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MINISTRY OF DEFENCE
DEFENCE BUSINESS SERVICES

**FUTURE SERVICE DELIVERY CONTRACT
(FSDC)**

**Provision of Armed Forces Pay, Pensions and
Military HR and Administrative Services**

Invitation to Negotiate

**Volume 3 – Draft Contract Documentation
including the Service Requirement
Document (SRD)**

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Legal02#81646765v1[AJR02]

Tel +44 (0)370 903 1000 Fax +44 (0)370 904 1099 mail@gowlingwlg.com www.gowlingwlg.com

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Private & Confidential

Subject to Contract

Dated 20[]

THE SECRETARY OF STATE FOR DEFENCE (1)

AND

SHARED SERVICES CONNECTED LIMITED (2)

CONTRACT NO: HOCS4/00015

FUTURE SERVICES DELIVERY CONTRACT

relating to the provision of

**Armed Forces Pay, Pensions, other Military HR
Services and Administrative Services**



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Tel +44 (0)370 903 1000 Fax +44 (0)370 904 1099 mail@gowlingwlg.com www.gowlingwlg.com

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CONTENTS

Clause	Heading	Page
SECTION A - PRELIMINARIES.....2		
1	DEFINITIONS AND INTERPRETATION.....2	2
2	DUE DILIGENCE3	3
3	WARRANTIES5	5
SECTION B - THE SERVICES.....8		
4	TERM.....8	8
5	SERVICES.....9	9
6	TRANSITION AND TRANSFORMATION16	16
7	PERFORMANCE INDICATORS18	18
8	SERVICES IMPROVEMENT19	19
9	AUTHORITY PREMISES20	20
10	CONTRACTOR SITES21	21
11	EQUIPMENT AND MAINTENANCE22	22
CONTRACTOR EQUIPMENT.....22		
SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS.....24		
12	FINANCIAL AND TAXATION MATTERS25	25
SECTION D - CONTRACT GOVERNANCE.....29		
13	GOVERNANCE.....29	29
14	RECORDS, REPORTS, AUDITS & OPEN BOOK DATA29	29
15	GOVERNMENT REQUESTS FOR INFORMATION.....30	30
16	CHANGE.....31	31
SECTION E - CONTRACTOR PERSONNEL AND SUPPLY CHAIN.....32		
17	CONTRACTOR PERSONNEL.....32	32
18	SUPPLY CHAIN RIGHTS AND PROTECTIONS37	37
SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY.....46		
19	INTELLECTUAL PROPERTY RIGHTS.....46	46
20	TRANSFER AND LICENCES GRANTED BY THE CONTRACTOR48	48
21	LICENCES GRANTED BY THE AUTHORITY.....55	55
22	IPRS INDEMNITIES.....56	56
23	OPEN SOURCE PUBLICATION.....58	58
24	SOURCE CODE.....59	59

OFFICIAL

25	AUTHORITY DATA AND SECURITY REQUIREMENTS	60
26	CONFIDENTIALITY.....	62
27	TRANSPARENCY AND FREEDOM OF INFORMATION	65
28	DATA PROTECTION	67
29	PUBLICITY AND BRANDING	72
	SECTION G - LIABILITY, INDEMNITIES AND INSURANCE	73
30	LIMITATIONS ON LIABILITY.....	73
31	INSURANCE	77
	SECTION H - REMEDIES AND RELIEF	78
32	RECTIFICATION PLAN PROCESS.....	78
33	DELAY PAYMENTS	80
34	REMEDIAL ADVISER	80
35	STEP-IN RIGHTS.....	83
36	AUTHORITY CAUSE	86
37	FORCE MAJEURE.....	89
	SECTION I - TERMINATION AND EXIT MANAGEMENT	91
38	TERMINATION RIGHTS	91
39	CONSEQUENCES OF EXPIRY OR TERMINATION	93
	SECTION J - MISCELLANEOUS AND GOVERNING LAW	97
40	COMPLIANCE	97
41	ASSIGNMENT AND NOVATION	99
42	WAIVER AND CUMULATIVE REMEDIES	100
43	RELATIONSHIP OF THE PARTIES	100
44	PREVENTION OF FRAUD AND BRIBERY	100
45	SEVERANCE	102
46	FURTHER ASSURANCES.....	103
47	ENTIRE AGREEMENT.....	103
48	THIRD PARTY RIGHTS	103
49	NOTICES.....	104
50	CONFLICTS OF INTEREST	106
51	DISPUTES	107
52	GOVERNING LAW AND JURISDICTION	107

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SCHEDULE 1	DEFINITIONS
SCHEDULE 2.1	SERVICES DESCRIPTION
SCHEDULE 2.2	PERFORMANCE LEVELS
SCHEDULE 2.3	STANDARDS
SCHEDULE 2.4	SECURITY MANAGEMENT
SCHEDULE 2.5	INSURANCES REQUIREMENTS
SCHEDULE 2.6	DATA
SCHEDULE 3	AUTHORITY RESPONSIBILITIES
SCHEDULE 4.1	CONTRACTOR SOLUTION
SCHEDULE 4.2	COMMERCIALLY SENSITIVE INFORMATION
SCHEDULE 4.3	NOTIFIED KEY SUB-CONTRACTORS
SCHEDULE 4.4	THIRD PARTY CONTRACTS
SCHEDULE 5	SOFTWARE
SCHEDULE 6.1	TRANSITION AND TRANSFORMATION PLANS
SCHEDULE 6.2	TESTING PROCEDURE
SCHEDULE 7.1	CHARGES AND INVOICING
SCHEDULE 7.2	PAYMENTS ON TERMINATION
SCHEDULE 7.3	BENCHMARKING
SCHEDULE 7.4	FINANCIAL DISTRESS
SCHEDULE 7.5	FINANCIAL REPORTS AND AUDIT RIGHTS
SCHEDULE 8.1	GOVERNANCE
SCHEDULE 8.2	CHANGE CONTROL PROCEDURE
SCHEDULE 8.3	DISPUTE RESOLUTION PROCEDURE
SCHEDULE 8.4	REPORTS AND RECORDS PROVISIONS
SCHEDULE 8.5	EXIT MANAGEMENT
SCHEDULE 8.6	BUSINESS CONTINUITY & DISASTER RECOVERY
SCHEDULE 8.7	CONDUCT OF CLAIMS
SCHEDULE 9.1	STAFF TRANSFER
SCHEDULE 9.2	KEY PERSONNEL
SCHEDULE 10	GUARANTEE
SCHEDULE 11.1	SITES
SCHEDULE 11.2	LEASES AND LICENCES
SCHEDULE 11.3	ISSUED PROPERTY

THIS AGREEMENT is made on

20[]

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** of Whitehall, London, SW1A 2HB (the "**Authority**"); and
- (2) **SHARED SERVICES CONNECTED LIMITED** a company registered in England and Wales under company number **0846057** whose registered office is at **Three Cherry Trees Lane, Hemel Hempstead, Hertfordshire, HP2 7AH** (the "**Contractor**")

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) The Authority is responsible for providing Armed Forces service personnel, veterans, defence and business areas with pay, pension and other military HR administrative operational support services and wishes to outsource the delivery of such services.
- (B) On 6 April 2018 the Authority advertised in the Official Journal of the European Union (reference 2018/S 069-154104), inviting prospective Contractors to submit proposals for the delivery of Armed Forces pay, pensions and other Military HR administrative services.
- (C) The Contractor is a leading provider of business transformation programmes to government and the public sector and has experience in the provision of pay, pension and other military HR administrative operational support services and, in particular, the ability and technological solutions to transform and modernise the delivery of such services to individual users of the service.
- (D) On the basis of the Contractor's response to the advertisement and a subsequent tender process pursuant to the DSCPR, the Authority selected the Contractor as its preferred Contractor.
- (E) Following conclusion of the Negotiated Procedure under the DSCPR, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.

1.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Bodies and their successors and permitted assignees or transferees;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (h) unless otherwise provided and save for references in Annexes 1 to 2 of Schedule 5 (*Software*) and in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any

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Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and

- (i) references to this Agreement are references to this Agreement as amended from time to time.

1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.

1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

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

1.5 The Schedules including any Appendices, Annexes or other attachments referred to in them form part of this Agreement.

1.6 In entering into this Agreement the Authority is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Contractor acknowledges that, subject to the Allowable Assumptions:

- (a) the Authority has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Agreement;

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

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

2.2 The Contractor shall not, subject to Clause 2.3, be excused from the performance of any of its

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obligations under this Agreement nor shall the Contractor be entitled to recover any additional costs or charges arising as a result of:

- (a) any unsuitable aspects of the Operating Environment;
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 9 of Part A of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

3.1 The Authority represents and warrants that:

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

3.2 The Contractor represents and warrants that:

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- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations made by the Contractor as part of the procurement process in its response to the PQQ and its Tender and any other documents submitted with the Tender remain true and accurate as at the Effective Date except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Contractor Background IPRs and any other materials made available by the

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Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Agreement and/or the receipt of the Services by the Authority;

- (k) the Initial Financial Model is a true and accurate reflection of the Costs and Anticipated Contractor Profit Margin forecast by the Contractor and the Contractor does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.
- (n) except in relation to Monitored Suppliers, within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

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

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

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

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

SECTION B - THE SERVICES

4 TERM

- 4.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 26 (*Confidentiality*), 27 (*Transparency and Freedom of Information*), 29 (*Publicity and Branding*), 30 (*Limitations on Liability*), 42 (*Waiver and Cumulative Remedies*), 43 (*Relationship of the Parties*), 45 (*Severance*), 47 (*Entire Agreement*), 48 (*Third Party Rights*), 49 (*Notices*), 51 (*Disputes*) and 52 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 38 (*Termination Rights*), terminate at the end of the Term.

- 4.2 Not used.

- 4.3 Not used.

