



Home Office

Dated: 27th September 2013

(1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

(2) Teleperformance Ltd

NEXT GENERATION OUTSOURCED VISA SERVICES AGREEMENT

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SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is made on 27th September 2013 (**the “Effective Date”**)

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** acting through the United Kingdom Border Agency, REDACTED (**“the Authority”**); and
- (2) Teleperformance Limited, a company registered in England with its registered office address at REDACTED (the **“Supplier”**),

(together, the **“Parties”**).

RECITALS

- A. The Authority requires the provision of services (to supplement the Authority’s own in-house resources and services) for the support and delivery of the Authority’s visa application services in various countries world-wide.
- B. On 3 December 2012, the Authority published a notice in the Official Journal of the European Union (**“OJEU Notice”**) in relation to the tender of its requirements for services relating to visa applications. As part of the OJEU Notice, the Authority provided a Pre-Qualification Questionnaire (**“PQQ”**) and suppliers who provided responses to the PQQ by 8 January 2013 (**“PQQ Response”**) were evaluated by the Authority.
- C. Following the PQQ evaluation, on 21st March 2013, the Authority issued an Invitation to Tender to a number of suppliers, including the Supplier.
- D. The Supplier was successful in the competition in the Regions.
- E. The Parties have agreed the following terms for the provision and receipt of various visa application services in the Regions.

IT IS HEREBY AGREED as follows:

1. OBJECTIVES AND INTERPRETATION

1.1 Objectives

1.1.1 The Authority and the Supplier have agreed the following specific goals and objectives for the Agreement:

- (a) to facilitate the business change necessary to meet the Authority’s strategic and business direction, including the support of other Government Departments, where necessary, to facilitate joined-up services;
- (b) continuously to improve the performance of visa application services to meet the Authority’s requirements and provide a flexible source of supply that delivers cost effective services and continued value for money;
- (c) to ensure rapid access to up-to-date skills and technologies to meet the Authority’s requirements;

- (d) to ensure the continuity of the Authority's Visa Application Services at all times;
 - (e) to ensure the existence of a sound commercial contract whereby the Supplier is contracted to agreed terms for clearly defined services direct to the Authority;
 - (f) to manage change and provide sufficient opportunities for the Supplier to invest and enable the UK government to respond to evolving visa requirements;
 - (g) to mobilise the enrolment of applicant biometric data for the majority of future visa applicants;
 - (h) to facilitate co-partnering in situations that may arise where the Supplier cannot deliver to particular countries or provide specific services. Co-partnering will allow the Authority to appoint sub-contractors that the Supplier will manage to deliver the full service;
 - (i) to ensure that a consistent set of Service Packages is deployed; and
 - (j) to ensure the integrity of the process and implement measures to reduce fraudulent applications through robust and auditable procedures.
- 1.1.2 The provisions of Clause 1.1.1 are intended to be a general introduction to the Agreement and are not intended to expand the scope of the Parties' obligations under the Agreement or to alter the plain meaning of the Terms and Conditions.

2. DEFINITIONS, INTERPRETATION AND ORDER OF PRECEDENCE

2.1 In this Agreement:

- 2.1.1 interpretations are set out in Schedule 1 (**Definitions**); and
- 2.1.2 unless the contrary intention appears, capitalised terms shall have the meaning set out in Schedule 1 (**Definitions**).

2.2 Save to the extent that the context or the express provisions of the Agreement otherwise require:

- 2.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of the Agreement;
- 2.2.2 all references to Clauses and Schedules are references to Clauses of and Schedules to the Agreement, and all references to Sections, paragraphs or Annexes are references to Sections and paragraphs contained in the Schedules and Annexes to the Schedules;
- 2.2.3 all references to any agreement (including the Agreement), document or other instrument include a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned (subject to all relevant approvals and any other provision of the Agreement expressly concerning such agreement, document or other instrument);
- 2.2.4 without prejudice to the provisions in the Agreement relating to Changes in Law (and, in particular Discriminatory Changes in Law), all references to any statute or statutory provision (including any subordinate legislation) shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same, and shall include any

- orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- 2.2.5 all references to time of day shall be a reference to whatever time of day shall be applicable in England and Wales;
- 2.2.6 words importing the singular include the plural and vice versa;
- 2.2.7 words importing a particular gender include all genders;
- 2.2.8 “**person**” includes any individual, partnership, firm, trust, body corporate, undertaking, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association;
- 2.2.9 any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation, or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative;
- 2.2.10 references to “**Parties**” mean the parties to the Agreement and their successors and assignees, and references to a “**Party**” mean one of the Parties to the Agreement, and its successors and assignees;
- 2.2.11 the word “**including**” when used in the Agreement shall mean “**including without limitation**”;
- 2.2.12 the Authority shall not be imputed with knowledge of any UK Government policy, fact, matter or thing unless that Government policy, fact, matter or thing is within the knowledge of those of the Government’s employees or agents who have relevant responsibilities in connection with the conduct of the Services Requirements.
- 2.3 Subject to Section 2.4 below, the Schedules, Annexes and any other attachments expressly identified in the same or in the body of the Agreement form part of the Agreement and shall have the same force and effect as if expressly set out in the body of the Agreement, and any reference to the Agreement shall include the Schedules, Annexes and any such other attachments.
- 2.4 If and to the extent of any conflict or inconsistency:
- 2.4.1 Subject to Clause 2.4.2 below, between:
- (a) any provision of the Terms and Conditions together with Schedule 1 (**Definitions**); and
 - (b) any provision of the other Schedules,
- with respect to all other Schedules except Schedule 23 (**User Pays Services**), the Clauses, together with Schedule 1 (**Definitions**), shall prevail; and
- 2.4.2 in respect of User Pays Services only (and not to other Services), between:
- (a) the provisions of Schedule 23 (**User Pays Services**);
 - (b) the Terms and Conditions together with Schedule 1 (**Definitions**); and/or

- (c) any provision of the other Schedules

the provisions of Schedule 23 (**User Pays Services**) shall prevail over the Terms and Conditions together with Schedule 1 (**Definitions**) and any provision of the other Schedules, and the provisions of the Terms and Conditions together with Schedule 1 (**Definitions**) shall prevail over any provision of the other Schedules; and

2.4.3 between

- (a) any of the provisions of Schedule 3 (**Supplier's Solution**); and
(b) the other Schedules,

the provisions of the other Schedules shall prevail.

2.5 If and to the extent only, of any conflict or inconsistency:

2.5.1 between:

- (a) the provisions of the Agreement; and
(b) the provisions of any document, other than those within the scope of Section 2.4 above, referred to or referenced herein,

the provisions of the Agreement shall prevail;

2.5.2 between:

- (a) the provisions of the Agreement; and
(b) the provisions of any document agreed by the Parties or approved by the Authority subsequent to the date hereof (other than any amendment or variation to the Agreement made in accordance with the Terms and Conditions),

the provisions of the Agreement shall prevail;

2.5.3 between:

- (a) the provisions of the Schedules and the Financial Model; and
(b) the provisions of the Annexes and the Referenced Documents,

the provisions of the Schedules and the Financial Model shall prevail.

3. **SUPPLIER PARENT COMPANY GUARANTEE**

The Supplier shall, on , before, or within 45 days of the Effective Date, deliver to the Authority a Parent Company Guarantee in the form set out in Schedule 18 (**Parent Company Guarantee**), duly executed by the Guarantor.

4. **SUFFICIENCY OF SUPPLIER'S PRICING**

Notwithstanding the provisions of Clause 5 below, the Supplier is deemed to have satisfied itself before entering into the Agreement with the Authority as to the accuracy and sufficiency of the

rates and prices submitted by the Supplier in Schedule 6 (**Pricing, Payment & Invoicing**) which shall cover all its obligations, risks and contingencies under the Agreement and the Supplier's fulfilment of the Services Requirements.

5. DUE DILIGENCE

5.1 Supplier's Due Diligence

- 5.1.1 Using its expertise and professionalism, prior to the Effective Date, the Supplier has undertaken due diligence activities (including in its use, analysis and review of the Disclosed Data, its review of the supporting information and its general enquiries made during its due diligence liaison with the Authority) ("**Due Diligence Exercise**") to ensure that, from the Effective Date, it shall be able to fulfil the Services Requirements in full compliance with the Agreement and for the pricing set out in Schedule 6 (**Pricing, Payment & Invoicing**).
- 5.1.2 The Supplier acknowledges that the Authority has relied on the Supplier's expertise and professionalism in carrying out its Due Diligence Exercise, its review of the supporting information, and its general enquiries made during due diligence liaison with the Authority.
- 5.1.3 The Supplier's failure to carry out due diligence prior to the Effective Date or any failure of the Due Diligence Exercise or otherwise in connection with the Due Diligence Exercise shall not be used as a reason to increase the Service Charges, alter the Service Levels and/or refuse to fulfil any of the Services Requirements.
- 5.1.4 The Supplier acknowledges that, except as contemplated by Clause 6 below in relation to New Services and the cost review provisions set out in Schedule 6 (**Pricing, Payment & Invoicing**), there shall not be any due diligence or joint verification with the Authority after the Effective Date.
- 5.1.5 The Supplier shall not be entitled to adjust the Service Charges or alter the Service Levels in respect of any failure of the Due Diligence Exercise or otherwise in connection with the Due Diligence Exercise, except to the extent expressly set out or provided for to the contrary in the Agreement.
- 5.1.6 The Supplier shall not in any way be relieved from any risks or obligations imposed on or undertaken by it under the Agreement, nor (in the absence of fraud, wilful misconduct, or gross negligence by the Authority) shall it be entitled to bring a Claim against the Authority (whether in contract, tort, by statute or otherwise, howsoever arising and whether or not arising out of any negligence on the part of the Authority) in respect of any inaccuracy, insufficiency, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- 5.1.7 The Authority warrants that it has provided the Disclosed Data in good faith and has not fraudulently or with wilful misconduct or gross negligence provided inaccurate or untrue Disclosed Data. The Authority gives no warranty or undertaking that the Disclosed Data represents all of the information in its possession or power (either during the bid process in relation to the Agreement or at the Effective Date) relevant or material to the Services Requirements and the obligations required to be undertaken by the Supplier under the Agreement. In the absence of fraud, wilful misconduct, or gross negligence by the Authority, the Authority shall not be liable to the Supplier in respect of any failure to:

- (a) disclose or make available to the Supplier (whether before or after the execution of the Agreement) any information, documents or data;
- (b) keep the Disclosed Data up-to-date; or
- (c) inform the Supplier (whether before or after execution of the Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.

5.1.8 Except in the case of fraud, wilful misconduct, or gross negligence by the Authority, the Authority shall not be liable for any costs arising from the Supplier's failure to perform its obligations under this Clause 5 or from any lack of knowledge which the Supplier is deemed to have under the provisions of this Clause 5.

6. DUE DILIGENCE FOR NEW SERVICES

Prior to providing any New Services, the Supplier shall (unless otherwise agreed in writing between the Parties) perform a similar due diligence exercise to that undertaken by the Supplier prior to the Effective Date in relation to the Services Requirements relating to such New Services. All of the provisions of Clause 5.1 above shall apply to the due diligence carried out by the Supplier under this Clause 6.

7. CONTRACT TERM

- 7.1 Unless otherwise terminated in accordance with the provisions of the Agreement or otherwise in accordance with law or equity, the Agreement shall take effect on the Effective Date and it shall continue for five years from 1 April 2014 (the “**Initial Term**”).
- 7.2 Upon the Authority giving the Supplier at least six (6) months’ written notice prior to the expiry of the Initial Term, the Authority shall have the ability to extend the Contract Term beyond the Initial Term set forth in Clause 7.1 above for up to two further periods of twenty-four months each. Any extension under this Clause 7.2 shall be on existing terms and conditions upon written notice to Supplier. The pricing for any extension period under this Clause 7.2 shall be in accordance with the pricing specified in Schedule 6 (**Pricing, Payment & Invoicing**).
- 7.3 If the Authority serves notice to extend the Contract Term pursuant to Clause 7.2 above, the Authority may also specify different Services Transfer Dates (within such twenty four (24) month extended period) for specific Countries to allow for a phased transition of the Services to a Successor Supplier. Such request for a phased transition shall be deemed to be a request for a Mandatory Change, the impact of which (including the effect on the Service Charges) shall be agreed through the Change Control Procedure.

8. SCOPE OF THE SERVICES

- 8.1 In consideration of the payment of the Service Charges, commencing on the relevant Commencement Date(s), the Supplier shall provide to Visa Applicants the Free to User Services and User Pays Services, and the Supplier’s Solution to the Authority and/or Services Recipients in order to fulfil the Services Requirements, as the Services Requirements may evolve during the Contract Term and as they may be supplemented, enhanced, modified or replaced in accordance with the Agreement, but excluding any services, responsibilities or functions that are specifically identified in the Agreement as the Authority’s responsibility or a third party’s responsibility. Such Services Requirements are:

- 8.1.1 the services, functions, requirements, and responsibilities specified in the Agreement with the exception of Schedule 3 (**Supplier's Solution**);
 - 8.1.2 any services, functions, requirements, and responsibilities agreed as New Services in accordance with Schedule 10 (**Change Control**); and
 - 8.1.3 any services, functions, and responsibilities (including any incidental services, functions or responsibilities) reasonably and necessarily required for, or related to, the proper performance and provision of the services, functions and responsibilities set out in this Clause 8.1 (irrespective of whether such services, functions, and responsibilities are set out in Schedule 2 (**Statement of Requirements**)).
- 8.2 The Supplier shall fulfil the Services Requirements from the Effective Date or the relevant Commencement Date (as applicable) in accordance with the Agreement, the Transition Plan detailed in Schedule 5 (**Transition**) and any other agreed implementation plans for any New Services. The successful completion of the Transition Plan shall be determined in accordance with the provisions of Schedule 5 (**Transition**).
- 8.3 The Agreement does not give, or purport to give, the Supplier any rights of exclusivity in relation to the Services Requirements, New Services or services or requirements that are similar to the Services Requirements. The Authority, at any time, may perform, or retain third parties to perform, any Service Package or an element of a Service Package which forms part of the Services Requirements. Notwithstanding the foregoing, the Authority acknowledges that removal of a Region, Country, VAC or Service Package from the scope of this Agreement in accordance with Clause 16.2 or 16.3 shall be treated as Termination for Convenience.
- 8.4 The Supplier's Solution is set out in Schedule 3 (**Supplier's Solution**). The Supplier shall perform its obligations and responsibilities as described in the Supplier's Solution so that the Supplier's Solution fulfils the Services Requirements. In the event of a conflict between the Supplier's Solution and the Services Requirements, the Services Requirements shall take priority and prevail over the Supplier's Solution.
- 8.5 The Supplier shall fulfil the Services Requirements in accordance with the Transition timetable identified in Schedule 5 (**Transition**). The Parties acknowledge that certain Services Requirements shall become operational in the various countries at different times pursuant to Schedule 5 (**Transition**).
- 8.6 If, after a relevant Commencement Date, either Party identifies any services, functions, requirements, or responsibilities which were performed within the twelve (12) month period preceding such Commencement Date by the Authority, the Incumbent Suppliers, and/or an Incumbent Supplier's employees or its contractors who were displaced or transitioned to the Supplier or whose functions were displaced as a result of the Agreement and such service, function or responsibility is not specifically described in the Agreement, the Authority may require, as a Mandatory Change, such service, function or responsibility to be performed by the Supplier.
- 8.7 The Supplier shall provide the User Pays Services from the relevant User Pays Service commencement date for each such User Pays Services determined in accordance with Schedule 23 (**User Pays Services**).

