

TRADER SUPPORT SERVICE

SCHEDULE 1

DEFINITIONS

Definitions

1.1 Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below and, for the avoidance of doubt, any expressions or terms defined in any of the schedules to this Agreement shall be deemed to be included within this Schedule 1 (Definitions) by reference:.

“Accounting Reference Date”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Achieve”	(a) in respect of a Test, to successfully pass a Test without any Test Issues; and (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (<i>Testing Procedures</i>), and “Achieved” and “Achievement” shall be construed accordingly;
“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
“Actual Incurred Costs”	has the meaning given to it in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Additional MI”	has the meaning give to it in in paragraph 4 of Part 3 of Schedule 2.1 (<i>Services Description</i>)
“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Allowable Price”	in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:

A – B

where:

- (a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Declared Margin Position thereon; and
- (b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

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

“Allowable Price Adjustment”

has the meaning given in Clause 35.8(c) (*Payments by the Supplier*);

“Annual Contract Report”

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

“Annual Revenue”

means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

- (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and
- (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British

Pound Sterling at the closing exchange rate on the Accounting Reference Date;

“Anticipated Contract Life Mark Up”

has the meaning given to it in Schedule 7.2 (*Payments on Termination*);

“Approved Sub-Licensee”

any of the following:

- (a) a Central Government Body;
- (b) any third party providing services to a Central Government Body; and/or
- (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;

“Assets”

all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;

“Associated Person”

has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;

“Associates”

means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

“Assurance”

means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;

“ATP Milestone”

the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;

“Audit”

any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audit and Open Book Data*) and Schedule 7.5 (*Financial Reports and Audit Rights*);

“Audit Agents”

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

“Audit Rights”	the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Authority Assets”	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
“Authority Background IPRs”	<ul style="list-style-type: none"> (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures; (b) IPRs created by the Authority independently of this Agreement; and/or (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; <p>but excluding IPRs owned by the Authority subsisting in the Authority Software;</p>
“Authority Cause”	<p>any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:</p> <ul style="list-style-type: none"> (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
“Authority Data”	<ul style="list-style-type: none"> (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> (i) supplied to the Supplier by or on behalf of the Authority; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this

Agreement (which shall include:
(a) all reports and records provided by or on behalf of the Supplier to the Authority pursuant to this Agreement (including pursuant to schedules 2.2 (Performance Levels), 7.1 (Charges and Invoicing), 7.5 (Financial Reports and Audits) and 8.4 (Reports and Records) and as contained within the MI Dashboard) and (b) all Trader Data; or

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

“Authority IT Strategy”

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

“Authority Materials”

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

(a) are owned or used by or on behalf of the Authority; and

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

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

“Authority Premises”

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

“Authority Representative”

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

“Authority Requirements”

the requirements of the Authority set out in Schedule 2.1 (*Services Description*), Schedule

2.2 (*Performance Levels*), Schedule 2.3 (*Standards*), Schedule 2.4 (*Security Management*), Schedule 2.5 (*Insurance Requirements*), Schedule 6 (*Implementation Plan*), Schedule 8.4 (*Reports and Records Provisions*), Schedule 8.5 (*Exit Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

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

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

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

“Authority to Proceed” or “ATP” the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;

“Baseline Security Requirements” the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (*Security Management*), as updated from time to time by the Authority and notified to the Supplier;

“Board” has the meaning given to it in:

- (a) in Schedule 7.4 (*Financial Distress*), which shall apply in the context of Schedule 7.4 (*Financial Distress*); and
- (b) Schedule 8.1 (*Governance*), which shall apply in the context of Schedule 8.1 (*Governance*),

	as required by the context;
“Board Confirmation”	has the meaning given to it in Schedule 7.4 (<i>Financial Distress</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Central Government Body”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> (c) Government Department; (d) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (e) Non-Ministerial Department; or (f) Executive Agency;
“Change”	any change to this Agreement;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.2 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	has the meaning given to it in Schedule 8.2 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;