Conditions Precedent

- 4.4 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 26 (*Confidentiality*), 27 (*Transparency and Freedom of Information*), 29 (*Publicity and Branding*), 30 (*Limitations on Liability*), 42 (*Waiver and Cumulative Remedies*), 43 (*Relationship of the Parties*), 45 (*Severance*), 47 (*Entire Agreement*), 48 (*Third Party Rights*), 49 (*Notices*), 51 (*Disputes*) and 52 (*Governing Law and Jurisdiction*), this Agreement is conditional upon receipt by the Authority of:

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- (a) certified copy extracts of the board minutes of the Contractor authorising execution of the Agreement and the Contractor's Guarantor authorising execution of the Guarantee each approving the execution of this Agreement and Guarantee respectively; and
- (b) evidence as required by Schedule 2.5 (Insurance Requirements) of the policies of insurance contemplated by that Schedule;

the ("**Conditions Precedent**").

4.5 The Authority may in its sole discretion at any time agree to waive compliance with the Conditions Precedent by giving the Contractor notice in writing.

4.6 The Contractor shall satisfy, or procure the satisfaction of, the Conditions Precedent as soon as possible. In the event that the Conditions Precedent is not satisfied within 20 Working Days after the date of this Agreement then, unless the Conditions Precedent is waived by the Authority in accordance with Clause 4.4:

- (a) this Agreement shall automatically cease and shall not come into effect; and
- (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

4.7 The Contractor shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.4 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.6.

5 SERVICES

Standard of Services

5.1 The Contractor shall provide:

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

5.2 It is a fundamental condition of this Agreement that the Operating Environment (including the JPA-Configured Oracle HMRS Software) and each part thereof as well as all acts and things done directly in providing the Services shall only be located or done within the United Kingdom and where appropriate at the Sites (unless with the prior written consent of the Authority which consent may, in particular, be withheld on the grounds of security). However, nothing in this Clause 5.2 shall prohibit the Contractor from carrying out testing outside the United Kingdom provided that all Authority Data (including Authority Personal Data, Meta-Data and Reference Data) remains within the United Kingdom and is not accessed or processed by the Contractor from offshore.

5.3 The Contractor shall ensure that the Services:

- (a) comply in all respects with Schedule 2.1 (Services Description); and
- (b) are supplied in accordance with the Contractor Solution and the provisions of this Agreement.

Standard of Performance of the Services

5.4 The Contractor shall:

- (a) perform its obligations under this Agreement, including by developing processes and procedures for the delivery of the Services in accordance with Schedule 6.1 (*Transition and Transformation Plans*), and in relation to the supply of the Services in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;

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- (vi) the Contractor's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.4(a)(i) to Clause 5.4(a)(v);
 - (vii) Schedule 2.2 (*Performance Levels*);

and in a manner
 - (viii) that is not injurious to health and that does not cause a nuisance or damage to property or the environment;
 - (ix) so as not to detract from or damage the image and reputation of the Authority;
 - (x) so as not to impede the Authority in carrying out its functions or intentionally or unreasonably increases the cost to the Authority of carrying out its functions unless authorised by the Authority (not to be unreasonably withheld or delayed);
 - (xi) so as to accommodate the operations and activities of the Authority insofar as reasonable to do so; and
 - (xii) in accordance with all reasonable and lawful directions given to the Contractor by the Authority during the Term provided that those directions are not inconsistent with this Agreement;
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and
 - (c) deliver the Services from the Sites.

5.5 Subject to Clause 16.1, the Contractor shall not be entitled to any increase in the Charges in relation to any change to the Contractor Solution unless and to the extent:

- (a) the change arises from a change by the Authority to the Services;
- (b) the Authority requests a change to the Contractor Solution (other than pursuant to Clause 5.6 or as a consequence of a Default by the Contractor); or

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- (c) the change arises from any agreed (in writing) Service enhancement arising out of and in accordance with Clause 8 (Services Improvement).

- 5.6 In the event that the Contractor becomes aware of any inconsistency between the requirements of Clauses 5.4(a)(i) to 5.4(a)(v), the Contractor shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Contractor which requirement the Contractor shall comply with.
- 5.7 The Contractor shall at all times act in good faith towards and co-operate fully with the Authority, its agents, representatives and contractors (including the Previous Contractor) and shall endeavour to procure that its agents, representatives and contractors comply with their obligations to the Authority.
- 5.8 If the Contractor fails to provide the Services or comply with its obligations in accordance with this Agreement, the Authority may, in addition to its other rights, require the Contractor to re-perform the Services and/or otherwise (in the case of a Notifiable Default) comply with its obligations under the Rectification Plan Process (and, in the case of a failure caused by an act or omission of any Contractor Personnel, the Contractor shall do so at the Contractor's cost and shall not be entitled to pass that cost on to the Authority).

Contractor covenants

- 5.9 The Contractor shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
 - (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 16 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it (and/or any Sub-Contractor) may require and which are necessary for the provision of the Services;
 - (c) ensure that:

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- (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify the Authority 3 months before the release of any new Software or Upgrade;
 - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Contractor and/or any Sub-Contractor are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Contractor and/or any Sub-Contractor for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - (v) the Contractor System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with

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any reasonable directions that the Authority may notify from time to time to the Contractor;

- (g) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Contractor any such warranties and/or indemnities as are referred to in Clause 5.9(f);
- (h) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (i) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Agreement;
- (j) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control of the Contractor or Key Sub-Contractor taking place;
- (k) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under this Agreement;
- (m) manage closure or termination of Services to take account of the Authority's disposal requirements as agreed in the Exit Plan, including recycling and scope for re-use, and all applicable Standards; and
- (n) ensure that all Sub-Contracts, equipment rental or lease agreements, licences of Intellectual Property Rights, and all other (non-employment) contracts which are exclusively used by the Contractor and/or any Sub-Contractor for and necessary to the provision of the Services, are assignable to the Authority or a Replacement Contractor upon the termination or expiry of this Agreement.

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- 5.10 An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that, where relevant all Sub-contractors and Contractor Personnel also do, or refrain from doing, such act or thing.
- 5.11 Without prejudice to Clauses 22.2 to 22.6 inclusive (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Contractor shall:
- (a) remedy any breach of its obligations in Clauses 5.9(b) to 5.9(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - (b) remedy any breach of its obligations in Clause 5.9(a) and Clauses 5.9(e) to 5.9(i) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - (c) meet all the costs of, and incidental to, the performance of such remedial work,

and any material failure of the Contractor to comply with its obligations under Clause 5.11(a) or Clause 5.11(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

- 5.12 Without prejudice to Clauses 5.9 (*Contractor Covenants*) and 5.11 and any other rights and remedies of the Authority howsoever arising, the Contractor warrants to the Authority that all components of the Specially Written Software shall:
- (a) be free from material design and programming errors;
 - (b) perform in all material respects in accordance with the relevant specifications contained in the Contractor Solution and Documentation; and
 - (c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

- 5.13 The Contractor shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:

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- (a) any withholding of any part of the Monthly Service Charge by the Authority pursuant to Clause 7.2 (*Performance Failures*);
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay any Charges,

unless the Contractor is entitled to terminate this Agreement under Clause 38.3(a) (*Termination by the Contractor*) for failure to pay undisputed Charges.

Power of attorney

- 5.14 By way of security for the performance of its obligations under Clauses 5.9(f) and 5.9(g) (*Contractor covenants*) the Contractor hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Contractor's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.14 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

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

6 TRANSITION AND TRANSFORMATION

Quality Plans

- 6.1 The Contractor shall develop, within twenty (20) Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Contractor shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Contractor acknowledges and accepts that the Authority's approval shall not act

OFFICIAL

as an endorsement of the Quality Plans and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.

6.3 Following the approval by the Authority of the Quality Plans:

- (a) the Contractor shall design and deliver all Deliverables in accordance with the Quality Plans; and
- (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Transition Plan and Delays

6.4 The Parties shall comply with the provisions of Part 1 of Schedule 6.1 (*Transition and Transformation Plans*) in relation to the agreement and maintenance of the Detailed Transition Plan.

6.5 The Contractor shall:

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

Transformation Plan

6.6 The Parties shall comply with the provisions of Part 2 of Schedule 6.1 (*Transition and Transformation Plans*) in relation to the agreement and maintenance of the Detailed Transformation Plan.

6.7 The Contractor shall:

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

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

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- (a) it shall:
 - (i) notify the Authority in accordance with Clause 32.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) the provisions of Clause 33 (*Delay Payments*) shall apply if the Delay or anticipated Delay relates to the Transition Milestone.

Testing and Achievement of Milestones

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

Legacy Contracts

- 6.10 The Authority shall procure that the Previous Contractor assigns to the Contractor (or, as the Contractor may direct, to a Sub-Contractor) each of the Legacy Contracts which are capable of transfer to the Contractor or Sub-Contractor with effect from the Operational Service Commencement Date.

Legacy Assets

- 6.11 The Authority shall transfer the Legacy Assets to the Contractor with effect from the Operational Service Commencement Date for £1 (receipt of which is acknowledged).

7 PERFORMANCE INDICATORS

- 7.1 The Contractor shall:
- (a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Operational Service Commencement Date; and

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

Performance Failures

- 7.2 If in any Service Period a Performance Failure occurs, the provisions set out in Part A of Schedule 2.2 (Performance Levels) shall apply provided that the operation of this Clause 7.2 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Contractor as a result of such Performance Failure.

Critical Performance Failure

- 7.3 If a Critical Performance Failure occurs, the Authority may, subject to the Action Plan in Schedule 2.2 (Performance Levels), exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 38.1 or 38.2 (*Termination by the Authority*).

8 SERVICES IMPROVEMENT

- 8.1 In addition to the requirements under Clause 6.6 and 6.7, the Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Contractor shall identify and report to the Portfolio Management Board no less than quarterly:

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

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- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Contractor shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any improvement identified by the Contractor, the Authority may submit a Change Request, in accordance with the Change Control Procedure

9 AUTHORITY PREMISES

9.1 The Parties shall comply with their obligations set out in Schedule 11.2 (*Leases and Licences*) in relation to the Licensed Premises and the Leased Premises.

9.2 The Contractor may only occupy the Licensed Premises pursuant to the terms of this Agreement for so long as the Authority has sufficient proprietary interests to grant such occupational rights.

9.3 Subject to Clause 9.4, if the Authority ceases to have sufficient proprietary interests to grant the occupational rights referred to in Clause 9.2 then the Contractor's occupational rights of the Licensed Premises shall immediately cease without any liability or claim against the Authority.