9. PROVISION OF THE SERVICES

- 9.1 Without prejudice to the provisions of Clause 12.1, at a minimum, the Supplier shall fulfil the Services Requirements:

- 9.1.1 with promptness, diligence, and in accordance with Good Industry Practice;
- 9.1.2 in a professional manner, and in accordance with the practices and professional standards used by, and consistent with levels of performance achieved by, well-managed operations fulfilling services requirements similar to the Services Requirements;
- 9.1.3 consistent with the Supplier's own standards for such services;
- 9.1.4 using adequate numbers of personnel that:
 - (a) are appropriately experienced, qualified and trained;
 - (b) are familiar, where appropriate, with the requirements set out in the Agreement; and
 - (c) shall fulfil the Services Requirements with all reasonable skill, care and diligence;
- 9.1.5 using efficiently the resources necessary to provide the Services Requirements;
- 9.1.6 in a cost-effective manner, consistent with the required level of quality and performance;
- 9.1.7 in accordance with the Authority Policies; and
- 9.1.8 in compliance with all applicable Laws.
- 9.2 The Parties shall monitor, review and manage the Services in accordance with the processes and procedures set out in Schedule 8 (**Governance and Contract Management**).
- 9.3 The Supplier shall monitor and report on the Services in accordance with the processes and procedures set out in Schedule 14 (**Management Systems and Reporting**).
- 9.4 The Supplier shall cooperate and contribute to the process for identifying and implementing improvements to the Services as set out in Schedule 20 (**Continuous Improvement**).
- 9.5 The Supplier and the Authority agree to comply with their respective obligations and may exercise their respective rights pursuant to Schedule 19 (**Financial Distress**).
- 10. **FUTURE REQUIREMENTS**
- 10.1 The Authority's Future Requirements are set out in Section 1.4 of Schedule 2 (**Statement of Requirements**) and they are a category of Services Requirement which is described at an indicative level at the Effective Date. The Supplier shall provide such Future Requirements to the Authority or any Services Recipients upon their request, subject to Clause 10.2 below.
- 10.2 If, at any time after the Effective Date, the Authority or a Services Recipient requests (at its sole discretion) that the Supplier provide any Future Requirements, the Parties shall agree the pricing and scope and content of any services to meet such Future Requirements in accordance with Schedule 10 (**Change Control**). In this event, the Supplier shall fulfil the agreed services relating to such Future Requirements in accordance with the terms and conditions of the Agreement, including the applicable Service Levels. From the date that the relevant CCN is agreed by the Parties, such Future Requirements shall form part of the Services Requirements set out in Schedule 2 (**Statement of Requirements**), and the agreed services relating to such Future Requirements shall form part of the Services.

11. TRANSITION SERVICES

11.1 Process of Transition

11.1.1 With effect from the Effective Date, the Supplier shall comply with its obligations as set out in Schedule 5 (**Transition**). All Transition activities, Milestones and deliverables set out in the Agreement shall be subject to the acceptance procedures set out in Schedule 5 (**Transition**). The Biometric Equipment shall be provided to the Supplier in accordance with the Transition Plan. The Transition Plan shall be amended by the Supplier during Transition in accordance with the process described in Schedule 5 (**Transition**).

11.1.2 The Supplier shall be responsible for the overall management of the Transition and shall:

- (a) keep the Transition on schedule in accordance with the timetable set out in the Transition Plan; and
- (b) identify and use Commercially Reasonable Efforts to resolve, or assist the Authority and any Services Recipients in the identification and resolution of, any problems encountered in the timely completion of each task identified in the Transition Plan, whether or not the task is the responsibility of the Supplier or the Incumbent Suppliers.

11.1.3 From the Effective Date until completion of Transition, the Supplier shall provide the Authority with weekly progress Reports that:

- (a) describe, in reasonable detail, the current status of the Transition;
- (b) indicate the progress of the work being performed;
- (c) identify any actual or anticipated problems or delays;
- (d) assess the impact of such problems or delays on the Supplier's fulfilment of the Services Requirements; and
- (e) describe all actions being taken or to be taken to remedy such problems or delays.

11.1.4 The impact on the payment of the Service Charges resulting from a delay to Transition is set out in Schedule 6 (**Pricing, Payment & Invoicing**).

11.1.5 Subject to Clauses 47 and 49 below, if the Supplier fails to fulfil any of its obligations with respect to Transition in accordance with the Transition Plan and this Clause 11 by the dates specified in the Transition Plan:

- (a) the provisions of Clause 19.4 shall apply;
- (b) the Supplier shall, at the Authority's request and without prejudice to the Authority's other rights and remedies in Law and under the Agreement, arrange (at the Supplier's own cost) all such additional resources as are necessary to fulfil said obligation as early as practicable thereafter without any additional cost to the Authority; and
- (c) the Authority shall be entitled to recover from the Supplier all additional and/or incremental costs and expenses incurred (including wasted costs and

management time) in securing continuity of delivery of the Services requirements from alternative sources, including the Incumbent Suppliers.

12. SERVICE LEVELS AND ANNUAL REVIEW

- 12.1 In supplying the Services, the Supplier shall, at all times, achieve or exceed the Service Levels in accordance with the provisions of Schedule 7 (**Service Levels & Service Credits**).
- 12.2 The Parties anticipate that the Service Levels shall improve over time and the Parties shall mutually co-operate to identify improvements and efficiencies in the fulfilment of the Services Requirements. In addition, at least annually during the Contract Term, the Authority and the Supplier shall review the Service Levels and shall make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology, processes and methods used to fulfil the Services Requirements or as otherwise agreed by the Parties to reflect any changes in the Posts' process or their priorities, in accordance with the provisions of Schedule 7 (**Service Levels & Service Credits**) and Schedule 20 (**Continuous Improvement**).
- 12.3 Without prejudice to Clause 12.2 above, the Parties expect and understand that the Service Levels shall be subject to continuous improvement requirements in accordance with the provisions of Schedule 7 (**Service Levels & Service Credits**).
- 12.4 The Supplier shall adopt and comply with the Authority's technology quality and certification procedures as set out in or implemented pursuant to Schedule 4 (**Security**).
- 12.5 The Supplier shall use the necessary measurement and monitoring tools and procedures required to measure and report the Supplier's performance against the applicable Service Levels. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify the Supplier's compliance with the Service Levels.
- 12.6 At least every twelve (12) months during the Contract Term, the Parties shall conduct a review of the overall operation of the Agreement (an "**Annual Review**"). Such Annual Review, at a minimum, shall include a review of:
- 12.6.1 the Service Levels in accordance with the continuous improvement mechanisms referred to in Schedule 7 (**Service Level & Service Credits**) and Schedule 20 (**Continuous Improvement**);
 - 12.6.2 certain elements of the Service Charges as described in Schedule 6 (**Pricing, Payment & Invoicing**); and
 - 12.6.3 the Supplier's Solution to ensure that the Supplier's Solution continues to meet and fulfil the Services Requirements and, if such review establishes that the Supplier's Solution does not meet and fulfil the Services Requirements, the Supplier shall implement changes to the Supplier's Solution as necessary to meet and fulfil such Services Requirements, without any change to the Service Charges, in accordance with the Solution Change Procedure.
- ## 13. FAILURE TO PERFORM
- 13.1 If the Supplier commits a Service Level Default, the Supplier shall take the steps identified in Schedule 7 (**Service Levels & Service Credits**). Notwithstanding the provisions of the preceding sentence of this Clause 13, the Supplier shall promptly:

- 13.1.1 use Commercially Reasonable Efforts to preserve any data indicating the cause of the Service Level Default;
 - 13.1.2 arrange all such additional resources as are necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Authority;
 - 13.1.3 use Commercially Reasonable Efforts to minimise the impact of the Service Level Default to both the Authority and all Services Recipients (as applicable), and to prevent it from recurring; and
 - 13.1.4 correct the Service Level Default and meet the relevant Service Level.
- 13.2 Without prejudice to any other rights and remedies available to the Authority, whether under this Agreement or at Law, the Supplier shall notify the Authority immediately upon becoming aware of any actual or anticipated event or other development which may have a material impact upon the Supplier's ability to comply with its obligations under the Agreement.
- 13.3 The Supplier shall notify the Authority as soon as reasonably practicable of any relevant material control weaknesses identified by the Supplier's internal or external auditors. The Supplier shall also provide to the Authority (in accordance with Schedule 14 (**Management Systems & Reporting**)) all reports relating to such internal and external audit reviews. The Supplier shall implement the recommendations in any such audit reviews as soon as practicable at its own cost and expense.
14. **SERVICE CREDITS**
- 14.1 If the Supplier fails to meet the required Critical Service Levels in accordance with Schedule 7 (**Service Levels & Service Credits**), the applicable Service Credit shall be paid by the Supplier to the Authority or, if the Authority elects, the Authority shall deduct such Service Credit from the monthly Service Charges for the applicable month in the next applicable invoice in accordance with Schedule 6 (**Pricing, Payment & Invoicing**) and Schedule 7 (**Service Levels & Service Credits**).
- 14.2 The Supplier acknowledges and agrees that the Service Credits are a price adjustment to take into account Services Requirements that are not fulfilled by the Supplier and are not an estimate of the loss or damage that may be suffered by the Authority and the Services Recipients as a result of the Supplier's failure to meet any Critical Service Level. Payment of any Service Credit by the Supplier under the Agreement is without prejudice to any entitlement that the Authority may have to damages at Law from the Supplier resulting from, or otherwise arising in respect of, any such breach of the Agreement, or to any right of the Authority to terminate the Agreement pursuant to Clause 45 below.
15. **VOLUME OF SERVICES**
- 15.1 The Authority does not guarantee or commit itself to any volume of usage of the Services Requirements during the Contract Term.
- 15.2 Without prejudice to Clause 16 below, the Authority shall be permitted to reduce or increase the volume (including the volume of Visa Applications) fulfilled by the Supplier in the event that the Authority's operational requirements change during the Contract Term, in accordance with the principles and the pricing set out in Schedule 6 (**Pricing, Payment & Invoicing**). If the principles in Schedule 6 (**Pricing, Payment & Invoicing**) do not apply to the relevant reduction

or increase to the volume, any change to the Service Charges directly arising due to such reduction or increase shall be made in accordance with the Change Control Procedure.

16. CHANGES TO THE SERVICES

16.1 Changes to the Services and New Services

Unless otherwise set out in the Agreement, the introduction of New Services and/or changes to the Services Requirements which impact the Service Charges shall be agreed and implemented in accordance with Clause 17.17 below and the Change Control Procedure.

16.2 Removal of a Country/Region

16.2.1 By written notice to the Supplier from time to time (which, as far as reasonably practicable, should be given a reasonable period before such removal), the Authority shall be entitled to remove any Country or Region (or part thereof) from the scope of the Agreement, in which case:

- (a) such removal shall be deemed to be a Termination for Convenience and the provisions of Clause 45.1.2 shall apply;
- (b) the Supplier shall no longer be under an obligation to fulfil the Services Requirements for that particular Country or Region from the date specified in the notice;
- (c) if necessary, the on-going Service Charges shall be equitably adjusted to reflect the reduced scope through the Change Control Procedure. Where appropriate, such adjustment shall be made in accordance with the principles and the pricing set out in the Financial Model and Schedule 6 (**Pricing, Payment & Invoicing**); and
- (d) the Supplier shall provide Termination Assistance in relation to the Country or Region being removed, as requested by the Authority, in accordance with Schedule 9 (**Exit Management**).

16.3 Removal of Service Packages

16.3.1 By written notice to the Supplier from time to time (which, as far as reasonably practicable, should be given a reasonable period before such removal), the Authority shall be entitled to remove any Service Package from the scope of the Services Requirements, in which case:

- (a) such removal shall be deemed to be a Termination for Convenience and the provisions of Clause 45.1.2 shall apply;
- (b) the Supplier shall no longer be under an obligation to fulfil the Services Requirements for such Service Package (or part thereof) that has been removed or changed from the date specified in the notice;
- (c) if necessary, the on-going Service Charges shall be equitably adjusted to reflect the reduced scope through the Change Control Procedure. Where appropriate, such adjustment shall be made in accordance with the principles and the pricing set out in the Financial Model and Schedule 6 (**Pricing, Payment & Invoicing**); and

- (d) the Supplier shall provide Termination Assistance in relation to the Service Package (or part thereof) being removed, as requested by the Authority, in accordance with Schedule 9 (**Exit Management**).

16.4 **Country/Region Swap-Out**

If, for political reasons, border restrictions are introduced in particular Countries or Regions, or in cases of operational difficulty, the Authority shall be entitled, by written notice to the Supplier (which, as far as reasonably practicable, should be given a reasonable period before such change), to request the Supplier to provide the Visa Application Services for a particular Country or Region from a different Country or Region. The Supplier shall provide such Visa Application Services from such different Country or Region from the date specified in the Authority's notice. Such request shall be deemed to be a request for a Mandatory Change, the impact of which (including any changes to the Supplier's Solution and/or the Service Charges) shall be agreed through the Change Control Procedure.

16.5 **Closure or Change in Location of a Post**

By written notice to the Supplier from time to time (which, as far as reasonably practicable, should be given a reasonable period before such closure or change), the Authority shall be entitled to close or change the location of a Post in any Country. In this event, the Supplier shall redirect its Supplier's Solution to an alternative Post as nominated by the Authority in the Authority's notice. Such closure or change shall be deemed to be a Mandatory Change, the impact of which (including any changes to the Supplier's Solution and/or the Service Charges) shall be agreed through the Change Control Procedure.