“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“CNI”	means Critical National Infrastructure;
“Commercially Sensitive Information”	<p>the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier’s IPRs; and (c) the Supplier’s business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Clause 7.4(a) (<i>Unacceptable KPI Failure</i>);
“Compensation Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Confidential Information”	<ul style="list-style-type: none"> (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to: <ul style="list-style-type: none"> (i) the Disclosing Party Group; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential

or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;

- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:

- (1) performance under this Agreement; or
- (2) failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (*Supply Chain Protection*);

“Connected Company”	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
“Contract Breakage Costs”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Contract Change”	any change to this Agreement other than an Operational Change;
“Contract Inception Report”	the initial financial model in a form containing the level of detail set out in Part D (Financial Model) of Schedule 7.1 (Charges and Invoicing) and set out in Annex 4 of Schedule 7.1 (Charges and Invoicing);
“Contract Finder”	the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;
“Contract Year”	<ul style="list-style-type: none"> (a) a period of 12 months commencing on the Effective Date; or (b) thereafter a period of 12 months commencing on each anniversary of the Effective Date; <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;

- “Controller”** has the meaning given in the GDPR;
- “Corporate Change Event”** means:
- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
 - (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
 - (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
 - (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
 - (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
 - (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
 - (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
 - (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition,

arrangement or agreement being made with creditors of any member of the Supplier Group;

- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Resolution Planning Information”

means, together, the:

- (a) Group Structure Information and Resolution Commentary; and
- (b) UK Public Sector and CNI Contract Information;

“Costs”

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

“CPP Milestone”

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

“Critical National Infrastructure”

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or

	(b) significant impact on the national security, national defence, or the functioning of the UK;
“Critical Performance Failure”	<p>(a) the Supplier accruing in aggregate the number of Service Points agreed by the parties pursuant to paragraph 1.10(f) to Part A of Schedule 2.2 (Performance Levels), or more (in terms of the number of points allocated) in any period agreed by the parties pursuant to paragraph 1.10(f) to Part A of Schedule 2.2 (Performance Levels); or</p> <p>(b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;</p> <p>(c) any other event that is specified as a “Critical Performance Failure” pursuant to Schedule 2.2 (Performance Levels);</p>
“Critical Service Contract”	means the overall status of the Services provided under this Agreement as determined by the Authority and specified in paragraph 10.1 of Part B to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“CRP Information”	means the Corporate Resolution Planning Information;
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Customs Change”	means any Change in Law related to customs charges, customs arrangements, borders, or related arrangements between the UK, the EU, GB and/or Northern Ireland .
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	<ul style="list-style-type: none"> (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy;
“Data Subject”	has the meaning given in the DPA;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Declaration”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Declared Margin Position”	has the meaning given to it in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Deductions”	<ul style="list-style-type: none"> (a) all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Agreement; or (b) for the purposes of Schedule 7.2 (<i>Payments on Termination</i>) only, as defined in Schedule 7.2 (<i>Payments on Termination</i>);
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Authority, of its employees, servants, agents; or

(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,

in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

“Defect”

(a) any error, damage or defect in the manufacturing of a Deliverable; or

(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or

(c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or

(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;

“Delay”

(a) a delay in the Achievement of a Milestone by its Milestone Date; or

(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

“Delay Deduction Period”

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

“Delay Payments”

the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 7 (*Charges and Invoicing*);

“Deliverable”	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
“Descartes Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs which is owned or licensed by the Supplier’s Key Subcontractor, Descartes Systems UK Limited;
“Descartes Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software which is owned or licensed by the Supplier’s Key Subcontractor, Descartes Systems UK Limited;
“Detailed Implementation Plan”	the plan set out in Annex 2 of Schedule 6.1 (<i>Implementation Plan</i>) as further developed and revised from time to time in accordance with Paragraphs 2, 3 and 4 of Schedule 6.1 (<i>Implementation Plan</i>);
“Direct Representation”	means where the Supplier acts in the name of the User;
“Disclosing Party”	has the meaning given in Clause 22.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	<ul style="list-style-type: none"> (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;

