

**DATED**

21 November 2023

**(1) NHS ENGLAND**

and

**(2) PALANTIR TECHNOLOGIES UK, LTD.**

**AGREEMENT**

relating to

a federated data platform and  
associated services

(Contract reference number: C227572)

Contains public sector information licensed under the Open Government Licence v3.0  
<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>.

## CONTENTS

SECTION A - PRELIMINARIES .....	1
1 DEFINITIONS AND INTERPRETATION .....	1
2 DUE DILIGENCE.....	2
3 WARRANTIES.....	2
SECTION B - THE SERVICES.....	5
4 TERM .....	5
5 THE SERVICES .....	5
6 PROJECT SERVICES .....	10
7 KEY PERFORMANCE INDICATORS .....	10
8 SERVICES IMPROVEMENT .....	12
9 EQUIPMENT AND MAINTENANCE .....	13
SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS .....	14
10 FINANCIAL AND TAXATION MATTERS .....	14
SECTION D - CONTRACT GOVERNANCE.....	16
11 GOVERNANCE.....	16
12 RECORDS, REPORTS & AUDITS .....	16
13 CHANGE .....	16
SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN.....	18
14 SUPPLIER PERSONNEL .....	18
15 SUPPLY CHAIN RIGHTS AND PROTECTIONS .....	20
SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY .....	27
16 INTELLECTUAL PROPERTY RIGHTS.....	27
17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER .....	28
18 LICENCES GRANTED BY THE AUTHORITY .....	32
19 IPRs INDEMNITY .....	33
20 AUTHORITY DATA AND SECURITY REQUIREMENTS.....	33
21 CONFIDENTIALITY.....	35
22 TRANSPARENCY AND FREEDOM OF INFORMATION .....	37
23 PROTECTION OF PERSONAL DATA .....	39
24 PUBLICITY AND BRANDING.....	42
SECTION G - LIABILITY, INDEMNITIES AND INSURANCE .....	44
25 LIMITATIONS ON LIABILITY.....	44
26 INSURANCE .....	47
SECTION H - REMEDIES AND RELIEF .....	48
27 RECTIFICATION PLAN PROCESS .....	48
28 DELAY PAYMENTS .....	49
29 REMEDIAL ADVISER.....	50
30 STEP-IN RIGHTS .....	52
31 AUTHORITY CAUSE.....	52
32 FORCE MAJEURE .....	54
SECTION I - TERMINATION AND EXIT MANAGEMENT .....	56
33 TERMINATION RIGHTS.....	56
34 CONSEQUENCES OF EXPIRY OR TERMINATION .....	57
35 COMPLIANCE.....	59
36 ASSIGNMENT AND NOVATION.....	61
37 WAIVER AND CUMULATIVE REMEDIES.....	62
38 RELATIONSHIP OF THE PARTIES.....	62
39 PREVENTION OF FRAUD AND BRIBERY.....	62
40 SEVERANCE .....	64
41 FURTHER ASSURANCES .....	64
42 ENTIRE AGREEMENT .....	64
43 THIRD PARTY RIGHTS .....	64
44 NOTICES.....	65
45 DISPUTES.....	66
46 GOVERNING LAW AND JURISDICTION.....	66

## SCHEDULES

1. **Definitions**
2. **Service Requirements**
  - 2.1 Services Description
  - 2.2 Performance Levels
  - 2.3 Standards
  - 2.4 Security Management
  - 2.5 Insurance Requirements
  - 2.6 Authority Service Recipients
  - 2.7 Digital & Data Academy
  - 2.8 FOI Policy
  - 2.9 Social Value Commitments
  - 2.10 Collaboration
3. **Authority Responsibilities**
4. **Supplier Matters**
  - 4.1 Supplier Solution
  - 4.2 Commercially Sensitive Information
  - 4.3 Notified Sub-contractors
5. **Software**
6. **Project services and Testing**
  - 6.1 Project Plan
  - 6.2 Testing Procedures
7. **Financial Matters**
  - 7.1 Charges and Invoicing
  - 7.2 Payments on Termination
  - 7.3 Financial Distress
  - 7.4 Audit Rights
8. **Governance**
  - 8.1 Governance
  - 8.2 Change Control Procedure
  - 8.3 Dispute Resolution Procedure
  - 8.4 Reports and Records Provisions
  - 8.5 Exit Management
  - 8.6 Service Continuity Plan
  - 8.7 Conduct of Claims
9. **Employment**
  - 9.1 Key Personnel
  - 9.2 Staff Transfer
10. **Additional Authority Remedies**
11. **Processing Personal Data**

**BETWEEN:**

- (1) NHS ENGLAND of Quarry House, Quarry Hill, Leeds LS2 7UE (the “Authority”); and
- (2) PALANTIR TECHNOLOGIES UK, LTD. a company registered in England and Wales whose registered office is New Penderel House, 4th Floor, 283-288 High Holborn, London, England, WC1V 7HP (the “Supplier”),

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

**INTRODUCTION**

- (A) The Authority is an executive non-departmental public body of the Department of Health & Social Care and responsible for the National Health Service in England further to the National Health Service Act 2006, the Health and Social Care Act 2012 and the Health and Care Act 2022. The Authority wishes to procure a federated data platform and associated services in order to deliver its functions.
- (B) On 10 January 2023 the Authority published a notice on the UK Government’s Find a Tender service (ref 2023/S 000-000669), inviting prospective suppliers to submit requests to participate in a procurement for a federated data platform and associated services.
- (C) The Supplier is a leading provider of data analytics and associated software services and its supply chain [REDACTED] includes capabilities in implementation, support and delivery of such services and their adoption by users.
- (D) On the basis of the Supplier’s response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (E) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

**SECTION A - PRELIMINARIES**

**1 DEFINITIONS AND INTERPRETATION**

In this Agreement, unless otherwise provided or the context otherwise require:

- (a) capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears;
- (b) the rules of interpretation and other terms of Schedule 1 (*Definitions*) apply.