16.6 **Changes to User Pays Services**

Schedule 23 (**User Pays Services**) contains provisions dealing with the process for review and/or Termination of User Pays Services.

17. **SERVICE CHARGES, INVOICING, AND TAXES**

- 17.1 In consideration for the payment of the Service Charges, the Supplier shall fulfil the Services Requirements. All Service Charges are set out in Schedule 6 (**Pricing, Payment & Invoicing**) and/or (in relation to User Pays Services) Schedule 23 (**User Pays Services**) and the Authority shall only be required to pay to the Supplier those amounts set out therein.
- 17.2 The Supplier acknowledges that no additional amounts shall be paid by the Authority for the Supplier's fulfilment of the Services Requirements unless agreed pursuant to Schedule 10 (**Change Control**). This Clause 17.2 shall not in any way limit or be deemed to limit the rights or remedies of either Party under the Agreement or in Law in respect of any indemnities set out in the Agreement or any Losses suffered by reason of any Default. This Clause 17.2 does not affect the Authority's obligation to pay a Compensation Payment on the event of a Termination for Convenience.
- 17.3 All Service Charges due under the Agreement shall be paid in Pounds Sterling and the Authority shall pay the Service Charges in accordance with the invoicing procedure specified in Schedule 6 (**Pricing, Payment and Invoicing**) and/or (in relation to User Pays Services) Schedule 23 (**User Pays Services**).
- 17.4 Payment by the Authority shall be made within thirty (30) days of receipt by the Authority (at its nominated address for invoices) of a valid invoice from the Supplier, in accordance with the provisions of Schedule 6 (**Pricing, Payment & Invoicing**) and/or (in relation to User Pays

Services) Schedule 23 (**User Pays Services**). Failure to pay within this period shall not constitute a Material Default of the Agreement.

- 17.5 The Authority may withhold payment of any portion of the Service Charges that it disputes in good faith. The Authority shall use its Commercially Reasonable Efforts to notify the Supplier, within thirty (30) days of receipt by the Authority of the invoice, of any such dispute giving its reasons and specifying any additional information required to assist in resolving its concerns, in which case the Supplier shall re-issue an invoice for the undisputed amount. Nothing in this Clause 17.5 shall prevent the Authority from disputing, in good faith, the validity of any Service Charges that have already been paid by the Authority pursuant to Clause 17.4.
- 17.6 The Supplier shall continue to perform all its obligations under the Agreement, notwithstanding any withholding of payment in accordance with Clause 17.5 above.
- 17.7 The Parties shall use Commercially Reasonable Efforts to resolve any dispute regarding the Service Charges within thirty (30) days of it arising. If the Parties fail to so resolve the dispute, such dispute shall be determined in accordance with the Dispute Resolution Procedure in Schedule 8 (**Governance & Partnership**).
- 17.8 Following resolution of any dispute, any amount agreed or adjudged to be due to the Supplier shall promptly be paid on demand, together with interest thereon (which shall be payable for the period from when such amount would originally have been due had such amount not been withheld until payment) at the rate set out in Clause 17.11 below.
- 17.9 The Service Charges are stated exclusive of VAT. The Authority shall pay any applicable VAT on the Service Charges at the rate and in the manner prescribed by Law, from time to time. The Supplier shall, where applicable, provide the Authority with a valid VAT invoice and such invoice shall be provided by the Supplier in the format and within the timescales required by Law.
- 17.10 Any legislative requirement to account for the Service Charges in Euros instead of and/or in addition to Pounds Sterling shall be implemented by the Supplier at nil charge to the Authority.
- 17.11 If either Party fails to pay any valid amount payable under the Agreement by the due date specified in Schedule 6 (**Pricing, Payment & Invoicing**) and/or (in relation to User Pays Services) Schedule 23 (**User Pays Services**) or elsewhere in the Agreement (as applicable) and subject to Clause 45.2.3, the non-paying Party shall be liable to pay interest on the overdue amount from the due date up to the actual payment date at a daily rate equal to the rate of two percent (2%) per annum above the Base Rate.
- 17.12 All expenses that the Supplier incurs in fulfilling the Services Requirements (including travel and lodging, document reproduction, shipping, and telephone expenses) are included in the Service Charges. Accordingly, expenses are not separately reimbursable by the Authority except where otherwise expressly agreed between the Parties.
- 17.13 The Supplier shall be liable for any applicable Local Sales Tax and other applicable taxes and duties at the prevailing rates payable by the Supplier on any goods and services used or consumed by the Supplier in its fulfilment of the Services Requirements where the tax is imposed on the Supplier's acquisition or use of such goods or services in its fulfilment of the Services Requirements.
- 17.14 The Service Charges include any amount of Local Sales Tax which the Supplier reasonably believes cannot be recovered from the relevant tax authority. The Supplier shall use Commercially Reasonable Efforts to recover (whether by way of repayment, credit or otherwise)

any Local Sales Taxes referred to in Clause 17.13 from the relevant tax authority. To the extent that an amount of Local Sales Tax that is included in the Service Charges is so recovered, the Service Charges shall be reduced by the amount of such recovery.

17.15 The Supplier and the Authority shall use Commercially Reasonable Efforts to structure the Services Requirements, the Supplier's Solution and/or the Supplier Subcontracts so as to maximise the amount of Local Sales Tax that can be recovered by the Supplier from the relevant tax authority.

17.16 The Supplier shall be responsible for:

17.16.1 any taxes on its property or assets;

17.16.2 any taxes on its business; and

17.16.3 any taxes based on its net income or gross receipts.

17.17 Value For Money

If New Services are requested in accordance with Clause 16.1 above and/or changes to the Agreement or the Services Requirements or Supplier's Solution are requested by either Party which impact the Service Charges and/or the Contract Term is extended in accordance with Clause 7 above, the Supplier shall provide the Authority with sufficient pricing information in accordance with the Financial Model and/or value for money mechanisms set out in Schedule 20 (**Continuous Improvement**) so that the Authority can ensure that it is receiving value for money from the Supplier in respect of the Service Charges being proposed by the Supplier for such New Services, changes to the Agreement or Services Requirements or Supplier's Solution and/or extension(s) to the Contract Term.

17.18 Financial Model

It is a condition of the Agreement that, as at the Effective Date, the Financial Model is, in all material respects, a fair, complete and accurate representation of the basis on which the Supplier has calculated charges, revenues, costs and returns (including capital costs, financing costs and on-going revenue expenditure) in relation to the fulfilment of the Services Requirements during the Contract Term. Unless expressly provided elsewhere in the Agreement, the Supplier shall not be entitled to amend the Service Charges to take account of errors or omissions in the Financial Model or of circumstances which are (or should be) reflected in the Financial Model.

17.19 Recovery of Sums Due

Save where there is genuine dispute, if any sum of money shall be due from the Supplier, the same may be deducted by the Authority from any sum then due or which at any time thereafter may become due to the Supplier under the Agreement.

18. PROCEDURES MANUAL

18.1 The Supplier shall prepare and deliver to the Authority a Procedures Manual regarding the Supplier's provision of the Services Requirements in accordance with the following terms and conditions. The Authority shall review and approve the scope and content of the Procedures Manual.

18.2 At least thirty (30) days before the first Scheduled Commencement Date, the Supplier shall deliver to the Authority a draft Procedures Manual. Throughout the Transition Period, the

Supplier shall develop and improve the Procedures Manual to reflect knowledge and experience gained during Transition. The Supplier shall provide regular updates of the draft Procedures Manual to the Authority throughout the Transition Period and shall incorporate any reasonable comments and suggestions of the Authority. The Procedures Manual shall be finalised no later than sixty (60) days after the final Commencement Date.

- 18.3 The Procedures Manual shall detail the operations, functions, activities, processes and procedures used and/or followed by the Supplier and Supplier Subcontractors and Supplier Personnel in the provision of the Services Requirements and the performance of the obligations of the Supplier under this Agreement.
- 18.4 The Supplier shall, at least once every Contract Year, update the Procedures Manual to reflect changes in the operations, functions, activities, plans, inventories, processes and/or procedures. Prior to their implementation, updates of the Procedures Manual shall be provided regularly (and at least once every Contract Year) to the Authority for review and comment as described in Clause 18.2.
- 18.5 Subject to Clause 32.1, the Authority shall own all rights, title and interest (including Intellectual Property Rights) in and to the Procedures Manual (and all versions of it). The Authority hereby grants to the Supplier a worldwide, non-exclusive, irrevocable, perpetual, royalty-free licence to use, Modify, copy, sub-licence and commercially exploit the Procedures Manual (excluding any pre-existing Supplier IPR in such Procedures Manual). The Supplier hereby grants to the Authority a worldwide, non-exclusive, irrevocable, perpetual, royalty-free licence to use, Modify, copy, sub-licence and commercially exploit any pre-existing Supplier IPR in the Procedures Manual.

19. LIQUIDATED DAMAGES

- 19.1 Schedule 5 (**Transition**) sets out the Services Requirements relating to Transition and the Transition Plan. It also identifies the Scheduled Commencement Dates for the provision of the Supplier's Solution at each VAC and other associated Key Milestone Dates for Transition.
- 19.2 Annex 5-2 to Schedule 5 (**Transition**) also sets out the calendar month (the "**Scheduled Biometric Install Month**") in which the Parties intend that the Authority shall install the Biometrics Equipment at each VAC so that the Biometric Recording Services can commence. After the Effective Date, the Parties, acting in good faith, shall agree the exact date by which the Authority shall install the Biometrics Equipment in each VAC (the "**Scheduled Biometric Install Date**"). Unless otherwise agreed, the Scheduled Biometric Install Date shall be within the Scheduled Biometric Install Month.
- 19.3 The Supplier recognises that if it fails to meet the relevant Readiness Criteria for go-live at a VAC in accordance with Section 6 of Schedule 5 (**Transition**) such that it is not ready to assume the fulfilment of the Services Requirements (including, in particular, the Biometric Recording Services) by the Scheduled Biometric Install Date or the Scheduled Commencement Date whichever is the later (a "**Serious Delay**"), such Serious Delay shall have a material adverse impact on the business and operations of the Authority.
- 19.4 Subject to Clauses 47 and 49, if there is a Serious Delay the Authority shall be entitled to recover liquidated damages from the Supplier. Such liquidated damages shall be calculated as follows:
- 19.4.1 for each VAC in Serious Delay, the Supplier shall pay to the Authority one per cent (1%) of the Country Transition Charge for each week (or part thereof) of Serious Delay, up to a maximum of twelve (12) weeks;

- 19.4.2 the amount of liquidated damages paid by the Supplier pursuant to this Clause 19.4, in any Country shall, in no event, exceed twelve per cent (12%) of the corresponding Country Transition Charge; and
- 19.4.3 if, at the end of the twelve (12) week period specified in Clause 19.4.1, the Supplier still has not met the relevant Readiness Criteria for go-live at a VAC, the Authority may, at its option, elect to remove the affected VAC, or Country from the scope of the Agreement (such removal being deemed to be a partial Termination for Default) and claim damages and/or pursue any other rights and remedies the Authority may have under the Agreement or at Law.
- 19.5 The Parties acknowledge that, for any Serious Delay of less than twelve (12) weeks, the liquidated damages provided hereunder are:
- 19.5.1 reasonable and intended to compensate the Authority; and
- 19.5.2 the Authority's sole financial remedy for such Serious Delay.

20. SERVICES RECIPIENTS

- 20.1 The Commencement Date for any Services Requirements that are required by a Services Recipient in accordance with Schedule 2 (**Statement of Requirements**) shall be agreed in accordance with Schedule 10 (**Change Control**), and the Supplier shall fulfil such Services Requirements from such Commencement Date. In respect of each such Services Recipient:
- 20.1.1 any and all of such Services Recipients shall have the right to benefit from the Services Requirements under the Agreement and shall be deemed third party beneficiaries under the Agreement from the Effective Date;
- 20.1.2 any indemnity in favour of the Authority or any limitation or exclusion of liability in favour of the Authority is intended by the Parties to be a right or benefit of such Services Recipients as if such Services Recipients had been parties to the Agreement;
- 20.1.3 the Authority shall ensure that such Services Recipients comply with such of the Authority's obligations under the Agreement that are relevant to the Services Recipients;
- 20.1.4 the Authority shall ensure the Services Recipients comply with the Dispute Resolution Procedure in Schedule 8 (**Governance & Contract**) in respect of any disputes or claims arising in relation to the Agreement;
- 20.1.5 The Authority shall use its Commercially Reasonable Efforts to ensure that any Claims that such the Services Recipients may have under the Agreement against the Supplier are assigned and/or managed by such Service Recipients to the Authority, and the Supplier agrees that such Claims may be so assigned and/or managed;
- 20.1.6 solely to the extent that the Authority is unable, having complied with Clause 20.1.5 above, to bring such Claims itself, the Services Recipients shall be entitled to bring such Claims under the Agreement;
- 20.1.7 the Authority and the Services Recipients shall ensure that all information, notices, correspondence and documentation arising under Clause 20.1.5 above are controlled centrally by the Authority in order for the Authority to be a single point of contact for issuing such notices, correspondence and documentation to the Supplier and any

subsequent information, notices, correspondence and documentation issued by the Supplier to such Services Recipients; and

20.1.8 the Parties agree that no consent from the Services Recipients is required for the Parties to vary or terminate the Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such Services Recipients).

20.2 The day-to-day management and operational interfaces between the Supplier and the Services Recipients shall be developed and added to Schedule 8 (**Governance & Contract Management**) at the Commencement Date for the fulfilment of the Services Requirements for such Services Recipients or as otherwise agreed by the Parties.

21. **USE OF THIRD PARTIES AND COOPERATION WITH OTHER SERVICE PROVIDERS**

21.1 **Services Performed by the Authority or Third Parties**

21.1.1 Where third parties are retained by the Authority to provide a service in substitution for all or an element of a particular Service Package that formed part of the Services Requirements, the Supplier shall, to the extent and as agreed in accordance with the Change Control Procedure, integrate such service with the Supplier's Solution.