9.4 In the event that:

- (a) the Authority ceases to provide the Licensed Premises including where
 - (i) the Authority ceases to have sufficient proprietary interests to grant the occupational rights referred to in clause 9.2;
 - (ii) the Authority requires the Contractor to vacate the Licensed Premises in accordance with paragraph 3.1(l) of Schedule 11.2 (Licences and Lease)
- (b) except to the extent caused by the Contractor, the Leased Premises becomes unfit for occupation and use or inaccessible or unusable pursuant to Paragraph 8.4 of the Authority Lease;

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- (c) the Authority Lease is determined under clause 23.1 or 23.2 of the Authority Lease;
or
- (d) the Authority resumes possession of the Leased Premises under clause 23.3 of the Authority Lease;

then the provisions of Clause 36 (Authority Cause) shall apply and the Parties shall agree an alternative location from which the Contractor may provide the Services in accordance with Schedule 8.2 (Change Control Procedure).

9.5 At the Leased Premises, the Contractor shall:

- (a) undertake the receipt and dispatch (on behalf of the Authority) of Authority mail, including the screening, sorting and retention for collection by the Authority staff within the Leased Premises;
- (b) following receipt of any Authority mail that is not classified, place such mail in the DBS 'Authority Distribution Slot';
- (c) following receipt of any Authority mail that is classified, gain confirmation of receipt from the Authority mailroom; and
- (d) make the Authority mail ready for collection twice a day at 09:00 and 15:00 on every Working Day.

10 CONTRACTOR SITES

- 10.1 The Contractor shall not supply the Services from any location other than the Sites unless the prior written consent of the Authority has been obtained (not to be unreasonably withheld or delayed). The Contractor shall, in proposing any change to a Site through the Change Control Procedure, identify the business benefits and risks to the Authority from the new location or relocation, and provide a risk assessment and mitigation plan. Any mitigation actions reasonably required by the Authority as a condition of approving the proposed change shall be implemented by the Contractor at its own cost and expense.
- 10.2 Subject to Clause 10.1, the Contractor shall pay the reasonable and properly incurred costs and expenses of the Authority resulting from any change to a Site, provided that the Contractor is given prior notice of such change, other than where a change of location to the

Sites is required by the Authority, in which case the Authority shall pay the reasonable and properly incurred costs and expenses by the Contractor as agreed through the Change Control Procedure.

- 10.3 In the event of a Default by the Contractor, if the Authority acting reasonably requires a change to a Site as a consequence of that Default by the Contractor, then the Contractor shall pay the reasonable and properly incurred costs and expenses incurred by the Authority as a result of such change.

11 EQUIPMENT AND MAINTENANCE

Contractor Equipment

- 11.1 The Contractor shall be solely responsible for the cost of carriage of Contractor Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Contractor shall be responsible for the removal and safe disposal of all relevant Contractor Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good, to the extent specified in the relevant lease or licence, the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 11.2 All the Contractor's property, including Contractor Equipment, shall remain at the sole risk and responsibility of the Contractor, except that
- (a) the Authority shall be liable for loss of or damage to any of the Contractor's property located on Authority Premises which is due to the negligent act or omission of the Authority; and
 - (b) where any property of the Contractor has been taken on charge by the Authority Representative, and a proper receipt has been given the Authority shall be liable for any loss or damage occurring to that property while held on such charge.
- 11.3 Subject to Clause 11.2 and any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Contractor Equipment shall not relieve the Contractor of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Maintenance

- 11.4 The Contractor shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Contractor shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule and Appendix 1 to Annex M1 (*Non-Functional Requirements & Service Availability*).
- 11.5 The Contractor shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 11.6 The Contractor shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Unless otherwise agreed in writing with the Authority, any such maintenance shall be carried out in such a manner and at such times outside of Core Hours so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Issued Property

- 11.7 The Authority shall during the Term permit the Contractor to have access to and use of the Issued Property subject to and in accordance with Schedule 11.3 (Issued Property).

Arrangements with Other Contractors

- 11.8 The Contractor shall co-operate fully with Other Contractors and the Previous Contractor by providing such reasonable information (including any Documentation), advice and assistance as may reasonably be requested by the Authority in connection with the Services to:
- (a) any Other Contractor to enable such Other Contractor to create and maintain technical or organisational interfaces with the Services; and/or
 - (b) to enable the timely transition of the Services, or any of them, to the Authority and/or to any Replacement Contractor.
- 11.9 The Contractor shall, with the Authority's assistance, consent and authority where appropriate (such consent not to be unreasonably withheld):

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- (a) co-ordinate its efforts with the Other Contractor and the Previous Contractor to ensure that:
 - (i) work, materials and services provided by the Other Contractor or the Previous Contractor are efficiently and effectively integrated into and/or with the provision of the Services; and
 - (ii) any issues which develop between the Contractor and any relevant Other Contractor or the Previous Contractor are managed with such Other Contractor or the Previous Contractor proactively with the aim of resolving such issues in a manner which is in the Authority's best interests;
- (b) provide such information regarding the operation and delivery of the Services as is reasonably required by the Authority or the Other Contractor in connection with the services provided by them to the Authority; and
- (c) if required by the Authority, attend any meetings with the Other Contractor or the Previous Contractor called by the Authority in connection with the provision of the Services or, any Dispute.

11.10 Where problems or faults relating to the Services are caused or contributed to by circumstances from time to time subsisting on the Other Contractor's side of the interface with the Services, unless the Authority requires otherwise and to the extent reasonably possible, the Contractor shall:

- (a) manage the resolution or prevention of such problems or faults either by taking corrective or preventive steps in relation to the provision of the Services; or
- (b) procure the taking of corrective or preventative steps by the Other Contractor,

in each case in a manner which is in the Authority's best interests and at the Authority's cost.

SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

12 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 12.1 In consideration of the Contractor carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Contractor in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 12.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.9 (*Testing and Achievement of Milestones*), 14 (*Records, Reports, Audits and Open Book Data*), 27 (*Transparency and Freedom of Information*), 28 (*Data Protection*) and, to the extent specified therein, Clause 34 (*Remedial Adviser*) and Clause 35 (*Step-In Rights*).
- 12.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Contractor shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 12.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 12.5 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this Clause 12.5 shall be paid in cleared funds by the Contractor to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.
- 12.6 The Contractor is responsible for the determination of VAT liability in respect of the provision of the Services. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Commercial Officer) in cases of doubt. The Contractor shall notify the Authority's Commercial Officer of the Authority's VAT liability under the Agreement, and any changes to it, within twenty (20) Working Days of becoming aware the liability is other

than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Working Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Working Days of receiving the decision.

Set-off and Withholding

12.7 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under this Agreement or under any other agreement between the Contractor and the Authority, or with any other Government Department.

12.8 If the Authority wishes to:

- (a) set off any amount owed by the Contractor to the Crown or any part of the Crown (including the Authority) against any amount due to the Contractor pursuant to Clause 12.7; or
- (b) exercise its right pursuant to Clause 7.2 (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

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

Benchmarking

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

Financial Distress

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

Promoting Tax Compliance

- 12.11 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 20 Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

Preventing Facilitation of Tax Evasion

- 12.12 The Contractor shall and shall procure that any Associated Company will:
- (a) not take any step either alone or with any person to commit, solicit or facilitate any Corporate Failure to Prevent Offence, UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the performance of the Services, and this Agreement;
 - (b) properly and promptly pay all taxes for which they are liable in connection with the performance of the Services, the supply of Goods and this Agreement.
 - (c) establish and at all times maintain and implement reasonable Prevention Procedures to prevent any breach of this Clause 12.12 and the Contractor shall provide the Authority with copies of these procedures on request from time to time.
- 12.13 The Contractor shall immediately notify the Authority as soon as the Contractor becomes aware of any allegation, investigation, evidence or report relating to a breach or possible breach of any of the requirements in Clause 12.12.

- 12.14 The Contractor warrants that neither the Contractor nor any Associated Company has been investigated in connection with, or charged with having committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence and there are no grounds for considering that any such investigation or charge is likely.

Payments dispersed by the Contractor on behalf of the Authority

- 12.15 The Contractor shall indemnify the Authority on a continuing basis against any liability, incurred by the Authority at any time in relation to:

- (a) the recovery of any overpayment (or any part thereof) in respect of any payment dispersed by the Contractor or any Contractor Personnel on behalf of the Authority provided that, before taking such action, the Authority first allows the Contractor the opportunity to recover the overpayment by implementing the Contractor's part of the recovery procedure set out in Annex A of Schedule 2.1 (*Service Description*), together with any part of the overpayment that the Authority or the Contractor is unable to recover in accordance with the procedure set out in Annex A of Schedule 2.1 (*Service Description*), or any other recovery processes agreed between the Parties in writing (including, any payment plans agreed by the Contractor or the Authority with the recipient of the overpayment); and/or
- (b) any underpayment made by the Contractor or any Contractor Personnel together with any amounts paid out by or on behalf of the Authority to the relevant User or any third party arising out of or in connection with such underpayment e.g. charges levied by a mortgagor where the mortgagee (the party to whom the Contractor or any Contractor Personnel made the underpayment) defaults on its mortgage (or other loan),

provided always that in both Clause 12.15(a) and Clause 12.15(b) such overpayment or underpayment was made as a result of the Contractor's Default or a result of a combination of the Contractor's Default and an Authority Default, in which case the Parties shall agree a fair apportionment of the responsibility for such overpayment or underpayment.

- 12.16 The Contractor shall not be liable under the indemnities referred to in Clause 12.15 to the extent that an overpayment or underpayment is caused by a Default of the Authority, or any errors or incompleteness in data provided by Authority Personnel or pursuant to Clause 36.7 (*Authority Cause*).