“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Documentation”	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none"> (a) is required to be supplied by the Supplier to the Authority under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes

to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“DPA”	the Data Protection Act 2018;
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Authority prior to the date of this Agreement;
“Earn-back”	has the meaning given to it in paragraph 6 of Part A to Schedule 2.2 (Performance Levels);
“Effective Date”	18 September 2020
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Emergency Maintenance”	ad hoc and unplanned maintenance provided by the Supplier where: (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are

covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

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

“Employment Regulations”

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

“EORI Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs which is owned or licensed by the Supplier’s Key Subcontractor, EORI UK Limited;
“EORI Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software which is owned or licensed by the Supplier’s Key Subcontractor, EORI UK Limited;
“Estimated Year 1 Charges”	the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model and Annex 1 of Schedule 7.1 (Charges and Invoicing);
“Estimated Initial Service Charges”	the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model and Annex 1 of Schedule 7.1 (Charges and Invoicing);
“Exit Day”	shall have the meaning in the European Union (Withdrawal) Act 2018;
“Exit Management”	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	the process described in Paragraph 6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Extension Period”	has the meaning given to it in clause 4.2 (Term);

“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Remediation Plan”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Model”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Transparency Objectives”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Former Supplier”	has the meaning given in Schedule 9 (<i>Staff Transfer</i>);

“GDPR”	The General Data Protection Regulation (EU) 2016/679;
“General Anti-Abuse Rule”	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“General Change in Law”	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”	has the meaning given in Clause 9.7 (<i>Supply of Goods</i>);
“Group Structure Information and Resolution Commentary”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 1 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the date of this Agreement and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance

	with applicable Law regarding health and safety;
“HGS Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs which is owned or licensed by the Supplier’s Key Subcontractor, HGS UK Limited;
“HGS Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software which is owned or licensed by the Supplier’s Key Subcontractor, HGS UK Limited;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Implementation Plan”	the Detailed Implementation Plan as updated in accordance with Paragraphs 2, 3 and 4 of Schedule 6.1 (<i>Implementation Plan</i>) from time to time;
“Implementation Services”	the implementation services described as such in Part 2 of Schedule 2.1 (<i>Services Description</i>);
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services, being the Effective Date;
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
“Independent Control”	where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;
“Indirect Representation”	means where the Supplier acts in its own name but on behalf of the User;

“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period of from and including the Effective Date to 31 December 2022;
“Initial Upload Date”	means the occurrence of an event detailed in Schedule 8.4 (<i>Reports and Records Provisions</i>) Annex 3 (<i>Virtual Library</i>) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;
“Insolvency Event”	with respect to any person, means: <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

	(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
	(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
“Intellectual Property Rights” or “IPRs”	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Interim Milestone”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Intervention Cause”	has the meaning given in Clause 30.1 (<i>Remedial Adviser</i>);
“Intervention Notice”	has the meaning given in Clause 30.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 30.2(c) (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially</p>

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

- (c) the Supplier accruing in aggregate 75% or more Service Points which would constitute a Critical Performance Failure under limb (a) of that definition (in terms of the number of points allocated) in the same period specified in limb (a) of that definition;
- (d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or
- (e) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;

“IPRs Claim”

any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from Schedule 2.1 (*Service Description*) or the provisions of this Agreement;

“IT”

information and communications technology;

“IT Environment”

the Authority System and the Supplier System;

“Joint Controllers”

where two or more Controllers jointly determine the purposes and means of processing;

“Key Milestone”

the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7 (*Charges and Invoicing*) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;

“Key Performance Indicator”	the key performance indicators set out in Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (<i>Key Personnel</i>) against each Key Role as at the date of this Agreement or as amended from time to time in accordance with Clauses 14.5 and 14.6 (<i>Key Personnel</i>);
“Key Roles”	a role described as a Key Role in Schedule 9.2 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with Clause 14.4 (<i>Key Personnel</i>);
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model) but which shall not include McKinsey & Company Inc United Kingdom;
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	shall be as agreed pursuant to the provisions of Schedule 2.2 (<i>Performance Levels</i>);
“Law”	any law, statute, subordinate legislation within the meaning of section 21(1) of the

Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply including any applicable EU customs law including any applicable EU customs law;

“LED”

Law Enforcement Directive (*Directive (EU) 2016/680*);

“Licensed Software”

all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;

“Losses”

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

“Maintenance Schedule”

shall have the meaning set out in Clause 9.4 (*Maintenance*);

“Major Service Incident”

has the meaning given in Schedule 2.2 (*Performance Levels*);

“Malicious Software”

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Management Information”

the management information to be provided by the Supplier to the Authority pursuant to this Agreement, including:

- (a) the information derived from the MI Dashboard;
- (b) the management information specified in Schedules 2.2 (*Performance Levels*), Schedule 7.1 (*Charges and Invoicing*), Schedule 7.5 (*Financial Reports and Audit Rights*) and Schedule 8.1 (*Governance*), being:
 - (i) the Performance Monitoring Report;
 - (ii) Supplier invoices;
 - (iii) Financial Reports;
 - (iv) the Financial Model;
 - (v) the information to be provided pursuant to paragraph 5.3 of Part B of Schedule 7.1 (*Charges and Invoicing*);
 - (vi) the management information to be provided pursuant to paragraphs 1.11(b), 1.12 and 1.14 of Part A of Schedule 2.2 (*Performance Levels*); and
 - (vii) Board agendas, minutes, reports and risk management documentation to be provided pursuant to Schedule 8.1 (*Governance*), including the Risk Register; and/or
- (c) the Additional MI;

“Material KPI Failure”

- (a) a Serious KPI Failure;
- (b) a Severe KPI Failure; or
- (c) a failure by the Supplier to meet a KPI Service Threshold;

“Material PI Failure”

- (a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or

- (b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;

“Measurement Period”

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

“MI Dashboard”

the information provided by the Supplier pursuant to paragraph 4 of Part 3 of Schedule 2.1 (*Services Description*);

“Milestone”

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

“Milestone Achievement Certificate”

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

“Milestone Adjustment Payment Amount”

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

$$A - B$$

where:

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

“Milestone Adjustment Payment Notice”	has the meaning given in Clause 35.7 (<i>Payments by the Supplier</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 7 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate;
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Part A of Annex 1 to Schedule 2.2 (<i>Performance Levels</i>);
“month”	a calendar month and “ monthly ” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“NCSC”	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“New Releases”	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
“Non-retained Deliverables”	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;

“Notifiable Default”	shall have the meaning given in Clause 28.1 (<i>Rectification Plan Process</i>);
“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p style="margin-left: 40px;">(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p style="margin-left: 40px;">(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Book Data”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Open Source”	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
“Operating Environment”	the Authority System and the Sites;

“Operational Change”	any change in the Supplier's operational procedures which in all respects, when implemented: <ul style="list-style-type: none"> (a) will not affect the Charges and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and (d) will not require a change to this Agreement;
“Operational Service Commencement Date”	1 January 2021;
“Operational Services”	the operational services described as such in Schedule 2.1 (<i>Service Description</i>), except for Part 2 of Schedule 2.1 (<i>Service Description</i>);
“Other Supplier”	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Overhead”	as the meaning given to it in Schedule 7.1 (Charges and Invoicing);
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partnering Principles”	Shall have the meaning given to it in clause 4.12 (Partnering Principles);
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	the Key Performance Indicators and the Subsidiary Performance Indicators;

“Permitted Maintenance”	has the meaning given in Clause 9.4 (<i>Maintenance</i>);
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the GDPR;
“Personal Data Breach”	has the meaning given in the GDPR;
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“PI Service Threshold”	shall be as set out against the relevant Subsidiary Performance Indicator in Part B of Annex 1 to Schedule 2.2 (<i>Performance Levels</i>);
“Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Processor”	has the meaning given to it under the GDPR;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
“Profit Already Paid”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Programme Board”	the body described in Paragraph 5 of Schedule 8 (<i>Governance</i>);
“Prohibited Act”	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Project Specific IPRs”	Supplier Project Specific IPRs and Third Party Project Specific IPRs;
“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier’s group has Annual Revenue of £ [REDACTED] or more of which over 50% is generated from UK Public Sector Business;
“Public Sector and CNI Contract Information”	means the information requirements set out in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (<i>Service</i>

Continuity Plan and Corporate Resolution Planning);

“Publishable Performance Information”	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;
“Purchase Order Number”	the Authority’s unique number relating to the supply of the Services;
“Quality Plans”	has the meaning given in Clause 6.1 (<i>Quality Plans</i>);
“Quarter”	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
“Rate Card”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Re-baselining Reference Date”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Recipient”	has the meaning given in Clause 22.1 (<i>Confidentiality</i>);
“Records”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 28.4 (<i>Submission of the draft Rectification Plan</i>) or 28.8 (<i>Agreement of the Rectification Plan</i>); (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 28.7 (<i>Agreement of the Rectification Plan</i>);

- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 28.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process” the process set out in Clauses 28.4 (*Submission of the draft Rectification Plan*) to 28.9 (*Agreement of the Rectification Plan*);

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

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

“Relevant Authority” or “Relevant Authorities” means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;

“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
“Relevant Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 32.2 (<i>Authority Cause</i>);
“Remedial Adviser”	the person appointed pursuant to Clause 30.2 (<i>Remedial Adviser</i>);
“Remedial Adviser Failure”	has the meaning given in Clause 30.6 (<i>Remedial Adviser</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;

“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request for Estimate”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 31.1(a) (<i>Step-In Rights</i>);
“Retained Deliverables”	has the meaning given in Clause 35.8(b) (<i>Payments by the Supplier</i>);
“Risk Register”	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is to be agreed between the Parties pursuant to Annex 3 of Schedule 8.1 (<i>Governance</i>);
“Security Management Plan”	the Supplier's security plan as attached as Annex 2 of Schedule 2.4 (<i>Security Management</i>) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 2.4 (<i>Security Management</i>);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Part A of Annex 1 to Schedule 2.2 (<i>Performance Levels</i>);
“Service Charges”	the periodic payments made in accordance with Schedule 7 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;
“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);

“Service Credit Cap”	has the meaning given to it in paragraph 5.4 of Part A to Schedule 2.2 (<i>Performance Levels</i>);
“Service Credits”	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 7 (<i>Charges and Invoicing</i>);
“Service Period”	a calendar month, save that: <ul style="list-style-type: none"> (a) the first service period shall begin on 1 January 2021 and shall expire at the end of January 2021; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
“Service Points”	in relation to a KPI Failure, the points that are agreed by the parties in respect of each Key Performance Indicator pursuant to paragraph 1.10(f) to Part A of Schedule 2.2 (<i>Performance Levels</i>), which will apply in respect of each of a Minor KPI Failure, Serious KPI Failure, Severe KPI Failure and KPI Service Threshold;
“Service Stabilisation Period”	has the meaning given to it in paragraph 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Service Stabilisation Period Charge Report”	has the meaning given to it in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Service Transfer Date”	has the meaning given in Schedule 9 (<i>Staff Transfer</i>);
“Services”	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>);
“Services Description”	the description of the Services as set out in Schedule 2.1 (<i>Services Description</i>), but excluding the Supplier Solution;
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Part A of Annex 1 to Schedule 2.2 (<i>Performance Levels</i>);

“Shortfall Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <p style="padding-left: 40px;">(i) the Services are (or are to be) provided; or</p> <p style="padding-left: 40px;">(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p style="padding-left: 40px;">(i) any part of the Supplier System is situated; or</p> <p style="padding-left: 40px;">(ii) any physical interface with the Authority System takes place;</p>
“SME”	an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
“Social Value”	the social, economic or environmental benefits set out in the Authority’s Requirements;
“Software”	Specially Written Software, Supplier Software and Third Party Software;
“Software Supporting Materials”	has the meaning given in Clause 17.1(b) (<i>Specially Written Software and Project Specific IPRs</i>);
“Source Code”	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

“Specially Written Software”	Supplier Specially Written Software and Third Party Specially Written Software;
“Specific Change in Law”	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staffing Information”	has the meaning given in Schedule 9 (<i>Staff Transfer</i>);
“Standards”	the standards, policies and/or procedures identified in Schedule 2.3 (<i>Standards</i>);
“Step-In Notice”	has the meaning given in Clause 31.1 (<i>Step-In Rights</i>);
“Step-In Trigger Event”	<ul style="list-style-type: none"> (a) any event falling within the definition of a Supplier Termination Event; (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement; (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 31 (<i>Step-In Rights</i>) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (f) a need by the Authority to take action to discharge a statutory duty;
“Step-Out Date”	has the meaning given in Clause 31.5(b) (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 31.5 (<i>Step-In Rights</i>);

“Step-Out Plan”	has the meaning given in Clause 31.6 (<i>Step-In Rights</i>);
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Sub-contractor”	any third party with whom: <ul style="list-style-type: none"> (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, (c) or the servants or agents of that third party;
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
“Subsidiary Performance Indicator”	the performance indicators set out in Part B to Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 37.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing

the Supplier's Know-How or generic business methodologies; and/or

- (b) Intellectual Property Rights created by the Supplier independently of this Agreement,

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

“Supplier COTS Background IPRs”

Any embodiments of Supplier Background IPRs that:

- (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“Supplier COTS Software”

Supplier Software (including open source software) that:

- (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“Supplier Equipment”

the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;

“Supplier Gross Margin”

has the meaning given to it in Schedule 7.1 (*Charges and Invoicing*);

“Supplier Group”

means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;

“Supplier Non-COTS Background IPRs”	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 32.1 (<i>Authority Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
“Supplier Profit”	has the meaning given to it in Schedule 7.2 (<i>Payments on Termination</i>);
“Supplier Project Specific IPRs”	<p>(c) Intellectual Property Rights in items created by the Supplier specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(d) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;</p> <p>but shall not include the Supplier Background IPRs, the Supplier Specially Written Software, Third Party Project Specific IPRs or Third Party Specially Written Software;</p>
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3 (<i>Representatives</i>);
“Supplier Specially Written Software”	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software created specifically for the purposes of this Agreement but shall not include the Third Party Specially Written Software;

“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);
“Supplier Solution”	those parts of Schedule 2.1 (<i>Services Description</i>) which are not identified as requirements of the Authority;
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
“Supplier Termination Event”	<ul style="list-style-type: none"> (a) the Supplier’s level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable; (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 26.6(a) (<i>Financial and other Limits</i>); (d) a Remedial Adviser Failure; (e) a Rectification Plan Failure; (f) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> (i) Clause 19 (<i>IPRs Indemnity</i>); (ii) Clause 40.6(b) (<i>Prevention of Fraud and Bribery</i>); and/or (iii) Paragraph 6 of Schedule 7.4 (<i>Financial Distress</i>); (iv) Paragraph 12 of Part B to Schedule 8.6 (<i>Service Continuity</i>)

Plan and Corporate Resolution Planning);

- (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5.5(j) (*Services*);
 - (ii) Clause 24 (*Protection of Personal Data*);
 - (iii) Clause 23 (*Transparency and Freedom of Information*);
 - (iv) Clause 22 (*Confidentiality*); and
 - (v) Clause 36 (*Compliance*); and/orin respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or
- (j) Not used;
- (k) an Insolvency Event occurring in respect of the Supplier;
- (l) not used;
- (m) a change of Control of the Supplier 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 on which the change of Control took place or the date on which the Authority was given notice of the change of Control;
- (n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (*Appointment of Key Sub-contractors*);
- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9 (*Staff Transfer*);
- (p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;
- (q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
- (r) in relation to Schedule 2.4 (*Security Management*):
 - (i) the Authority has issued two rejection notices in respect of the Risk Management Document Set;
 - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance

with the timescales set out in the Required Changes Register;

- (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Authority has agreed in writing.
- (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or,
- (v) the Supplier fails to comply with the Incident Management Process.

“Supply Chain Transparency Report”

means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.4 (*Reports and Records Provisions*);

“Supporting Documentation”

has the meaning given to it in Schedule 7.1 (*Charges and Invoicing*);

“Target Performance Level”

the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in Annex 1 of Schedule 2.2 (*Performance Levels*);

“Tax”

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

	in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;
“Term”	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
“Termination Assistance Notice”	has the meaning given in Paragraph 5 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Estimate”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“Tests” and “Testing”	any tests required to be carried out under this Agreement, as further described in Schedule

6.2 (*Testing Procedure*) and “**Tested**” shall be construed accordingly;

“Test Success Criteria”

has the meaning given in Schedule 6.2 (*Testing Procedures*);

“Third Party Auditor”

an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 8.4 (*Reports and Records Provisions*);

“Third Party Beneficiary”

has the meaning given in Clause 44.1 (*Third Party Rights*);

“Third Party Contract”

has the meaning given in Schedule 7.2 (*Payments on Termination*);

“Third Party COTS IPRs”

Third Party IPRs that:

- (a) the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“Third Party COTS Software”

Third Party Software (including open source software) that:

- (a) the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and
- (b) has a Non-trivial Customer base;

“Third Party IPRs”

Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

“Third Party Non-COTS IPRs”

Third Party IPRs that are not Third Party COTS IPRs;

“Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software;
“Third Party Project Specific IPRs”	<p>(a) Intellectual Property Rights in items created by a Subcontractor (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement by a Subcontractor (or by a third party on behalf of the Supplier);</p> <p>but shall not include the Supplier Background IPRs, the Third Party Specially Written Software, Supplier Project Specific IPRs or Supplier Specially Written Software;</p>
“Third Party Provisions”	has the meaning given in Clause 44.1 (<i>Third Party Rights</i>);
“Third Party Specially Written Software”	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by a Sub-contractor or other third party on behalf of the Supplier specifically for the purposes of this Agreement, including any modifications or enhancements to Third Party Software created specifically for the purposes of this Agreement but shall not include the Supplier Specially Written Software.
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);
“Time and Materials Basis”	has the meaning given to it in Schedule 7.1 (<i>Charges and Invoicing</i>);

“Total Costs Incurred”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Trader Data”	the data collected and generated by the Supplier and/or any Sub-contractor from and/or on behalf of each User and contained in any Declaration to the extent retained by the Supplier in accordance with this Agreement;
“Transferring Assets”	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (<i>Exit Management</i>);
“Transferring Authority Employees”	has the meaning given in Schedule 9 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 9 (<i>Staff Transfer</i>);
“Transferring Supplier Employees”	has the meaning given in Schedule 9 (<i>Staff Transfer</i>);
“Transparency Information”	has the meaning given in Clause 23.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“UK”	the United Kingdom;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm’s length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“UK Public Sector / CNI Contract Information”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Unacceptable KPI Failure”	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the

	Key Performance Indicators that are measured in that Service Period;
“Unconnected Sub-contract”	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Unrecovered Profit”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Schedule 8.4 (<i>Reports and Records Provisions</i>) Annex 3 (<i>Virtual Library</i>) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Upgrades”	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
“User”	is defined in Annex 9 to Schedule 2.1 (<i>Services Description</i>);
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part B to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);

“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 8.4 (<i>Reports and Records Provisions</i>); and
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales or Northern Ireland.