21.1.2 To the extent that the Authority performs, or retains third parties to perform, any service in substitution for all or an element of a particular Service Package that formed part of the Services Requirements or any other services related to the Services Requirements, the Supplier shall co-operate with the Authority and such third parties to ensure (so far as it is reasonably able) that such services are able to be carried out in a co-ordinated, effective and timely manner. In the case of services that formed part of the Services Requirements, such Supplier co-operation shall include, as necessary to enable such services to be performed, access to the Supplier Facilities, Equipment, Biometric Equipment, Software, Materials and other facilities reasonably necessary to enable such services to be performed, subject always to such third parties complying with the Supplier's reasonable security and confidentiality requirements.

21.2 **Cooperation with Other Service Providers**

21.2.1 The Supplier shall be required to permit access (without any change to the Service Charges) to third parties or the Authority itself in accordance with Clause 21.2.2 below.

21.2.2 The Supplier shall co-operate (without any change to the Service Charges) to the extent that it is able to do so without impacting on its ability to fulfil the Services Requirements with all relevant parties, including, but not limited to, the Authority or third parties under contract to the Authority to facilitate co-ordination of other services that impact upon or interact with the Services Requirements, including by providing access to the Supplier Facilities, Equipment, Biometric Equipment, Software, Materials and other facilities reasonably necessary to enable such services to be performed, subject always to such third parties complying with the Supplier's reasonable security and confidentiality requirements.

22. **CONSENTS AND LICENCES**

22.1 The Supplier agrees to obtain and maintain throughout the Contract Term, at its own cost, all consents and licences which are necessary for the Supplier to fulfil the Services Requirements and the Authority to receive the benefits of the Services Requirements.

22.2 The Supplier agrees that the pricing in Schedule 6 (**Pricing, Payment & Invoicing**) covers all consents and licences required to fulfil the Services Requirements and to provide the Supplier's Solution in Schedule 3 (**Supplier's Solution**).

22.3 The provisions of this Clause 22 are without prejudice to the obligations of the Authority to supply, at its own cost, the Authority Software, the Authority Material, the Biometric Equipment and the Biometric Software.

23. ASSETS

23.1 The Supplier shall maintain a list of the Assets used in the fulfilment of the Services Requirements. The Parties shall agree the level of detail and content of such Asset list including the categories or types of Assets to be included or excluded from the list.

23.2 Schedule 9 (**Exit Management**) sets out the Supplier's obligations in relation to the selling or transferring of the Exclusive Assets to the Authority or a Successor Supplier on Termination.

23.3 Prior to their introduction, the Parties shall agree the use of any Shared Assets in the fulfilment of the Services Requirements. As a part of such agreement, the Parties shall discuss and agree the treatment of such Shared Assets on Termination. The Authority acknowledges and agrees that:

23.3.1 the Assets used to provide the Information Services shall be deemed to be Shared Assets; and

23.3.2 if the Authority agrees that a VAC may be used to provide services to other customers of the Supplier, the Assets used to provide such services shall be deemed to be Shared Assets.

23.4 The Parties' obligations with respect to the Biometric Equipment and the Biometric Software are set in Schedule 2 (**Statement of Requirements**).

23.5 The Authority hereby grants to the Supplier (and/or to the Supplier Subcontractors) the right to use the Biometric Equipment and Biometric Software solely to the extent necessary to perform its continuing obligations under the Agreement.

23.6 At all times whilst the Biometric Equipment is within the Supplier's possession, custody and control, such Biometric Equipment shall be at the Supplier's sole risk and the Supplier shall procure that it is kept safe, secure and insured against loss, theft and damage.

24. THIRD PARTY AGREEMENTS

The Supplier shall obtain all Required Consents to complete the Transition and to fulfil the Services Requirements. The Supplier shall pay any fees (*e.g.*, transfer or upgrade fees) that may be required to obtain a Required Consent for any of the Third Party Contracts required by the Supplier to fulfil the Services Requirements. Subject to the Authority's approval, if a Required Consent cannot be obtained, the Supplier may adopt any alternative approaches or workarounds that are necessary and sufficient to fulfil the Services Requirements without the relevant Required Consent.

25. PERSONNEL ISSUES

The Supplier shall comply with the requirements set out in Schedule 11 (**Personnel**), including those provisions relating to the appointment and removal of Supplier Personnel.

26. **ACQUIRED RIGHTS DIRECTIVE**

The Supplier shall comply with the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Acquired Rights Directive. On any exit of the Agreement, the Supplier shall comply with obligations set out in Schedule 9 (**Exit Management**).

27. **PERSONNEL ACCESS**

The Supplier shall provide access to its Audit Records, premises and other materials required for the Authority, its Authority Audit Representatives, the National Audit Office and other individuals or organisations for the purposes described in Schedule 15 (**Audit Access**) or such access as expressly identified elsewhere in the Agreement.

28. **DIVERSITY / NO DISCRIMINATION / RESPECT FOR RELIGIOUS AND CULTURAL SENSITIVITIES**

28.1 In providing the Services, the Supplier shall comply with:

28.1.1 the provisions of the Equality Act 2010;

28.1.2 the provisions of the Human Rights Act 1998;

28.1.3 the National Minimum Wage Act 1998; and

28.1.4 the non-discrimination provisions set out in Section 7 of Schedule 11 (**Personnel**),

and, in respect of Supplier Personnel based in a country outside the UK, all equivalent or analogous legal requirements under the laws in force in that country.

28.2 In relation to Visa Applications, the Supplier shall comply with the requirements in Schedule 2 (**Statement of Requirements**) that relate to the Supplier providing the Supplier's Solution in a way that respects the religious and cultural sensitivities of Visa Applicants and Customers.

29. **RESPONSIBILITY FOR SUBCONTRACTORS AND SUPPLIER AFFILIATES**

29.1 The Supplier shall provide a list to the Authority by the Effective Date of the Supplier Subcontractors that it shall be using to provide the Services under the Agreement. This list of Supplier Subcontractors shall be a deliverable of the Supplier under Schedule 12 (**Subcontractors**). This list also identifies the Supplier Subcontractors that are Material Subcontractors at the Effective Date.

29.2 The Supplier shall remain liable at all times for all acts or omissions of the Supplier Subcontractors (including Material Subcontractors) in accordance with the provisions of Schedule 12 (**Subcontractors**).

29.3 The Supplier shall ensure that relevant terms of this Agreement are flowed-down to the Supplier Subcontracts as more particularly described in Schedule 12 (**Subcontractors**).

30. **CONFIDENTIALITY**

30.1 The Supplier shall abide by the provisions of the Official Secrets Acts 1911 to 1989. The Supplier shall, by display of notices or by other appropriate means, ensure that all persons engaged on any work in connection with the Agreement have notice that these statutory

provisions apply to them and shall continue so to apply after the Termination of the Agreement. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Supplier acknowledges that any Confidential Information obtained by or provided to the Supplier in relation to the Agreement remains the property of the Authority, its servants or agents, operational partners or members as appropriate.

30.2 Each Party shall ensure that:

30.2.1 it and any person employed or engaged by the relevant Party (in connection with the Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of enabling it to perform (or cause to be performed) or to enforce any of its rights or obligations under the Agreement (but only to the extent necessary to so enable);

30.2.2 any person employed or engaged by either the Supplier or the Authority, as applicable, (in connection with the Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other Party;

30.2.3 it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of the Agreement by their employees, servants, agents or Supplier Subcontractors; and

30.2.4 without prejudice to the generality of the foregoing, each Party shall not, and each Party shall procure that any person engaged by them, whether as a servant or a consultant or otherwise, shall not, use the Confidential Information for the solicitation of business from the other or by their servants or consultants or by any third party.

30.3 The Supplier shall obtain from all Supplier Subcontractors, prior to their commencing work on the Services or receiving any Confidential Information, a signed non-disclosure agreement.

30.4 The Supplier shall inform the Authority of all third parties (including Supplier Subcontractors and all Supplier Personnel) to whom it intends to disclose Confidential Information and the Authority shall have the right to veto the disclosure of Confidential Information to any such persons, and in the event of such veto being exercised by the Authority, the Supplier shall not disclose any Confidential Information to any such vetoed person.

30.5 The provisions of Clause 30.2 above shall not apply to any information which:

30.5.1 is or becomes public knowledge other than by breach of this Clause 30;

30.5.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;

30.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

30.5.4 is independently developed without access to the Confidential Information;

30.5.5 is required to be disclosed by Law or pursuant to the rules or any order having the force of law of any court, association or agency of competent jurisdiction or any government agency; or

- 30.5.6 in the case of Supplier's Confidential Information, the Authority is obliged to disclose under the Freedom of Information Act 2000 ("**FOIA**").
- 30.6 Without limiting either Party's right to disclose Confidential Information as described under Clause 30.5.5 or 30.5.6 above (as applicable), prior to the either Party disclosing information pursuant to Clauses 30.5.5 and 30.5.6 above (as applicable) and as soon as it is apparent that such a disclosure may be necessary, the disclosing Party shall first contact the other Party to enable that other Party to make representations in respect of such requirement for disclosure should that Party so wish.
- 30.7 Nothing in this Clause 30 shall be deemed or construed to prevent the Authority from disclosing any Confidential Information obtained from the Supplier to:
- 30.7.1 any other department, office or agency of the Government (including the National Audit Office, the Efficiency and Reform Group of the Cabinet Office and the Office of the Government CIO), or ministers where such disclosure is required to meet what the Authority reasonably considers to be its responsibilities to such ministers, or other entity where required for its proper departmental, parliamentary, governmental, statutory or judicial purposes, provided that the Authority shall first advise that department, office or agency of the confidentiality undertakings set out within this Clause 30; or
- 30.7.2 any consultant, professional adviser or other person engaged by the Authority in connection with the Agreement.
- 30.8 Nothing in the Agreement shall prevent the Authority from using techniques, ideas and know-how gained during the Contract Term in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information of the Supplier or an infringement by the Authority of any Intellectual Property Right of the Supplier.
- 30.9 Without prejudice to any other rights and remedies whether under the Agreement or at Law, each Party agrees that damages would not be an adequate remedy for any breach of this Clause 30 and that the other Party shall be entitled to apply for the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Clause 30.
- 30.10 Nothing in this Clause 30 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 30.11 The obligations with respect to Confidential Information disclosed under the Agreement shall survive Termination of the Agreement and continue for as long as such information remains confidential.
- 30.12 The Supplier acknowledges that the Authority is obliged to publish this Agreement, in accordance with the Government's transparency agenda PROVIDED THAT nothing in this Clause 30.12 shall oblige the Authority to publish any section of the Agreement where such publication would be in breach of the Data Protection Act 1998 nor where that section is exempted from disclosure under the Freedom of Information Act 2000.
31. **FOIA**
- 31.1 Nothing in the Agreement shall operate in any way to affect adversely any obligation and/or rights of the Authority under the FOIA.

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- 31.2 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Supplier's expense) to enable the Authority to comply with these information disclosure requirements.
- 31.3 The Supplier shall, and shall procure that its Supplier Subcontractors shall:
- 31.3.1 transfer to the Authority any Request for Information that it receives as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - 31.3.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - 31.3.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 31.4 The Authority shall notify the Supplier before it discloses any Commercially Sensitive Information and allow the Supplier to make representations in respect of such disclosure if it so wishes.
- 31.5 The Authority, acting reasonably but in its sole discretion, shall be responsible for determining whether the Commercially Sensitive Information and/or any other Information:
- 31.5.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and
 - 31.5.2 is to be disclosed in response to a Request for Information.
- 31.6 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 31.7 The Supplier acknowledges that the Authority may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:
- 31.7.1 without consulting with the Supplier; or
 - 31.7.2 following consultations with the Supplier and having taken its views into account.

32. INTELLECTUAL PROPERTY RIGHTS

32.1 Intellectual Property Rights existing at the Effective Date

Save as set out herein, the Agreement shall not be deemed to assign or otherwise transfer to either Party any Intellectual Property Rights of the other Party existing at the Effective Date. Neither Party shall contest the ownership of any such Intellectual Property Rights belonging to the other Party prior to the Effective Date.

32.2 The Authority Software and the Authority Material

- 32.2.1 The Authority shall retain all right, title and interest in and to all the Authority Software and the Authority Material, including all Intellectual Property Rights therein.
- 32.2.2 The Authority hereby grants to the Supplier a fully paid-up, non-exclusive, non-transferable licence during the Contract Term and for the duration of any Termination Assistance to use, reproduce, modify, adapt, maintain and enhance the Authority Software and the Authority Material, only to the extent necessary and for the sole purpose of fulfilling the Services Requirements and/or performing its other obligations under the Agreement, with the right to grant non-transferable sub-licences thereunder to Supplier Subcontractors only for such purpose.
- 32.2.3 Subject to Clause 18.5, the Supplier and Supplier Subcontractors shall cease any and all use of the Authority Software, the Authority Material, and Work Product (owned by the Authority in accordance with Clause 32.5.1) upon Termination of the Agreement or the date upon which the Supplier and Supplier Subcontractors ceases to require such Authority Software, Authority Material and Work Product for the purposes of the provision of Termination Assistance, whichever is the later.

32.3 Supplier Software and Supplier Material

- 32.3.1 Save as otherwise set out in the Agreement, the Supplier shall retain all right, title and interest in and to the Supplier Software and Supplier Material, including all Intellectual Property Rights therein.
- 32.3.2 The Supplier hereby grants to the Authority, the Services Recipients, their contractors, agents and employees a fully paid-up, non-exclusive licence to use, operate and copy the Supplier Software and Supplier Material for the purpose only of the receipt by the Authority and the Services Recipients of the benefit of the Services Requirements during the Contract Term and for the term of any Termination Assistance. The licence granted under this Clause 32.3.2 shall take effect on the date that the relevant Supplier Software or Supplier Material is first used by or on behalf of the Supplier to fulfil the Services Requirements.
- 32.3.3 On a Termination, the Supplier hereby grants to the Authority, Services Recipients, any Successor Supplier, and their respective contractors, agents and employees, a fully paid-up, non-exclusive licence to use, operate, reproduce, adapt, copy, maintain, support, modify and enhance the Necessary Supplier IPR for the purpose only of:
- (a) the receipt by the Authority or the Services Recipients (as applicable) of services similar to those fulfilled by the Supplier prior to the Termination Date; and/or
 - (b) a Successor Supplier and its contractors, agents and employees providing services to the Authority or the Services Recipients similar to those provided by the Supplier prior to the Termination Date.