SECTION D - CONTRACT GOVERNANCE

13 GOVERNANCE

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

Representatives

- 13.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 13.3 The initial Contractor Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Contractor Representative shall be agreed in accordance with Clause 17 (*Contractor Personnel*).
- 13.4 The Authority shall notify the Contractor of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Contractor, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

14 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 14.1 The Contractor shall comply with the provisions of:
- (a) Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
 - (b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 14.2 The Parties shall comply with the provisions of:
- (a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

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

15 GOVERNMENT REQUESTS FOR INFORMATION

- 15.1 The Contractor acknowledges that the Authority may be subject to Government review or required to disclose or provide information (including Commercially Sensitive Information) at any stages during the Term.
 - 15.2 In respect of any Government review, the Contractor shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges. The Authority shall notify the Contractor as soon as possible in advance of any such review.
 - 15.3 In respect of any request for information for Ministerial Correspondence (MC), Prime Minister's Questions (PMQ), Parliamentary Questions (PQ), "Treat Official" correspondence, and letters from members of the public, the Contractor shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations in responding to such requests;
 - (b) provide the Authority with a full response or copy of all requested information requested as soon as practicable and in any event:
 - (i) for Ministerial Correspondence (MC), within 3 Working Days;
 - (ii) for Prime Minister's Questions (PMQ), within 3 hours during a Working Day;
 - (iii) for Parliamentary Questions (PQ), within 24 hours;
 - (iv) for "Treat Official" correspondence, within 10 Working Days; and
 - (v) for letters from members of the public, within 10 Working Days
- of the Authority's request for such information or such other longer period as the Authority may reasonably specify; and

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(c) not respond directly to such requests.

15.4 The information supplied by the Contractor under Clause 15.3 must be accurate, specific, complete and in non-technical/lay terms and include any relevant background material (as deemed appropriate by the Contractor or requested by the Authority).

15.5 If the Contractor is for any reason unable to comply with the obligations under Clause 15.3, the Contractor shall notify the Authority immediately of steps it is taking including any relevant timelines involved to comply.

16 CHANGE

Change Control Procedure

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

Change in Law

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

(a) a General Change in Law; or

(b) a Specific Change in Law where the impact of that Specific Change in Law on the Services is reasonably foreseeable as taking effect on or before the Milestone Date for the Transition Milestone .

16.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 16.2(b)), the Contractor shall:

(a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

(i) whether any Change is required to the Services, the Charges or this Agreement; and

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- (ii) whether any relief from compliance with the Contractor's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
 - (b) provide the Authority with evidence:
 - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 16.4 Any variation in the Charges or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.2(b)) shall be implemented in accordance with the Change Control Procedure.
- 16.5 For the avoidance of doubt, where and to the extent that a General Change in Law requires a change to a Standard such changes shall be dealt with in accordance with Schedule 2.3 (Standards) on the basis that there will be no change to the Charges.

SECTION E - CONTRACTOR PERSONNEL AND SUPPLY CHAIN

17 CONTRACTOR PERSONNEL

- 17.1 The Contractor shall:
- (a) provide in advance of any admission to Authority Premises a list of the names of all Contractor Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
 - (b) ensure that all Contractor Personnel:

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- (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
- (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);
- (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);
- (iv) are notified and given adequate instructions in relation to hazards and risks as set out in Clause 36.2 (*Authority Cause*) and Schedule 2.3 (*Standards*).

provided that, in the event that any Previous Contractor Employee or Authority Employee does not, as at the date of any Relevant Transfer, comply with any provision of Clause 17.1(b) then the Contractor shall have a reasonable period in which to remedy such non-compliance and shall not be in breach of this Agreement during such period;

- (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Contractor Personnel at all times so that the Contractor Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Contractor Personnel, so that any act or omission of a member of any Contractor Personnel which results in a Default under this Agreement shall be a Default by the Contractor;
- (e) use all reasonable endeavours to minimise the number of changes in the Contractor's Key Personnel;
- (f) except in the case of non-material short term absences of up to 2 weeks, replace (temporarily or permanently, as appropriate) any Key Personnel as soon as practicable if any Key Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Contractor Personnel; and

OFFICIAL

- (h) procure that the Contractor Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

17.2 If the Authority reasonably believes that any of the Contractor Personnel including any Key Personnel are unsuitable to undertake work in respect of this Agreement, it may:

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

Key Personnel

17.3 The Contractor shall ensure that the Key Personnel:

- (a) fulfil the Key Roles at all times during the periods stated in Schedule 9.2 (*Key Personnel*); and
- (b) are available by/to the Authority between the hours of 8.00 to 17.00 Monday to Friday (excluding Bank Holidays) throughout the Term.

17.4 Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who have been approved by the Authority as at the Effective Date and who the Contractor shall appoint to fill those Key Roles at the Effective Date.

17.5 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Contractor, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

17.6 The Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

- (a) requested to do so by the Authority;
- (b) the person concerned resigns, retires, dies, is on maternity leave or long-term sick leave;

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- (c) the person's employment or contractual arrangement with the Contractor or a Sub-Contractor is terminated for material breach of contract by the employee; or
- (d) the Contractor obtains the Authority's prior written consent and prior approval in relation to any proposed replacement (such consent or approval not to be unreasonably withheld or delayed).

17.7 The Contractor shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean with at least 60 Working Days' notice, or in the event of resignation within three Working Days following their resignation;
- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced;
- (f) ensure that each of the Key Personnel devote substantially all their working time or such proportion of their working time as is commensurate with and sufficient to perform the obligations of that person's role;

OFFICIAL

- (g) ensure that all arrangements for changes in the Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and that such change does not have an adverse impact on the performance of the Services.

17.8 The Parties agree that:

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

Income Tax and National Insurance Contributions

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

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

Staff Transfer

17.10 The Parties shall comply with their respective obligations under Schedule 9.1 (*Staff Transfer*)

18 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-Contractors

18.1 The Contractor shall:

- (a) subject to Clause 18.3, advertise on Contract Finder all sub-contract opportunities arising from or in connection with the provision of goods and/or services and/or works above a minimum threshold of one hundred thousand pounds (£100,000) that arise during the Term;
- (b) within ninety (90) days of awarding any such sub-contract to a Sub-Contractor, update the notice on Contract Finder with details of the successful Sub-Contractor;
- (c) monitor the number, type and value of the sub-contract opportunities placed on Contract Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Clause 18.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contract Finder to its suppliers and encourage those organisations to register on Contract Finder.

18.2 Each advert referred to in Clause 18.1(a) above shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contract Finder by the Contractor.

18.3 The obligation at Clause 18.1(a) shall only apply in respect of sub-contract opportunities arising after the Effective Date.

18.4 Notwithstanding Clause 18.1, the Authority may by giving its prior written approval, such approval not to be unreasonably withheld or delayed, agree that a sub-contract opportunity is not required to be advertised on Contract Finder.

18.5 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Contractor is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice; and

OFFICIAL

- (b) comply with its obligations under this Agreement in the delivery of the Services.

18.6 Prior to sub-contracting any of its obligations under this Agreement, the Contractor shall notify the Authority in writing of:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms so that each of the Affiliate and Contractor are acting in their own self-interest and are not subject any pressure or duress from the other party.

18.7 If requested by the Authority within 10 Working Days of receipt of the Contractor's notice issued pursuant to Clause 18.6, the Contractor shall also provide:

- (a) a copy of the proposed Sub-contract;
- (b) in relation to Enterprise Agreements:
 - (i) a copy of the Enterprise Agreement; or
 - (ii) in the event that the Enterprise Agreement imposes confidentiality obligations on the Contractor which prohibit the release of the Enterprise Agreement in its entirety to the Authority, such information as is relevant to the delivery of the Services to the Authority as is reasonably requested by the Authority; and
- (c) any further information reasonably requested by the Authority.

18.8 Subject to the Authority acting reasonably and subject to Clause 18.11, the Authority may, within 10 Working Days of receipt of the Contractor's notice issued pursuant to Clause 18.6 (or, if later, receipt of any further information requested pursuant to Clause 18.7), object to the appointment of the relevant Sub-Contractor if it considers that:

OFFICIAL

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-Contractor employs unfit persons; and/or
- (d) the proposed Sub-Contractor should be excluded in accordance with Clause 18.23,

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

18.9 If:

- (a) the Authority has not notified the Contractor that it objects to the proposed Sub-Contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Contractor's notice issued pursuant to Clause 18.6; and
 - (ii) any further information requested by the Authority pursuant to Clause 18.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 18.10 (*Appointment of Key Sub-contractors*),

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

Appointment of Key Sub-Contractors

- 18.10 Where the Contractor wishes to enter into a Key Sub-contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-Contractor if it reasonably considers that:

OFFICIAL

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons; and/or
- (d) the proposed Key Sub-Contractor should be excluded in accordance with Clause 18.23.

18.11 The Authority consents to the appointment of the Key Sub-Contractors listed in Schedule 4.3 (*Notified Key Sub-Contractors*) and to other Sub-Contractors listed in this Agreement, including in Schedule 4.4 (*Third Party Contracts*) and Schedule 5 (Software).

18.12 Except where the Authority has given its prior written consent for otherwise, the Contractor shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Contractor to discharge its obligations under this Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority (or in the case of an Enterprise Agreement such parts of the Enterprise Agreement as are directly relevant to the provision of the Services);
- (c) a provision enabling the Authority to enforce the Key Sub-contract (or in the case of an Enterprise Agreement such parts of the Enterprise Agreement as are directly relevant to the provision of the Services) as if it were the Contractor;
- (d) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract (or in the case of an Enterprise Agreement such parts of the Enterprise Agreement as are directly relevant to the provision of the Services) to the Authority or any Replacement Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;

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- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Contractor under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 25 (*Authority Data and Security Requirements*) and Clause 28 (*Data Protection*);
 - (ii) FOIA requirements set out in Clause 27 (*Transparency and Freedom of Information*);
 - (iii) compliance with Child Labour Legislation as set out in Clause 40.6 (*Child Labour and Employment*);
 - (iv) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.9(l) (*Services*);
 - (v) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (vi) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Contractor to terminate the Key Sub-contract on notice on terms no more onerous on the Contractor than those imposed on the Authority under Clauses 38.1(a) (*Termination by the Authority*) and 39.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-contract all or any part of the services provided to the Contractor under the Key Sub-contract without first seeking the written consent of the Authority, such consent not to be unreasonably withheld or delayed;
- (h) a provision enabling the Contractor or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 34 (*Remedial Adviser*);
- (i) a provision enabling the Contractor, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 35 (*Step-in Rights*);

OFFICIAL

- (j) a provision requiring the Key Sub-Contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice where possible to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-Contractor to:
 - (i) promptly notify the Contractor and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor,

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

- (ii) co-operate with the Contractor and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Contractor and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (Financial Distress).