## **2 DUE DILIGENCE**

- 2.1 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- (a) any misinterpretation of the Authority Requirements; and/or
  - (b) any fact or matter accurately and adequately described in the Due Diligence Information.

## **3 WARRANTIES**

- 3.1 The Authority represents and warrants that:

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

- 3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) it has notified the Authority in writing of any suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding

obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and invitation to competitive dialogue (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
  - (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
  - (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority and Authority Service Recipients which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority and Authority Service Recipients;
  - (k) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
  - (l) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
  - (m) 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.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall

immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## SECTION B - THE SERVICES

### 4 TERM

4.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (*Termination Rights*), terminate:
  - (i) at the end of the Initial Term; or
  - (ii) if the Authority elects to extend the Term by an Extension Period by giving the Supplier at least 90 days' notice before the end of the Initial Term or the then current Extension Period, at the end of the further Extension Period.

### 5 THE SERVICES

#### Standard of Services

- 5.1 The Parties agree to execute a Statement of Work for Implementation Services (which shall include a completed Implementation Plan), on or within 5 Working Days of the Effective Date (or within such other timescale as may be agreed in writing by the Parties). The Supplier shall provide Implementation Services in accordance with the Statement of Work for the Implementation Services and the dates set out for performance in the Implementation Plan.
- 5.2 The Supplier shall provide the Operational Services from the Go Live Date.
- 5.3 The Supplier shall provide Build Services in accordance with the dates set out for their performance in a Build Plan.
- 5.4 The Supplier shall ensure that:
  - (a) the Services:
    - (i) comply in all respects with the Services Description; and
    - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement.
- 5.5 The Supplier shall:
  - (a) perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:

- (i) all applicable Law;
  - (ii) Good Industry Practice;
  - (iii) the Standards;
  - (iv) the Baseline Security Requirements;
  - (v) the Authority IT Strategy; and
  - (vi) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.5(a)(i) to 5.5(a)(v); and
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.6 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.5(a)(i) to 5.5(a)(v), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

#### **Authority Service Recipients**

5.7 The Supplier acknowledges that Services are provided to and for the benefit of Authority Service Recipients and the Parties agree to perform their obligations under Schedule 2.6 (*Authority Service Recipients*).

#### **Supplier covenants**

5.8 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
  - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority and Authority Service Recipients which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority and Authority Service Recipients;
  - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and

(except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify (other than in respect of the Cloud Solution updates or Upgrades) the Authority 3 months before the release of any new Software or Upgrade;

- (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority and Authority Service Recipients in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements;
- (v) all Data Connectors meet the Authority Requirements and are approved by the Authority; and
- (vi) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's (and Authority Service Recipients') operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority and Authority Service Recipients are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers notified to the Supplier by the Authority in accordance with Schedule 2.10 (*Collaboration*);
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, 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 or indemnities in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.8(g);
- (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (k) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any Change of Control taking place;

- (l) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
  - (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority (and the same shall apply regarding Authority Service Recipients); and
  - (n) manage closure or termination of Services to take account of the Authority's and Authority Service Recipients' disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.9 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.10 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 5.8(b) to 5.8(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
  - (b) remedy any breach of its obligations in Clause 5.8(a) and Clauses 5.8(e) to 5.8(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
  - (c) meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under Clause 5.10(a) or Clause 5.10(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

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

- 5.11 Without prejudice to Clauses 5.8 (*Supplier Covenants*) and 5.10 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:
- (a) be free from material design and programming errors;
  - (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
  - (c) not infringe any Intellectual Property Rights.

### Continuing obligation to provide the Services

- 5.12 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- (a) any withholding of the Service Charges by the Authority pursuant to Clause 7 (*Key Performance Indicators*);
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by the Authority to pay any Charges,
- unless the Supplier is entitled to terminate this Agreement under Clause 33.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

### Optional Services

- 5.13 The Authority may require the Supplier to provide any or all of the Optional Services at any time by issuing a Brief to the Supplier.
- 5.14 The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority and Authority Service Recipients from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.15 The Supplier shall respond to a Brief within 10 Working Days (or such other time period agreed in writing by the Parties) by providing a Draft SoW to the Authority. Following receipt of a Draft SoW the Authority and the Supplier shall discuss and document the Optional Services in the form of a Statement of Work including:
- (a) an Outline Project Plan complying with paragraph 3 of Schedule 6.1 (*Project Plan*);
  - (b) any additional charges for the Optional Services, calculated in accordance with Schedule 7.1 (*Charges and Invoicing*); and
  - (c) the provision by the Supplier, 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)), of the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Key Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*) or such other Key Performance Indicators applicable to the Optional Services as agreed by the Parties in the Statement of Work.
- 5.16 The Supplier shall perform Optional Services as set out in the relevant Statement of Work.

### Power of attorney

- 5.17 By way of security for the performance of its obligations under Clauses 5.8(g) and 5.8(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be

necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.17 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

### **Authority Responsibilities**

5.18 The Authority shall comply with its responsibilities:

- (a) set out in Schedule 3 (*Authority Responsibilities*);
- (b) expressly identified as Authority Responsibilities in a Statement of Work.

## **6 PROJECT SERVICES**

### **Project Plans and Delays**

6.1 The Parties shall comply with the provisions of Schedule 6.1 (*Project Plan*) in relation to the agreement and maintenance of the Detailed Project Plans.

6.2 The Supplier shall:

- (a) comply with each Project Plan; and
- (b) ensure that each Milestone is Achieved on or before its Milestone Date.

6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

- (a) it shall:
  - (i) notify the Authority in accordance with Clause 27.1 (*Rectification Plan Process*); and
  - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
  - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 28 (*Delay Payments*) shall apply.

### **Testing and Achievement of Milestones**

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

## **7 KEY PERFORMANCE INDICATORS**

7.1 The Supplier shall:

- (a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator from the

Milestone Date for each relevant Milestone; and

- (b) comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Key Performance Indicators.

### Performance Failures

7.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*); and
- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a)).

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

- (a) the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;
- (b) the KPI Failure:
  - (i) breaches the relevant KPI Service Threshold;
  - (ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
  - (iii) results in:
    - (A) the corruption or loss of any Authority Data (in which case the remedies under Clause 20.7 (*Authority Data and Security Requirements*)) shall also be available); and/or
    - (B) the Authority and/or Authority Service Recipients being required to make a compensation payment to one or more third parties;
- (c) the Supplier has fraudulently misrepresented its performance against any Key Performance Indicator; and/or
- (d) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 33.1(b) (*Termination by the Authority*).

### Unacceptable KPI Failure

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

- (a) the Authority shall (subject to the Service Credit Cap set out in Clause 25.4(c) (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of

that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”); and

- (b) if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

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

7.5 The Supplier:

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

**Critical Performance Failure**

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

**8 SERVICES IMPROVEMENT**

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every 12 months on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority or Authority Service Recipients which might result in efficiency or productivity gains or in reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority and Authority Service Recipients; and/or
- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

## **9 EQUIPMENT AND MAINTENANCE**

### **Supplier Equipment**

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

### **Supply of Goods**

[NOT USED]

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

### 10 FINANCIAL AND TAXATION MATTERS

#### Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.4 (*Testing and Achievement of Milestones*), 12 (*Records, Reports & Audits*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein, Clause 29 (*Remedial Adviser*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the 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

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

#### Set-off and Withholding

- 10.6 The Authority may set off any amount owed by the Supplier to the Authority against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to Clause 10.6, it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

#### Financial Distress

- 10.8 The Parties shall comply with the provisions of Schedule 7.3 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

## Promoting Tax Compliance

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

## SECTION D - CONTRACT GOVERNANCE

### 11 GOVERNANCE

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

#### Representatives

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

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.1 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

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

### 12 RECORDS, REPORTS & AUDITS

12.1 The Supplier shall comply with the provisions of Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records and provision of any or all of the reports identified in Schedule 8.4 (*Reports and Records Provisions*) or otherwise required to be provided by the Supplier under this Agreement.

12.2 The Parties shall comply with the provisions of Schedule 7.4 (*Audit Rights*).

### 13 CHANGE

#### Change Control Procedure

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

#### Change in Law

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

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

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

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
  - (i) whether any Change is required to the Services, the Charges or this

Agreement; and

(ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and

(b) provide the Authority with evidence:

(i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

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

(iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

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

## SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN

### 14 SUPPLIER PERSONNEL

#### 14.1 The Supplier shall:

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

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

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

## Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.1 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
  - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
  - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
  - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
  - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
  - (e) ensure that any replacement for a Key Role:
    - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

## Employment Indemnity

14.7 The Parties agree that:

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

## Income Tax and National Insurance Contributions

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

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

## Staff Transfer

14.9 The Parties agree that in respect of Relevant Transfers the provisions of Schedule 9.2 (*Staff Transfer*) shall apply.

## 15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

### Advertising Services Sub-contract Opportunities

15.1 The Supplier shall:

- (a) subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Services Sub-contract opportunities arising from or in connection with the provision of Services [REDACTED]
- (b) within ninety (90) days of awarding a Services Sub-contract to a Services Sub-contractor, update the notice on Contracts Finder with details of the successful Services Sub-contractor;
- (c) monitor the number, type and value of the Services Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Clause 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Services Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

15.3 The obligation at Clause 15.1 shall only apply in respect of Services Sub-contract opportunities arising after the Effective Date.

15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Services Sub-contract opportunity is not required to be advertised on Contracts Finder.

#### **Appointment of Services Sub-contractors**

15.5 Where the Supplier wishes to enter into a Services Subcontract or replace a Services Subcontractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Services Subcontractor if it reasonably considers that:

- (a) the appointment of a proposed Services Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority and/or any Authority Service Recipients;
- (b) the proposed Services Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Services Sub-contractor employs unfit persons; and/or
- (d) the proposed Services Sub-contractor should be excluded in accordance with Clause 15.12 (*Termination of sub-contracts*).

15.6 The Authority consents to the appointment of the Services Sub-contractors listed in Schedule 4.3 (*Notified Sub-contractors*).

- 15.7 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Services Subcontract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
  - (b) a right under CRTPA for the Authority to enforce any provisions under the Services Sub-contract which are capable of conferring a benefit upon the Authority and/or Authority Service Recipients;
  - (c) a provision enabling the Authority to enforce the Services Sub-contract as if it were the Supplier;
  - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Services Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
  - (e) obligations no less onerous on the Services Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
    - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
    - (ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
    - (iii) the obligation not to embarrass the Authority and Authority Service Recipients or otherwise bring the Authority and Authority Service Recipients into disrepute set out in Clause 5.8(m) (*Services*);
    - (iv) the keeping of records in respect of the services being provided under the Services Sub-contract; and
    - (v) the conduct of Audits set out in Schedule 7.4 (*Audit Rights*);
  - (f) provisions enabling the Supplier to terminate the Services Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33.1(a) (*Termination by the Authority*) and 34.3 (*Payments by the Authority*) of this Agreement;
  - (g) a provision restricting the ability of the Services Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Services Sub-contract without first seeking the written consent of the Authority;
  - (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 29 (*Remedial Adviser*);
  - (i) a provision requiring the Services Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Services Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and

- (j) a provision requiring the Services Sub-contractor to:
  - (i) promptly notify the Supplier and the Authority 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 Services 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 Services Sub-contractor,and in any event, provide such notification within 10 Working Days of the date on which the Services Sub-contractor first becomes aware of such); and
  - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.3 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.3 (*Financial Distress*).

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

#### **Supply chain protection: Services Sub-contractors**

15.9 The Supplier shall ensure that all Services Subcontracts contain provisions:

- (a) giving the Supplier a right to terminate the Services Sub-contract if the Services Sub-contractor fails to comply in the performance of the Services Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Services Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Services Sub-contractor to include a clause to the same effect as this Clause 15.9 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

15.10 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Services Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.10(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.11 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Services Sub-contractor's undisputed invoice within 30 days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

### **Termination of Services Sub-contracts**

15.12 The Authority may require the Supplier to terminate:

- (a) a Services Sub-contract where:
  - (i) the acts or omissions of the relevant Services Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b) (*Termination by the Authority*);
  - (ii) the relevant Services Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority and/or any Authority Service Recipients into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority and/or any Authority Service Recipient, regardless of whether or not such act or omission is related to the Services Sub-contractor's obligations in relation to the Services or otherwise;
  - (iii) the relevant Services Sub-contractor has failed to comply in the performance of its Services Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
  - (iv) the Authority has found grounds for exclusion of the Services Sub-contractor in accordance with Clause 15.13; and
- (b) a Services Sub-contract where there is a Change of Control of the relevant Services Sub-contractor, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

## Competitive Terms: Services Sub-contractors

- 15.13 If the Authority is able to obtain from any Services Subcontractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
  - (b) enter into a direct agreement with that Services Sub-contractor or third party in respect of the relevant item.
- 15.14 If the Authority exercises either of its options pursuant to Clause 15.13, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.15 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
  - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

## Retention of Legal Obligations

- 15.16 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier 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

- 15.17 Where the Authority considers whether there are grounds for the exclusion of a Services Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Services Sub-contractor;
  - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Services Sub-contractor and the Supplier shall comply with such a requirement.
- 15.18 The Supplier shall provide a supply chain transparency report in the form and as otherwise required by Annex 1 to Schedule 8.4 (Reports and Records Provisions), or as required by the Authority from time to time.



## SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

### 16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

- (a) neither the Authority nor any Authority Service Recipient shall acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
  - (i) the Supplier Software;
  - (ii) the Third Party Software;
  - (iii) the Specially Written Software;
  - (iv) the Third Party IPRs; and
  - (v) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or an Authority Service Recipient or its licensors, including:
  - (i) the Authority Software;
  - (ii) the Authority Data; and
  - (iii) the Authority Background IPRs;
- (c) Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

16.2 The Supplier is not permitted to make any use of Authority Data other than for the purposes of performance of its obligations under this Agreement and except as expressly provided in this Clause 16.2, may not collect, perform or retain any inspection, analysis, aggregation, evaluation, reproduction, metrics or analytics of or derived from Authority Data or use Authority Data or any information, learning or insight derived from it as the basis for any product or service. The Supplier and its Sub-contractors are permitted to collect and use metrics, analytics, statistics, or other data related to Authority's and Authority Service Recipients' use of the Service in accordance with clause 2.4 of the Platform Use Terms.

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

16.4 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.

## 17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

- 17.1 The Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause 16.1(a)(Intellectual Property Rights)) in Project Specific IPRs but not including any Know-How, trade secrets or Confidential Information. The Supplier shall execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Authority.
- 17.2 The Supplier hereby grants to the Authority and the Authority Service Recipients:
- (a) subject to the provisions of Clause 34 (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use, develop, modify and update the Specially Written Software and the Supplier Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's and/or any Authority Service Recipient's business or function;
  - (b) subject to clause 17.11 (*Cloud Software, Standard Platform Terms and Platform Use Terms*), a licence for the Term and any Termination Assistance Period to use the Supplier Software and relevant Supplier Background IPRs provided always that the Authority and/or any Authority Service Recipient shall remain entitled to sub-license and to assign and novate the Supplier Software and Supplier Background IPRs on equivalent terms to those set out in Clauses 17.3 (*Authority's right to sub-license*) and 17.4 (*Authority's right to assign/novate sub-licences*); and
  - (c) 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.
- 17.3 The Authority and the Authority Service Recipients may sub-license:
- (a) the rights granted under Clause 17.2 (*Supplier Software and Supplier Background IPRs*) to any Successor Body, Replacement Supplier, Authority or Authority Service Recipient contractor, organisation providing consultancy services to the Authority, or in each case any of their users, provided that:
    - (i) the sub-license is on terms no broader than those granted to the Authority and the Authority Service Recipients;
    - (ii) the sub-license authorises the third party to use the rights licensed in Clause 17.2 (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's and/or any Authority Service Recipient's (or any other NHS Body's) business or function; and
    - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*); and
  - (b) the rights granted under Clause 17.2 (*Supplier Software and Supplier 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:

- (i) the sub-licence is on terms no broader than those granted to the Authority and the Authority Service Recipients; and
- (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

#### **Authority's and Authority Service Recipient's right to assign/novate licences**

- 17.4 The Authority and/or any Authority Service Recipient may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.2 (*Supplier Software and Supplier Background IPRs*) to a Successor Body.
- 17.5 Any change in the legal status of the Authority and/or any Authority Service Recipient which means that it ceases to be a NHS Body shall not affect the validity of any licence granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*). If the Authority and/or any Authority Service Recipient ceases to be a NHS Body, the Successor Body shall still be entitled to the benefit of the licence granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*).
- 17.6 If a licence granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*) is novated under Clause 17.4 (*Authority's and Authority Service Recipient's right to assign/novate licences*) or there is a change of the Authority's and/or an Authority Service Recipient's status pursuant to Clause 17.5, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority and/or that Authority Service Recipient.

#### **Third Party Software and Third Party IPRs**

- 17.7 The Supplier shall:
  - (a) notify the Authority in writing of all Third Party Software and Third Party IPRs that it uses and the terms on which it uses them; and
  - (b) use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party Software and Third Party IPRs grants a direct licence to the Authority and the Authority Service Recipients on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 17.8 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority and the Authority Service Recipients do not have a suitable licence, then the Supplier must notify the Authority within 10 days

of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

### **Termination and Replacement Suppliers**

- 17.9 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.
- 17.10 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*) and at the Supplier's cost:
- (a) grant (or procure the grant) to any Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPRs on a royalty-free basis to the Replacement Supplier and on terms no less favourable (including as to indemnification against IPRs Claims) than those granted to the Authority and the Authority Service Recipients in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Replacement Supplier;
  - (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party Software and/or Third Party 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.

### **Cloud Software, Standard Platform Terms and Platform Use Terms**

- 17.11 The Supplier shall grant or procure the grant of licences or rights to use Cloud Software and Supplier Software (where so indicated in Schedule 5 (*Software*)) to the Authority on the Standard Platform Terms and relevant Authority Service Recipients on the Platform Use Terms, in each case for the Term .
- 17.12 The Authority acknowledges that Authority Service Recipient use of such Cloud Software and Supplier Software is subject to arrangements made further to Schedule 2.6 (*Authority Service Recipients*).

### **Modifications to Supplier Service Specific Terms**

- 17.13 The Supplier shall, from time to time during the Term, notify material modifications to the Standard Platform Terms and/or Platform Use Terms ("**Platform Terms**") to the Authority. The consent of the Authority to such modifications is not required provided in each case the following conditions are satisfied:
- (a) the Supplier has given the Authority's authorised representative not less than 3 calendar months' prior written notice of any modifications to such Platform Terms, such notice to set out in full and in a clear and transparent manner

the proposed modified Platform Terms, including an accurate and complete list (and brief description) of the changes made;

- (b) in the case of Standard Platform Terms, the proposed modifications apply on a uniform basis to all customers for the relevant Cloud Software;
- (c) the proposed modifications to the Platform Terms do not contain:
  - (i) any indemnities (or clauses of a similar nature to indemnities);
  - (ii) any clauses which would have any material impact on either (A) the potential liability of either Party under this Agreement; or (B) the balance of risks under the Agreement from the Authority's perspective (including the creation of new or increased potential liabilities and/or new or materially different operational responsibilities for the Authority and/or any Authority Service Recipient); and
- (d) any proposed modifications do not constitute a substantial modification to this Agreement to the extent that the Public Contracts Regulations 2015 require a new procurement procedure.

17.14 Other than in respect of any proposed modifications necessitated by changes to the licensing terms of Third Party Software and Third Party IPRs (which shall be provided in accordance with Clause 17.7), where the Authority reasonably believes such a proposed modification has, or is likely to have, a materially adverse impact on it, any Authority Service Recipient, the Services, the commercial benefits under the Agreement or the balance of risks under it, the Authority may, acting reasonably, object to the Supplier's proposed modification to the Platform Terms by notifying the Supplier in writing within 6 weeks of the Authority's receipt of the Supplier's notice of such modification pursuant to Clause 17.13(a). If the Parties (acting reasonably) are unable within the next 3 weeks to resolve the Authority's objection to its reasonable satisfaction the Authority may terminate this Agreement with immediate effect and without any liability (including, for the avoidance of doubt, pursuant to Clause 34.3 (*Payments by the Authority*)) by giving notice in writing to the Supplier.

17.15 Where the Authority (or Authority Service Recipient):

- (a) does not object to a proposed modification to the Platform Terms within the 6 calendar week period referred to in Clause 17.14; or
- (b) having objected, the Authority subsequently agrees to the proposed modification to the Platform Terms,

and subject to the conditions in Clause 17.11 being satisfied, the relevant Platform Terms are deemed modified, with effect from the effective date set out in the relevant email notice (or where no effective date is specified thirty (30) days following the Authority's receipt of the email notice of the proposed modification).

17.16 Where any standard, policy, list, terms and conditions or any other document ("**Additional Documents and/or Terms**") is incorporated into the relevant Platform Terms by reference to a hyperlink, then any changes to (or new) hyperlinks or Additional Documents and/or Terms must be strictly in accordance with the

provisions of Clauses 17.11 to 17.15 (*Modifications to Supplier Service Specific Terms*).

17.17 Save for the Platform Terms (including, for the avoidance of doubt, any subsequent modifications to Platform Terms permitted pursuant to Clause 17.13), and except as otherwise agreed in this Agreement, a Statement of Work, under the Change Control Procedure, no other or modified Supplier or third party terms or conditions shall be valid as between the Authority or Authority Service Recipients and the Supplier, and such terms or conditions shall be without legal effect in transactions under this Agreement.

## **18 LICENCES GRANTED BY THE AUTHORITY**

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

- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
- (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority and the Authority Service Recipients.

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

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

## **19 IPRs INDEMNITY**

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and the Authority Service Recipients and each other Indemnified Person, and keep the Authority, the Authority Service Recipients and each other Indemnified Person indemnified, against all direct Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority and the Authority Service Recipients or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
  - (b) replace or modify the relevant item with non-infringing substitutes provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
    - (iii) there is no additional cost to the Authority, the Authority Service Recipients or relevant Indemnified Person (as the case may be); and
    - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
  - (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

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

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply on request that Authority Data to the Authority as requested by

the Authority in the format reasonably specified by the Authority, and shall not do anything that directly or indirectly prevents or obstructs the Authority from accessing or processing any Authority Data.

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

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

- 20.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- 20.13 Notwithstanding the provisions of Clause 23 (*Protection of Personal Data*) relating to the processing of Personal Data contained in Authority Data, the Parties acknowledge that this Agreement does not authorise the Supplier to identify, access or use Authority Data in the Data Platform other than in the course of Service provision.
- 20.14 In respect of Authority Data which is Personal Data, Supplier shall not take or permit Supplier Personnel to take any action directed towards, where applicable, the identification of any data subject, the reversal of any de-identification, anonymisation or pseudonymisation steps or methods applied to such data, the attribution of personal data to a data subject or the acquisition or processing of any additional information in pursuit of any of those objectives, unless otherwise requested by the Authority as part of Service performance.

## 21 **CONFIDENTIALITY**

- 21.1 For the purposes of this Clause 21, the term “**Disclosing Party**” shall mean a Party (and in the case of the Authority “Party” shall include an Authority Service Recipient) which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party (and in the case of the Authority “Party” shall include an Authority Service Recipient) which receives or obtains directly or indirectly Confidential Information.
- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner’s prior written consent;
  - (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where and to the extent that:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority or any Authority Service Recipient arising out of or in connection with this Agreement;
  - (ii) the examination and certification of the Authority's or any Authority Service Recipient's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority or any Authority Service Recipient is making use of any Services provided under this Agreement; or
  - (iii) the conduct of an NHS Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

21.5 The Supplier may disclose the Confidential Information of the Authority or any Authority Service Recipient on a confidential basis only to:

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

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

21.6 The Authority or any Authority Service Recipient may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any NHS Body for any proper purpose of the Authority, any Authority Service Recipient or of the relevant NHS Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority or any Authority Service Recipient (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6 for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its rights to appoint a Remedial Adviser pursuant to Clause 29 (*Remedial Adviser*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

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

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

## **22 TRANSPARENCY AND FREEDOM OF INFORMATION**

22.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
  - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
  - (ii) Commercially Sensitive Information,

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

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

22.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including: (a) the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (Reports and Records Provisions); and (b) without prejudice to the provisions of this Clause 22,

complying with the FOI Policy.

- 22.4 If the Authority and any Authority Service Recipient believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority and any Authority Service Recipient shall be entitled to exclude such information from publication. The Authority and any Authority Service Recipient acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority and any Authority Service Recipient acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 22.5 The Authority and any Authority Service Recipient shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority and any Authority Service Recipient on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority and any Authority Service Recipient may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6(c))) publish such Information. The Supplier shall provide to the Authority or any Authority Service Recipient within 5 (five) Working Days (or such other period as the Authority or any Authority Service Recipient may reasonably specify) any such Information requested by the Authority or any Authority Service Recipient.
- 22.7 The Supplier acknowledges that the Authority and the Authority Service Recipients are subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority or any Authority Service Recipient to enable the Authority or any Authority Service Recipient to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Authority or any Authority Service Recipient with a copy of all Information held on behalf of the Authority or any Authority Service Recipient which is requested in a Request For Information and which is in its possession or control in the form that the Authority or any Authority Service Recipient requires within 5 Working Days (or such other period as the Authority or any Authority Service Recipient may reasonably specify) of the Authority's or any Authority Service Recipient's request for such Information; and
  - (d) not respond directly to a Request For Information addressed to the Authority or any Authority Service Recipient unless authorised in writing to do so by the Authority or the that Authority Service Recipient.

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

**23 PROTECTION OF PERSONAL DATA**

23.1 The Supplier is a Processor in relation to the provision of the Services.

23.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in a DPA.

23.3 [Redacted]

1

[Redacted text block containing multiple lines of blacked-out content]

1

[Redacted]

24 **PUBLICITY AND BRANDING**

24.1 The Supplier shall not:

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

without the prior written consent of the Authority or relevant Authority Service Recipient, which shall not be unreasonably withheld or delayed.

24.2 Without prejudice to the Authority's and Authority Service Recipients' rights under or in connection with Clause 22 (*Transparency and Freedom of Information*), the

Authority shall consult with the Supplier prior to the publication of any press announcement in respect of this Agreement.

- 24.3 Promptly following the Effective Date, each Party will work together to issue a joint publicity pack announcing the entry into this Agreement to the wider public and press ("**Publicity Pack**"). Each Party will use all reasonable endeavours to agree on the form and content of the Publicity Pack within 5 days of the Effective Date. Where the Authority provides a proposed Publicity Pack to the Supplier, the Supplier (acting reasonably and in good faith) shall, within 2 days of receiving the Publicity Pack, respond in writing to the Authority to approve or provide comments on the proposed Publicity Pack, failing which the Supplier shall be deemed to have approved the Publicity Pack. Except as provided in the foregoing sentence, all Publicity Packs shall be subject to both Parties' prior written consent.
- 24.4 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

### 25 LIMITATIONS ON LIABILITY

#### Unlimited liability

25.1 Neither Party limits its liability for:

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

25.2

[REDACTED]

25.3 The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*) and Schedule 9.2 (*Staff Transfer*) and the Annexes to Schedule 9.2 (*Staff Transfer*) shall be unlimited.

#### Financial and other limits

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

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event [REDACTED]
- (b) the Supplier's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event [REDACTED]
- (c) the Supplier's aggregate liability in respect of all:
  - (i) Service Credits; and
  - (ii) Compensation for Unacceptable KPI Failure;incurred in any Service Period shall be subject to the Service Credit Cap; and

(d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

- (i) in relation to Defaults relating to Implementation Services, [REDACTED]
- (ii) in relation to Defaults relating to Operational Services occurring in a Service Year [REDACTED] and [REDACTED]
- (iii) in relation to Defaults relating to Optional Services, [REDACTED]

provided that where any Losses referred to in this Clause 25.4(d) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the reference [REDACTED]

25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4(c). The Supplier hereby expressly agrees that any Losses of any Authority Service Recipient incurred in connection with or in relation to this Agreement arising in contract, tort (including negligence) or otherwise shall be deemed to be (and shall be) the Losses of the Authority.

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

- (a) the Authority's total aggregate liability as a result of early termination of this Agreement by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) shall comprise the Termination Payment calculated in accordance with the provisions of Schedule 7.2 (*Payments on Termination*); and
- (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:
  - (i) in relation to Defaults relating to Implementation Services, [REDACTED]
  - (ii) in relation to Defaults relating to Operational Services occurring in a Service Year [REDACTED] and [REDACTED]

- (iii) in relation to Defaults relating to Optional Services, [REDACTED]

### Consequential Losses

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

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

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

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

### Conduct of indemnity claims

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

### Mitigation

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

26 **INSURANCE**

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

## SECTION H - REMEDIES AND RELIEF

### 27 RECTIFICATION PLAN PROCESS

27.1 In the event that:

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

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

#### Notification

27.2 If:

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

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

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

#### Submission of the draft Rectification Plan

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

27.5 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;

- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

27.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

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

27.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

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

27.9 If the Authority consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default,

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

#### **28 DELAY PAYMENTS**

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

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

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

## 29 REMEDIAL ADVISER

29.1 If:

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

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

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

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

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

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

29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this

Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

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

29.4 The Supplier shall:

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

29.5 The Supplier shall be responsible for:

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

29.6 If:

- (a) the Supplier:
  - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
  - (ii) is in Default of any of its obligations under Clause 29.4; and/or

(b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

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

30

[Redacted text block]

(i) [Redacted text block]

[Redacted]

## 32 FORCE MAJEURE

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

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

- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
  - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 33.1(b) (*Termination by the Authority*) or Clause 33.3(b) (*Termination by the Supplier*); and
  - (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with this Agreement:
  - (i) the Authority shall not be entitled:
    - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (*Remedial Adviser*) and/or Schedule 10 (*Additional Authority Remedies*) as a result of such failure;
    - (B) to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
    - (C) to receive Service Credits or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
  - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

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

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

## SECTION I - TERMINATION AND EXIT MANAGEMENT

### 33 TERMINATION RIGHTS

#### Termination by the Authority

33.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time (subject to Clause 34.3 (*Payments by the Authority*));
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

33.2 Where the Authority:

- (a) is terminating this Agreement under Clause 33.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 33.1(b) or Clause 33.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

#### Termination by the Supplier

33.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which [REDACTED] and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- (b) 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 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.3(b) would result in a Partial Termination, the provisions of Clause 33.4 (*Partial Termination*) shall apply.

## Partial Termination

- 33.4 If the Supplier notifies the Authority pursuant to Clause 33.3(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 33.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
  - (b) any adjustment to the Charges (if any) shall be calculated in accordance with relevant provisions (if any) in Schedule 7.1 (*Charges and Invoicing*) and must be reasonable; and
  - (c) the Supplier shall not be entitled to reject the Change.

## 34 CONSEQUENCES OF EXPIRY OR TERMINATION

### General Provisions on Expiry or Termination

- 34.1 The provisions of Clauses 5.11 (*Specially Written Software warranty*), 10.4 and 10.5 (*VAT*), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports & Audits*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Transfer and Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.4 (*Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*) and 8.5 (*Exit Management*) shall survive the termination or expiry of this Agreement.

### Exit Management

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

### Payments by the Authority

- 34.3 If this Agreement is terminated by the Authority pursuant to

Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).

- 34.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b) and/or 33.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
  - (b) payments in respect of unpaid Charges for Services received up until the Termination Date.
- 34.5 The costs of termination incurred by the Parties shall lie where they fall if:
- (a) either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or 33.3(b) (*Termination by the Supplier*); or
  - (b) the Authority terminates this Agreement under Clause 33.1(d) (*Termination by the Authority*).

#### **Payments by the Supplier**

- 34.6 Without prejudice to any right which the Authority may have to claim damages, and any other rights or remedies of the Authority, in the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

## SECTION J - MISCELLANEOUS AND GOVERNING LAW

### 35 COMPLIANCE

#### Health and Safety

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

#### Equality and Diversity

- 35.3 The Supplier shall:
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) the Authority's or any Authority Service Recipient's equality and diversity policy as provided to the Supplier from time to time;
    - (iii) any other requirements and instructions which the Authority or any Authority Service Recipient reasonably imposes in connection with any equality obligations imposed on the Authority or any Authority Service Recipient at any time under applicable equality Law; and
  - (b) take all necessary steps, and inform the Authority and the Authority Service Recipients of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### Official Secrets Act and Finance Act

- 35.4 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.

## Conflicts of Interest

### 35.5 The Supplier:

- (a) must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.
- (b) must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

35.6 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Agreement immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

## Modern Slavery

### 35.7 The Supplier:

- (a) shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- (e) shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Agreement;
- (h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business (or a copy of a report under section 54 of the Modern Slavery Act 2015);

- (i) shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- (j) shall not use or allow child or slave labour to be used by its sub-contractors; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline.

35.8 If the Supplier notifies the Authority pursuant to Clause 35.10 it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Agreement.

35.9 If the Supplier is in Default under Clause 35.7 the Authority may by notice:

- (a) require the Supplier to remove from performance of the Agreement any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Agreement.

#### **Whistleblowing**

35.10 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:

- (a) Law;
- (b) Clauses 35.1 to 35.7 or 35.11; or
- (c) Clause 39.

35.11 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

#### **36 ASSIGNMENT AND NOVATION**

36.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

36.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

- (a) any NHS Body; or
- (b) to a Successor Body,

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

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

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

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

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

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

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

- 39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 39.2 The Supplier shall not during the term of this Agreement:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any Authority Service Recipient or any of the Authority's or any Authority Service Recipient's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability

in relation to the Relevant Requirements.

- 39.3 The Supplier shall during the term of this Agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
  - (c) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request; and
  - (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
- 39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 39.5 If the Supplier makes a notification to the Authority pursuant to Clause 39.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports & Audits*).
- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Agreement.
- 39.7 Any notice served by the Authority under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including,

where relevant, the date on which this Agreement shall terminate).

#### **40 SEVERANCE**

- 40.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 40.3.

#### **41 FURTHER ASSURANCES**

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

#### **42 ENTIRE AGREEMENT**

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

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

- 43.1 The Supplier acknowledges that the Authority enters into this Agreement for its own benefit and for the benefit of each Authority Service Recipient and the Supplier shall perform its obligations under this Agreement for the benefit of the Authority and such Authority Service Recipients. Accordingly, a number of the provisions in this

Agreement confer benefits on Authority Service Recipients and/or other persons named or identified in such provisions (together “Third Party Provisions”) other than the Parties (each such person a “Third Party Beneficiary”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

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

**44 NOTICES**

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

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

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

	Supplier	Authority
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

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

- (a) Force Majeure Notices;
- (b) notices issued by the Supplier pursuant to Clause 33.3 (*Termination by the Supplier*) or Schedule 10 (*Additional Authority Remedies*);
- (c) Termination Notices; and
- (d) Dispute Notices.

44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

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

**45 DISPUTES**

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

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

**46 GOVERNING LAW AND JURISDICTION**

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

Wales.

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