32.4 Third Party Software and Third Party Material

- 32.4.1 The Supplier shall provide such Third Party Software and Third Party Material as is necessary or appropriate to fulfil the Services Requirements. Before installing any Third Party Software or Third Party Material (as applicable), the Supplier shall obtain or provide (as applicable) a licence which enables the Authority, the Services Recipients, or their subcontractors or their permitted assignees, rights to use the Third Party Software and/or Third Party Material (as applicable), as appropriate, during the Contract Term (or any term of Termination Assistance) for the purposes of receiving the benefit of the

Services Requirements. The Supplier shall be liable for the cost associated with obtaining the third party licences described in this Clause 32.4.1. The Supplier shall maintain copies of all third party licences obtained by the Supplier in accordance with this Clause 32.4.1.

32.4.2 Subject to Clauses 32.4.3 and 32.4.4, the Supplier shall ensure that licences to use Third Party Software and Third Party Material (including Modifications to any Third Party Software that was already in use as at the Effective Date) shall be in the Supplier's or a Supplier Group Company's name, provided that prior to the introduction of such Third Party Software or Third Party Material, the Supplier shall, at its own cost, use Commercially Reasonable Efforts to obtain an obligation on the third party licensor at the Termination of the Agreement either to:

- (a) transfer, assign or novate the licence for such Third Party Software and Third Party Material to the Authority or a Successor Supplier without the need for further consent, licence or payment of charges applicable to such transfer, assignment or novation (as applicable); or
- (b) grant to the Authority or a Successor Supplier a licence for such Third Party Software and Third Party Material on terms substantially similar to the terms of the Supplier's existing licence for such Third Party Software and Third Party Material,

(each, an "**IPR Transfer Right**"), in each case provided that the on-going fees for such Third Party Software and Third Party Material payable by the Authority or a Successor Supplier (as applicable) are consistent with and no higher than the fees payable by the Supplier prior to such Termination.

32.4.3 If the third party licensor refuses to grant an IPR Transfer Right or requires an additional fee for the granting of an IPR Transfer Right, the Supplier shall notify the Authority and the Authority shall, at its option, either:

- (a) require the Supplier to agree (provided that the third party licensor so agrees) to such IPR Transfer Right, in which case the Authority shall pay the fee levied by the licensor, provided that the Supplier has used its Commercially Reasonable Efforts to reduce such fee;
- (b) agree with the Supplier a commercially reasonable workaround, which may include the Supplier using alternative Software; or
- (c) waive the obligation to obtain an IPR Transfer Right.

32.4.4 Clause 32.4.2 shall not apply to Commercially Available Off The Shelf Software.

32.5 **Work Product**

32.5.1 If, during the Contract Term, any Work Product is created, the Parties hereby agree that:

- (a) except as otherwise specifically provided, the Supplier shall own all rights, title and interest (including Intellectual Property Rights) in and to all of such Work Product that has been developed, and maintained by the Supplier, at its sole expense, in the course of, and for the purpose of, the fulfillment of the Services Requirements. Such ownership shall apply whether Work Product is created solely or jointly by the Supplier and the Supplier Subcontractors including in

relation to any Software (which may include Modifications to Supplier Software) specifically requested by the Authority through the Change Control Procedure and any Supplier modification to Third Party Software or Third Party Materials; but excluding Third Party Software or Third Party Materials themselves and the Procedures Manual and

- (b) the Supplier shall own all rights, title and interest (including Intellectual Property Rights) in and to any website developed and maintained by the Supplier, at its sole expense, for the purpose of either presenting or effecting the flow of information in relation to delivery of the Services Requirements.
- (c) the Authority shall own any Reports, monitoring information or statements created as part of the Supplier's fulfillment of the Service Requirements and delivered to the Authority;
- (d) the Authority shall own any Software or Material specifically commissioned and paid for by the Authority as agreed by the Parties;
- (e) the Authority shall own any other such Work Product, not hitherto defined by the terms of this Clause **Error! Reference source not found.**, that has been created or developed by or on behalf of the Supplier in the course of and for the purpose of the fulfillment of the Services Requirements as agreed by the Parties.

32.5.2 The Parties shall maintain a list of any Work Product created pursuant to Clause 32.5.1

32.5.3 For the avoidance of doubt, any Work Product which has been adapted or translated from the Authority Data as part of the provision of the Information Services (including but not limited to web content, guidance notes, information sheets, or standard e-mail responses) shall be deemed to be the Authority Material.

32.6 **Non-Infringement, Conformation to Specification and Conformation of Ownership**

32.6.1 The Supplier shall ensure that the Supplier Software, Supplier Material, Work Product, or any other product provided by the Supplier or any Supplier Subcontractor, and its use by the Authority, the Services Recipients, and any Successor Suppliers in the intended manner, shall not infringe any Intellectual Property Rights or moral right of any third party.

32.6.2 Subject to Clause 32.6.1 above, the Supplier confirms (and shall procure that the Supplier Subcontractors confirm) that:

- (a) it owns or has the right to use or otherwise exploit, and shall, at all relevant times, own or have the right to use or otherwise exploit, the Assets, Material, Software and all Intellectual Property Rights to the extent necessary to provide the Services;
- (b) it shall not infringe any third party's Intellectual Property Rights in fulfilling the Services Requirements; and
- (c) it has, and shall at all relevant times have, full right to grant the licences and provide any Assets, Work Product and/or Software to the Authority as set out in the Agreement.

- 32.6.3 Subject to Clause 32.6.4, the Supplier shall indemnify the Authority against all claims, proceedings, damages, expenses, legal costs (on a solicitor and client basis) and any other sort of liabilities arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights.
- 32.6.4 Clause 32.6.2 shall not apply in respect of any infringement or alleged infringement relating to material which the Authority has supplied to the Supplier or which the Authority has specified for use by the Supplier.
- 32.6.5 The Supplier shall promptly notify the Authority if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Rights which may affect the Services. The Supplier shall, at its sole expense, conduct any litigation or negotiations arising for any such claim provided that it shall consult with the Authority on all substantive matters arising during the conduct of such litigation or negotiations and shall, in such conduct, take due account of the interests of the Authority.
- 32.6.6 The Authority shall promptly notify the Supplier if any claim or demand is made or action brought against the Authority to which Clause 32.6.3 may apply. In the case of any such claim:
- (a) the Authority shall not pay or agree to pay any such claim or make any admissions which are prejudicial to the defence of the claim without the prior written consent of the Supplier; and
 - (b) the Supplier shall have the right to take over conduct of the claim and proceedings at its sole expense.
- 32.6.7 If a claim or demand is made or action brought to which Clause 32.6.3 may apply, the Supplier may, at its sole expense, either:
- (a) Modify any or all of the Services without reducing the performance and functionality of the same or substitute alternatives of equivalent performance and functionality so as to avoid the infringement or alleged infringement provided that the terms of this Agreement apply mutatis mutandis to such modified or substituted services and provided that the substituted services are acceptable to the Authority, such acceptance not to be unreasonably withheld; or
 - (b) procure a licence to use the Services on terms that are acceptable to the Authority; or
 - (c) if a modification or substitution in accordance with Clause 32.6.7(a) is not possible so as to avoid the infringement or the Supplier is unable to procure a licence in accordance with Clause 32.6.7(b), the Supplier shall be liable for the value of the replacement services or any part thereof together with additional costs incurred in implementing and maintaining such replacements.

32.7 Escrow

During the Contract Term, the Supplier shall keep the Source Code of all Software produced as part of the Work Product and of all Supplier Software current and, on the Authority's written request, the Supplier shall place the Source Code of any such Software in escrow with the National Computing Centre (or such other escrow agent as may be agreed between the Parties), on the terms of its tripartite agreement or on such other terms as the Supplier and the Authority

shall from time to time mutually agree. All escrow costs associated with complying with this Clause 32.7 shall be to the account of the Authority. During the Contract Term, the Supplier shall provide the Authority with an annual report identifying the Software held in escrow.

32.8 **Cataloguing**

The Supplier shall maintain a continuously updated inventory of all Supplier Software, Supplier Material, Authority Software, Authority Material, Third Party Software, Third Party Material and all Work Product which are used as part of, or in the fulfilment of, the Services Requirements hereunder from time to time.

33. **REGULATORY AND LEGAL COMPLIANCE**

33.1 Without prejudice to Clauses 33.2 and 33.3 below, the Supplier shall fulfil the Services Requirements consistent with regulatory requirements to which the Authority and the Services Recipients are subject and all other requirements of Law in any country in which the Services Requirements are provided, and the Supplier shall make any necessary changes to the Supplier's Solution to comply with such requirements (without any increase to the Service Charges). Regulatory requirements include (among others) data protection legislation, import and export restrictions and requirements imposed by UK regulatory authorities. The Supplier shall ensure that any such change shall be implemented by the Supplier so as not to have an adverse effect on, or give rise to increased inconvenience in, the fulfilment of the Services Requirements.

33.2 The Parties acknowledge that any costs relating to compliance with any material Discriminatory Change in Law after the Effective Date shall be subject to the Change Control Procedures set out in Schedule 10 (**Change Control**). All other Changes in Law shall be at the Supplier's cost.

33.3 If the Supplier's obligation to fulfil the Services Requirement in a particular Country necessarily and unavoidably results in the breach of Law (which shall include, for the avoidance of doubt, trade or export restrictions that prevent the Supplier from operating in a particular Country), the Supplier shall be relieved of its obligation to comply with such Services Requirement in such Country only to the extent that such Law prevents it from so complying. The Parties shall agree, through the Change Control Procedure, a Change to the relevant Services Requirement for such Country to ensure that the fulfilment of such Services Requirement does not breach the relevant Law.

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

33.4.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and

33.4.2 promptly provide to the Authority:

- (a) 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
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

34. **DATA PROTECTION AND AUTHORITY DATA**

34.1 **Data Protection - General**

34.1.1 The Parties shall each comply with their respective obligations under the DPA. Neither Party shall do any act that puts the other Party in breach of its obligations under the DPA. Nothing in the Agreement shall be deemed to prevent any Party from taking the steps that it reasonably deems necessary to comply with the DPA.

34.1.2 The Parties acknowledge that:

- (a) the Authority alone shall determine the purposes for which and the manner in which Authority Data is, or is to be, processed in the performance of the Services;
- (b) the Authority shall be the “Data Controller” (as defined in the DPA) in respect of all Authority Personal Data; and
- (c) the Supplier shall be the “Data Processor” (as defined in the DPA) in respect of the Authority Personal Data.

34.1.3 In a manner that conforms to any time-scales set out in the DPA and, in any event, as soon as reasonably practicable, the Supplier shall (and shall procure that any relevant Supplier Subcontractors shall) comply with any reasonable written request by the Authority to:

- (a) correct or delete inaccurate the Authority Personal Data;
- (b) provide a copy of the Authority Personal Data relating to a “Data Subject” (as defined in the DPA) that is stored in any form of retrieval or storage facilities in the possession or control of the Supplier;
- (c) provide information about the Supplier’s processing of the Authority Personal Data;
- (d) provide information to enable the Authority to maintain its registration as required under the DPA;
- (e) assist in respect of any request or notice, or any anticipated request or notice, by or on behalf of any Data Subject in respect of the Authority Personal Data; and
- (f) otherwise provide reasonable assistance to the Authority as necessary to allow the Authority to comply with the DPA.

34.1.4 The Supplier shall not disclose or allow access to any Personal Data provided by the Authority, or acquired by the Supplier during the course of tendering or executing its obligations of the Agreement, other than to a person employed or engaged by the Supplier or a Supplier Subcontractor or to Data Subjects to the extent that they are entitled to receive such Personal Data in accordance with the DPA, without the prior written permission of the Authority.

34.1.5 Any disclosure or access to Personal Data allowed under this Clause 34.1 shall be made in confidence and shall extend only so far as necessary for the purposes of the Agreement except as otherwise required by the requirements of the DPA.

34.1.6 The Supplier agrees that it, its servants and agents and Supplier Subcontractors and/or any other person in the control of the Supplier shall store or process Personal Data in accordance with the DPA and any statutory re-enactment or modification thereof.

34.1.7 The Supplier shall fully indemnify the Authority against the costs of dealing with any successful civil claims made in respect of information subject to the DPA, or any statutory re-enactment or modification thereof, which claims would not have arisen but for some act, omission or negligence on the part of the Supplier, its servants, agents or Supplier Sub-Contractors.

34.1.8 All Personal Data, which is the subject of this Clause 34.1, shall be retained at all times in the possession and under the control of the Supplier. All rights in any compilation or database of such Personal Data shall vest in and be the property of the Authority. The Supplier shall ensure that the Authority at all times has full rights of access to all such Personal Data and may take copies thereof.

34.1.9 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Supplier during the Contract Term);
- (b) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by relevant Law or any Regulatory Body;
- (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (d) take reasonable steps to ensure the reliability of any Supplier Personnel who have access to the Personal Data;
- (e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Supplier Subcontractors or Supplier Group Companies for the provision of the Services;
- (f) ensure that all Supplier Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 34.1;
- (g) ensure that none of the Supplier Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- (h) notify the Authority (within five Working Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;

- (i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority;

34.1.10 permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with the Authority's rights of audit under this Agreement, the Supplier's data processing activities in relation to personal data (and/or those of its agents, subsidiaries and Supplier Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement. "Process" in relation to personal data, has the meaning set out in the Data Protection Act 1998.;

34.1.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Authority); and

34.1.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:

- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- (b) any reasonable instructions notified to it by the Authority.

34.1.13 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

34.2 Authority Data

34.2.1 All Authority Data shall remain the property of the Authority. The Authority may, at its sole discretion, withhold or withdraw any Authority Data, provided that the Supplier shall be relieved from its obligation to meet any Services Requirements which such withholding or withdrawal prevents the Supplier from fulfilling. Save as otherwise expressly specified in Schedule 2 (**Statement of Requirements**), the Supplier shall not, without the Authority's prior written authorisation:

- (a) use Authority Data for the Supplier's or Supplier Subcontractors' own purposes, including marketing purposes; or
- (b) subject to Clause 34.2.12, transfer, disclose, assign, sell, lease or otherwise provide any of the Authority Data to third parties or transfer the Authority

Personal Data across any country's border except solely to the extent necessary to transfer such Authority Personal Data to the Authority or to the Posts, or to comply with its contingency and business continuity obligations in Schedule 2 (**Statement of Requirements**) for the sole purpose of providing the Services required under the Agreement.

