 of Schedule 8 (Financial Distress) of the Framework Agreement;
- (g) any breach of clause 13 (Records, Reports and Audits);
- (h) the representation and warranty given by the Service Provider pursuant to clause 4.2.9 (Warranties) being materially untrue or misleading;
- (i) the Service Provider committing a material Default under clause 8.3 (Promoting Tax Compliance) of the Framework Agreement or the Service Provider failing to provide details of the of steps being taken and mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (j) the Service Provider committing a material Default under any of the following clauses:
 - (i) clause 7.6.11 (Services);
 - (ii) clause 18 (Protection of Personal Data) of the Framework Agreement;
 - (iii) clause 17 (Freedom of Information);

- (iv) clause 16 (Confidentiality) under the Framework Agreement; and
 - (v) clause 33 (Compliance); and/or
 - (vi) in respect of any security requirements set out in the Services Description, Schedule 4 (Security Management) or the Baseline Security Requirements; and/or
 - (vii) in respect of any requirements set out in clauses 16.6, 16.7, 16.9 and/or 16.10 (Service Provider Personnel);
- (k) an Insolvency Event occurring in respect of the Service Provider or the Guarantor;
- (l) where a Guarantee is required to be delivered and executed pursuant to clause 25 (Guarantee) of the Framework Agreement, the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Customer with the Guarantor or with another guarantor which is acceptable to the Customer);
- (m) a change of Control of the Service Provider or the Guarantor unless:
- (i) the Customer has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date on which the change of Control took place or the date on which the Customer was given notice of the change of Control; or
- (n) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the

Customer that it objects to such change of Control, the Service Provider terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Customer pursuant to clause 17.11 (Appointment of Key Sub-contractors); or

- (o) the Service Provider is in breach of clause 25 (Guarantee) of the Framework Agreement; or
- (p) the Customer terminates or Suspends the Framework Agreement (or part thereof);
- (q) if specified in the Task Order, the Customer has become aware that the Service Provider should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations from the procurement procedure leading to the award of this Agreement; or
- (r) a failure by the Service Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;

“Services”

any and all of the services to be provided by the Service Provider under this Agreement, including such of the services set out in Schedule 2 (Service Requirements and Service Provider Service Descriptions) of the Framework Agreement as are prescribed in the Task Order;

“Services Description”

the description of the Services set out in relevant section (as referenced in in Appendix 3 of the Task Order) of Schedule 2 (Service Requirements and Service Provider Service Descriptions) of the Framework Agreement;

“Severe KPI Failure”

shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Annex 1 of Schedule 2 (Performance Levels) or as otherwise specified in Table 1 of Annex 4 (Performance Levels) of the Task Order;

“Sites”

any premises (including the Customer Premises, the Service Provider Premises or third party premises):

- (a) from, to or at which:

(i) the Services are (or are to be) provided; or

(ii) the Service Provider manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

(i) any part of the Service Provider System is situated; or

(ii) any physical interface with the Customer System takes place;

"SME"

either:

(a) a Sub-contractor; or

(b) a sub-contractor to a Sub-contractor,

that is:

(i) autonomous;

(ii) a company registered in the European Union not owned or controlled by a non-European Union registered parent company; and

(iii) either:

A) a medium sized enterprise (medium class) which employs fewer than 250 staff, has an annual turnover no greater than 50 million euros and does not have a balance sheet value greater than 43 million euros;

B) a small sized enterprise (small class) which employs fewer than 50 staff and has an annual turnover no greater than 10 million euros and does not have a balance sheet value greater than 10 million euros; or

C) a micro sized enterprise (micro class) which employs fewer than 10 staff and has an annual turnover no greater than 2 million euros and does not have a balance sheet value greater than 2 million euros;

"Software"	Specially Written Software, Service Provider Software and Third Party Software;
"Software Supporting Materials"	has the meaning given in clause 19.1.2 (Specially Written Software and Project Specific IPRs);
"Source Code"	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;
"Specially Written Software"	<p>any software (including, but not limited to database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Service Provider (or by a Sub-contractor or other third party on behalf of the Service Provider) specifically for the purposes of this Agreement, including:</p> <ul style="list-style-type: none"> (a) any modifications or enhancements to Service Provider Software or Third Party Software created specifically for the purposes of this Agreement; and (b) as specified in the Task Order;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Standards"	the standards, codes, policies, procedures, practices and Quality Plans identified in Schedule 2 (Service Requirements and Service Provider Service Descriptions) of the Framework Agreement and Schedule 3 (Standards), together with any additional standards specified in Annex 10 of the Task Order and any other applicable British standards, notified the Customer internal policies and procedures from time to time in force;
"Sub-contract"	any contract or agreement (or proposed contract or agreement) between the Service Provider (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Service Provider (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 Service Provider 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;
"Subsidiary Indicator"	Performance	the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2 (Performance Levels) insofar as they relate to the Services, as specified in Table 2 of Annex 4 (Performance Levels) of the Task Order;
"Successor Body"		has the meaning given in clause 35.4 (Assignment and Novation);
"System"		the Software, Hardware and Services together;
"Target Performance Level"		the minimum level of performance for a Performance Indicator which is required by the Customer, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 2 (Performance Levels) insofar as they relate to the Services or as otherwise specified in Annex 6 of the Task Order;
"Task Order"		the order, based on the proforma set out in Schedule 5 (Task Order) of the Framework Agreement, completed and agreed in writing by the Parties which forms part of this Agreement;
"Tender"		the tender submitted by the Service Provider in response to the Customer's invitation pursuant to clause 6.4 or 6.10 (Ordering Procedure) (as applicable) of the Framework Agreement;
"Term"		the period commencing on the Call-Off Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
"Termination Assistance Notice"		has the meaning given in Paragraph 5.1 of Schedule 9 (Exit Management);
"Termination Assistance Period"		in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Service Provider is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 9 (Exit Management);
"Termination Date"		the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;

“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 8 (Payments on Termination);
“Termination Services”	the services and activities to be performed by the Service Provider pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 9 (Exit Management), and any other services required pursuant to the Termination Assistance Notice;
“Tests” and “Testing”	any tests required to be carried out under this Agreement, as further described in Schedule 6 (Testing Procedure) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 6 (Testing Procedures);
“TFEU”	the Treaty on the Functioning of the European Union;
“Third Party Beneficiary”	has the meaning given in clause 41.1 (Third Party Rights);
“Third Party COTS IPRs”	Third Party IPRs that: <ul style="list-style-type: none"> (a) the Service Provider or relevant third party 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 Service Provider save as to price; and (b) has a Non-trivial Customer Base;
“Third Party COTS Software”	Third Party Software that: <ul style="list-style-type: none"> (a) the Service Provider or relevant third party 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 Service Provider save as to price; and (b) has a Non-trivial Customer base, including where indicated as such in the Task Order;
“Third Party IPRs”	Intellectual Property Rights owned by a third party but excluding Intellectual Property

	Rights owned by the third party subsisting in any Third Party Software;
"Third Party Non-COTS IPRs"	Third Party IPRs that are not Third Party COTS IPRs;
"Third Party Non-COTS Software"	Third Party Software that is not Third Party COTS Software including where indicated as such in the Task Order;
"Third Party Provisions"	has the meaning given in clause 41.1 (Third Party Rights);
"Third Party Software"	software which is proprietary to any third party (other than an Affiliate of the Service Provider) which in any case is, will be or is proposed to be used by the Service Provider for the purposes of providing the Services, including the software specified as such in the Task Order and including the OSS, but excluding the Specifically Written Software;
"Transfer Date"	means the date on which the Service Provider starts to provide the Services;
"Transferring Assets"	has the meaning given in Paragraph 6.2(a) of Schedule 9 (Exit Management);
"Treaties"	the Treaty on European Union and TFEU;
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"UK"	the United Kingdom;
"Unintended Exiting Employee"	means a person employed or engaged by the Service Provider and who claims to have become an employee of the Customer or a Replacement Service Provider by reason of TUPE applying or being alleged to apply at the Exit Date;
"Unintended Transferring Employee"	means a person employed by Customer who claims to have become an employee of the Service Provider by reason of TUPE applying at the Transfer Date;
"Unrecovered Payment"	has the meaning given in Schedule 8 (Payments on Termination);
"VAT"	value added tax as provided for in the Value Added Tax Act 1994; and
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.