18.13 The Contractor shall not terminate or materially amend the terms of any Key Sub-contract (or in the case of a Key Sub-contract that is also an Enterprise Agreement, such portion of the Enterprise Agreement that is specific to the delivery of the Services under this Agreement) without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

18.14 The Contractor shall ensure that all Sub-contracts (which in this Clause 18.14 and Clause 18.15 includes any contract in the Contractor's supply chain made wholly or substantially for

OFFICIAL

the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- (a) giving the Contractor a right to terminate the Sub-contract if the Sub-Contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 18.14(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 18.14(d) after a reasonable time has passed;
- (d) requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed;
- (e) [not used];
- (f) requiring the counterparty to that Sub-contract to include in any Sub-contract which it awards, provisions having the same effect as Clauses 18.14(a) to 18.14(d);
- (g) giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (h) requiring the Sub-Contractor to include a clause to the same effect as this Clause 18.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

18.15 The Contractor shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within 30 days of verifying that the invoice is valid and undisputed;
- (b) include within the Performance Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause

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18.15(a), such data to be certified each Quarter by a director of the Contractor as being accurate and not misleading.

18.16 Notwithstanding any provision of Clauses 26 (*Confidentiality*) and 29 (*Publicity and Branding*), if the Contractor notifies the Authority (whether in a Performance Scorecard Report or otherwise) that the Contractor has failed to pay a Sub-Contractor within 30 days of verifying that the invoice is valid and undisputed, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

18.17 If the Contractor shall enter into any other contract with the Crown relating in any way to the subject matter of this Agreement, then no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:

- (a) give the Contractor any right under this Agreement to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or
- (b) affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority (including without limitation the right to liquidated damages under this Agreement); or
- (c) be taken to amend, add to, delete or waive any term or condition of this Agreement.

Termination of Sub-contracts

18.18 The Authority may require the Contractor to terminate:

- (a) a Sub-contract or relevant portion of an Enterprise Agreement where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 38.1(b) (*Termination by the Authority*);
 - (ii) the relevant Sub-Contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any

OFFICIAL

act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise;

- (iii) the relevant Sub-Contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 18.23; and
- (b) a Key Sub-contract or relevant portion of an Enterprise Agreement where there is a change of Control of the relevant Key Sub-Contractor, unless:
- (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Competitive Terms

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

- (a) require the Contractor to use all reasonable endeavours to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) subject to Clause 18.21, enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

18.20 If the Authority exercises either of its options pursuant to Clause 18.19, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

18.21 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

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

Retention of Legal Obligations

18.22 Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 18, the Contractor shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

Exclusion of Sub-Contractors

18.23 Where the Authority reasonably considers there are grounds for the exclusion of a Sub-Contractor under Regulation 23 of the DSCPR, then:

- (a) if the Authority finds there are or were, at the time of approval of the Sub-Contract under Clause 18.8 compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-Contractor;
- (b) if the Authority finds there are or were, at the time of approval of the Sub-Contract under Clause 18.8 non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-Contractor and the Contractor shall comply with such a requirement.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

19 INTELLECTUAL PROPERTY RIGHTS

19.1 Except as expressly set out in this Agreement:

OFFICIAL

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, namely:
 - (i) the Contractor Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Contractor Background IPRs;
- (b) the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
 - (i) the Authority Software;
 - (ii) the Authority Data; and
 - (iii) the Authority Background IPRs;
- (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

19.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 19.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

19.4 Unless the Authority otherwise agrees in advance in writing:

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

- (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as Open Source software, the Contractor shall also provide the converted format to the Authority.

19.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Contractor shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Clause 23 (*Open Source Publication*).

20 TRANSFER AND LICENCES GRANTED BY THE CONTRACTOR

Specially Written Software and Project Specific IPRs

20.1 Subject to Clause 20.17 (*Patents*) the Contractor hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause 19.1(a)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**"),

but not including any Know-How, trade secrets or Confidential Information.

20.2 The Contractor:

- (a) shall:
 - (i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Contractor Software or Third Party Software; and
 - (ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms

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

- (iii) without prejudice to Clause 20.11 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Contractor Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Clause 20.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Contractor Software and Contractor Background IPRs

20.3 The Contractor shall not use any Contractor Non-COTS Software or Contractor Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 5 (Software) or sent to the Joint Architecture Governance Board for review and approval granted by the Authority.

20.4 The Contractor hereby grants to the Authority:

- (a) subject to the provisions of Clause 20.17 (*Patents*) and Clause 39.11(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display));
- (i) the Contractor Non-COTS Software for which the Contractor delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's business or function;

OFFICIAL

- (ii) the Contractor Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's business or function;
- (b) a licence to use the Contractor COTS Software for which the Contractor delivers a copy to the Authority and Contractor COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Contractor COTS Software and Contractor COTS Background IPRs on equivalent terms to those set out in Clauses 20.6 and 20.7(b) in relation to the Contractor Non-COTS Software and Contractor Non-COTS Background IPRs; and
- (c) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

20.5 At any time during the Term or following termination or expiry of this Agreement, the Contractor may terminate the licence granted in respect of the Contractor Non-COTS Software under Clause 20.4(a)(i) or in respect of the Contractor Non-COTS Background IPRs under Clause 20.4(a)(ii) by giving 30 days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 20.7 (*Authority's right to sub-licence*) commits any material breach of the terms of Clause 20.4(a)(i) or 20.4(a)(ii) or 20.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Contractor gives the Authority written notice specifying the breach and requiring its remedy.

20.6 In the event the licence of the Contractor Non-COTS Software or the Contractor Non-COTS Background IPRs is terminated pursuant to Clause 20.5, the Authority shall:

- (a) immediately cease all use of the Contractor Non-COTS Software or the Contractor Non-COTS Background IPRs (as the case may be);
- (b) at the discretion of the Contractor, return or destroy documents and other tangible materials to the extent that they contain any of the Contractor Non-COTS Software and/or the Contractor Non-COTS Background IPRs, provided that if the Contractor has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of

OFFICIAL

the Contractor Non-COTS Software and/or the Contractor Non-COTS Background IPRs (as the case may be); and

- (c) ensure, so far as reasonably practicable, that any Contractor Non-COTS Software and/or Contractor Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Contractor Non-COTS Software and/or Contractor Non-COTS Background IPRs.

Authority's right to sub-license

20.7 Subject to Clause 20.17 (*Patents*) the Authority may sub-license:

- (a) the rights granted under Clause 20.4(a) (*Contractor Software and Contractor Background IPRs*) to a third party provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Clause 20.4(a) (*Contractor Software and Contractor Background IPRs*) only for purposes relating to the Services; and
 - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Contractor in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*); and
- (b) the rights granted under Clause 20.4(a) (*Contractor Software and Contractor Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority; and
 - (ii) the Contractor has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

- 20.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 20.4(a) (*Contractor Software and Contractor Background IPRs*) to:
- (a) a Central Government Body; or
 - (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- 20.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 20.3 (*Contractor Software and Contractor Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 20.3 (*Contractor Software and Contractor Background IPRs*).
- 20.10 If a licence granted in Clause 20.3 (*Contractor Software and Contractor Background IPRs*) is novated under Clause 20.8 (*Authority's right to assign/ novate licences*) or there is a change of the Authority's status pursuant to Clause 20.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

- 20.11 The Contractor shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 5 (Software) or approval is granted by the Authority following a review by the Joint Architecture Governance Board and has in each case either:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 20.4(a) and 20.5 (*Contractor Software and Contractor Background IPRs*) and Clause 20.8 (*Authority's right to assign/ novate licences*); or

OFFICIAL

- (b) complied with the provisions of Clause 20.12.

20.12 If the Contractor cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 20.11(a), the Contractor shall:

- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Contractor could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party and for these purposes the Authority has approved the terms of licence for the third parties described in Schedules 4.4 (Third Party Contracts) and/or Schedule 5 (Software).

20.13 The Contractor shall:

- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) where the Authority needs a right to use Third Party COTS Software or Third Party COTS IPRs to receive the benefit of the Services unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Clause 20.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against Authority IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

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

Termination and Replacement Contractors

- 20.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Contractor or relevant third party pursuant to or as contemplated by this Clause 20.
- 20.16 The Contractor shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*) and at the Authority's cost:
- (a) grant (or procure the grant) to the Authority or any Replacement Contractor of:
 - (i) a licence to use any Contractor Non-COTS Software, Contractor Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 20 subject to receipt by the Contractor of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Replacement Contractor;
 - (ii) a licence to use any Contractor COTS Software and/or Contractor COTS Background IPRs, on terms no less favourable (including as to indemnification against Authority IPRs Claims) than those on which such software is usually made commercially available by the Contractor; and/or
 - (b) use all reasonable endeavours to procure the grant to any Replacement Contractor or the Authority of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against Authority IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

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

21 LICENCES GRANTED BY THE AUTHORITY

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

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Contractor on the same terms as set out in Clause 26 (*Confidentiality*); and
- (b) the Contractor shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

21.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 21.1 and any sub-licence granted by the Contractor in accordance with Clause 21.1 shall terminate automatically on the date of such termination or expiry and the Contractor shall:

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

22 IPRS INDEMNITIES

Authority IPRs Claim

- 22.1 The Contractor shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an Authority IPRs Claim.
- 22.2 If an Authority IPRs Claim is made, or the Contractor anticipates that an Authority IPRs Claim might be made, the Contractor may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the Authority IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 22.3 If the Contractor elects to procure a licence in accordance with Clause 22.2(a) or to modify or replace an item pursuant to Clause 22.2(b), but this has not avoided or resolved the Authority IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Contractor; and
 - (b) without prejudice to the indemnity set out in Clause 22.1, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute items and/or services

OFFICIAL

including the additional costs of procuring, implementing and maintaining the substitute items.

Contractor IPRs Claim

22.4 The Authority shall at all times, during and after the Term, on written demand indemnify the Contractor, and keep the Contractor indemnified, against all Losses incurred by, awarded against or agreed to be paid by the Contractor arising from a Contractor IPRs Claim.

22.5 If a Contractor IPRs Claim is made, or the Authority anticipates that a Contractor IPRs Claim might be made, the Authority may, at its own expense and sole option, either:

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

22.6 If the Authority elects to procure a licence in accordance with Clause 22.2(a) or to modify or replace an item pursuant to Clause 22.2(b), but this has not avoided or resolved the Contractor IPRs Claim, then without prejudice to the indemnity set out in Clause 22.1, the Authority shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

23 OPEN SOURCE PUBLICATION

- 23.1 The Contractor agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.
- 23.2 The Contractor hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- (a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source Software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
 - (b) shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
 - (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
 - (d) do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
 - (e) will be supplied in a format suitable for publication as Open Source (the "**Open Source Publication Material**") no later than the Operational Service Commencement Date.
- 23.3 The Contractor shall ensure that the Open Source Publication Material provided to the Authority does not include any Contractor Software or Contractor Background IPRs save that which the Contractor is willing to allow to be included in any Open Source publication. In such a case, the Contractor hereby acknowledges that any such Contractor Software or Contractor Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

- 23.4 The Contractor hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Clause 23.1.

24 SOURCE CODE

- 24.1 Subject to Clause 24.2, the Contractor shall place the Source Code for the Deposited Software in escrow within ten (10) working days from installation of that item in the live environment or other use of the Deposited Software in the provision of the Services. The Contractor shall ensure that the deposited version of the Source Code is updated to reflect the then current version of the Deposited Software.
- 24.2 Where the Contractor is unable to ensure compliance with the provisions of Clause 24.1 in respect of any Third Party Non-COTS Software, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall propose a suitable alternative to escrow that affords the Authority the nearest equivalent protection in relation to access to Source Code for such Third Party Non-COTS Software. The Authority shall notify the Contractor as to whether the proposed alternative is acceptable and can be adopted by the Contractor. The Contractor shall be excused from its obligations under this Clause 24.2 only to the extent that the Authority accepts any alternative proposal in accordance with this Clause 24.2, provided that the Authority shall not unreasonably withhold such acceptance.
- 24.3 In circumstances where the Authority obtains the release of the Source Code from escrow, the Contractor grants to the Authority (or in the case of Third Party Non-COTS Software shall procure that the relevant owner/licensor grants to the Authority) a perpetual, irrevocable, assignable, royalty-free and non-exclusive licence to copy, adapt and use the Source Code version of the Deposited Software deposited under Clause 24.1 to the extent necessary for the receipt of the Services or any Replacement Services and for the Authority to carry on its normal functions and operations.
- 24.4 The Contractor shall deliver to the Authority the Specially Written Software, and any software adaptations and modifications to the Specially Written Software as provided in Clause 24.1 in both Source Code and binary code forms within ten (10) working days from installation of that item in the live environment or milestones as the Authority may reasonably specify.
- 24.5 The Contractor further undertakes to provide updates of the Source Code in respect of the Specially Written Software, on each new release of the Specially Written Software and, in

respect of both the Specially Written Software and any software adaptations and modifications to Authority Licensed Materials with ten (10) working day of each major Release change on media and in a format that is reasonably acceptable to the Authority.

25 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 25.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 25.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 25.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).
- 25.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor. The Contractor shall remain liable for the reinstatement of data where it has caused and is responsible for its corruption or loss, to the last back-up that was or should have been performed by the Contractor in accordance with Schedule 8.6 (*Business Continuity and Disaster Recovery*).
- 25.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan and the Back-Up Plan. The Contractor shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 25.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 25.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

OFFICIAL

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Recovery*) and the Contractor shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Recovery*).
- 25.8 If at any time the Contractor 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 Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- 25.9 The Contractor shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 25.10 The Authority shall notify the Contractor of any changes or proposed changes to the Baseline Security Requirements.
- 25.11 If the Contractor believes that a change or proposed change to the Baseline Security Requirements or any other aspect of the Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 25.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 25.11 the Contractor shall continue to perform the Services in accordance with its existing obligations.

Malicious Software

- 25.13 The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of Anti-Virus definitions and software available from an industry accepted Anti-Virus Software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the

OFFICIAL

spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).

25.14 Notwithstanding Clause 25.13, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their contracted operating efficiency.

25.15 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 25.14 shall be borne by the Parties as follows:

- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor (except where the Authority has waived the obligation set out in Clause 25.13) or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Contractor; and
- (b) otherwise by the Authority.

26 CONFIDENTIALITY

26.1 For the purposes of this Clause 26, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

26.2 Except to the extent set out in this Clause 26 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

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

OFFICIAL

- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 27 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Recipient arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

OFFICIAL

26.5 The Contractor may disclose the Confidential Information of the Authority on a confidential basis only to:

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

Where the Contractor discloses Confidential Information of the Authority pursuant to this Clause 26.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

26.6 The Authority may disclose the Confidential Information of the Contractor:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, Contractor or other person engaged by any of the entities described in Clause 26.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 35 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 34 (*Remedial Adviser*) and Exit Management rights;

OFFICIAL

- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; or
- (g) on a confidential basis to any potential or actual Replacement Contractor or any other third party whom the Authority is considering engaging as contemplated or permitted by this Agreement only to the extent that such disclosure is to enable the re-procurement of the Services (or services similar to the Services) or necessary to ensure service continuity,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 26.

- 26.7 Nothing in this Clause 26 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

27 TRANSPARENCY AND FREEDOM OF INFORMATION

- 27.1 The Parties acknowledge that

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

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

- 27.2 Notwithstanding any other provision of this Agreement, the Contractor hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the

OFFICIAL

provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 27.3 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Required Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).
- 27.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.
- 27.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Contractor.
- 27.6 The Contractor agrees that any Information it holds that is not included in the Required Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 26.6(c)) and Open Book Data) publish such Information. The Contractor shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 27.7 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

OFFICIAL

- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

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

28 DATA PROTECTION

28.1 In connection with the Personal Data received under this Agreement, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.

28.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 2.6 (Data). The only processing that the Contractor is authorised to do, is as set out in Schedule 2.6 (*Data*) by the Authority and may not be determined by the Contractor. Schedule 2.6 (Data) shall form part of the Specification for this Agreement.

OFFICIAL

- 28.3 The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that no notification (or absence of notification) by the Contractor will be construed as legal advice or a representation by the Contractor.
- 28.4 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services provided under this Agreement;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 28.5 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 2.6 (*Data*), unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, including those set out in Schedule 2.6 (*Data*), as appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;

OFFICIAL

- (iii) state of technological development; and
- (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) subject to Clause 28.5(a), the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 2.6 (*Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this Clause;
 - (B) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - (C) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (iii) it shall not transfer or process Personal Data outside of the EEA unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (A) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Authority;
 - (B) the Data Subject has enforceable rights and effective legal remedies;
 - (C) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any

OFFICIAL

Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

(D) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(iv) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of this Agreement unless the Contractor is required by Law to retain the Personal Data.

28.6 Subject to Clause 28.7, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under this Agreement, it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

28.7 The Contractor's obligation to notify under Clause 28.6 shall include the provision of further information to the Authority in phases, as details become available.

28.8 Taking into account the nature of the processing, the Contractor shall provide the Authority with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 28.6 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

OFFICIAL

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

28.9 The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under this Clause 28.9. The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in this Agreement.

28.10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

28.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority, such consent not to be unreasonably withheld or delayed, and which consent is hereby given in respect of any Affiliate of the Contractor and any Key-Subcontractor or Sub-contractor listed in this Agreement as of the Effective Date;
- (c) enter into a written contract with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the

OFFICIAL

Authority may reasonably require.

- 28.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 28.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this Clause 28 (*Data Protection*) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 28.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 28.15 Any amendments resulting from Clause 28.13 and/or Clause 28.14 shall be conducted in accordance with the Change Control Procedure.

29 PUBLICITY AND BRANDING

- 29.1 The Contractor shall not (unless strictly necessary to comply with the Law):
- (a) make any press announcements or publicise this Agreement or its contents in any way; or
 - (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 29.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Contractor System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 29.3 The Contractor shall appoint, and notify to the Authority, a corporate communications representative to provide cover from 08:00 to 17:00 (inclusive) every Working Day who will

work with the Authority in respect of any corporate communications (including, but not limited to, media enquiries, joint Authority and Contractor communications, and internal communications). Such corporate communications representative shall have a minimum of 1 year experience in corporate communications.

- 29.4 The Contractor shall produce joint press statement (to be agreed with the Authority prior to publication), which shall contain statements and joint promotional content (for example, to celebrate successes).

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

30 LIMITATIONS ON LIABILITY

Unlimited liability

- 30.1 Neither Party limits its liability for:

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

- 30.2 The Contractor's liability in respect of the indemnities in Clause 12.5 (*VAT*), Clause 17.8(a) (*Employment Indemnity*), Clause 17.9 (*Income Tax and National Insurance Contributions*), Clause 22.1 (*IPRs Indemnities*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

- 30.3 The Authority's liability in respect of the indemnities in Clause 17.8(b) (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

Financial and other limits

30.4 Subject to Clauses 30.1 and 30.2 (*Unlimited Liability*) and Clauses 30.7 and 30.8 (*Consequential losses*):

- (a) except in relation to loss of or damage to the Leased Premises and/or the Licensed Premises, the Contractor's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Contractor occurring in each and any Contract Year shall in no event exceed [REDACTED];
- (b) the Contractor's:
 - (i) liability for Failure Charges shall be subject to the Failure Charge Cap;
 - (ii) aggregate liability in any period of 12 consecutive months in respect of all Failure Charges shall be subject to the Annual Failure Charge Cap; and
 - (iii) liability for Withholding Deductions shall be subject to the Withholding Deduction Cap,
- (c) subject to Clause 30.4(d) the Contractor's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Contractor shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to [REDACTED] of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to [REDACTED] of the Charges paid and/or due to be paid to the Contractor under this Agreement in the Contract Year immediately preceding the Contract Year in which such Default occurred;
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to [REDACTED] of the Charges paid and/or due to be paid to the Contractor in the 12 month period immediately prior to the last day of the Term,

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provided that where any Losses referred to in Clause 30.4(c) have been incurred by the Authority as a result of the Contractor's abandonment of this Agreement or the Contractor's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to [REDACTED] shall be deemed to be references to [REDACTED];

- (d) the Contractor's aggregate liability in respect of Defaults relating to Clause 28 (*Data Protection*) occurring:
 - (i) in the first Contract Year, an amount equal to [REDACTED] of the Estimated Year 1 Charges;
 - (ii) during any subsequent Contract Year, an amount equal to [REDACTED] of the Charges paid and/or due to be paid to the Contractor under this Agreement in the Contract Year immediately preceding the Contract Year in which such Defaults occurred;
 - (iii) after the end of the Term, an amount equal to [REDACTED] of the Charges paid and/or due to be paid to the Contractor in the 12 month period immediately prior to the last day of the Term.

30.5 Deductions from Charges shall not be taken into consideration when calculating the Contractor's liability under Clause 30.4(c) .

30.6 Subject to Clauses 30.1 and 30.3 (*Unlimited Liability*) and Clause 30.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Contractor under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 38.1(a) (*Termination by the Authority*) or by the Contractor pursuant to Clause 38.3(a) (*Termination by the Contractor*) shall in no event exceed the following amounts:
 - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 3 of Schedule 7.2 (*Payments on Termination*);

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- (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 2.2 of Schedule 7.2 (*Payments on Termination*); and
 - (iii) in relation to the Compensation Payment, the amount set out in Paragraph 5 of Schedule 7.2 (*Payments on Termination*); and
- (b) the Authority's aggregate liability in respect of all Losses incurred by the Contractor under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Contractor in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

- 30.7 Subject to Clauses 30.1, 30.2 and 30.3 (*Unlimited Liability*) and Clause 30.8, neither Party shall be liable to the other Party for:
- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 30.8 Notwithstanding Clause 30.7 but subject to Clause 30.4, the Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

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- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables;
- (d) the difference between the amount the Authority is required to pay the Previous Contractor to continue to provide the Services, and the amount that the Authority would have been due to pay to the Contractor had the Contractor been able to provide the Services under this Agreement;
- (e) any compensation or interest paid to a third party by the Authority; and
- (f) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Conduct of indemnity claims

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

Mitigation

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

31 INSURANCE

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

SECTION H - REMEDIES AND RELIEF

32 RECTIFICATION PLAN PROCESS

32.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; and/or
- (b) the Contractor commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

Notification

32.2 If:

- (a) the Contractor notifies the Authority pursuant to Clause 32.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Contractor that it considers, acting reasonably, that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Contractor has to rectify),

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

32.3 The "**Rectification Plan Process**" shall be as set out in Clauses 32.4 (*Submission of the draft Rectification Plan*) to 32.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

32.4 The Contractor shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 32.2 (*Notification*). The Contractor shall submit a draft Rectification Plan, provided that if the Contractor disputes that it is responsible for the Notifiable Default such plan shall not be required to include a root cause analysis under Clause 32.5(a) or the information required under Clause 32.5(c).

32.5 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps which the Contractor proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

32.6 The Contractor shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Contractor's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 5 of Schedule 8.3 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

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

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or

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- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

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

32.9 If the Authority consents to the Rectification Plan:

- (a) the Contractor shall immediately start work on the actions set out in the Rectification Plan; and
- (b) subject to Clause 38.1(b) (*Termination by the Authority*), the Authority may no longer terminate this Agreement in whole or in part on the grounds of the same Notifiable Default.

33 DELAY PAYMENTS

33.1 If the Transition Milestone has not been Achieved by its Milestone Date, the provisions of Paragraph 3.5 to 3.10 of Part A of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

33.2 Delay Payments shall be the Authority's exclusive financial remedy for the Contractor's failure to Achieve the Transition Milestone by its Milestone Date except where:

- (a) the Authority is entitled to or does terminate this Agreement pursuant to Clause 38.1(b) (*Termination by the Authority*); or
- (b) the Delay exceeds the Delay Deduction Period.

34 REMEDIAL ADVISER

34.1 If:

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

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

- (c) a meeting between the Authority Representative and the Contractor Representative to discuss the Intervention Cause; and/or
- (d) the appointment as soon as practicable by the Contractor of a Remedial Adviser, as further described in this Clause 34.

34.2 For the avoidance of doubt, if the Intervention Cause is also a Contractor Termination Event, the Authority has no obligation to exercise its rights under this Clause 34.1 prior to or instead of exercising its right to terminate this Agreement.

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

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Contractor and approved by the Authority; or
 - (ii) if none of the persons selected by the Contractor have been approved by the Authority acting reasonably (or no person has been selected by the Contractor) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority acting reasonably;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority, such approval not to be unreasonably withheld or delayed; and
- (c) any right of the Authority to terminate this Agreement pursuant to Clause 38.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention

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Notice (or such other period as may be agreed between the Parties) (the **"Intervention Period"**).

34.4 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Contractor's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

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

34.5 The Contractor shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;

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- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

34.6 The Contractor shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 34.

34.7 If:

- (a) the Contractor:
 - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
 - (ii) is in Default of any of its obligations under Clause 34.5; and/or
- (b) subject to the Remedial Advisor confirming that there is no longer an Intervention Trigger Event, the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to Clause 38.1(b) (*Termination by the Authority*).

35 STEP-IN RIGHTS

35.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Contractor (a "**Step-In Notice**") that it will be taking action under this Clause 35 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to Clause 26 (*Confidentiality*)). The Step-In Notice shall set out the following:

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

35.2 Following service of a Step-In Notice, the Authority shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Contractor;
- (c) co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide the Services in relation to which the Authority is not assuming control; and
- (d) act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this Clause 35.

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

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

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- (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 35.4 shall apply to Deductions from Charges in respect of other Services; and
- (c) the Authority shall pay to the Contractor the Charges, calculated as if no Step-In Trigger Event had arisen, after subtracting applicable Deductions in respect of Services that are not the subject of the Required Action and (solely where the Step-in Trigger Event arises as a direct result of the Contractor's breach of its obligations under this Agreement) the Authority's costs of taking the Required Action.

35.4 If the Contractor demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action; or
- (b) the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Contractor shall be entitled to a reasonable adjustment of the Charges.

35.5 Before ceasing to exercise its step in rights under this Clause 35 the Authority shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with Clause 35.6.

35.6 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

35.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-

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Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

35.8 The Contractor shall bear its own costs in connection with any step-in by the Authority under this Clause 35, provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- (b) limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Contractor's Default).

36 AUTHORITY CAUSE

36.1 Notwithstanding any other provision of this Agreement, if the Contractor has failed to:

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

each a ("**Contractor Non-Performance**"), and can demonstrate that the Contractor Non-Performance would not have occurred but for an Authority Cause, then (subject to the Contractor fulfilling its obligations in this Clause 36):

- (d) the Contractor shall not be treated as being in breach of this Agreement to the extent the Contractor can demonstrate that the Contractor Non-Performance was caused by the Authority Cause;
- (e) the Authority shall not be entitled to exercise any rights that may arise as a result of that Contractor Non-Performance including:

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- (i) to terminate this Agreement pursuant to Clause 38.1(b) (*Termination by the Authority*); or
 - (ii) to take action pursuant Clauses 34 (*Remedial Adviser*) or 35 (*Step-In Rights*);
- (f) where the Contractor Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Contractor can demonstrate was caused by the Authority Cause;
 - (ii) the Transition Plan and/or the Transformation Plan, as applicable, shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
 - (iii) the Contractor shall have no liability to pay any Delay Payments associated with the Transition Milestone to the extent that the Contractor can demonstrate that such failure was caused by the Authority Cause; and
 - (iv) the Contractor shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 14 of Part A of Schedule 7.1 (*Charges and Invoicing*); and/or
- (g) where the Contractor Non-Performance constitutes a Performance Failure:
 - (i) the Contractor shall not be liable to accrue Failure Charges;
 - (ii) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2 (*Performance Failures*); and
 - (iii) the Contractor shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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

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36.2 In order to claim any of the rights and/or relief referred to in Clause 36.1 the Contractor shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Contractor Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

- (a) the Contractor Non-Performance;
- (b) the Authority Cause and its effect, or likely effect, on the Contractor's ability to meet its obligations under this Agreement;
- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- (d) the relief and/or compensation claimed by the Contractor.

36.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Contractor Non-Performance and the alleged Authority Cause and whether it agrees with the Contractor's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Contractor where necessary.

36.4 The Contractor shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Contractor may incur and the duration and consequences of any Delay or anticipated Delay.

36.5 Without prejudice to Clause 5.13 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

- (a) whether a Contractor Non-Performance would not have occurred but for an Authority Cause; and/or
- (b) the nature and/or extent of the relief and/or compensation claimed by the Contractor,

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

- 36.6 Any Change that is required to the Transition Plan or the Transformation Plan or to the Charges pursuant to this Clause 36 shall be implemented in accordance with the Change Control Procedure.

Legacy Data

- 36.7 In the event that any errors or incompleteness in the Authority Data that have arisen prior to the Operational Service Commencement Date give rise to a Default of or any claim against the Contractor, such event shall be deemed an Authority Cause and the provision of this Clause 36 (Authority Cause) shall apply.

37 FORCE MAJEURE

- 37.1 Subject to the remaining provisions of this Clause 37 (and, in relation to the Contractor, subject to its compliance with its obligations in Schedule 8.6 (*Business Continuity and Disaster Recovery*)), a Party may claim relief under this Clause 37 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-Contractor or Contractor shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Contractor is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- 37.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 37.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this Clause 37 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including those to be provided in accordance with Schedule 8.6 (*Business Continuity and Disaster Recovery*), but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.

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- 37.4 Subject to Clause 37.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 37.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 37.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 38.1(c) (*Termination by the Authority*) or Clause 38.3(b) (*Termination by the Contractor*); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 34 (*Remedial Adviser*) and/or Clause 35 (*Step-in Rights*) as a result of such failure;
 - (B) to receive Delay Payments pursuant to Clause 33 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (C) to receive Failure Charges, to withhold any of the Charges pursuant to Clause 7.2 (*Performance Failures*) or withhold and retain any of the

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Charges as compensation pursuant to Clause 7.2 (*Performance Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

- (ii) the Contractor shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

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

37.8 Relief from liability for the Affected Party under this Clause 37 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 37.7.

SECTION I - TERMINATION AND EXIT MANAGEMENT

38 TERMINATION RIGHTS

Termination by the Authority

38.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Contractor:

- (a) for convenience at any time by serving six (6) months' notice, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- (b) if a Contractor Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than 90 days; or
- (d) if the Agreement has been substantially amended to the extent that the DSCPR require a new procurement procedure,

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

38.2 Where the Authority:

- (a) is terminating this Agreement under Clause 38.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Contractor Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clauses 38.1(a), 38.1(b) or 38.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the Partial Termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Contractor

38.3 The Contractor may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Contractor under this Agreement which in aggregate exceeds [REDACTED] and such amount remains outstanding 60 Working Days after the receipt by the Authority of a notice of non-payment from the Contractor; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 38.3(b) would result in a Partial Termination, the provisions of Clause 38.4 (*Partial Termination*) shall apply.

Partial Termination

38.4 If the Contractor notifies the Authority pursuant to Clause 38.3(b) (*Termination by the Contractor*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a

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Termination Notice to the Contractor within 1 month of receiving the Contractor's Termination Notice. For the purpose of this Clause 38.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

38.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

- (a) the Contractor shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Contractor Termination Event;
- (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- (c) the Contractor shall not be entitled to reject the Change provided that the Authority has acted reasonably and in accordance with both the Change Control Procedure and this Clause 38.5.

39 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

39.1 The provisions of Clauses 5.12 (*Specially Written Software warranty*), 12.4 and 12.5 (*VAT*), 12.7 and 12.8 (*Set-off and Withholding*), 14 (*Records, Reports, Audits and Open Book Data*), 17.8 (*Employment Indemnity*), 17.9 (*Income Tax and National Insurance Contributions*), 19 (*Intellectual Property Rights*), 20.4 (*Licences Granted by the Contractor*), 22.1 (*IPRs Indemnity*), 26 (*Confidentiality*), 27 (*Transparency and Freedom of Information*), 28 (*Data Protection*), 30 (*Limitations on Liability*), 39 (*Consequences of Expiry or Termination*), 45 (*Severance*), 47 (*Entire Agreement*), 48 (*Third Party Rights*), 50 (*Conflicts of Interests*) and 52 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

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

Payments by the Authority

39.3 If this Agreement is terminated by the Authority pursuant to Clause 38.1(a) or 38.1(d) (*Termination by the Authority*) or by the Contractor pursuant to Clause 38.3(a) (*Termination by the Contractor*), the Authority shall pay the Contractor the following payments (which shall be the Contractor's sole remedy for the termination of this Agreement):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than one calendar year:
 - (i) the period from (but excluding) the date that the Termination Notice is given by the Authority pursuant to Clause 38.1(a) (*Termination by the Authority*) to (and including) the Termination Date; or
 - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause 38.3(a) (*Termination by the Contractor*) to (and including) the Termination Date.

39.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 38.1(b) or 38.1(c) (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

- 39.5 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 38.1(c) or 38.2(b) (*Termination by the Authority*) or 38.3(b) (*Termination by the Contractor*).

Payments by the Contractor

- 39.6 In the event of termination or expiry of this Agreement, the Contractor shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination.
- 39.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 38.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Contractor of written notice (a "**Milestone Adjustment Payment Notice**") require the Contractor to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.
- 39.8 A Milestone Adjustment Payment Notice shall specify:
- (a) each CPP Milestone to which it relates;
 - (b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Authority wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and
 - (c) those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"),

and may form part of a Termination Notice.

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

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- (a) notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- (b) in relation to each such Retained Deliverable that the Contractor agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Contractor's proposed amount of the Allowable Price Adjustment and the basis for its approval;
- (c) provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - (i) all relevant Milestone Payments; and
 - (ii) the Allowable Price of each Retained Deliverable; and
- (d) provide the Authority with such supporting information as the Authority may require.

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

39.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 39.7:

- (a) the Authority shall:
 - (i) securely destroy or return to the Contractor all Non-retained Deliverables that are in tangible form; and
 - (ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

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in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

- (b) all licences granted pursuant to Clause 20 (*Transfer and Licences granted by the Contractor*) in respect of Specially Written Software and Project Specific IPRs and any Contractor Non-COTS Software and/or Contractor Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

40 COMPLIANCE

Health and Safety

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

- (a) all applicable Law regarding health and safety;
- (b) the Health and Safety Policy whilst at the Authority Premises; and
- (c) the applicable Standards.

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

Equality and Diversity

40.3 The Contractor shall:

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

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

Modern Slavery Act 2015

40.4 In performing its obligations under the Agreement, the Contractor shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- (b) have and maintain throughout the term of the Agreement its own policies and procedures to ensure its compliance;
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (d) ensure that each of its direct subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

Child Labour and Employment

- 40.5 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Agreement is being performed.
- 40.6 The Contractor agrees to take reasonable efforts to reflect the requirements set out in Clause 40.5 above in any Sub-contract that it enters into to satisfy the requirements of this Agreement and to require its Sub-Contractors to reflect the same in their Sub-contracts that they enter into to satisfy the requirement of this Agreement.

Official Secrets Act and Finance Act

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

41 ASSIGNMENT AND NOVATION

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

and the Contractor shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 41.2.

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- 41.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 41.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 41.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Contractor shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (i) of the definition of Contractor Termination Event (as if references in that limb (i) to the Contractor and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

42 WAIVER AND CUMULATIVE REMEDIES

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

43 RELATIONSHIP OF THE PARTIES

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

44 PREVENTION OF FRAUD AND BRIBERY

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

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- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

44.2 The Contractor shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

44.3 The Contractor shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under Clause 44.3(a) and make such records available to the Authority on request.

44.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 44.1 and/or 44.2, or has reason to believe that it has or any of the Contractor Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

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- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

44.5 If the Contractor makes a notification to the Authority pursuant to Clause 44.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 14 (*Records, Reports, Audits and Open Book Data*).

44.6 If the Contractor is in Default under Clauses 44.1 and/or 44.2, the Authority may by notice:

- (a) require the Contractor to remove from performance of this Agreement any Contractor Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this Agreement; and recover from the Contractor;
 - (i) the amount or value or any such gift, consideration or commission; and
 - (ii) any other losses sustained in consequence of any breach of this Clause.

44.7 Any notice served by the Authority under Clause 44.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

45 SEVERANCE

45.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

45.2 In the event that any deemed deletion under Clause 45.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid

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and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

- 45.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 45.2, the matter shall be dealt with in accordance with Paragraph 3 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 45.3.

46 FURTHER ASSURANCES

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

47 ENTIRE AGREEMENT

- 47.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 47.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 47.3 Nothing in this Clause 47 shall exclude any liability in respect of misrepresentations made fraudulently.

48 THIRD PARTY RIGHTS

- 48.1 The provisions of Clause 22.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.2 of Part 1, Paragraphs 2.1, 2.3, 2.4 and 2.6 of Part 2 and Paragraphs 2.1 and 2.2 of Part 3, of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 5.9 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

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- 48.2 Subject to Clause 48.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 48.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 48.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 48.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

49 NOTICES

- 49.1 Any notices sent under this Agreement must be in writing.
- 49.2 Subject to Clause 49.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

MANNER OF DELIVERY	DEEMED TIME OF SERVICE	PROOF OF SERVICE
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message, provided that a confirmation copy of the e-mail is sent to the recipient by prepaid first class domestic postal service or any other prepaid method in the manner set out below. Failure to send a confirmation copy will invalidate the service of any e-mail transmission.
Personal delivery	At the time recorded on the signed delivery receipt, provided delivery is between	Properly addressed and delivered as evidenced by signature of a

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	9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	delivery receipt
Prepaid, Royal Mail Signed Form 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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

	CONTRACTOR	AUTHORITY
CONTACT	██████████	████████████████████
ADDRESS	██████ ██████████████████ ██████████████ ██████████ ██████	██████████ ██████ ██████████ ██████████ ██████████████
EMAIL	██████████████████	██████████████████

- 49.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 49.2:

- (a) Step-In Notices;

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- (b) Force Majeure Notices;
- (c) notices issued by the Contractor pursuant to Clause 38.3 (*Termination by the Contractor*);
- (d) Termination Notices; and
- (e) Dispute Notices.

49.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 49.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed Form 1st Class delivery (as set out in the table in Clause 49.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

49.6 This Clause 49 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

50 CONFLICTS OF INTEREST

50.1 The Contractor shall ensure that no conflict of interest arises between its provision of the Services and any other matter in which it may be interested whether directly or indirectly.

50.2 If the Contractor becomes aware of any conflict of interest (whether such existed before the Effective Date or afterwards) it shall immediately notify the Authority of the conflict of interest and provide full details of the conflict of interest together with any additional information which the Authority may require in connection with such matter.

50.3 If the Authority reasonably considers that the conflict of interest notified to it under Clause 50.2 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as are necessary to avoid or, as the case may be, remove such conflict of Interest in accordance with the Rectification Plan Process.

50.4 If:

- (a) the Contractor fails to remedy such conflict of interest as required in Clause 50.3 ;

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- (b) such conflict of interest cannot be remedied; or
- (c) a conflict of interest existed at the Effective Date that had not been notified to the Authority in writing prior to that date or, where it had been so notified, any remedial action required by the Authority had not been completed by the Contractor,

the Authority shall be entitled to terminate this Agreement in accordance with Clause 38.1(b).

51 DISPUTES

- 51.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 51.2 The Contractor shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

52 GOVERNING LAW AND JURISDICTION

- 52.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 52.2 Subject to Clause 51 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

53 COUNTERPARTS

- 53.1 This Agreement may be executed in counterparts, each of which when executed shall constitute a duplicate original, but the counterparts shall together constitute the one Agreement.
- 53.2 Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF format) shall take effect as delivery of an executed counterpart of this Agreement. Without prejudice to the validity of the Agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

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53.3 No counterpart shall be effective until each party has executed at least one counterpart.

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

SIGNED for and on behalf of SHARED SERVICES CONNECTED LIMITED

Signature (1):

Name (block capitals):

Position:

Date:

Signature(2):

Name (block capitals):

Position:

Date:

SIGNED for and on behalf of THE SECRETARY OF STATE FOR DEFENCE

Signature:

Name (block capitals):

Position:

Date:

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