- 34.2.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 34.2.3 The Supplier shall not store, copy, disclose, nor 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.
- 34.2.4 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority in the format specified by the Authority.
- 34.2.5 Upon receipt or creation by the Supplier of any Authority Data and during any collection, processing, storage and transmission by the Supplier of any Authority Data, the Supplier shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 34.2.6 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 obligations of Schedule 21 (**Business Continuity and Disaster Recovery**) and the agreed Business Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than the frequency agreed in accordance with Schedule 21 (**Business Continuity and Disaster Recovery**).
- 34.2.7 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 Policy.
- 34.2.8 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 may:
 - (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Authority Data and the Supplier shall do so as soon as practicable but not later than seven (7) days; and/or
 - (b) itself restore or procure the restoration of the Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 34.2.9 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 immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 34.2.10 The Supplier shall comply with all local Laws relating to the processing of the Authority Data. Such compliance shall include the Supplier obtaining any relevant consents or permissions from Visa Applicants or other Customers as required by such local Laws to process the Authority Data in accordance with the Supplier's Solution.
- 34.2.11 If any non-UK government or competent authority requests the Supplier to disclose or allow access to the Authority Data, the Supplier shall immediately notify the Authority of such request and, in so far as it is possible, shall not disclose or allow access to such

Authority Data without first giving the Authority an opportunity to consult with such government or authority to seek to prevent such disclosure or accessing. The Parties shall discuss and agree any actions or steps which may be taken to avoid or prevent such disclosure or accessing, which may include agreeing appropriate changes to the Supplier's Solution.

34.2.12 If the Supplier's Solution involves the transfer of the Authority Personal Data from within the European Economic Area to a country outside the European Economic Area (or allows the Authority Personal Data within the European Economic Area to be accessed from outside of the European Economic Area), the Authority and the Supplier shall enter into the Model Contract Clauses.

34.2.13 The Supplier shall promptly notify the Authority if any complaints are received about the processing of the Authority Personal Data from third parties, and the Supplier shall not make any admissions or take any action which may be prejudicial to the defence or settlement of any such complaint and shall provide to the Authority such reasonable assistance as it may require in connection with such complaint.

34.3 DPA – Seventh Data Protection Principle

The Supplier acknowledges that it is obliged to comply with the “**Seventh Data Protection Principle**” in respect of the Authority Personal Data (as set out in the DPA) and, in particular, that it shall comply with the following obligations:

34.3.1 taking appropriate technical and organisational security measures (including those measures set out in Schedule 4 (**Security**) and in accordance with any other security requirements expressly set out in the Agreement) to safeguard against unauthorised and unlawful processing of the Authority Personal Data and against accidental loss or destruction of, or damage to, the Authority Personal Data. In doing so, the Supplier shall have regard to the state of technological development and cost of implementing any measures in order to comply with the legislation in determining which measures are appropriate;

34.3.2 only processing the Authority Personal Data in accordance with written instructions given by the Authority, including as set out in the Agreement;

34.3.3 taking reasonable steps to check the reliability of those Supplier Personnel that have access to the Authority Personal Data; and

34.3.4 ensuring that all of the Supplier Personnel involved in processing the Authority Personal Data have undergone reasonably adequate training in the care and handling of the Authority Personal Data.

35. DATA LOSS

35.1 The Supplier shall use its Commercially Reasonable Efforts to preserve the integrity of the Authority Data held or controlled by the Supplier pursuant to the performance of the Agreement and to prevent any misuse, corruption, destruction or loss of the same.

35.2 The Supplier and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Agreement) to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

- 35.3 The Supplier shall not, without the prior written agreement of the Authority, insert or allow the insertion into any Software of any code which would have the effect of disabling or otherwise shutting down all or any portion of the Supplier's Solution, including during any period of Termination Assistance. For the avoidance of doubt, this Clause 35.3 is not intended nor should be interpreted in any manner as being to prevent normal operation and maintenance activities, including prudent responses to emergency situations.

36. **VALUE FOR MONEY**

To ensure that the Services Charges represent value for money to the Authority during the Contract Term, the Parties have agreed and shall comply with the Value for Money Mechanisms set out in Schedule 20 (**Continuous Improvement**).

37. **AUDIT RIGHTS AND ACCESS**

The Parties shall comply with the provisions of Schedule 15 (**Audit Access**).

38. **DISPUTE RESOLUTION PROCEDURE**

The Parties shall comply with the dispute resolution provisions of Section 11 of Schedule 8 (**Governance & Contract Management**).

39. **SECURITY REQUIREMENTS**

The Supplier shall comply with the Security requirements as set out in Schedule 4 (**Security**).

40. **FACILITIES/POSTS**

- 40.1 The Supplier's VACs shall be listed in Schedule 13 (**Facilities**).

- 40.2 If the Supplier wishes to relocate the performance of any part of the Supplier's Solution from the VACs identified in Schedule 13 (**Facilities**) at the Effective Date to a Supplier facility or a third party facility, then the Authority authorises it to do so, provided that the Supplier:

40.2.1 provides reasonable notice to the Authority;

40.2.2 develops a transition plan reasonably acceptable to the Authority that is designed to avoid any disruptions or degradation in the fulfilment of Services Requirements;

40.2.3 demonstrates to the Authority's reasonable satisfaction that the Supplier shall be able to meet the Service Levels set out in Schedule 7 (**Service Levels & Service Credits**) at the new location and the new location shall meet those requirements set out in Annex 13-1 to Schedule 13 (**Facilities**) and the Authority's data security, confidentiality and privacy requirements as set out in the Agreement;

40.2.4 complies with any other reasonable requirement of the Authority in relation to such relocation; and

40.2.5 shall be responsible for the relocation costs in respect of any relocation under this Clause 40.2.

- 40.3 The Supplier shall comply with all health and safety measures and reasonable security requirements of the Authority while on any and all Posts, and shall procure that all of its employees, agents and Supplier Subcontractor shall likewise comply with such requirements.

41. WARRANTIES AND REPRESENTATIONS

41.1 The Supplier warrants and represents that, throughout the Contract Term:

- 41.1.1 at all times, the Supplier has full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of the Supplier Parent Company) to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representative of the Supplier;
- 41.1.2 the Supplier has the full capacity and authority to grant the licences referred to in Clause 32 above and/or shall secure such authorisation from third parties relative to their products;
- 41.1.3 the Supplier is not aware, as at the Effective Date, of anything within its reasonable control which might or will adversely affect its ability to fulfil its obligations under the Agreement;
- 41.1.4 the Supplier's signing, delivery and performance of the Agreement shall not constitute:
 - (a) a violation or any law, judgement, order or decree;
 - (b) a material default under any material contract by which it or any of its assets are bound; or
 - (c) an event that would, with notice or lapse of time, or both, constitute such a default;
- 41.1.5 the Services shall be supplied and rendered with all due skill, care, promptness and diligence by appropriately experienced, qualified and trained personnel and executed in a professional manner;
- 41.1.6 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence, including, but not limited to, Good Industry Practice;
- 41.1.7 the Service Charges were independently established by the Supplier and proposed to the Authority without any collusion with any third party (excluding Supplier Group Companies and Supplier Subcontractors) or any employee, adviser or representative of the Authority; and
- 41.1.8 all statements and representations made by or on behalf of the Supplier in writing in its PQQ Response, Tender were, to the best of the Supplier's knowledge and belief, true and accurate at the time that they were made or given, and that by the Effective Date the Supplier advised the Authority in writing of any material fact, matter or circumstance of which the Supplier has been aware since making such proposals or responses which would render any such statement or representation false or misleading. The Parties acknowledge that this warranty does not apply to any statements and representations made by the Supplier in its PQQ Response or Tender which have been superseded, replaced or corrected by a later statement or representation made in the Tender or the Agreement (as applicable).
- 41.1.9 The Supplier represents and warrants that as at the Effective Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance.

41.2 Each warranty shall be construed as a separate warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other warranty or any other terms of the Agreement. Except as expressly stated in the Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including, but not limited to, fitness for purpose) are hereby excluded to the extent permitted by Law.

42. **INDEMNITIES**

42.1 **Indemnity by the Supplier**

42.1.1 Subject always to the Authority's proper observance of its obligations under Clause 42.3 below (if applicable) and the provisions of Clause 43.4 below, the Supplier shall indemnify, defend and hold the Authority, the Services Recipients their respective officers, directors, employees, successors and assignees harmless from and against any Losses (including, where applicable, Losses resulting from Claims brought by third parties) arising from or in connection with any of the following:

- (a) any fine or penalty imposed by Law arising as a result of any Default by the Supplier;
- (b) any fines, penalties, ex gratia payments, compensation, redress and/or awards imposed by Law as a result of any Default by the Supplier (which shall include any fines, penalties, ex gratia payments, redress and/or awards made by the Authority or any Service Recipient or ordered by a Regulatory Body against the Authority or any Service Recipients, including the costs of redress, the costs of any review to establish the need for redress and the on-going administration costs caused by the redress);
- (c) any Default committed by the Supplier, or by any Supplier Subcontractor, or by Supplier Personnel in respect of the Supplier's confidentiality obligations under the Agreement;
- (d) death or personal injury caused by a negligent act or omission of the Supplier or any of Supplier Subcontractors where the Supplier or any of the Supplier Subcontractors is legally liable or responsible for that death or personal injury;
- (e) loss or damage to real or tangible personal property belonging to a third party, where the Supplier or any of the Supplier Subcontractors is legally liable or responsible for that loss or damage;
- (f) any Claim for damages or compensation payable to any person employed by the Supplier or any of its Supplier Subcontractors where the Supplier or any of the Supplier Subcontractors is legally liable or responsible for that loss or damage;
- (g) any Claim by third parties arising out of any wilful, deliberately or intentionally wrongful, negligent or reckless act or omission of the Supplier which causes any breach by the Authority of any of its statutory duties;
- (h) any Claim by third parties arising out of any act or omission of the Supplier which causes any breach by the Authority of any of its duties under the DPA;
- (i) without prejudice to Clause (h) above, any reasonably foreseeable Loss or Claim by third parties arising out of the loss or corruption or any of the data held or controlled by the Supplier in connection with the Services Requirements;

- (j) any Claim relating to Section 2.9 of Schedule 11 (**Personnel**); and
- (k) any Claim by Visa Applicants or Customers in relation to a Default by the Supplier in its performance of the Service Requirements or Supplier's Solution including without limitation in relation to lost or damaged Packages or Visa Applications.

42.1.2 The Supplier's liability under the indemnities referred to in Clause 42.1.1 above and the indemnities set out elsewhere in the Agreement shall be without prejudice to any other right or remedy available to the Authority in accordance with the provisions of this Agreement.

42.2 **Enforcement of Indemnities**

It is not necessary for the Authority to incur expense or make payment before issuing notification under Clause 42.3 below.

42.3 **Indemnification Procedures**

42.3.1 The Authority shall notify the Supplier in writing as soon as it knows or becomes aware of any event arising in connection with the Agreement which it believes may give rise to a Claim under the provisions of the indemnity obligations in the Agreement.

42.3.2 The Authority shall promptly notify the Supplier if any Claim or demand is made or action brought against the Authority to which the above may apply. The Supplier shall, at its own expense, conduct any litigation and/or any negotiations arising therefrom and shall have the exclusive right to defend, conduct and settle all Claims or proceedings in connection therewith, provided that where there is an impact upon the Authority the Supplier shall consult with the Authority, and provided further that the Supplier shall not settle such Claim or demand without the Authority's consent unless the settlement incorporates an absolute release of the Authority from all liability in connection with such Claim or demand.

42.3.3 The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Claim or demand made or action brought against the Authority to which the above may apply. The Supplier shall reimburse the Authority for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in so doing.

42.3.4 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Claim, demand or action in connection with any indemnities given in the Agreement.

43. **LIABILITY AND LIMITATION OF LIABILITY**

43.1 **Annual Liability Cap**

43.1.1 Subject to Clauses 43.4.1, 43.5 and 43.6 below, the annual aggregate liability of either Party to the other (including the Loss of the Services Recipients as set out in Clause 43.3 below) for any Loss relating to or arising in connection with the Agreement, and whether based on an action or Claim in contract (including pursuant to an indemnity), equity, negligence, intended conduct, tort, misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise shall be limited per annum to the greater of:

- (a) the Service Charges paid or payable by the Authority under this Agreement in the Contract Year immediately preceding the Contract Year in which the Loss occurred (or, in the case of the first Contract Year, the Service Charges budgeted to be paid or payable by the Authority under this Agreement in that first Contract Year); or
 - (b) £25,000,000 (twenty five million pounds Sterling),
- (the “**Annual Liability Cap**”).

43.2 **Aggregate Liability Cap**

43.2.1 Subject to Clauses 43.4.1 and 43.6 below, the aggregate liability of either Party to the other (including the Loss of the Services Recipients as set out in Clause 43.3 below) for any Loss relating to or arising in connection with the Agreement during the Contract Term, and whether based on an action or Claim in contract (including pursuant to an indemnity), equity, negligence, intended conduct, tort, misrepresentation (other than fraudulent misrepresentation), or otherwise shall be limited to the greater of:

- (a) an amount equal to two (2) times the average annual amount of the Service Charges paid or payable by the Authority under this Agreement in all completed Contract Years; or
 - (b) £60,000,000 (sixty million pounds Sterling),
- (the “**Aggregate Liability Cap**”).

43.3 **Loss of the Services Recipients**

The Authority and the Supplier agree that the Authority shall have the right to bring actions against the Supplier for any Loss suffered by each of the Services Recipients in connection with the Services Requirements. Where the Authority brings an action on behalf of the Services Recipients, the Parties also agree that the Loss of each such Services Recipients shall be deemed the actual and direct Loss of the Authority and shall be subject to the limitations set out in this Clause 43.

43.4 **Direct, Indirect and Consequential Loss**

43.4.1 Subject to Clauses 43.3 and 45.1.2 and the Authority’s obligation to pay the Service Charges, neither Party shall be liable for:

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

43.4.2 Subject to the financial limits set out in Clauses 43.1 and 43.2 above, the Parties acknowledge the following heads of loss as being within their reasonable contemplation as at the date of this Agreement as possible results of a Default by the Supplier and that, accordingly, the Authority may, amongst other things and subject to such losses being established in all the circumstances at the time to be a direct result of a Default by the Supplier, recover from the Supplier the following categories or heads of loss and/or damage suffered by the Authority and/or a Service Recipient under or in connection with this Agreement:

- (a) any additional operational and/or administrative costs and expenses arising from the other Party's Default; and
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by such Party arising from the other Party's Default
- (c) costs and expenses relating to the implementation of a workaround to correct a breach by the Supplier of this Agreement;
- (d) advertising and other costs reasonably incurred to limit damage caused to the Authority's reputation and goodwill.

43.4.3 The Authority may, amongst other things, recover as a direct Loss the additional cost of procuring Removed Services for the remainder of the Term where the need to procure Removed Services results from a Default by the Supplier.

43.5 **Losses subject to the Aggregate Liability Cap**

43.5.1 The Annual Liability Cap shall not apply to, and each Party accepts liability up to the Aggregate Liability Cap, for any Losses suffered or incurred by the other Party resulting from:

- (a) an intentional or wilful act or omission of the Party amounting to misconduct; or
- (b) any Default by the Supplier in respect of its obligations under Schedule 4 (**Security**).

43.6 **Exclusions**

43.6.1 The Liability Cap shall not apply to, and each Party accepts unlimited liability for any Losses suffered or incurred by the other Party resulting from:

- (a) death or personal injury caused by the negligent acts or omissions of itself, its employees, agents or subcontractors;
- (b) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 (or any subsequent amendment or replacement thereof);
- (c) any Claim for which the Supplier must indemnify pursuant to Clause 32.6 (Intellectual Property Rights); Clause 42.1.1(b) (fines, penalties etc.); Clause 42.1.1(c) (Confidential Information); and Clause 42.1.1(d) (death and personal injury);
- (d) any fraudulent pre-contractual misrepresentation made by either Party upon which the other Party can be shown to have relied;
- (e) any Claim for fraud or other criminal acts;
- (f) the wrongful Termination, repudiation or abandonment of the Agreement in whole or in part;
- (g) interest arising on any indemnity, liability, claim, loss, or damage under this Agreement, whether accrued by reason of contract or court judgment; or

(h) any other liability which cannot be excluded by Law,

provided that no amounts awarded or agreed to be paid under this Clause 43.6 shall count towards the caps on liability set out in Clauses 43.1 or 43.2.

43.7 **Misrepresentation**

43.7.1 Save as provided in this Clause 43.7 and without prejudice to the warranties set out in Clause 41 above, neither Party shall have any remedy in respect of any untrue statement (whether written or oral) made to it upon which it relied in entering into the Agreement and which is not expressly incorporated into the Agreement (“**Misrepresentation**”) and neither Party shall have any liability to the other Party other than pursuant to the express terms of the Agreement.

43.7.2 Nothing in the Agreement shall exclude or limit either Party’s liability for any fraudulent Misrepresentation.

44. **INSURANCE**

44.1 The Supplier shall comply with the provisions of Schedule 17 (**Insurance**).

45. **TERMINATION**

45.1 **The Authority’s Right to Terminate**

45.1.1 The Authority may, at any time by notice in writing, terminate the Agreement (in whole or in part) as from the date of service of such notice if:

- (a) the Supplier commits a Material Default which is capable of being cured and the Supplier fails to remedy such Material Default within thirty (30) days of notice by the Authority (or such longer period if agreed by the Parties);
- (b) the Supplier commits a Material Default which is not capable of being cured;
- (c) the Supplier commits repeated Defaults of its duties or obligations under the Agreement, the cumulative effect of which amounts to a Material Default of the Agreement, and the Supplier shall have failed to remedy such Material Default within thirty (30) days of notice by the Authority (or such longer period if agreed by the Parties);
- (d) an Insolvency Event occurs in respect of the Supplier;
- (e) the Supplier, or any Supplier Group Company, brings the Authority into serious disrepute or otherwise commits an act or omission (or is subject to any other event) reasonably likely to bring the Authority into serious disrepute or to materially adversely affect the Authority’s reputation or cause material embarrassment to the Authority, or the Supplier’s reputation is damaged in such a way as to make it unsuitable to provide the services under this Agreement;
- (f) if a Force Majeure Event occurs and the Authority exercises its option to terminate the Agreement in accordance with Clause 49.7.3 below;

- (g) there is a Change of Control of the Supplier or the Supplier Parent Company, which in the Authority's reasonable opinion is to the Authority's detriment or is likely to be to the detriment of the Authority, except where the Authority:
 - (i) has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) has not served its notice to terminate within six (6) months of the later of the day the Change of Control took place or the date on which the Authority was given notice of the Change of Control; or
- (h) if the Supplier breaches Clause 52.1 and the Authority exercises its option to terminate the Agreement in accordance with Clause 52.2 below.

45.1.2 The Authority, by giving written notice to the Supplier, may terminate the Agreement for convenience (in whole or in part) at any time during the Contract Term, as of the date specified in the notice of Termination. Within thirty (30) days of such Termination Date, the Authority shall pay to the Supplier the Compensation Payment. For the avoidance of doubt, any removal of a VAC, Country or Region (or part thereof) or a Service Package from the scope of this Agreement pursuant to Clause 16.2 or 16.3 above shall be deemed a Termination for Convenience under this Clause 45.1.2.

45.1.3 The Authority, by giving written notice to the Supplier, may terminate any User Pays VAC Services for convenience (in whole or in part) at any time during the Contract Term, such Termination for Convenience to take effect from the date specified in the notice of termination. Within thirty (30) days of the specified termination date, the Authority shall pay to the Supplier the User Pays VAC Compensation Payment calculated on the basis described in Section 7.7.3 of Schedule 23 (**User Pays Services**).

45.1.4 Notwithstanding any other provision of the Agreement, the Authority shall not be required to pay any termination charges, costs or expenses of any kind if the User Pays VAC Service is terminated, except for the User Pays VAC Compensation Payment.

45.1.5 In the event that:

- (a) the warranty given by the Supplier pursuant to Clause 41.1.9 is materially untrue; or
- (b) the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 33.4: or
- (c) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable

the Authority shall be entitled to terminate this Agreement by giving a Termination Notice to the Supplier.

45.2 The Supplier's Right to Terminate For Payment Disputes

45.2.1 The Supplier shall not be entitled to terminate the Agreement if there is a dispute between the Parties in respect of any invoice payable under the Agreement. Due to the reliance by the Authority on the Services, the Supplier shall not be permitted to terminate the Agreement unless the Authority fails to pay an undisputed valid invoice for the relevant

Service Charges within sixty (60) days of the due date in accordance with Clause 45.2.2 below.

45.2.2 The Supplier shall not terminate the Agreement in accordance with Clause 45.2.1 above unless the Supplier has given the Authority:

- (a) a further thirty (30) days of notice of the Authority's failure to make such payment; and
- (b) a further written notice of not greater than twenty-one (21) days nor less than fourteen (14) days prior to the expiry of the notice in Clause 45.2.2(a) above.

45.2.3 If the Supplier serves a notice to terminate in accordance with Clause 45.2.2(a), the Authority shall be liable to pay interest on the overdue amount from the date of such notice up to the actual payment date at the rate of one percent (1%) per annum above the Base Rate.

45.2.4 The Supplier acknowledges and agrees that failure by the Authority to pay an undisputed valid invoice, as described in Clause 45.2.1 above, is the only ground upon which the Supplier may terminate the Agreement.

46. CONSEQUENCES OF TERMINATION

46.1 If the Agreement is Terminated as provided for herein, the following provisions shall apply:

46.1.1 notwithstanding the provisions of Clauses 46.1.2 and 46.1.3 below, the Supplier shall provide the Termination Assistance in accordance with and subject to Schedule 9 (**Exit Management**) and the Authority shall pay the Supplier for such Termination Assistance to the extent specified in that Schedule;

46.1.2 on a Termination for Default:

- (a) the Supplier shall repay forthwith to the Authority all Service Charges paid up to and including such Termination Date other than Service Charges in respect of any Services or part thereof properly performed in accordance with the Agreement; and
- (b) subject to Clause 46.1.1 above and any term of this Agreement which survives Termination, the Authority shall not have any liability to the Supplier for the period after and from the Termination Date;

46.1.3 if requested by the Authority, the Supplier shall sell or transfer the Exclusive Assets to the Authority or a Successor Supplier in accordance with Schedule 9 (**Exit Management**);

46.1.4 the Supplier shall deliver up to the Authority or destroy, at the sole discretion of the Authority, all property owned by the Authority, including but not restricted to the Authority Data, in its possession; and

46.1.5 the Supplier shall use all Commercially Reasonable Efforts to assign or novate in favour of the Authority or to any person or Successor Supplier as may be designated for the purpose by the Authority all relevant resources, including any equipment leases, third party hardware, network services, maintenance agreements and support agreements as the Authority may designate which are relevant and necessary for the fulfilment of the

Services Requirements including agreements relating to the Third Party Software, Third Party Material, and the Work Product.

46.2 The Termination of the Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

46.3 All terms of the Agreement (including the applicable provisions of Schedule 9 (**Exit Management**)) shall continue to have full force and effect for as long as is necessary to protect the interests of either Party.

47. **THE AUTHORITY'S FAILURE TO PERFORM ITS OBLIGATIONS**

47.1 Save as otherwise set out in Clause 45.2.1 above, the occurrence of a Relief Event or failure by the Authority to perform any of its responsibilities set out in this Agreement shall not be deemed to be grounds for Termination by the Supplier provided, however, that the Supplier's non-performance of its obligations under the Agreement shall be excused (and the Supplier shall have no obligation to pay Service Credits or liquidated damages in respect thereof) if and to the extent that such non-performance by the Supplier results from such Relief Event or failure by the Authority to perform its responsibilities and obligations under the Agreement.

47.2 Without prejudice to the provisions of Clause 47.1 above, the Supplier agrees to provide the Authority with written notice within five (5) Working Days from the date the Supplier knows (or reasonably should have known) of such Relief Event or non-performance by the Authority and agrees to use Commercially Reasonable Efforts to perform, to the extent possible, the Services Requirements to be fulfilled by the Supplier notwithstanding such Relief Event or the failure by the Authority to perform its responsibilities and obligations under the Agreement.

47.3 The Authority agrees to pay the Supplier for any additional reasonable and actual expenses over and above the Service Charges, incurred as a result of the Supplier complying with Clause 47.2 above, including any Losses of the Supplier referred to in Clause 43.4.2.

47.4 In the event of any delay arising due to a Relief Event or the Authority's failure to perform any of its responsibilities as described in Clause 47.1 above, both Parties shall use all reasonable endeavours to mitigate the impact of such delay and the Parties shall discuss if any change is required to be made to any affected plan or timetable as a result of such delay.

48. **TERMINATION ASSISTANCE**

The Supplier shall provide Termination Assistance in accordance with Schedule 9 (**Exit Management**).

49. **FORCE MAJEURE**

49.1 If (and to the extent that) a Party (the "**Affected Party**") is unable to perform its obligations, in whole or in part, under this Agreement as a direct result of a Force Majeure Event, then, for so long as the performance of those obligations are directly affected by the Force Majeure Event, the Affected Party shall not be liable to the other Party for its failure to perform those obligations.

49.2 The relief from liability as set out in Clause 49.1 shall have effect from the other Party's receipt of notice from the Affected Party in accordance with Clause 49.4.1(a), and shall be subject to the Affected Party's compliance with the following terms and conditions of this Clause 49.

49.3 Where the Affected Party is the Supplier, the following events and/or circumstances shall not be regarded as a Force Majeure Event that relieves liability under Clause 49.1:

- 49.3.1 an event or circumstance within the scope and specification of any back-up, contingency planning, business continuity or disaster recovery services set out in this Agreement and/or the Business Continuity Plan, except to the extent that those Services are themselves directly affected by a Force Majeure Event;
- 49.3.2 a failure by a Supplier Subcontractor to perform any obligation owed to the Supplier unless and to the extent that the failure is directly caused by a Force Majeure Event directly affecting that Supplier Subcontractor; or
- 49.3.3 an event or circumstance caused by a Default (or other act or omission) by the Supplier or a Supplier Subcontractor unless such Default (or other act or omission) is itself due to a Force Majeure Event.

49.4 Actions upon Force Majeure Event Occurring

- 49.4.1 Upon becoming aware of the circumstances of a Force Majeure Event, the Affected Party shall:
 - (a) as soon as possible, notify the other Party of the occurrence of the Force Majeure Event, describe, at a reasonable level of detail, the circumstances causing such delay of performance and give an estimate of when performance will recommence; and
 - (b) use Commercially Reasonable Efforts to perform (or recommence performing) its obligations as soon as, and to the extent, possible, including the use of alternative sources, workarounds, and plans.
- 49.5 The Parties shall consult at regular intervals 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 a Force Majeure Event (on a temporary or permanent basis). At all times following the occurrence of a Force Majeure Event and during its subsistence, the Parties shall use their Commercially Reasonable Efforts to prevent and mitigate the effect of the Force Majeure Event and shall take all reasonable steps (in accordance with Good Industry Practice) to overcome or minimise the consequences of the Force Majeure Event.
- 49.6 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 (and following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 49.7 Without limiting the other rights or remedies of any Party, and subject to Clause 49.8, if a Force Majeure Event substantially prevents or delays the Supplier's performance necessary for the performance of a function reasonably identified by the Authority as critical:
 - 49.7.1 for more than three (3) consecutive Working Days, then the Authority may at its option and at the Supplier's expense procure, or direct the Supplier to procure, that function from a third party service provider (where reasonably possible) for the period of the Force Majeure Event;
 - 49.7.2 for more than ten (10) consecutive Working Days, then the Authority may remove the affected function from the scope of this Agreement, in which case the Service Charges shall be equitably reduced to reflect such removal; and

- 49.7.3 for more than thirty (30) consecutive Working Days, then the Authority may terminate the Agreement in whole or in part (without liability to the Supplier except to pay any Service Charges incurred up to the Termination Date) as of a date specified by the Authority in a written notice of Termination to the Supplier, provided that the Authority shall at all times exercise this right in good faith having regard to the scale of the Force Majeure Event and the extent to which it impacts the Authority;
- 49.8 The Authority may exercise any of its rights in Clauses 49.7.1 to 49.7.3 immediately if it is clear that the effect of the Force Majeure Event on the critical function is not capable of being remedied or avoided within the relevant time period specified in such Clauses.
- 49.9 If the Affected Party is the Supplier, the Authority shall be entitled to withhold the Service Charges in respect of the Services Requirements not being fulfilled by the Supplier by reason of the Force Majeure Event.
- 49.10 Except as specified in Clause 49.7.1, the Supplier shall not have the right to any additional payments from the Authority as a result of any Force Majeure Event or the performance of its obligations under this Clause 49.
- 49.11 For the avoidance of doubt, nothing in this Clause 49 shall affect the Supplier's obligations to provide back-up, contingency planning, business continuity or disaster recovery services that the Supplier has agreed to provide to the Authority or the Services Recipients under this Agreement or any other agreement for such services.
- 50. STEP IN RIGHTS**
- 50.1 The Services Requirements fulfilled under the Agreement are vital to the Authority and the Services Recipients. As a result, the Authority and/or the Services Recipients shall be entitled to exercise step-in rights in accordance with this Clause 50.
- 50.2 Notwithstanding any other provision of the Agreement and without prejudice to any other right or remedy of the Authority:
- 50.2.1 if the Authority reasonably considers that a Default or failure by the Supplier of an obligation under the Agreement may create an immediate and serious threat to the business and operational effectiveness of the Authority;
- 50.2.2 if it appears to the Authority reasonably necessary in the interests of carrying out its business, or in order to secure the carrying out of any statutory function or obligation; or
- 50.2.3 in any circumstances entitling the Authority to exercise its right to Terminate for Default,
- 50.3 The Authority may give written notice requiring the Supplier to take such reasonable steps as the Authority considers necessary or expedient in the circumstances to mitigate or preclude such state of affairs within a reasonable time. If the Supplier fails to take such reasonable steps as the Authority may think necessary and within such time, then provided that the Authority provides written notice to the Supplier specifying which components of the Services Requirements are the subject of the step-in, the Authority itself may step-in and take such steps itself or engage others third parties to step-in and to take such steps in respect of all or any part of the fulfilment of the Services Requirements which are the subject of such circumstances. The Authority shall procure that the third party engaged by it for such purposes complies (whilst on the premises of, or accessing the equipment of, the Supplier and/or the relevant Supplier Subcontractors) with the Supplier's reasonable security and confidentiality policies as notified by the Supplier from time to time.

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- 50.4 The Authority shall use reasonable care and skill in the exercise of its step-in rights pursuant to Clause 50.2 above.
- 50.5 Subject to Clause 50.6, if the Authority exercises its step-in rights pursuant to this Clause 50, the Authority shall pay to the Supplier the Service Charges after the deduction of all costs reasonably incurred by the Authority in taking the steps or engaging others to take the steps referred to in this Clause 50 (including the relevant administrative expenses of the Authority, with a reasonable sum in respect of general staff costs and overheads).
- 50.6 If the Authority exercises its step-in rights pursuant to Clause 50.2.2 and the need for such step-in has not resulted from a Default by the Supplier, the Authority shall pay all costs incurred by it in taking the steps or engaging others to take the steps referred to in this Clause 50 the Authority shall continue to pay the Service Charges less an equitable adjustment to reflect the Supplier's reduced costs of performing the remaining Services Requirements.
- 50.7 The Supplier shall pay its own costs in connection with any step-in by the Authority under this Clause 50, except in the case of a step-in pursuant to Clause 50.2.2 where the need for such step-in has not resulted from a Default by the Supplier, in which case the Authority shall reimburse the Supplier's reasonable additional expenses in respect of any such step-in.
- 50.8 During any step-in period arising under Clause 50.2.2 of this Schedule, the Authority shall cease to be entitled to deduct Service Credits from the Service Charges in respect of any Critical Service Level Default to the extent that such Critical Service Level Default relates to that part of the Services Requirements in respect of which the Authority has stepped-in (whether itself or by engaging others to take such steps) or to the extent that such failure relates to another part of the Services Requirements (if applicable) remaining under the control of the Supplier but which is caused by such step-in. The Supplier shall continue to be liable during any step-in period arising under this Clause 50 for Service Credits due to Critical Service Level Defaults in respect of any components of the Services Requirements for which it remains responsible to the extent that such failures are not caused by the exercise of step-in by the Authority.
51. **HEALTH AND SAFETY**
- 51.1 Nothing in the Agreement shall release either Party from their obligations under any requirements of Law in relation to health and safety to provide prior written notice of any health or safety hazards associated with equipment, material or other substances supplied by either Party, or facilities used in the performance of work under the Agreement.
- 51.2 The Supplier shall deliver, maintain and manage a plan and policy for the promotion of health and safety, including fire protection and first aid.
- 51.3 The Supplier shall notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement and the Supplier should take immediate and appropriate action in relation to such health and safety hazards. In particular, the Supplier shall notify the Authority of any health and safety hazards which may exist or arise at any VAC and which may affect the Visa Applicants. The Supplier shall draw these hazards to the attention of the Visas Applicants, its employees and Supplier Subcontractors or any persons engaged by the Supplier in the performance of the Agreement at the Authority Facilities and the Supplier shall instruct such persons in connection with any necessary associated safety measures.
- 51.4 The Authority reserves the right to exclude from any Post any employee or agent or representative of the Supplier on safety grounds.

51.5 The Supplier warrants that any equipment, materials or other substances at the VACs, or which is used by the Supplier to fulfil the Services Requirements, for the purposes of the Agreement, are not a safety hazard. The Authority warrants that the Authority Assets are not a safety hazard.

51.6 The Supplier shall inform all persons engaged in the performance of the Agreement at the Authority Facilities of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

51.7 **Environmental Requirements**

51.7.1 The Supplier shall perform the Services Requirements in such a manner as to conserve appropriately energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

51.7.2 In providing the Services, the Supplier shall comply with the provisions of Schedule 16 (**Sustainability**).

52. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

52.1 The Supplier shall neither:

52.1.1 offer or give or agree to give any person employed by the Authority any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Agreement or any other agreement with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement; nor

52.1.2 enter into the Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Authority or acting on its behalf by the Supplier or on the Supplier's behalf or to the Supplier's knowledge, unless before the Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.

52.2 The Supplier shall:

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

52.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

52.2.3 have and shall maintain in place throughout the Contract Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 52.2.2, and shall enforce them where appropriate;

52.2.4 promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;

- 52.2.5 immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the Effective Date;
- 52.2.6 within six (6) months of the Effective Date, and annually thereafter, certify to the Authority in writing signed by an officer of the Supplier, compliance with this Clause 52 by the Service Provider and all persons associated with it under Clause 52.3. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 52.3 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Service Provider in this Clause 52 (the “**Relevant Terms**”). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.
- 52.4 For the purpose of this Clause 52:
- 52.4.1 the meaning of “adequate procedures” and “foreign public official” and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and
- 52.4.2 the purpose of this Clause 52, a person associated with the Supplier includes but is not limited to any Subcontractor of the Supplier.
- 52.5 Subject to Clause 52.6, in the event of any breach of this Clause 52 by the Supplier or by anyone employed by the Supplier or acting on the Supplier's behalf, including Supplier Subcontractors, (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by anyone employed by the Supplier or acting on behalf of the Supplier under the Bribery Act 2010, in relation to the Agreement or any other contract with the Authority, the Authority may summarily terminate the Agreement for Material Default in accordance with Clause 45.1.1 above by notice in writing to the Supplier. Provided always that such Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and provided always that the Authority may recover from the Supplier the amount or value of any such gift, consideration or commission.
- 52.6 If the breach of Clause 52.1 or 51.2 is committed by a member of the Supplier Personnel without the Supplier’s knowledge and despite the Supplier having used Commercially Reasonable Efforts to prevent such breach, the Authority may terminate the Agreement for Material Default in accordance with Clause 45.1.1 unless the Supplier terminates the employment of such member of the Supplier Personnel and demonstrates to the Authority’s reasonable satisfaction that it has implemented adequate controls and procedures to prevent subsequent reoccurrences of such breach.
- 52.7 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:
- 52.7.1 the interpretation of this Clause 52 (except so far as the same may relate to the amount recoverable from the Supplier under Clause 52.2 in respect of any loss resulting from such Termination of the Agreement);

52.7.2 the right of the Authority under this Clause 52 to terminate the Agreement; or

52.7.3 or the amount or value of any such gift, consideration or commission.

53. NOTICES

53.1 Notices given under the Agreement shall be in writing in the English language and made by an authorised officer of the Authority or the Supplier as the case may be. The Parties shall, from time to time, provide each other with a list of personnel designated as “authorised officers”.

53.2 Notices issued pursuant to Clause 53.1 shall be addressed to:

53.2.1 for the Authority:

REDACTED

Home Office Commercial Directorate,

REDACTED

53.2.2 for the Supplier:

REDACTED Teleperformance Limited,

REDACTED

and such address of either Party may be altered by notice given in accordance with Clause 53.1 above and this Clause 53.2.

53.3 A notice given in accordance with Clauses 53.1 and 53.2 above shall deemed to be received:

53.3.1 if left at the recipient’s address during normal business hours, on the date of delivery;

53.3.2 if sent by prepaid registered post, two (2) days after the date of posting;

53.3.3 if sent by an express courier with a reliable system for tracking delivery, on the date of delivery to the recipient; and

53.3.4 if sent by electronic mail to the electronic mail address specified above (as may be altered by giving notice in accordance with this Clause 53) during normal business hours, and provided that a confirmation copy is sent by the Party giving notice in accordance with a method specified above, upon receipt as evidenced by production of a receipt by the notifying Party of a confirmation of receipt report in respect of the electronic mail sent, as appropriate, or if outside the normal business hours of the recipient, then at the beginning of the recipient’s next working day.

54. GENERAL PROVISIONS

54.1 Assignment and Novation

54.1.1 Save as otherwise expressly stated in the Agreement, the Supplier may not assign, novate or otherwise transfer its rights or transfer its obligations under the Agreement without the prior written consent of the Authority.

54.1.2 The Authority shall be entitled to:

- (a) assign, novate, or otherwise transfer its rights or obligations under the Agreement or any part thereof to any Contracting Authority, provided that any such assignment, novation or transfer shall not increase the burden of the Supplier's obligations pursuant to the Agreement; or
- (b) novate the Agreement to any other body (including, but not limited to, any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority. If such novation is to a private sector body, consequential amendments shall be made to the Agreement as strictly necessary to reflect the fact that the novatee is not a public sector body.

54.2 Notwithstanding the provisions of Clause 30, in the event of an assignment, novation or transfer (as applicable) pursuant to Clauses 54.1.1 or 54.1.2 above, the Authority shall be entitled to disclose to any transferee any Confidential Information of the Supplier which relates to the fulfilment of the Services Requirements by the Supplier or its replacement or successors. In such circumstances, the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the fulfilment of the Services Requirements.

54.3 Any change in the legal status of the Authority shall not affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Authority.

54.4 Publicity

54.4.1 Except with the written consent of the other Party, neither Party shall make any press announcements or publicise the Agreement in any way, such consent shall not be unreasonably held or delayed. Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause 54.4 by all their servants, employees, agents and consultants. The Authority shall be entitled to publicise the Agreement in accordance with any legal or quasi legal obligation upon the Authority, including any examination of the Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

54.5 Third Party Rights

54.5.1 Save as otherwise provide in Clause 20.1 above, a person who is not a Party to the Agreement has no right to under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, save that the Supplier acknowledges that the Authority shall enter into the Agreement for the benefit of the Service Recipients who shall be third party beneficiaries under the Agreement.

54.5.2 For the avoidance of doubt, the Services Recipients shall have the right to enforce any term of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

54.5.3 The Authority and the Supplier may agree to rescind or vary the Agreement without the consent of Service Recipients or any other third party.

54.6 Independent Supplier and Relationship between the Parties

54.6.1 The Supplier, in providing the Services, shall be acting as an independent contractor. Nothing in the Agreement, including references to “partnership”, shall create any

relationship of agent and principal, partnership, or employer and employee between the Parties or between one of the Parties and the other Party's personnel, agents, employees or subcontractors.

54.6.2 Nothing in the Agreement shall give either Party any authority to act or make representations or commitments on behalf of the other Party or to create any contractual liability to a third party on behalf of the other Party.

54.7 **Amendments and Variations**

The Agreement shall not be varied or amended unless such variation or amendment is agreed in writing and signed and dated by a duly authorised representative of the Authority and by the duly authorised representative of the Supplier acting on behalf of the Authority and the Supplier, respectively, as applicable.

54.8 **Entirety of Agreement**

The Agreement constitutes the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, and in the absence of fraud, supersedes any prior warranties, indemnities, undertakings, conditions, understanding, commitments or agreements between the Parties, whether oral or written.

54.9 **Governing Law**

54.9.1 Without prejudice to the Supplier's obligations under Clause 33.1, the construction, performance and validity of the Agreement shall be governed by English law.

54.9.2 Subject to Clause 30.9 above and the procedures set out in the Dispute Resolution Procedures in Section 11 of Schedule 8 (**Governance & Contract Management**) (to the extent such procedures are applicable), the Parties irrevocably agree that the courts of England shall have, and the Parties shall submit to, the exclusive jurisdiction of the courts of England to settle any disputes which may arise out of or in connection with the Agreement and that, accordingly, any proceedings arising out of or in connection with the Agreement shall be brought in such courts located in London, England and the Parties waive any objection to proceedings in any such courts on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum.

54.9.3 For the purposes of serving any Claims, proceedings or notices on the Supplier in connection with the Agreement, the Supplier hereby appoints the Company Secretary of the Supplier to accept service of such Claims, proceedings, or notices on behalf of the Supplier at the registered address of the Supplier.

54.9.4 Solely for the purposes of providing the Supplier with a copy of any Claims, proceedings or notices served under Clause 54.9.3 above, the Authority shall, at the same time of serving any Claims, proceedings or notices under Clause 54.9.3 above, send a copy of such Claims, proceeding or notices to the person identified in Clause 53.2.2 above.

54.9.5 If the Human Rights Act 1998 applies to the Supplier, the Supplier shall comply with such Act. If the Human Rights Act 1998 applies to any Supplier Subcontractor, the Supplier shall procure that such Supplier Subcontractor shall comply with such Act.

54.10 **No Waiver**

54.11 Severance

54.12 Survival of Terms

55. CONFLICTS OF INTEREST

55.2 Where the performance of the Supplier's obligations involves the selection (or advice as to selection) of alternative courses of action or the acquisition (or advice upon the acquisition) of Software, goods, Services and/or rights, the Supplier shall make such selection or acquisition or give such advice in an impartial, independent and unbiased manner and in the best interests of the Authority, irrespective of the interests of the Supplier, or of any benefit to the Supplier (or any Supplier Group Company) arising directly or indirectly from such selection or acquisition or advice. The Supplier shall require each Supplier Subcontractor to comply with such obligation as it may relate to interests or potential benefit to that Supplier Subcontractor or any Affiliate of that Supplier Subcontractor.

SIGNED FOR and on behalf of the Authority:

By:_____

Name:

Position: Director of the Authority

SIGNED FOR and on behalf of **the Supplier:**

By:_____

Name:

Position: