



HM Revenue
& Customs

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

Banking Services Agreement

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THIS AGREEMENT is made this day of March 2015 (the “**Effective Date**”)

BETWEEN:

- (1) **THE COMMISSIONERS FOR HER MAJESTY’S REVENUE & CUSTOMS** acting as part of the Crown and for this purpose through the Office of The Government Banking Service whose principal office is at 100 Parliament Street, London SW1A 2BQ (the “**Authority**”); and
- (2) The Royal Bank of Scotland Plc. (Company Number SC090312) whose registered office is at 36 St Andrew Square, Edinburgh, EH2 2YB (the “**Supplier**”).

RECITALS:

- (A) On 14 June 2014 the Authority advertised in the Official Journal of the European Union (reference number 2014/S 113-199009) for a Supplier to supply the Services as defined in this Agreement to the Authority and certain other Government Departments, executive agencies, non-Departmental public bodies, other Crown Bodies and other public sector bodies or organisations.
- (B) The Authority and the Supplier participated in a restricted procedure as defined by the Public Contracts Regulations 2006, following which the Supplier, amongst other Suppliers, submitted its solution in response to the Authority's invitation to tender.
- (C) On the basis of the Supplier's solution, the Authority selected the Supplier to provide the Services as defined in this Agreement.
- (D) The Supplier has represented that it has the necessary skill and expertise to provide the Services and, on that basis, the Authority has agreed to enter into this Agreement and the Supplier has agreed to provide the Services on the terms set out herein.
- (E) The Authority intends that under this Agreement the Services will be available for purchase by it on behalf of all other Government Departments, executive agencies, non-Departmental public bodies, other Crown Bodies and other public sector bodies or organisations by means of a Services Order as set out in

Schedule 11 (**Services Order**) of this Agreement. This document together with the Services Orders shall form the Agreement between the Authority and the Supplier and the Supplier shall provide the Services to the Authority in accordance with the terms of the Agreement and the Services Orders.

- (F) The Authority and the Supplier wish to enter into this Agreement in order to govern in more detail the provision of Services by the Supplier to the Authority.

IT IS AGREED as follows:

SECTION A – PRELIMINARY MATTERS

1. Interpretation and Priority of Documents

1.1 Definitions and Interpretation

- (a) In this Agreement, unless the contrary intention appears, all capitalised terms shall have the meanings set out in Schedule 1 (**Definitions**).
- (b) In this Agreement, unless the context indicates a contrary intention:
 - (i) words suggesting the singular include the plural and vice versa;
 - (ii) words suggesting any gender include any other gender;
 - (iii) references to the Parties include their permitted successors and assigns;
 - (iv) references to a person include a company, partnership, joint venture, corporation, unincorporated or incorporated association, other body corporate and statutory authority;
 - (v) references to Clauses, Schedules, paragraphs and sub-paragraphs mean, unless expressly provided otherwise, the Clauses, Schedules, paragraphs and sub-paragraphs of this Agreement;

- (vi) headings used for Clauses, Schedules, paragraphs and sub-paragraphs and the table of contents are for ease of reference only and will not affect the interpretation of this Agreement;
- (vii) references to any agreement or instrument are to that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (viii) use of the words 'includes' or 'including' means without limitation, unless the contrary intention appears;
- (ix) references to statutes or statutory instruments shall be to:
 - (A) such statutes or statutory instruments as they may be amended, replaced or supplemented from time to time; and
 - (B) any regulations made under such statutes; and
 - (C) statutes made in the United Kingdom and statutory instruments made under them;
- (x) the Schedules shall form part of, and be construed in accordance with, this Agreement; and
- (xi) Recital D above shall form an integral part of this Agreement.
 - (c) Where the day on or by which any thing is to be done is not a Working Day, that thing must be done on or by the following Working Day.
 - (d) The Authority shall not be treated to have knowledge of any UK Government policy, fact, matter or thing unless that Government policy, fact, matter or thing is within the knowledge of those of the Government's employees or agents who have relevant responsibilities in connection with the Authority's Service Requirements or the Services.
 - (e) Where this Agreement refers to an English legal term and that reference is being considered in the context of an event which has occurred or may occur outside England, the term should be interpreted to include what most nearly

approximates to the English legal term in the relevant jurisdiction.

- (f) References to "this Agreement" include all Services Orders.

1.2 Priority of Documents

Unless otherwise specifically agreed in writing between the Parties, if there is any inconsistency between any of the Terms and Conditions, Schedules 1 to 12 (inclusive), any Annexes and any other document referred to in or incorporated into this Agreement, the order of priority for the purposes of construction is:

- (a) these Terms and Conditions and Schedule 1;
- (b) (in descending order of priority):
- The Authority's Service Requirements in Schedule 2, any Schedule 11 Services Orders and Schedule 12
 - Schedules 3 to 10 inclusive
 - The Supplier's terms and conditions contained in Schedule 2

2. Term

- (a) This Agreement shall commence from the Effective Date and shall continue for seven (7) years (the “**Initial Term**”), unless terminated earlier either in whole or in part in accordance with Clause 48 (**Termination**).
- (b) The Authority may, at its option, require this Agreement to continue in force after expiry of the Initial Term for up to three (3) successive periods of one (1) year (each successive one year period being known as a “**Continuing Term**”). Such option shall be exercised for the next following Continuing Term by the Authority giving to the Supplier written notice not later than three (3) months prior to the expiry of the Initial Term or the first or second Continuing Term (whichever is then current).
- (c) Each Continuing Term shall commence on the relevant anniversary of the Effective Date and continue for the duration of the Continuing Term unless terminated earlier either in whole or in part in accordance with Clause 48 (Termination). During each Continuing Term this Agreement shall, subject as provided by this Agreement, continue on the same terms and conditions (including as regards Service Charges) as apply immediately before the commencement of that Continuing Term.
- (d) If the Authority does not give written notice of its intention to renew the Agreement as referred to in Clause 2(b), the Parties acknowledge and agree that:
 - (i) the Agreement shall be treated as having expired at 11.59 pm on the day before the relevant anniversary of the Effective Date; and
 - (ii) such expiry shall not trigger the payment of any additional fees to the Supplier or be treated as a termination for convenience by the Authority pursuant to Clause 48.4;
- (e) The total term of this Agreement shall not exceed ten (10) years in aggregate, save where the Supplier is required to provide Termination Assistance.

3. Non-Exclusivity

The Supplier agrees that its relationship with the Authority is not exclusive and that the Authority may contract with any third party to perform services which are the same as or similar to some or all of the Services, or may itself perform such

services.

4. Due Diligence

4.1 General

The Supplier acknowledges that, in entering into this Agreement, it has satisfied itself as to the nature and extent of the Services required to be provided by the Supplier pursuant to this Agreement, the suitability and extent of interfacing work required with the Authority, Authority Software and Authority Materials, the nature and content of the Authority Security Requirements and any other matters which the Supplier considers relevant in relation to this Agreement.

4.2 Due Diligence acknowledgements

The Supplier further acknowledges and agrees that:

- (a) the Authority has relied upon the Supplier's expertise and professionalism in:
- (b) carrying out its due diligence exercise; and
- (c) coming to a view as to the methods and resources necessary to provide the Services; and
- (d) it has all information, rights, equipment, Hardware, Software, Supplier Systems and Personnel necessary in order to enable it to provide the Services and any Deliverables in accordance with the provisions of this Agreement.

4.3 No Warranty

The Authority gives no warranty, representation or undertaking that the data or information made available to the Supplier prior to the Effective Date is accurate or represents all of the information in its possession or power relevant or material to the Services and/or the obligations undertaken by the Supplier under this Agreement.

5. Authority Customers and Contractual Relationships

- (a) The Supplier acknowledges that the Authority Customers shall be entitled to receive and benefit from any or all of the Services and agrees that:

- (i) all payments due under this Agreement (but for the avoidance of doubt excluding payments to or from an Authority Bank Account which are made in the course of providing the Services) shall flow between the Authority and the Supplier and vice versa. Accordingly all Service Charges and/or other payments due under this Agreement to the Supplier, including any payments due in respect of Services acquired by the Authority for Authority Customers, will be due and payable by the Authority; and
- (ii) in the event of any breach of this Agreement by the Supplier which results in loss or damage being suffered or incurred by an Authority Customer, the Authority shall be entitled to recover any or all Losses suffered by any or all of the Authority Customers to the extent that the Authority would have been entitled to recover such Losses if such loss or damage had been suffered or incurred by the Authority as a result of such breach and/or for which the Authority is liable to an Authority Customer, subject to Clause 46 (Liability and Limitation of Liability) and the other provisions of this Agreement. Accordingly no Authority Customer shall be entitled to raise any action, make any claim or recover any Losses directly from the Supplier; and
- (iii) for the purposes of this Clause 5(a), references in this Agreement (other than in this Clause) to the Authority shall be interpreted as referring to or including the Authority Customer receiving the Services, as the context requires for the purpose of giving effect to this Clause.
- (b) Any Losses suffered by any or all of the Authority Customers shall be subject to Clause 45 and 46, unless the Parties agree in writing otherwise.
- (c) The limitations and exclusions of liability in this Agreement apply to all liability of the Supplier for (i) Losses incurred by the Authority, and (ii) Losses incurred by the Authority Customers in aggregate under or in connection with this Agreement.
- (d) The Authority shall be entitled to enforce any provision of this Agreement against the Supplier either for its own benefit or for the benefit of any of the Authority Customers. Any claim by an Authority Customer in respect of the Supplier's breach of this Agreement shall be brought by the Authority on the Authority Customer's behalf and the Authority Customers shall not otherwise be entitled to enforce any provision of this Agreement against the Supplier. Any civil proceedings in connection with such enforcement shall be brought solely by the Authority.

- (e) The Supplier shall be entitled to enforce any provision of this Agreement only against the Authority and not against any Authority Customers. This right shall apply in respect of any Default by the Authority including any act or omission of the Authority Customers in connection with this Agreement. Any civil proceedings in connection with such enforcement shall be brought solely by the Supplier.
- (f) The Parties agree that the provisions of this Clause 5 are reasonable and are intended as a mechanism for channelling any and all claims through the respective Parties to this Agreement.
- (g) The Services are supplied to the Authority notwithstanding that the supply thereof may be made to, or (subject to the Authority having confirmed to the Supplier in writing (by service of a Services Order set out in Schedule 11 (**Services Order**))) that the Authority Customer has authority to issue instructions to the Supplier in connection with the provision of the Services) on the instructions of, the Authority Customers. For the purposes of this Agreement, Authority Customers and the Authority constitute one and the same person and accordingly the supply of Services to Authority Customers constitutes a supply thereof to the Authority. To the extent that the Services are supplied to the Authority for its own use and benefit (and not for an Authority Customer) references in this Agreement to the Authority Customers shall where the context requires include the Authority.
- (h) Notwithstanding Clause 5(g) it is expressly acknowledged and agreed by the Supplier that the provision of the Services and the performance of its obligations hereunder are for the benefit of, and to fulfil the requirements of, the Authority Customers. Accordingly, without prejudice to any other provision of this Agreement, it is expressly agreed that in supplying the Services and in performing its obligations under this Agreement the Supplier shall owe a duty of care to the Authority Customers.

6. Partnering and Joint Objectives

6.1 Partnering; Contractual Relationships

Both Parties acknowledge that this Agreement provides for a long term relationship between the Parties and that this relationship is intended to evolve over time for their mutual benefit. This Agreement shall operate on a partnering basis and the Parties will work in accordance with the provisions of Schedule 6 (**Governance and Co-operation**):

- (a) in a proactive, flexible and collaborative manner; and
- (b) making use of open communications between the Parties, mutual trust and the sharing of information;

in order to achieve the objectives referred to below in Clause 6.2. The Parties will co-operate in good faith to resolve issues in a timely and cost effective manner and acknowledge that the success of the Agreement is dependent upon co-operative joint working and the achievement of common goals.

6.2 Objectives and Partnering Arrangement

- (a) The objectives of the partnering arrangement created by the Parties include the following:
 - (i) continuously to improve the Services;
 - (ii) continuously to improve processing efficiencies and economies of scale in order to provide a cost efficient but mutually beneficial relationship for both Parties;
 - (iii) to improve efficiency and reduce costs by identifying innovative approaches to the provision of the Operational Services;
 - (iv) to enable the better management of information and informing future development of better policies and provision; and
 - (v) for the Supplier to work in close co-operation with the Authority, using up to date practice and appropriate technologies to safeguard the reputation of both Parties and the Authority Customers against fraudulent activity.
- (b) The provisions of this Clause 6.2 are intended to be a summary of the approach which the parties intend to adopt in this Agreement and are not intended to expand the scope of the Parties' obligations or to alter the meaning or construction of this Agreement. However, to the extent that this Agreement does not address a particular circumstance or is otherwise unclear or ambiguous, this Agreement is to be interpreted and construed so as to give effect to Clause 6.2(a).

SECTION B – SERVICE DEVELOPMENT

7. Implementation and Implementation Services

7.1 Application to Authority Customers

- (a) The provisions of this Section B (Service Development) shall apply at the commencement of this Agreement in relation to the Original Authority Customers.
- (b) The Authority and the Supplier shall comply with any provisions for Implementation in respect of any Additional Authority Customer which may be specified in the Services Order applicable to that Authority Customer.

7.2 Development of Implementation Plans

- (a) The Authority shall be responsible for developing an implementation plan (the “**Overall Implementation Plan**”) providing for the implementation of the Authority’s Service Requirements of which the provision of the Services is an integral part together with the provision to the Authority and Authority Customers of other banking services by other commercial banks and by the Bank of England, the provision of back office and other services by other service providers, and the transition and exit of any Outgoing Supplier.
- (b) In respect of the Operational Services, the Supplier must within 20 Working Days from the Effective Date draw up and submit to the Authority for the Authority’s approval a draft detailed implementation plan providing for the successful Implementation of the Services (the “**Supplier’s Implementation Plan**”). The Supplier’s Implementation Plan must:
 - (i) comply with the applicable requirements set out in Schedule 2 (**The Authority’s Service Requirements**);
 - (ii) plan and provide for the Achievement of specified Milestone Dates in respect of the Key Deliverables and the commencement of provision of the Operational Services as soon as reasonably practicable;
 - (iii) conform with Good Industry Practice;
 - (iv) include detailed provisions (including procedures, timing and criteria for success) for tests (which shall include Supplier functional

and performance testing; Supplier simulated user testing; Authority and end user simulated testing; and Authority and end user live testing) (“**Assurance Tests**”) designed to demonstrate successful Implementation and the Supplier’s ability to deliver the Services in accordance with this Agreement; and

- (v) plan and provide for the transition of the provision of Services from and exit of any Outgoing Supplier.
- (c) The Authority shall review the draft Supplier’s Implementation Plan and may propose any amendments which shall be incorporated into the Supplier’s Implementation Plan or discussed and resolved as soon as practicable by the Parties. When the Supplier’s Implementation Plan is in form and substance satisfactory to the Authority, the Authority shall notify the Supplier of its approval of the Supplier’s Implementation Plan.
- (d) Thereafter,
 - (i) the Authority shall prepare the Overall Implementation Plan which shall form Schedule 5 to the Agreement, and shall be notified to, and discussed and agreed with the Supplier as soon as reasonably practicable after its preparation; and
 - (ii) the Supplier shall keep the Supplier’s Implementation Plan under regular review and the Supplier’s Implementation Plan shall be amended as agreed from time to time in accordance with the Authority’s reasonable requirements and the principles set out in Clause 7.2(b).

7.3 Implementation – Supplier Obligations

- (a) Following agreement of the Overall Implementation Plan, the Supplier shall diligently and properly implement the Supplier’s Implementation Plan.
- (b) The Authority shall be responsible for the management of the Overall Implementation Plan and for managing the interface between the Authority, the Authority Customers, the Supplier, any Outgoing Supplier and the other service providers and stakeholders, and the Supplier shall be responsible for management of the Implementation as provided in the Supplier’s Implementation Plan.
- (c) Subject to the direction of the Authority, the Supplier must:

- (i) keep the Implementation on schedule and in accordance with the timetable set out in the Supplier's Implementation Plan;
 - (ii) identify and resolve, or assist the Authority in the identification and resolution of, any problems encountered in the timely completion of each task identified in the Supplier's Implementation Plan, whether or not the task is the responsibility of the Supplier, the Authority, any Authority Customer, any Outgoing Supplier or any other existing suppliers; and
 - (iii) on a monthly basis (or such other period as the Authority may require) share with the Authority a properly updated and regularly maintained risk issues log identifying all potential risks, the likelihood of the occurrence of the relevant risks and appropriate mitigation.
- (d) From the Effective Date until completion of the Implementation, the Supplier must provide the Authority with weekly progress reports that:
- (i) describe in reasonable detail the current status of the Implementation;
 - (ii) indicate the progress of the work being performed;
 - (iii) identify any actual or anticipated problems or delays;
 - (iv) assess the impact of such problems or delays on the Supplier's provision of the Services and the Supplier's Implementation Plan and the Overall Implementation Plan; and
 - (v) describe all actions being taken or to be taken to remedy such problems or delays.

7.4 Assurance Tests

The Supplier must make available the relevant Deliverables to the Authority in order for the Assurance Tests to be performed in accordance with the procedures set out in the Supplier's Implementation Plan.

7.5 Delivery or Payment does not Constitute Acceptance

The supply of any Deliverable by or on behalf of the Supplier to the Authority or the payment (in whole or in part) for any Deliverable or for any Services by the Authority will not constitute acceptance of that Deliverable by the Authority. Furthermore, where the Supplier's Implementation Plan contemplates the delivery of a number of related Deliverables, then confirmation by the Authority of satisfactory completion of Assurance Tests in respect of particular Deliverables shall be subject to, and contingent upon, the Authority issuing such confirmation in respect of all such related Deliverables.

8. Progression and timing of the Implementation

8.1 Timing

The Supplier acknowledges and accepts that it is critical and material to the Authority's strategic, reputational and financial interests that the Supplier completes each of the Key Deliverables by their Milestone Dates.

8.2 Alteration to the Timing

Save where otherwise agreed by the Parties, only an approved Contract Change Request, a failure by the Authority pursuant to Clause 18.2 or a Force Majeure Event may alter the Milestone Dates for the Key Deliverables.

8.3 Where time not specified

Without prejudice to the remainder of this Agreement, where dates for the provision of Services are not specified in this Agreement, the Supplier shall provide such services in a timely and efficient manner having due and proper regard to the Authority's requirements for prompt delivery and value for money.

9. Transition Services

The Parties shall comply with their respective obligations set out in the Supplier's Implementation Plan and the Overall Implementation Plan.

SECTION C SERVICES

10. Provision of Services

10.1 Services - General

Throughout the Term, the Supplier must provide the Supplier's Solution and the Services so that they comply with the Authority's Service Requirements. In the event that the Supplier becomes aware of any non-compliance of the Supplier's Solution with the Authority's Service Requirements the Supplier must immediately:

- (a) give notice to the Authority of such non-compliance; and
- (b) at no additional cost to the Authority, amend the Supplier's Solution so that it and the Services comply with the Authority's Service Requirements.

10.2 Scope of Services

The Supplier must provide, perform and accept any services, functions and responsibilities (including any incidental service, function or responsibility) not specified in the Authority's Service Requirements if they are reasonably and necessarily required for or related to the proper performance and provision of the services, functions and responsibilities so specified (unless those services, responsibilities or functions are specifically identified in this Agreement as being solely the responsibility of the Authority, the Authority Customers and/or third parties acting on behalf of or appointed by the Authority and/or Authority Customers).

10.3 Authority's Request for Services

Whenever the Authority requires Services to be provided by the Supplier for an Additional Authority Customer, the procedure set out in Schedule 11 (**Services Order**) shall be followed. A Services Order issued by the Authority shall (without limitation) specify the Services to be provided to that Additional Authority Customer, any Authority's Service Requirements which are specific to the Additional Authority Customer, and any requirements for Implementation with regard to the Additional Authority Customer.

10.4 Amendments to the Services Description

Without limiting the Supplier's obligations under Clause 10.1 and Clause 10.2, if either Party identifies a service, function or responsibility that forms part of the

Services in accordance with Clause 10.2, the Parties will promptly amend the relevant Schedule(s) to this Agreement in order to include that service, function or responsibility or reflect that change in scope and the Supplier shall provide such service at no additional cost.

10.5 Services – Obligations of the Supplier

Throughout the Term, the Supplier undertakes to perform the Services (as the same may be amended from time to time in accordance with this Agreement) for the Authority and in accordance with:

- (a) all the provisions of this Agreement, including without limitation the provisions of Schedule 3 (**Service Levels**) and Schedule 2 (**The Authority's Service Requirements**) and any specifications applicable to Deliverables or Key Deliverables agreed by the parties in writing and the provisions of Schedule 6 (**Governance and Co-operation**);
- (b) the requirements of any Services Orders;
- (c) the Authority Security Requirements, including without limitation the provisions of Schedule 9 (**Information Security Assurance and Accreditation**);
- (d) all reasonable directions given to the Supplier by the Authority during the Term to the extent that those directions are related or incidental to the Services and provided that those directions are not inconsistent with the Terms and Conditions of this Agreement; and
- (e) in a timely and efficient manner, to a professional standard in accordance with Good Industry Practice and in a manner that is not likely to be injurious to health or to cause damage to property or unlawfully interfere with the convenience of the public.

10.6 Co-operation with Third Party Suppliers

At any time, the Authority and Authority Customers may perform themselves, or retain third parties to perform, any services other than the Services. The Supplier must, at no additional cost, co-operate (to the extent it is able to do so without impacting on its ability to perform the Services) with all relevant parties in accordance with the principles set out in Schedule 6 (**Governance and Co-operation**), in order to facilitate the co-ordination of other services that impact

upon or interact with the Services. The Authority will likewise cooperate with all the relevant third parties engaged by the Supplier to deliver the Services.

10.7 Suspension of Services

Where there is:

- (a) a Change in Law; or
- (b) a change in regulation or standards; or
- (c) a security issue,

which unavoidably results in the Supplier being unable in a material respect to meet its obligations under the Agreement, and provided:

- (i) the Supplier has, promptly upon becoming aware of any such proposed change or any such security issue, notified the Authority with full details of the implications for the performance of the Supplier's obligations; and
- (ii) the Supplier has sought in good faith to find and agree with the Authority a resolution of the problem; and
- (iii) (in the case of a Change in Law) a Contract Change has not been implemented in accordance with Clause 20 which enables the continued performance of the Agreement in compliance with the Change in Law,

the Supplier may seek agreement from the Authority (such agreement not to be unreasonably withheld) for the affected Services to be suspended on terms to be agreed between the Parties.

11. Future Services

- (a) Subject always to the Authority's ability at Law to do so and the right of the Authority (which shall not in any way be fettered or restrained) to seek bids from alternative suppliers, the Authority may request the Supplier to supply any Future Services to the Authority from time to time.

- (b) In responding to any such request, the Supplier must demonstrate that its pricing is competitive and its provision of Future Services will provide value for money to the Authority.
- (c) Future Services and the Service Charges relating to them shall be agreed in the manner set out in Schedule 8 (**Change Control Procedure**).
- (d) The Supplier's provision of the Future Services shall be subject to testing as may be agreed in accordance with the Change Control Procedure, and the Future Services will become part of the Services from the agreed date.
- (e) The Supplier agrees that (save as agreed otherwise by the Authority under the Change Control Procedure) the performance of the Services measured against their respective Service Levels shall not be degraded or reduced by the addition of any Future Services.

SECTION D – PERFORMANCE

12. Service Levels

12.1 General

Schedule 3 (**Service Levels**) sets out the Service Levels that shall apply to the Operational Services detailed in that Schedule. The Supplier shall at all times perform the Operational Services so as to achieve or exceed the Service Levels set out in Schedule 3 (**Service Levels**).

12.2 Failure to Perform

Without prejudice to any rights of the Authority arising under Clause 48, in the event of a Service Level Default, the Supplier shall:

- (a) investigate the underlying causes of the Service Level Default and use all reasonable efforts to preserve any data indicating the cause of the Service Level Default;
- (b) prepare and deliver to the Authority a report identifying the causes of the Service Level Default;
- (c) use all reasonable efforts immediately to minimise the impact of the Service Level Default to the Authority and to prevent it recurring;

- (d) correct the Service Level Default within the time scale set out in Schedule 3 (**Service Levels**), or within two (2) Working Days, or within the time scale as otherwise agreed between the Parties and, thereafter, ensure that it meets each relevant Service Level; and
- (e) advise the Authority, as and to the extent requested by the Authority, of the status of the remedial efforts being undertaken by the Supplier to avoid a recurrence of the Service Level Default.

12.3 Periodic Reviews of Service Levels

At such times as the Authority may require, the Authority and the Supplier shall review the Service Levels and make adjustments to them as the Parties agree are appropriate to reflect any improved performance capabilities associated with advances in technology, processes and methods used to provide the Services. The Parties expect and understand that the Service Levels shall improve over time and that the intention behind such review shall be to determine whether the Service Levels should be increased or decreased and if any Future Services require service levels. Any agreed adjustments shall be made in accordance with the Change Control Procedure and shall be at no additional cost to the Authority, which includes for the avoidance of doubt any improved performance by the Supplier. Should there be a reduction in Service Levels the Authority expects there to be a reduction in Service Charges (such reduction to be agreed between the Parties). Any dispute between the Parties regarding the Service Levels shall be subject to resolution in accordance with Clause 61.

13. Performance Monitoring

At the end of every Measurement Window the Supplier must measure and report its performance against the Service Levels, using appropriate measurement and monitoring tools and procedures to measure its performance accurately and in a level of detail sufficient to verify compliance or non-compliance with the Service Levels. The Supplier must:

- (a) provide the Authority with information as reasonably required by the Authority to verify that such measurement and monitoring tools accurately measure the Supplier's performance; and
- (b) report to the Authority in a level of detail which will enable the Authority to verify compliance or non-compliance by the Supplier with the Service Levels.

14. Quality assurance

- (a) The Supplier must, throughout the Term, provide quality assurance and quality improvement as follows. Without prejudice to any other provisions of this Agreement the Supplier shall:
- (i) in managing projects for the Authority, use Prince 2 or equivalent as the Supplier's recognised project management methodology;
 - (ii) implement, in accordance with Good Industry Practice, quality processes which must conform with ISO 9001:2001 or equivalent; and
 - (iii) in respect of information security, comply with the terms set out in Schedule 9 (**Information Security and Accreditation**);

and otherwise shall comply with the Supplier's internal and, independently audited quality standards and such other standards as may be required by Good Industry Practice and agreed with the Authority. Where any standard is referred to in this Agreement, it shall include reference to supporting standards and/or documentation and to any standards which amend, extend, consolidate or replace the same. Where practicable, the Supplier must always ensure compliance with appropriate open standards in preference to closed proprietary standards; and

- (b) The Supplier shall forecast and seek to mitigate (so far as practicable) the risk that the alteration of one process change may affect other processes.

15. Continuous Improvement of the Services

- (a) The Parties acknowledge that, as part of the Operational Services, the ongoing pro-active improvement of the Services (while maintaining quality and complying with the Supplier's Implementation Plan and the Overall Implementation Plan) and appropriate incentivisation (as set out in Schedule 4 (**Financial Obligations**)), of the Supplier are intended to form a key aspect of this Agreement.
- (b) Throughout the Term, the Supplier undertakes pro-actively to identify opportunities for improvements which would enable the Authority to improve efficiency on an ongoing basis (including by way of reducing costs and utilisation of new and innovative ways (whether by improvements in technology, banking methods or otherwise) of delivering the Services), to

generally improve the Operational Services and to resolve any problems that arise in the provision of the Services as quickly and helpfully as possible.

16. Force Majeure

16.1 Neither Party Liable

- (a) Neither Party will be liable for any Default or delay in performance of its obligations under this Agreement if and to the extent the Default or delay is caused, directly or indirectly, by a Force Majeure Event, but in each case only if and to the extent that the non-performing Party is without fault in causing the Default or delay, and the Default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party at its expense through the use of existing available resources, work around plans, any relevant provision of the Business Continuity Plan and/or Disaster Recovery Plan or any other means.
- (b) Any Default or delay in performance of its obligations under this Agreement by the Supplier which results from any Default or delay by a Subcontractor, agent or supplier shall be regarded as due to Force Majeure only if that Subcontractor, agent or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.

16.2 Period of Delay

When a Force Majeure Event has occurred, the non-performing Party will (subject to and as provided in Clause 16.1) be excused from further performance of the obligations affected for as long as the circumstances prevail and the non-performing Party continues to use its reasonable efforts to recommence performance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due in writing by the most expeditious means available and describe at a reasonable level of detail the circumstances causing such delay and the period for which it is estimated that such delay shall continue.

16.3 Authority's Option

If the Supplier is delayed, prevented or excused from performing its obligations under this Agreement due to a Force Majeure Event and, as a result, the provision of a substantial part or key aspect of the Services is not available or is

substantially hindered, degraded or delayed or completion of a Key Deliverable is substantially prevented, hindered, degraded or delayed for more than ten (10) consecutive days, then at the Authority's option and without limiting any other rights it may have:

- (a) the Authority may exercise its rights in accordance with Clause 27;
- (b) the Authority may remove the affected Services from the scope of this Agreement and shall benefit from a resultant decrease in Service Charges, and not suffer any increase in Service Charges for the remaining Services; or
- (c) the Authority may terminate this Agreement in whole or in part, without incurring any liability to the Supplier as of a date specified by the Authority in a written notice of termination to the Supplier, and Termination Assistance shall be provided.

16.4 No Compensation

- (a) The Supplier shall not have the right to any payments from the Authority under this Agreement as a result of any Force Majeure Event or the performance of its obligations under this clause.
- (b) Where a Force Majeure Event affects the Supplier, the Supplier shall only be entitled to payment of Service Charges (or a proportional payment thereof) to the extent the Services (or part of the Services) are actually delivered to the Authority or Authority Customers.

16.5 Exclusions from Force Majeure

In no circumstances will:

- (a) an industrial dispute affecting part or all of the non-performing Party's workforce or the workforce of a Subcontractor; or
- (b) an event that is within the scope of the Business Continuity Plan;

constitute a Force Majeure Event provided that in the case of (b) above, an event shall constitute a Force Majeure Event to the extent that the implementation of the Business Continuity Plan is itself affected by such Force Majeure Event.

17. Disaster Recovery and Business Continuity Services

- (a) The Supplier must provide the Authority with a suitable Disaster Recovery Plan and Business Continuity Plan meeting the applicable requirements set out in Schedule 2 (**Authority's Service Requirements**) and any other reasonable concerns of the Authority and otherwise in accordance with Good Industry Practice within two (2) months of the Effective Date.
- (b) The Authority shall review the Disaster Recovery Plan and Business Continuity Plan and may propose any amendments which shall be incorporated into the Disaster Recovery Plan and Business Continuity Plan or discussed and resolved as soon as practicable by the Parties. When the Disaster Recovery Plan and Business Continuity Plan are in form and substance satisfactory to the Authority, the Authority shall notify the Supplier of its approval of the Disaster Recovery Plan and Business Continuity Plan.
- (c) Thereafter the Supplier shall keep the Disaster Recovery Plan and Business Continuity Plan under regular review and the Disaster Recovery Plan and Business Continuity Plan shall be amended as agreed from time to time in accordance with ongoing Good Industry Practice or otherwise in accordance with the Authority's reasonable requirements.
- (d) Each Party shall as soon as possible notify the other if it believes that there is a business disruption requiring the implementation of the Disaster Recovery Plan and/or Business Continuity Plan in whole or in part.

SECTION E – CONTRACTOR AND AUTHORITY PROTECTION

18. Authority Obligations

18.1 Authority Undertakings and Responsibilities

The Authority undertakes to provide the Supplier with such information and co-operation as may reasonably be required to assist the Supplier to carry out its obligations under this Agreement.

18.2 Dependencies

- (a) The following provisions apply in circumstances where the Supplier has not provided certain of the Services it is contractually obliged to provide as a direct consequence of a failure by the Authority, the Authority Customers,

or the Authority's or any Authority Customer's other suppliers, to meet their obligations set out in this Agreement.

- (b) The failure by the Authority, the Authority's Customers, or the Authority's or any Authority Customer's other suppliers to perform any of its obligations set out in this Agreement shall not constitute a repudiation of this Agreement by the Authority, shall not be deemed to be grounds for termination by the Supplier and shall not entitle the Supplier to treat itself as discharged.
- (c) Without prejudice to the foregoing, the Supplier's non-performance of its obligations or delay under this Agreement shall be excused if, and to the extent that, such non-performance is a direct consequence of the failure by the Authority, the Authority's Customers, or the Authority's or any Authority Customer's other suppliers, to perform their obligations under this Agreement.
- (d) Without prejudice to the provisions of sub-Clauses 18.2(b) and 18.2(c) above, the Supplier must provide to the Authority, within five (5) Working Days of the Supplier becoming aware of such non-performance, notice of such non-performance and must use all reasonable efforts to perform, to the extent possible, the Services to be performed by the Supplier notwithstanding the failure by the Authority, the Authority's Customers or the Authority's or any Authority Customer's other suppliers to perform their obligations under this Agreement.
- (e) Notwithstanding any other provisions of this Clause 18.2:
 - (i) in respect of the Supplier's provision of Operational Services, the Authority agrees to continue to pay the Supplier any Service Charges which fall due; and
 - (ii) Clause 25 shall apply in respect of the Supplier's failure to meet any Milestone Date for the reasons referred to in Clause 18.2(a).

The payments referred to above shall be the Supplier's sole and exclusive remedy in respect of the Authority's failure to perform its obligations, other than non-payment of Service Charges.

19. Warranties Representations and Undertakings

19.1 Representations and Warranties by the Supplier

The Supplier represents, warrants and undertakes that during the Term:

- (a) the Services shall be performed with promptness and diligence and executed in a professional manner, in accordance with the best practices and professional standards of a bank in performing services similar to the Services in accordance with Good Industry Practice;
- (b) the Supplier shall perform the Services efficiently and in a cost-effective manner;
- (c) as at the Commencement Date, all information contained in the tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement;
- (d) there are no matters, whether another contractual obligation, claim, litigation, arbitration, administrative or other proceedings, pending or threatened, against it or any of its Associates or assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
- (e) it owns, or has the right to Use to the extent necessary to supply the Services, all Intellectual Property Rights in the Supplier's Software, Tools, Material and Hardware used in providing the Services;
- (f) the Supplier will not infringe any person's Intellectual Property Rights;
- (g) the Supplier's signing, delivery and performance of this Agreement shall not constitute:
 - (i) a breach of any judgement, order or decree;
 - (ii) the committing of a fraud;
 - (iii) a material default under any material contract by which it or any of its assets are bound; or

- (iv) an event that would, with notice or lapse of time, or both, constitute such a default;
- (h) the Supplier has, and shall at all times during the Term have, the requisite power and authority to enter into this Agreement and to carry out the obligations contemplated by this Agreement; and
- (i) the Supplier's Sites, but only to the extent that they are used to perform the Services, are fit for that purpose and comply with the Authority's Security Requirements.

19.2 Separation

Each warranty, representation and undertaking contained in this Agreement shall be construed as a separate warranty, representation and undertaking and shall not be limited or restricted by reference to or inference from, the terms of any other warranty, representation or undertaking or any other terms of this Agreement and the Supplier acknowledges and agrees that compliance by it with the warranties, representations and undertakings (or any of them) shall not of itself constitute performance of any of its other obligations under this Agreement.

19.3 Representations and Warranties by the Authority

The Authority represents and warrants to the Supplier that:

- (a) the Authority's signing, delivery and performance of this Agreement will not constitute:
 - (i) a breach of any judgement, order or decree; or
 - (ii) an event that would, with notice or lapse of time, or both, constitute such a breach; and
- (b) the Authority has the requisite power and authority to enter into this Agreement and to carry out the obligations contemplated by this Agreement;
- (c) all creditor balances on Authority Bank Accounts are and will be beneficially owned by, and all debtor balances on Authority Bank Accounts are and will be the liability of, the sovereign state of the United Kingdom of Great Britain and Northern Ireland; and

- (d) the data or information provided after the Commencement Date by the Authority to the Supplier in order for the Supplier to deliver the Services is accurate and complete.

19.4 No Implied Warranties

All other warranties or representations which might have effect between the Parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to and the use of reasonable skill and care.

20. Compliance with Laws and Changes in Law and Regulation

20.1 Compliance with Laws and Regulation

- (a) The Supplier must perform its obligations under this Agreement in a manner that complies with all Laws and regulation applicable to the provision of the Services, including all Laws and regulation coming into force after the Effective Date.
- (b) As a separate obligation, it must immediately notify the Authority if it receives a written allegation of non-compliance with any Law or regulation by any person in relation to this Agreement save in circumstances where such Law or regulation prevents such disclosure being made to the Authority.
- (c) In connection with the receipt of the Services by the Authority and the Authority Customers, the Authority shall comply and shall procure that the Authority Customers comply with all applicable Laws applicable to the provision of the Services.

20.2 Change in Law and Regulation

- (a) Subject to Clause 20.2(b), any variation of the Services or to this Agreement required as a result of any Change in Law or regulation occurring after the Effective Date shall be implemented by way of the Change Control Procedure.
- (b) Where there is a Change in Law or regulation occurring after the Effective Date which requires an immediate variation of the Services or to this

Agreement, such variation will be implemented in such manner as agreed between the Parties.

- (c) The Supplier shall not be entitled to any payment, increase to the Service Charges or other compensation or relief from any performance of its obligations under this Agreement in respect of any General Change in Law or regulation or associated change or amendment to this Agreement or the Services (or the consequences of either);
- (d) The Supplier shall, without prejudice to its general obligation to comply with the terms of this Agreement:
 - (i) use all reasonable endeavours to mitigate the adverse effects of any Authority Specific Change in Law and take all reasonable steps to minimise any increase in Service Charges arising from such Authority Specific Change in Law; and
 - (ii) use all reasonable endeavours to take advantage of any positive or beneficial effects of any Authority Specific Change in Law and take all reasonable steps to maximise any reduction in Service Charges arising from such Authority Specific Change in Law.
- (e) Further, notwithstanding any other provision of this Clause 20, if an Authority Specific Change in Law results in any additional costs or expenses being incurred by the Supplier as a direct result of implementing any changes to the provision of the Services in order to ensure compliance with that Authority Specific Change in Law, the Supplier shall be entitled to no increase to the Service Charges or other compensation unless the cumulative total of its additional costs and expenses in respect of any single or series of Authority Specific Changes in Law exceeds £20,000 (subject to Indexation) in any Contract Year. For the avoidance of doubt, any such amount up to £20,000 (subject to Indexation) in any Contract Year shall always be borne by the Supplier.

21. Security

21.1 General

- (a) The Supplier must at all times comply with the security requirements of the Authority and Authority Customers as set out in Schedule 2 (**The**

Authority's Service Requirements) and Schedule 9 (**Information Security Assurance and Accreditation**) and Clause 28 (**Use of Subcontractors**).

- (b) Whilst on the Authority Sites, all Personnel and Subcontractors (and Subcontractors' personnel) must comply with all security measures implemented by the Authority or any Authority Customer in respect of Personnel and other persons attending those premises. The Authority or any Authority Customer may carry out searches of Personnel or any personnel of any Subcontractor or of vehicles used by the Supplier, its Personnel or of any Subcontractor or any personnel of any Subcontractor at the Authority Sites and the Supplier must regularly carry out random searches of Personnel and personnel of Subcontractors engaged on Supplier's Sites and any visitors to Supplier's Sites.
- (c) The Supplier shall report immediately to the Authority all identified attempts (whether successful or not) by unauthorised persons (including unauthorised persons who are employees of the Supplier or the Authority or an Authority Customer) to gain access to or interfere with the Supplier Systems (to the extent such access, attempted access or interference may impact on the provision of the Services) or with any Authority Data.
- (d) The Supplier will comply with its own security policies and procedures as well as the Authority Security Requirements in so far as it is relevant to its obligations under this Agreement and the security of provision of the Services and the security of the Authority Data. The Supplier will implement and operate appropriate security measures in accordance with Good Industry Practice to ensure that only its authorised Personnel can have access to Supplier Systems.
- (e) Following any breach or attempted breach of security, the Supplier must notify the Authority and must immediately investigate and report on the cause of the breach, including planned corrective action. Where directed by the Authority, or otherwise where the Supplier acting reasonably suspects that any breach or attempted breach of security was caused or facilitated by the Supplier Systems, the Supplier must repair or correct the relevant part(s) of the Supplier System that gave rise to or facilitated the breach of security. Such repair or correction shall be carried out promptly at the Supplier's expense. The Supplier shall discuss with the Authority and take into consideration any concerns that the Authority has raised with the Supplier regarding such repairs or corrective actions.

- (f) The Supplier must co-operate with any investigation relating to security which is carried out by the Authority or any Authority Customer or by any person who is responsible to the Authority or any Authority Customer for security matters and when required by the Authority Relationship Manager:
- (i) must make any Personnel (and any personnel of Subcontractors) identified by the Authority or any Authority Customer available to be interviewed by the Authority Relationship Manager, or by a person who is responsible to the Authority or any Authority Customer for security matters, for the purposes of the investigation (and Personnel shall have the right to be accompanied by the Supplier Relationship Manager and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority Relationship Manager and the Supplier Relationship Manager); and
 - (ii) must provide all documents, records or other material of any kind which may reasonably be required by the Authority or any Authority Customer or by a person who is responsible to the Authority or any Authority Customer for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Supplier from performing the Services, and the Authority or Authority Customer may retain any such material for use in connection with the investigation and, so far as possible, shall provide the Supplier with a copy of any material retained.

21.2 Loss of Authority Data

Without prejudice to the generality of the foregoing, if through any act or omission of the Supplier or any Subcontractor any Authority Data is lost or sufficiently degraded so that such Authority Data is not useable, the Supplier shall, subject to Clause 46 (**Liability and Limitation of Liability**), be liable for the reasonable costs of the re-constitution of such Authority Data and any other direct losses that the Authority or any Authority Customer may suffer arising from such loss or degradation.

22. Authority Security Requirements and Health and Safety

- (a) The Supplier must ensure compliance at all times during the Term with the Authority Security Requirements.

- (b) The Supplier must provide the Services in accordance with all Laws relating to health and safety and in accordance with Good Industry Practice.
- (c) The Parties shall notify each other of any health and safety or environmental hazards which may exist at the Authority Sites or the Supplier's Sites to the extent that the provision of the Services in accordance with this Agreement is materially impacted by such health and safety or environmental hazards. Where applicable to the provision of the Services by Personnel and Subcontractors, the Supplier shall be responsible for drawing these hazards which relate to the Supplier's Sites to the attention of its Personnel and Subcontractors and must instruct such persons in connection with any associated safety measures.

23. Consent

Any consent, approval or agreement given by either Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements and obligations of this Agreement (except to the extent that the consent, approval or agreement is in respect of relief from the relevant requirement and/or obligations set out in this Agreement).

SECTION F – REMEDIES FOR DELAY AND/OR SERVICE FAILURE

24. Implementation Delays

- (a) The Supplier shall ensure that each Key Deliverable is Achieved on or before its associated Milestone Date.
- (b) The Supplier shall notify the Authority as soon as reasonably practicable if it should appear at any time that there may be a delay:
 - (i) to the delivery or commencement of any part of the Operational Services; or
 - (ii) in Achieving any Key Deliverable by its associated Milestone Date or in satisfactorily completing any Assurance Tests by the applicable date provided for in the Supplier's Implementation Plan.
- (c) Within ten (10) Working Days of becoming aware of any of the circumstances identified in sub-clause (b) the Parties shall comply with any process provided for in the Supplier's Implementation Plan or otherwise agreed by the Parties (acting reasonably) to rectify any such delay.

- (d) Whether the Delay is due to an Authority Cause or not, the Supplier shall deploy all additional resources and take such action as required by Clause 25(c).
- (e) If, due to a Default of the Supplier, a Key Deliverable is not Achieved by its Milestone Date, or any Assurance Tests have not been recorded as successful in accordance with the Supplier's Implementation Plan by the end of the period provided for in the Supplier's Implementation Plan, the Supplier shall prepare for the Authority's approval (which shall not be unreasonably withheld) a report categorising the reasons therefore and issues arising and the consequential impact on any other Assurance Tests or Key Deliverables.
- (f) If any Assurance Tests have not been recorded as successful in accordance with the Supplier's Implementation Plan by the end of the period provided for in the Supplier's Implementation Plan, or a Key Deliverable has not been Achieved by its Milestone Date, the Authority shall have the right, without prejudice to its other rights and remedies:
 - (i) to pass any Deliverables or Services which have successfully completed the relevant Assurance Tests or (as the case may be) been Achieved by its Milestone Date and pay an appropriately prorated element of any Service Charges applicable to the Deliverables or Services;
 - (ii) to extend the period for successful completion of the applicable Assurance Tests, during which the Supplier must correct the fault or faults which caused the Assurance Tests to be recorded as unsuccessful and the Assurance Tests shall be re-performed in a timely manner and at no cost to the Authority (unless any such fault is the fault of the Authority in which case any additional costs shall be discussed and agreed between the Parties);
 - (iii) to extend the applicable Milestone Date for a period or periods specified by the Authority; or
 - (iv) to reject the Deliverables or Services.
- (g) In the event that the Authority extends the relevant period for successful completion of the applicable Assurance Tests for a period, or extends a Milestone Date, pursuant to paragraph (f) and the Assurance Tests have

not been recorded as successful, or the Key Deliverable has not been Achieved, by the end of that period, the Authority shall have the right either:

- (i) to pass any Deliverables or Services which have successfully completed the Assurance Tests or (as the case may be) been Achieved by its Milestone Date and pay an appropriately pro-rated element of any Service Charges applicable to the Deliverables;
- (ii) to extend the period for successful completion of the applicable Assurance Tests, or the applicable Milestone Date, for a further period or periods in accordance with paragraph (f); or
- (iii) to reject the Deliverables or Services and exercise any rights the Authority may have under Clause 48.

25. Delays to Key Deliverables due to Authority Cause

- (a) Subject to Clause 26, if the Supplier would have been able to but has failed to Achieve a Key Deliverable by its Milestone Date as a direct result of an Authority Cause, the Supplier will be entitled to relief from its obligations in respect of Achievement of that Key Deliverable by the relevant Milestone.
- (b) As soon as reasonably practicable (and in any event within ten (10) Working Days, or such other period as may be agreed in writing between the Parties, after the Supplier becomes aware of the circumstances described in sub-clause (a)), the Supplier shall give the Authority notice which shall contain:
 - (i) its claim for relief from its obligations under this Agreement, including full details of the Authority Cause and the foreseeable consequences for the Services, including any consequences for the meeting of Milestone Dates;
 - (ii) (as far as is reasonably practicable) the date of occurrence of the Authority Cause;
 - (iii) (as far as is reasonably practicable) the likely duration of the Authority Cause; and
 - (iv) (as far as is reasonably practicable) its suggestions either for remedying or mitigating the effects of the Authority Cause.

- (c) Thereafter the Parties shall meet as soon as reasonably practicable (but in any event within ten (10) Working Days) to discuss resolution of the Authority Cause, including, whether or not the Authority should reasonably compensate the Supplier for any Losses sustained providing at all times the Supplier has complied with its obligations under Clause 53.
- (d) In relation to the Authority Cause concerned to the extent that the Supplier can demonstrate to the Authority's reasonable satisfaction that the Authority Cause was the direct cause of any Delay in the Achievement of the relevant Key Deliverable then, subject to the Supplier complying with Clause 24, the Authority shall not be entitled in respect of such Delay to:
 - (i) exercise any rights to terminate this Agreement for cause under Clause 48;
 - (ii) exercise its rights under Clause 27; or
 - (iii) receive any damages.
- (e) The Supplier shall notify the Authority if, at any time, it receives or becomes aware of any further information relating to the Authority Cause (if not known to or originated by the Authority). The Supplier shall give details of that information to the extent that such information is new, or renders information previously submitted materially inaccurate or misleading, or relates to the suggestions of how the Authority could mitigate or remedy the Authority Cause.

26. Delays not due to one Party

Where a Delay is attributable in part to the Supplier's Default and in part to an Authority Cause, the Parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay.

27. Rights of the Authority

- (a) The Authority may give notice to the Supplier of the occurrence of any of the following events or circumstances:
 - (i) the Supplier is in Default and the Authority reasonably considers that such Default by the Supplier will create an immediate or serious threat to the business and operational effectiveness of the Authority or any Authority Customer;

- (ii) the Authority is entitled to terminate this Agreement in accordance with Clause 48.1;
 - (iii) an act or omission of the Supplier or any Subcontractor in connection with this Agreement:
 - (A) which results in a Delay in the provision of all or any part of the Services; or
 - (B) which prevents or restricts the Authority's or any Authority Customer's performance or delivery of all or any part of its services or functions to a material extent;
 - (iv) a Force Majeure Event occurs which substantially prevents or substantially delays the performance of the Services or any part of the Services;
 - (v) any circumstances which the Authority reasonably considers constitute an emergency, even though the Supplier may not be in Default of its obligations under this Agreement;
 - (vi) a serious risk exists to the health or safety of persons, property or the environment;
 - (vii) the Authority or an Authority Customer wishes to discharge a statutory duty; or
 - (viii) an Insolvency Event occurs in respect of the Supplier.
- (b) Following the service of a notice pursuant to Clause (a), the Supplier shall if so required by the Authority:
- (i) immediately commence an investigation into the events giving rise to the Authority's notice;
 - (ii) as soon as reasonably practicable, following such investigation, report to the Authority on the outcome of the investigation and discuss with the Authority the steps which it might take to resolve the situation; and
 - (iii) report to the Authority on a regular basis on progress towards resolving the situation.

- (c) Following the service of a notice pursuant to Clause (a), the Authority may:
 - (i) require the Supplier by notice in writing to take such steps as the Authority reasonably considers necessary or expedient to mitigate or rectify the event or circumstances described in the notice;
 - (ii) suspend the provision by the Supplier of all or part of the Services (in which case the Authority shall not be obliged to pay the Service Charges in respect of such Services and may procure the provision of such Services by a third party); and/or
 - (iii) take such other steps as the Authority reasonably considers appropriate to ensure the performance of all or part of the Services, and the Supplier shall co-operate fully and in good faith with the Authority.
- (d) Except in the circumstances described in Clause 27(a)(iv), (v), (vi) and (vii), the Supplier shall reimburse the Authority and Authority Customers for all costs and expenses reasonably incurred by it or them in taking the steps or engaging others to take the steps referred to in this Clause 27 (including any relevant administrative expenses of the Authority, with an appropriate sum in respect of general staff costs and overheads).
- (e) The Supplier shall bear its own costs in connection with any exercise by the Authority of its rights under Clause 27.

SECTION G – SUB CONTRACTS

28. Use of Subcontractors

28.1 Prior Approval

The Supplier must not Subcontract any of its obligations under this Agreement without the Authority's prior written consent (which the Authority may withhold in its sole discretion). The Supplier must retain Subcontractors only in accordance with the provisions of this Agreement and shall remain responsible for any acts or omissions of its Subcontractors and of any other party to which the Supplier has subcontracted any of its obligations under this Agreement as if these were the Supplier's acts or omissions. Those Subcontractors whose proposed engagement is approved by the Authority as at the Effective Date are set out in Schedule 7 (**Subcontractors**).

28.2 Notification to the Authority

The Supplier must immediately notify the Authority if, in good faith, the Supplier has doubts concerning the Subcontractor's ability to render performance of any of the Services in accordance with the provisions of this Agreement or if the Supplier reasonably believes that the Subcontractor or its personnel are a threat to the security of the Authority or its personnel.

28.3 Exceptions

The Supplier may use any payment industry infrastructure used by banks generally in the provision of banking services (to the extent only that such payment industry infrastructure is required to enable the provision of the Services and is in accordance with general banking law and practice) to discharge any of its obligations under this Agreement without the Authority's prior written consent.

28.4 Subcontractors' compliance with Authority's Security Requirements

- (a) The Supplier shall ensure that Subcontractors comply with the Authority's Security Requirements set out in Schedule 2 (**Authority's Service Requirements**) and Schedule 9 (**Information Security Assurance and Accreditation**) of this Agreement.
- (b) The Supplier shall, at the request of the Authority, and within five (5) Working Days of receiving any such request, notify the Authority of the measures and controls it has put in place to ensure Subcontractors' compliance with Authority Security Requirements.

29. Replacement of Subcontractors

- (a) The Authority may in its absolute discretion and without being required to give reasons require that the Supplier cease using a Subcontractor and make alternative arrangements to ensure that the Services continue to be met. The Parties shall discuss the impact of such request upon the Service Charges and the Service Levels and shall implement such requirement to replace a Subcontractor in accordance with the Change Control Procedure.
- (b) Any Subcontractor proposed by the Supplier to replace a Subcontractor removed pursuant to this Clause must be approved by the Authority save that, as an interim measure, where necessary to continue the provision of the Services, the Supplier may replace the Subcontractor concerned with a

different Subcontractor which has not been so approved until such approval has been obtained or an alternative replacement has been approved.

SECTION H - PAYMENT PROVISION

30. Notification of Service Charges and Payment

30.1 General

- (a) The Authority will pay the Service Charges in consideration of the performance of the Services by the Supplier in accordance with this Agreement. The Service Charges shall be calculated in accordance with the provisions (and principles) set out in Schedule 4 (**Financial Obligations**).
- (b) The Supplier shall only be entitled to receive payment if:
 - (i) an obligation is chargeable under this Agreement; and
 - (ii) Service Charges are notified to the Authority in accordance with Clause 33; and
 - (iii) the Service Charges, or the basis for determining the Service Charges, for that activity are or is identified in Schedule 4 (**Financial Obligations**).

30.2 No Additional Amounts

The Supplier acknowledges and accepts that the Service Charges specified in this Agreement (as may be varied from time to time by the Parties in accordance with the Change Control Procedure) are the only amounts payable by the Authority in respect of the Supplier's performance of the Services.

30.3 Incidental Expenses

The Authority shall not be liable for the payment of any fees, charges or expenses (including travel and lodging, expenses relating to document reproduction, transportation and courier charges and telecommunications charges) that are not identified in this Agreement as payable by the Authority ("**Incidental Expenses**"), unless identified and agreed in writing by the Authority in advance. For this purpose, all the Service Charges set out in Schedule 4 (**Financial Obligations**)

shall be deemed to be inclusive of any such Incidental Expenses unless the contrary is stated.

30.4 Payment Due

The Authority will pay valid and undisputed Service Charges (or where Service Charges are partially in dispute, the undisputed part of those Service Charges) within thirty (30) days of notification of such Service Charges. Without prejudice to its other rights, the Authority may in good faith dispute any Service Charges at any time even if it has paid such Service Charges.

30.5 Disputes regarding payment

- (a) The Authority may withhold payment of Service Charges and expenses that it disputes in good faith by notice in writing to the Supplier within thirty (30) days after receipt of the relevant notification of Service Charges giving its reasons and specifying any additional information required to assist the Authority in resolving its concerns.
- (b) The Supplier must continue to perform all its obligations under this Agreement, notwithstanding any withholding of payment in accordance with this Clause.
- (c) The Parties shall use all reasonable endeavours to resolve any dispute regarding the Service Charges within thirty (30) days of it arising. If they fail to resolve the dispute, either Party may refer the matter to the Escalation Procedure (Clause 61.1).

30.6 Accountability

The Supplier must:

- (a) maintain complete and accurate records of, and supporting documentation for, Service Charges notified to the Authority and all payments made by the Authority under this Agreement in accordance with generally accepted accounting principles applied on a consistent basis; and
- (b) immediately provide the Authority with such documentation and other information with respect to each notified Service Charge as may be reasonably requested by the Authority in order to verify accuracy and compliance with the provisions of this Agreement.

30.7 Currency

All payments made under this Agreement shall be made in Pounds Sterling, save that, in the event of the United Kingdom joining the European Monetary Union, all references to Pounds Sterling shall be converted into Euros using the relevant exchange rate set out in regulations promulgated by the Council of the European Union (or any replacement body or official replacement mechanism) rounded down to the nearest Euro Cent.

30.8 Refunds and credits

If the Supplier receives a refund, credit or other rebate from a third party for goods or services previously paid for by the Authority, the Supplier shall promptly notify the Authority of such refund, credit or rebate and shall promptly pay the full amount of such refund, credit or rebate, as the case may be, to the Authority.

30.9 Interest for Late Payment

In the event that the Authority fails to pay the Service Charges when due or in the event that the Supplier fails to pay any amount payable by it to the Authority under this Agreement, in each case the Party that is late in making payment shall pay interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgement, at the rate of one (1) per cent per annum above the base rate from time to time of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly.

31. Set Off

Whenever under this Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Supplier under this Agreement or under any other contract with the Authority or with any other Department, office or agency of the Crown.

32. VAT and Similar Taxes

- (a) The Supplier shall be responsible for all taxes on its business, property or assets or based on its net income or gross receipts.

- (b) The Supplier shall be responsible for all VAT and other taxes and duties payable by the Supplier on any goods or services used or consumed by it in providing the Services where the tax is imposed on the Supplier's acquisition or use of such goods or services in its provision of Services.
- (c) The Authority shall be responsible for all VAT that is assessed against, or incurred by the Authority in respect of the Service Charges by the Supplier for the provision of the Services as a whole, or on any particular Service received by the Authority from the Supplier.
- (d) The Supplier shall, where applicable, provide the Authority with a VAT invoice to enable, where possible, the Authority to reclaim or obtain a refund of VAT and such invoice shall be provided by the Supplier in the format and within timescales as will enable the Authority to comply with the Law or obtain such refund.

33. Notification of Service Charges

The Supplier must notify the Authority in writing at monthly intervals in arrears for the Service Charges (or at such other intervals as the Parties agree in writing). Such notification must contain such information as agreed between the Parties, including but not limited to, all appropriate references and a detailed breakdown of the Services provided.

SECTION I – INTELLECTUAL PROPERTY RIGHTS

34. Intellectual Property Rights

34.1 Ownership of Intellectual Property Rights

Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier, the Subcontractors or any of the Supplier's or Subcontractors' licensors; and
- (b) neither the Supplier, the Subcontractors nor any Personnel shall acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or any Authority Customer or any of the Authority's licensors, or any of the Authority Customers' licensors or to any Authority Data.

34.2 Protection of Each Party's Rights

Neither Party will at any time do anything or cause anything to be done that would prejudice the other Party's or any Authority Customer's right, title and interest in any of the Intellectual Property Rights vested in that Party or Authority Customer pursuant to this Agreement or as otherwise owned by that Party or Authority Customer.

34.3 Mutual Licence Grant

To the extent that it is so required for the performance of each Parties' obligations under this Agreement, each Party hereby grants to the other a royalty free, irrevocable non-exclusive licence to use any Intellectual Property Rights that the Party owned or developed prior to the Effective Date and which the other party reasonably requires in order to exercise its rights or meet its obligations under this Agreement.

35. Project specific Intellectual Property Rights

- (a) The development of any Intellectual Property Rights by or on behalf of the Supplier during the Term at the request of the Authority for or in relation to the provision of the Services (including the ownership of and rights to use such Intellectual Property Rights) shall be discussed and implemented in accordance with the Change Control Procedure.
- (b) This Clause is without prejudice to the provisions of Clause 34.1.

36. Third Party Materials and Consents

36.1 Consents

Unless otherwise agreed in writing, the Supplier shall obtain and maintain at all times during the Term at its own cost all consents and licences which are necessary to enable the Supplier to perform the Services including consents from third parties who have any legal or equitable interest in the Software, Hardware and any other data, documentation, materials or equipment used or provided by, or on behalf of, the Supplier in the performance of the Services. The Supplier shall advise the Authority of such requirements, consents and licences.

SECTION J – DATA, INFORMATION AND CONFIDENTIALITY

37. Data Protection

37.1 Authority Data - Generally

The Supplier must carry out the processing of Authority Data only in order to provide the Services and must not divulge the whole or any part of the Authority Data to any person, except to the extent reasonably necessary for the proper performance by it of this Agreement or to the extent required by Law or regulation. In particular, the Supplier must not:

- (a) Store, copy, process or use the Authority Data for its own purposes;
- (b) disclose the Authority Data to any individual other than for the purposes of complying with this Agreement;
- (c) include the Authority Data in any product or service offered by the Supplier to third parties;
- (d) carry out any research, analysis or profiling activity which involves the use of any element of the Authority Data (including in aggregate form) or any information derived from any processing of such Authority Data save where such activity is necessary for the delivery of the Services; or
- (e) pass files containing the Authority Data to any third party for further processing by that third party or its agents without prior written consent of the Authority.

37.2 Authority Personal Data

- (a) For the purposes of this Clause 37.2, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA.
- (b) The Supplier shall (and shall ensure that Personnel, Subcontractors and agents) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.
- (c) Notwithstanding the general obligation in Clause 37.2(b), where the Supplier is (as defined by the DPA) processing Authority Personal Data as

a Data Processor for the Authority or any Authority Customer, the Supplier shall:

- (i) ensure that it has in place and implements appropriate technical and organisational measures to ensure the security and protection of the Authority Personal Data to guard against unauthorised or unlawful processing of the Authority Personal Data and against accidental loss or destruction of, damage to, alteration or disclosure of the Authority Personal Data. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Authority Personal Data and having regard to the nature of the Authority Personal Data which is to be protected;
- (ii) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
- (iii) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to paragraph (i) above.
- (iv) comply with all applicable Laws and assist the Authority and the Authority Customers to comply with any legislative or regulatory responsibilities or liabilities under the DPA (including in relation to data subjects' rights of access to or rectification of personal data).
- (v) Take reasonable steps to ensure the reliability of Personnel, Subcontractors or agents who may have access to the Authority Personal Data;
- (vi) Ensure that all Personnel, Subcontractors or agents required to access Authority Personal Data are informed of the confidential nature of Authority Personal Data and comply with the obligations set out in this Clause 37.2;
- (vii) Not publish, disclose or divulge, and shall ensure that no Personnel, Subcontractors or agents publish, disclose or divulge, any Authority Personal Data to any third parties unless directed to do so by the Authority in writing or in compliance with a legal obligation imposed upon the Authority;

- (viii) Obtain prior written consent from the Authority in order to transfer the Authority Personal Data to any Subcontractor for the provision of the Services; and
 - (ix) not process or transfer Authority Personal Data outside the EEA without the prior written consent of the Authority and, where the Authority consents, the Supplier shall comply with the obligations of a Data Controller under the DPA (including the Eighth Data Protection Principle in Schedule 1 to the DPA) by providing an adequate level of protection to any Personal Data that is so processed or transferred and with any reasonable instructions of the Authority.
- (d) Neither Party shall do any act that puts the other Party in breach of its obligations under the DPA.
- (e) Nothing in the Agreement shall be deemed to prevent either Party or any Authority Customer from taking the steps such Party or Authority Customer deems reasonably necessary in order to comply with such Party's or Authority Customer's obligations under the DPA.
- (f) The Supplier shall notify the Authority within five (5) Working Days if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the DPA,
- (g) The Supplier shall provide the Authority with reasonable cooperation and assistance in relation to any such complaint or request made, including by:
 - (i) Providing the Authority with full details of the complaint or request;
 - (ii) Assisting the Authority to comply with any such request in accordance with the Authority's reasonable instructions; and
 - (iii) Providing the Authority with any Authority Personal Data it holds in relation to a Data Subject within timescales reasonably required by the Authority.

- (h) The provision of this Clause 37 shall apply during the Term and indefinitely after its expiry.

38. Freedom of Information

38.1 General

The Supplier acknowledges and agrees that:

- (a) The Authority is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations (EIR) and further agrees that it shall assist and cooperate with the Authority to enable it to comply with its information disclosure obligations;
- (b) It may hold information on behalf of the Authority or any Authority Customer which falls under the FOIA or within the scope of the EIR; and
- (c) Any Subcontractor employed by it to process information in connection with this Agreement (and any of their agents or subcontractors, whether direct or indirect) may hold information on behalf of the Authority or any Authority Customer which falls under the FOIA or within the scope of the EIR.

38.2 Compliance

The Supplier must promptly (and at no additional charge):

- (a) provide the Authority with such assistance (and procure that its Subcontractors provide the Authority with such assistance) as the Authority may require in order to comply with its or any Authority Customer's obligations under FOIA or EIR ; and
- (b) ensure that each of its Subcontractors is made aware of the Authority's legally binding FOIA and EIR obligations and the Supplier's legally binding obligations in this Clause, and the Supplier undertakes to take steps with all Subcontractors sufficient to ensure the Supplier's absolute compliance with this Clause.

38.3 Information Requests

Without prejudice to the generality of Clause 38.2 above, the Supplier must pass to the Authority within two (2) Working Days of receipt by it (or by any of its

Subcontractors) all requests which the Supplier or any of its Subcontractors receives about, or in any way connected with, the Services or the Agreement.

38.4 Undertaking

The Supplier undertakes throughout the Term that all requests made under the FOIA or EIR for information held by or on behalf of the Authority or any Authority Customer (and whether made to a member of the Authority or any Authority Customer, the Supplier or any Subcontractor) shall be dealt with solely in accordance with the Authority's written instructions.

38.5 Other provisions

- (a) Without prejudice to the foregoing provisions of this Clause 38, the Supplier must (and shall procure that its Subcontractors shall):
 - (i) provide the Authority with such particulars as the Authority or any Authority Customer needs in order to maintain its publication scheme as required under FOIA, for the alteration of any particulars included in its publication scheme and for any renewal of its publication scheme; and
 - (ii) if the Authority or any Authority Customer is served with a FOIA Notice or request for information under the FOIA or EIR by the Information Commissioner or other relevant person, take such steps within such time as the Authority may by notice in writing require (being steps and time specified in such FOIA Notice or request) for complying with the FOIA Notice or request in question and shall not respond directly to any such FOIA Notice or request unless expressly authorised in writing to do so by the Authority; and
- (b) fully and effectively indemnify the Authority and each Authority Customer against any liability incurred by the Authority or any Authority Customer under Sections 54 and 77 of FOIA or otherwise under the FOIA or EIR by reason of any failure of the Supplier (or any of its Subcontractors) to comply with any provision of this Agreement or arising out of any act or omission of the Supplier.
- (c) The Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or EIR.

- (d) If the Authority receives a request to disclose information relating to the Supplier under the FOIA or EIR, the Authority shall (unless under any applicable Governmental code of practice it is obliged to disclose information without consulting or obtaining consent from the Supplier) promptly notify the Supplier and shall consult with the Supplier and shall consider any representations which the Supplier may make within two (2) Working Days in relation to the requested disclosure prior to deciding whether to comply with or to refuse the request (in whole or in part).

39. Confidential Information

39.1 Protection of Confidential Information

The Supplier must (and must ensure that its Personnel and Subcontractors shall):

- (a) keep all Authority Confidential Information confidential and must not (except as expressly permitted) disclose the Authority Confidential Information, make copies of Material containing the Authority Confidential Information or otherwise use the Authority Confidential Information;
- (b) use due care to safeguard the Authority Confidential Information and comply with any requirements specified by the Authority from time to time;
- (c) implement appropriate technical and organisational measures to ensure the security of the Authority Confidential Information (and to guard against unauthorised copying, use, access, disclosure (whether that disclosure is oral, in writing or in any other form) or unlawful processing of the Authority Confidential Information and against loss or destruction of, or damage to, the Authority Confidential Information), as required by the HMG Security Policy Framework;
- (d) immediately notify the Authority if the Supplier suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of, or is required by Law to disclose, any Authority Confidential Information;
- (e) take all reasonable steps to enforce any obligation of confidence imposed or required to be imposed by this Agreement; and

- (f) do all things, execute all documents and give all assistance reasonably required by the Authority in order to enforce any obligation of confidence imposed or required to be imposed by this Agreement.

39.2 Use of Confidential Information

The Supplier may only:

- (a) use and copy the Authority Confidential Information:
 - (i) in order to comply with its obligations under this Agreement (and then only to the extent reasonably necessary to achieve such compliance); or
 - (ii) to the extent necessary in order to enable the Supplier to exercise its rights under this Agreement; and
- (b) subject to Clause 39.3, disclose the Authority Confidential Information to:
 - (i) its Personnel and its Subcontractors on a 'need to know' basis and then only for the purpose identified in Clause (a) above; and
 - (ii) any other person with the prior written consent of Authority.

39.3 Handling Authority Confidential Information

The Supplier must in addition to and without limiting any other obligation of the Supplier:

- (a) if required by the Authority, arrange for any or all Personnel and Subcontractors and any person to whom Confidential Information is disclosed in accordance with this Clause, to give a written and enforceable undertaking to the Authority in a form reasonably required by the Authority; and
- (b) ensure that Personnel, Subcontractors and any person to whom Confidential Information is disclosed in accordance with this Clause complies with the provisions of this Clause and Schedule 9 (**Information Security Assurance and Accreditation**).

39.4 Authority Obligations

The Authority has the same rights and obligations in respect of the Supplier's Confidential Information as those given to or imposed on the Supplier under Clause 39.1 save that the Authority may:

- (a) use the Supplier's Confidential Information to the extent necessary in order to receive the Services;
- (b) disclose the Supplier's Confidential Information to any other Government Department, executive agency, non-Departmental public body, other Crown body or other public sector bodies or organisations
 - (i) for any proper purpose of the Authority or the aforementioned departments, agencies and bodies, or
 - (ii) to the extent that is necessary in connection with the receipt of the Services,

as long as it makes the recipient aware prior to disclosure of the Authority's obligations under this Clause and shall require that such other departments, agencies and bodies comply with the provisions of this Clause;

- (c) disclose the Supplier's Confidential Information to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (d) disclose the Supplier's Confidential Information to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (e) disclose the Supplier's Confidential Information on a confidential basis to a professional advisor, consultant, supplier or other person engaged by any of the entities described in Clause 39.4(b) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (f) disclose the Supplier's Confidential Information on a confidential basis for the purpose of the exercise of its rights under his Agreement, including but not limited to its rights of Audit pursuant to Clause 57;

- (g) disclose the Supplier's Confidential Information on a confidential basis to any proposed successor of the Authority in connection with any assignment, novation or disposal of its rights obligation or liabilities under this Agreement pursuant to Clause 62;
- (h) disclose the Supplier's Confidential Information where obliged to do so pursuant to FOIA or EIR in accordance with Clause 38;
- (i) disclose such Supplier's Confidential Information relating to the outcome of the procurement process for this Agreement as may be required to be published in the Supplement to the Official Journal of the European Communities in accordance with EC directives or elsewhere in accordance with requirements of United Kingdom government policy on the disclosure of information relating to government contracts; and
- (j) disclose the Supplier's Confidential Information obtained from the Supplier in respect of Schedule 10 (**Exit Management**) to the extent that the Authority considers necessary for the purposes of exit management or the re-procurement of the Services or to ensure the effective transition of the supply of Services to a Successor Supplier.

For the purposes of the foregoing provisions, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement.

39.5 Exceptions to obligations of confidentiality

Nothing in this Agreement prohibits the use or disclosure of any Confidential Information by either Party to the extent that:

- (a) the information has been placed in the public domain otherwise than due to a Default of the Party;
- (b) the disclosure is expressly required by Law or regulation;
- (c) the information has been independently developed by the Party without reference to the Confidential Information of the other Party;
- (d) the information was lawfully available to or in the possession of the Party without an obligation of confidentiality prior to its disclosure;
- (e) the information has been received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

- (f) the other Party has approved in writing the particular use or disclosure of the Confidential Information.

In addition, nothing in this Clause shall prevent either Party 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 does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

39.6 The Authority's right to Publish the Contract

- (a) Save for any information which the Authority in its sole discretion determines as exempt from disclosure in accordance with the provisions of the FOIA, the Supplier acknowledges that, and consents to, the Authority publishing the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public.
- (b) The Authority may consult with the Supplier to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.
- (c) The Supplier shall assist and cooperate with the Authority to enable it to publish the Agreement.

39.7 Period of confidentiality

The obligations with respect to Confidential Information disclosed under this Agreement shall survive termination of this Agreement.

39.8 Expiry or Termination

On expiry or termination of the Services, the Supplier shall provide to the Authority any copies of the Authority's Confidential Information in its possession, or its Subcontractors possession, and shall also ensure that it, and its sSbcontractors, permanently deletes any Authority Confidential Information from all Supplier Systems. The Supplier, and its Subcontractors, may retain any such Authority Confidential Information as required in order to comply with any statutory or regulatory requirements and in so doing, the Supplier shall notify the Authority of all such Authority Confidential Information it retains, or its Subcontractors retain, and undertakes to permanently destroy and/ or delete that Authority Confidential

Information, and ensure that its Subcontractors also do so, no later than six (6) years after the date of expiry or termination of this Agreement.

39.9 Solicitation of business

The Supplier shall not use any Confidential Information obtained from the Authority for the solicitation of business from the Authority or any other part of the Crown.

39.10 The Commissioners for Revenue and Customs Act 2005 and related legislation

The Supplier further undertakes to abide by, and ensure that Subcontractors and Personnel abide by, the provisions of:

- (a) the Commissioners for Revenue and Customs Act 2005
- (b) the Official Secrets Acts 1911 to 1989; and
- (c) section 182 of the Finance Act 1989.

39.11 Other Obligations

The obligations of the Supplier under this Clause are in addition and without prejudice to any other obligations of confidentiality which the Supplier may have by Law or regulation.

SECTION K – EMPLOYMENT AND PERSONNEL

40. The Supplier's Obligations in respect of Personnel

Without prejudice to the remainder of this Agreement, the Supplier represents, warrants and undertakes throughout the Term:

- (a) to procure the services of adequate numbers of Personnel to ensure that the Services are provided in accordance with this Agreement and that its Personnel devote such time, attention and skill as may be necessary for the Services to be carried out in accordance with this Agreement;
- (b) that the Personnel (and the personnel of all Subcontractors) will be suitably skilled, experienced and qualified to carry out the Services;

- (c) that the Personnel (and the personnel of any Subcontractor) are appropriately vetted taking into account their role in the provision of the Services and any access to secure materials or data;
- (d) that the Personnel (and the personnel of any Subcontractors) comply with the provisions of Clause 63; and
- (e) that the Supplier shall comply, and shall procure that the Personnel and any Subcontractors comply, with all health and safety, security and internal staff requirements and procedures of the Authority while on the Authority Sites.

41. Transfer of Undertakings

- (a) The provisions relating to TUPE which shall apply in relation to the termination or expiry of this Agreement are set out in Schedule 10 (**Exit Management**).
- (b) The Parties confirm their expectation that TUPE shall not apply in relation to this Agreement in such a way as to transfer the employment of any employees of any Outgoing Supplier (or any subcontractor of an Outgoing Supplier) to the Supplier or to any Subcontractor. However, if notwithstanding such expectation any such employees ("**Transferring Employees**") do transfer to the Supplier or any Subcontractor pursuant to TUPE:
 - (i) the Supplier shall (and shall procure that any such Subcontractor shall) comply with its obligations under TUPE in respect of the Transferring Employees;
 - (ii) the Supplier shall give an indemnity directly to the Outgoing Supplier against all Losses arising out of or in connection with:
 - (1) the employment or termination of employment by the Supplier or any Subcontractor of the Transferring Employees in the period on and after the date of such transfer;
 - (2) any claim or other legal recourse brought by or on behalf of any Transferring Employee arising out of the resignation of such Transferring Employee before the date of such transfer on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Supplier or its

Subcontractors in the period on or after the date of such transfer; or

- (3) any failure by the Supplier or its Subcontractors to provide sufficient information to the Outgoing Supplier to enable the Outgoing Supplier to comply with its obligations under Regulation 13 of TUPE; and
- (iii) the Supplier shall give an indemnity directly to the Outgoing Supplier against all liabilities, damages, losses, costs and expenses arising out of any claim by a Transferring Employee that the provision of (or failure to provide) early, normal, late or ill-health retirement, death or life assurance benefits after the date of such transfer is such that the level of such benefit provided is at a level less than that provided by the Outgoing Supplier prior to the date of such transfer and as such constitutes a breach of his employment rights provided always that the indemnity under this sub-clause (iii) shall not apply to the extent that any claim arises from a failure on the part of the Outgoing Supplier to notify the Supplier of all relevant terms and conditions of employment of a Transferring Employee prior to the date of such transfer.

42. Supplier Control and Liability

Any and all of the Personnel shall remain under the overall control of the Supplier at all times and shall not be deemed to be employees, agents, contractors or subcontractors of the Authority or any Authority Customer for any purpose.

43. Equality, Diversity and Non-Discrimination

The Supplier shall and shall procure that its Subcontractors shall:

- (i) comply with any applicable Law relating to discrimination in employment or service provision (whether in relation to race, gender, religion, age or otherwise);
- (ii) exercise their duties under the Equality Act 2010 to make any reasonable adjustments to the extent provided for in that Act; and
- (iii) comply with the codes of practice prepared and issued from time to time by the Equality and Human Rights Commission or the Secretary of State or other relevant competent authority.

44. Non-Solicitation

Except in respect of any Staff Transfer, the Supplier shall not, and the Supplier shall procure that no Subcontractor shall, during the Term and for twelve (12) months following its expiry or termination of this Agreement, employ or engage as an independent consultant, or make any offer to employ or engage as an independent consultant, any of the Authority's or any Authority Customer's employees who are involved in providing or receiving the Services, without the Authority's prior written consent. The provisions of this Clause 44 shall not apply to restrict the Supplier or any Subcontractor from employing (or offering to employ) any personnel who has responded to general recruitment advertising.

SECTION L – INDEMNITIES, LIABILITY AND INSURANCE

45. Indemnities

45.1 Indemnity by the Supplier

Subject to Clause 46 (Liability and Limitation of Liability) and Clause 53 (Mitigation), the Supplier shall on demand fully and effectively indemnify, defend and hold harmless the Authority and each Authority Customer from any and all Losses (including loss of funds and loss of interest on or the use of funds) arising from or in connection with any of the following:

- (a) any third party allegation, claim, demand, proceeding or other action ("**Claim**") that results from the negligent or otherwise wrongful act(s) or omission(s) of the Supplier or any of its contractors or personnel including the Subcontractors and Personnel;
- (b) any failure by the Supplier or any of the Subcontractors or Personnel to perform any of the obligations set out in this Agreement;
- (c) any negligent, wrongful or fraudulent act or omission of the Supplier, its Sub-Contractors or its Personnel;
- (d) any Claim that the performance of the Services infringes a third party's Intellectual Property Rights or rights in respect of confidential information of that third party;
- (e) the Supplier's or any Subcontractor's failure to obtain or maintain any licences, consents or other approvals to perform the Services for which the Supplier is responsible or to observe or perform any obligations in relation

to third party contracts including any leases, licences or services contracts which the Supplier has assumed or agreed pursuant to this Agreement;

- (f) death or personal injury caused by the negligent acts or omissions of the Supplier, its Subcontractors or its Personnel;
- (g) loss or damage to any real or tangible property (whether belonging to the Authority or any Authority Customer or any third party to whom the Authority or any Authority Customer is liable) caused by any breach of this Agreement or by the tortious conduct of the Supplier, its Subcontractors or Personnel or for which the Supplier is otherwise legally liable or responsible;
- (h) loss or corruption of Authority Data due to any wrongful or negligent act or omission of the Supplier, its Subcontractors or Personnel;
- (i) the Supplier's or any Subcontractor's breach of its confidentiality obligations or its data protection obligations under this Agreement;
- (j) the Authority's re-procurement costs arising as a consequence of the Authority's valid exercise of its rights pursuant to Clause 48.1 and in circumstances where the Authority exercises its rights under Clause 48.2 as a consequence of material breach by the Supplier; and
- (k) any liability incurred by the Authority or any Authority Customer under Sections 54 and 77 of FOIA or otherwise or under the EIR by reason of any failure of the Supplier (or any of its Subcontractors or Personnel) to comply with this Agreement.

45.2 Indemnity by the Authority

The Authority shall fully and effectively indemnify, defend and hold harmless the Supplier from any and all Losses arising from or in connection with any of the following:

- (a) death or personal injury caused by the negligent acts or omissions of the Authority; and
- (b) loss or damage to any real or tangible property of the Supplier caused by any breach of this Agreement by the Authority or by the tortuous conduct of the Authority.

45.3 Tax

If a payment due from the Supplier under Clause 45.1 is subject to tax (whether by way of direct assessment or withholding at its source), the Authority shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Authority in respect of the payment is the same as it would have been were the payment not subject to tax.

45.4 Anticipation of Infringement

If any item used by the Supplier to provide the Services becomes, or in the Authority's or the Supplier's reasonable opinion is likely to become, the subject of an infringement Claim or proceeding, the Supplier must, in addition to its obligation to indemnify the Authority and to the other rights the Authority may have under this Agreement, promptly at its own expense:

- (a) use its best efforts to secure the right to continue use of the item; or
- (b) replace or modify the item to make it non-infringing, provided that any such replacement or modification will not degrade or reduce the performance or quality of the affected component of the Services; and
- (c) if, and only if, the Supplier is unable to secure such a right for the Authority to continue to Use or replace or modify the item to make it non-infringing, the Supplier shall cease using the item and the Service Charges shall be refunded or reduced to reflect any reduction or other impact on the Services.

45.5 Enforcement of Indemnities

It is not necessary for the Authority to incur expense or make payment before notifying the Supplier of its intention to enforce a right of indemnity conferred by this Agreement.

45.6 Indemnification Procedures

- (a) Any failure to comply with any provision of this Clause 45.6 shall not exclude, limit or otherwise prejudice the obligations of the Supplier to indemnify the Authority and the Authority Customers under Clause 45.1.
- (b) The Authority shall (or shall procure that any relevant Authority Customer shall) notify the Supplier as soon as reasonably practicable once it knows

or becomes aware of any event arising in connection with this Agreement which it believes may give rise to a Claim under the provisions of any indemnity obligations set out in this Agreement.

- (c) The Supplier shall notify the Authority as soon as reasonably practicable once it knows or becomes aware of any event arising in connection with this Agreement which it believes may give rise to a Claim under the provisions of any indemnity obligations set out in this Agreement.
- (d) Each Party shall (or in the case of the Authority shall procure that any relevant Authority Customer shall) promptly notify the other Party once it knows or becomes aware of any Claim or demand being made or action brought in respect of which the indemnity obligations set out in this Agreement may apply. The Supplier shall, at its own expense conduct any litigation arising in relation to any indemnity granted by the Supplier under this Agreement and all negotiations in respect thereof and shall have the right to defend, conduct and settle all Claims or proceedings in connection therewith provided that, where there is an impact, or likely to be an impact, upon the Authority, the Supplier must consult with the Authority.
- (e) The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Claim or demand made or action brought against the Authority to which any indemnity granted by the Supplier under this Agreement may apply. The Supplier must promptly reimburse the Authority for all reasonable costs and expenses (including legal costs and disbursements) incurred in so doing.
- (f) The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Claim, demand or action in connection with any indemnities given in this Agreement.

46. Liability and Limitation of Liability

46.1 Extent of Parties' Liability

Subject to Clauses 46.2, 46.3 and 46.4:

- (a) the Supplier's liability to the Authority and Authority Customers in respect of all Claims or Losses, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall be limited in aggregate to an amount equal to the total Service Charges payable by the Authority to the Supplier in that year plus an

amount equal to the aggregate value (in pounds sterling) of the spread applied (in accordance with Schedule 4 (**Financial Obligations**)) by the Supplier in respect of all foreign exchange payments and foreign exchange receipts processed by the Supplier in that year in the course of providing the Services.

- (b) the Authority's and Authority Customers' liability to the Supplier in respect of all Claims or Losses, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall be limited in aggregate to £250,000 in each year from the Effective Date.

46.2 Consequential Loss

Except as provided in Clause 46.3 and Clause 46.4, the Parties shall not be liable to each other for any special, indirect or consequential loss or damage, whether arising from negligence, breach of contract or howsoever or for any loss of profits, turnover or business opportunities or damage to goodwill (whether direct or indirect).

46.3 Exclusions

The limits and exclusions of liability set out in this Clause 46 do not apply to:

- (a) liability for death or personal injury;
- (b) Loss caused by fraud; and
- (c) any other loss which by Law cannot be excluded or limited.

46.4 Wrongful Payments and Failure to make Payments

- (a) If, as a result of any default, act or omission of the Supplier or any Personnel or any Subcontractor, monies are wrongly paid or transferred from any Authority Bank Account to a third party, the Supplier shall indemnify the Authority and any relevant Authority Customer for the full amount of the monies that have been wrongly paid or transferred and shall immediately transfer funds for credit to such Authority Bank Account in the full amount of the monies wrongly paid or transferred away. The Authority will thereafter at the cost of the Supplier join with the Supplier in taking such action as the Supplier may reasonably require for the repayment of the said sum by the third party.

- (b) The Supplier shall indemnify the Authority and Authority Customers and the Crown against any additional borrowing costs and/or loss of interest (as may be determined by the Authority) arising from any failure by the Supplier duly to perform its obligations under this Agreement, including any failure to make any payment to or from an Authority Bank Account as may be required from time to time in the due performance of the Services.

47. Evidence of Insurance

- (a) The Supplier must produce to the Authority Relationship Manager on request copies of all insurance policies or broker's letters maintained by the Supplier in respect of public liability insurance, employer's liability insurance and any other insurance which the Supplier is required to maintain by any Laws or applicable regulatory authority, or other evidence confirming the existence and extent of the cover given by those policies together with receipts or other evidence of payment of the latest premiums due under those policies.
- (b) The holding of insurance does not relieve the Supplier of any liabilities it has towards the Authority or Authority Customers.

SECTION M –TERMINATION AND EXIT MANAGEMENT

48. Termination

48.1 Termination for Cause by the Authority

Without prejudice to any other rights or remedies it may have, the Authority may, by giving written notice to the Supplier, terminate this Agreement (either immediately or as of a date specified in the notice of termination) if any of the following circumstances occur or exist:

- (a) if the Supplier commits:
 - (i) a material breach of this Agreement, which breach is not cured within thirty (30) days following written notice of the breach from the Authority to the Supplier;
 - (ii) a material breach of this Agreement which is not capable of being cured; or

- (iii) a number of breaches of its duties or obligations which collectively constitute a material breach of this Agreement,

and for the purposes of this Clause, a material breach of this Agreement shall include, but not be limited to, failure to provide all or a substantial part of the Services, failure to Achieve a Key Deliverable in accordance with the Supplier's Implementation Plan, material breach of the provisions relating to the appointment of Subcontractors or the assignment (or purported assignment) of the Supplier's rights and liabilities under this Agreement, breach of the Authority Security Requirements, and breach of confidentiality.

- (b) if an Insolvency Event affects the Supplier or the Supplier's parent undertaking where an '**Insolvency Event**' means the Supplier or the Supplier's parent undertaking being unable to pay its debts as they fall due or the taking of any steps by the Supplier or the Supplier's parent undertaking or any other person relating to any of the following:
 - (i) the presentation of a petition for winding-up the Supplier or the Supplier's parent undertaking which is not discharged within five (5) Working Days;
 - (ii) the lodging of an application for a Court order or tabling of an effective resolution (made at a shareholder's meeting) for winding-up the Supplier or the Supplier's parent undertaking;
 - (iii) the lodging of an application for an order or application for the appointment of a receiver (including an administrative receiver), administrator (whether out of court or otherwise) or similar officer in respect of the Supplier or the Supplier's parent undertaking;
 - (iv) a receiver (including an administrative receiver), administrator or other similar officer taking possession of or being appointed (whether out of court or otherwise) in respect of the whole or any part of the Supplier's or the Supplier's parent undertaking's property or assets;
 - (v) the Supplier or the Supplier's parent undertaking resolving to make a composition with its creditors generally; or
 - (vi) a moratorium being declared in respect of any indebtedness of the Supplier or the Supplier's parent undertaking;

and the occurrence of an analogous procedure or step in any jurisdiction in respect of the Supplier or the Supplier's parent undertaking shall be deemed to be an Insolvency Event for the purposes of this Agreement and this Clause;

- (c) if the Supplier ceases to be an authorised person for the purposes of the Financial Services and Markets Act 2000 or equivalent Laws in relation to all regulated activities comprised in the Services;
- (d) if the Supplier fails to comply with any provision of the Value Added Tax Act 1994 and or any other Laws relating to direct or indirect taxation;
- (e) if the Authority, acting reasonably, believes that there is a risk that the Authority Security Requirements will not be or have not been complied with in any material respect;
- (f) if the Supplier causes reputational damage to the Authority or any Authority Customer or the ability of the Authority or any Authority Customer to carry out its business and provide its usual services is materially adversely affected by any act or omission of the Supplier; or
- (g) in the circumstances set out in Clause 63.2.

48.2 Remedial Plan Process

- (a) If the Supplier commits a Default under this Agreement and such Default is believed to be capable of remedy, the Authority may take steps to instigate the process set out in this Clause 48.2 (the '**Remedial Plan Process**') notwithstanding its rights pursuant to Clause 48.1.
- (b) The Authority may notify the Supplier in writing (the '**Remedial Plan Notice**') that it considers that the Supplier is in Default and that it requires a plan for the remedy of the Default (a '**Remedial Plan**'). The Remedial Plan Notice shall specify the matters complained of in outline and must contain sufficient detail so that it is reasonably clear what the Supplier has to remedy.
- (c) The Supplier shall serve a draft Remedial Plan within twenty (20) Working Days (or any other period agreed by the Parties) of receipt of the Remedial Plan Notice even if the Supplier disputes that it is in Default or responsible for the matters complained of.

- (d) If the Authority considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Escalation Procedure.
- (e) If despite the measures taken under Paragraph (d) above, a Remedial Plan cannot be agreed within a further ten (10) Working Days of the date of its submission then the Authority may elect to end the Remedial Plan Process at the end of the escalation period set out in the Escalation Procedure and serve a Termination Notice which will take effect unless the Supplier remedies the Default within a period specified in the Termination Notice which shall not be less than thirty (30) days from the date on which the Termination Notice is sent to the Supplier.
- (f) If a Remedial Plan is agreed between the Parties but the Supplier fails to implement the Remedial Plan the Authority may either give the Supplier a further opportunity to implement the Remedial Plan or escalate any issues arising out of the failure to implement the Remedial Plan using the Escalation Procedure.
- (g) If the reasons for the Supplier's failure to implement the Remedial Plan have not been resolved despite the use of the Escalation Procedure in accordance with sub-clause (f) above, and the Supplier has not otherwise remedied the Default, then the Authority may serve a Termination Notice and the Agreement shall terminate on the last day of the period specified by the Authority in its notice, which shall not be less than thirty (30) days from the date on which the Termination Notice is sent to the Supplier.

48.3 Termination in Part

- (a) In any of the circumstances where the Authority may terminate this Agreement, the Authority may also, without prejudice to any other right or remedies it may have, by giving written notice to the Supplier immediately terminate part or certain of the Services provided pursuant to this Agreement (including the termination of the provision of Services to any one or more Authority Customers) as of a date specified in the notice of termination. Where the Authority chooses to exercise its rights pursuant to this Clause, the Agreement shall remain in full force and effect in respect of all Services except for the Service(s) that are terminated.

- (b) If the Authority chooses to terminate any part or certain of the Services, then:
 - (i) the Supplier at the Authority's request shall provide Termination Assistance for the transfer of responsibility for the provision of the affected Services; and
 - (ii) the Service Charges payable under this Agreement shall be reduced to reflect those Services and/or Deliverables that are terminated (such reduction to be agreed by the Parties).

48.4 Termination for Convenience

- (a) In addition to any other rights it has under this Agreement, the Authority may terminate this Agreement for convenience, and without any obligation to pay compensation, at any time upon giving the Supplier not less than six (6) months written notice.
- (b) If a purported termination for cause by the Authority under Clause 48.1 or 48.2 is determined by a court not to be properly a termination for cause, then such termination by the Authority will be deemed to be a termination for convenience under this Clause 48.4 and shall take effect in accordance with this Clause 48.4.

48.5 Termination for Change of Control or Change of Financial Condition or in the Public Interest

- (a) In addition to any other rights it may have under this Agreement, the Authority may terminate this Agreement by notice in writing (either immediately or as of a date specified in the notice of termination), if:
 - (i) subject to the remainder of this Clause 48.5 there is a Change of Control or change of ownership of the Supplier or the Supplier's parent undertaking; or
 - (ii) in the reasonable opinion of the Authority there is a material adverse change in the financial condition of the Supplier; or
 - (iii) in the reasonable opinion of the Authority the continuation of this Agreement or the continued provision of the Services by the Supplier is against the public interest.

- (b) The Authority shall only be entitled to terminate for Change of Control of the Supplier or the Supplier's parent undertaking if:
 - (i) the Supplier or the Supplier's parent undertaking comes directly or indirectly under the Control of a third party with which the Authority is in dispute; or
 - (ii) the Authority reasonably believes that the Change of Control could result in a material reduction in performance as against the Service Levels.
- (c) The Authority shall only be entitled to terminate for the Change of Control of the Supplier or the Supplier's parent undertaking within six (6) months following the completion of the transactions effecting such Change of Control. Notwithstanding any other provision of this Agreement, the Supplier must provide prompt notice to the Authority in the event of a Change of Control of the Supplier or the Supplier's parent undertaking.

48.6 Termination for Force Majeure

The Authority may terminate this Agreement without payment of any compensation in the circumstances set out in Clause 16.3.

48.7 The Supplier's ability to Terminate this Agreement

Where there is:

- (a) a Change in Law; or
- (b) a change in regulation or standards; or
- (c) a security issue,

which unavoidably results in the Supplier being unable in a material respect to meet its obligations under the Agreement, and provided:

- (i) the Supplier has, promptly upon becoming aware of any such proposed change or any such security issue, notified the Authority with full details of the implications for the performance of the Supplier's obligations; and

- (ii) the Supplier has sought in good faith to find and agree with the Authority a resolution of the problem; and
- (iii) (in the case of a Change in Law) a Contract Change has not been implemented in accordance with Clause 20 which enables the continued performance of the Agreement in compliance with the Change in Law,

the Supplier may seek agreement from the Authority (such agreement not to be unreasonably withheld) for the Agreement to be terminated (but if the Authority so requires, only to the extent of the affected Services) on terms to be agreed between the Parties; provided further that the Authority shall be entitled to require that the Supplier first exercises its right of suspension under Clause 10.7 for a period of not less than six (6) months to allow further time to find a resolution of the issue.

This is without prejudice to the Supplier's right to approach the Authority at any time during the Term to seek agreement from the Authority for the Agreement to be terminated (on terms to be agreed between the Parties) due to reasons other than those cited at (a) to (c) above.

Except as expressly provided in this Clause 48.7, the Supplier shall have no right to terminate or rescind this Agreement or to treat itself as discharged from its obligations and waives any such right which it may otherwise have by operation of Law.

48.8 Disclaimer

In the event that the Supplier or a lawfully appointed insolvency practitioner disclaims or repudiates this Agreement (in whole or in part), the Supplier shall indemnify the Authority against all direct Losses arising.

49. Consequences of Termination

The termination of this Agreement in accordance with Clause 48 or any other provision of this Agreement or its expiry shall not affect the accrued rights, duties and liabilities of either Party.

50. **Exit Management**

The provisions relating to management of the termination of the Agreement and the transfer of services to a Successor Supplier are set out in Schedule 10 (**Exit Management**).

51. **Payments made on Termination**

- (a) Save for where Service Charges are due and payable in accordance with Clause 30, the Authority shall not make any payment to the Supplier:
 - (i) in respect of the expiry of the Term; or
 - (ii) if the Agreement is terminated by the Authority.
- (b) Each Party shall bear its own costs of termination of this Agreement pursuant to Clause 48 or any other provision of this Agreement.

52. **Survival of terms**

The Clauses and Schedules of this Agreement which expressly or impliedly have effect after expiry or termination of this Agreement will continue to be enforceable notwithstanding the expiry or termination of this Agreement and in particular (but without limitation) the following terms will survive the termination or expiry of this Agreement:

Clause 57 (**Audits**);

Clause 19 (**Warranties and Representations**);

Clause 37 (**Authority Data**)

Clause 39 (**Confidential Information**);

Clause 34 (**Intellectual Property Rights**);

Clause 45 (**Indemnities**);

Clause 46 (**Liability and Limitation of Liability**);

Clause 50 (**Exit Management**);

Clause 49 (**Consequences of Termination**);

Clause 52 (**Survival of terms**);

Clause 61 (**Dispute Resolution**); and

Clause 73 (**General**),

(together, the “**Surviving Clauses**”) along with all the other provisions of this Agreement to the extent necessary to give effect to the Surviving Clauses.

53. Mitigation

Each Party shall have a duty to mitigate Losses for which the other Party is financially responsible.

SECTION N – GOVERNANCE AND DISPUTES

54. Contract and Project Management Process

The Parties must follow the procedures set out in Schedule 6 (**Governance and Cooperation**) for managing the Agreement, including frequency of meetings, Escalation Procedures and reporting requirements. The Authority will co-operate with the Supplier by making available, as reasonably requested by the Supplier, such information, approvals and acceptances of the Authority as are reasonably necessary for the Supplier to provide the Services.

55. Relationship Managers

- (a) The Authority and the Supplier will each appoint a delegate with the authority to give and receive notices under this Agreement and exercise rights and give approvals under this Agreement (each, respectively the “**Authority Relationship Manager**” and the “**Supplier Relationship Manager**”).
- (b) The Supplier Relationship Manager and the Authority Relationship Manager must be knowledgeable about the Agreement, the Authority’s requirements and the Services and must be responsible for the ongoing management of the Agreement, including billing activities. The Supplier’s appointment and any replacement of the Supplier Relationship Manager must be subject to the Authority’s approval, which shall not be unreasonably withheld.

56. Records

The Supplier must (at no additional cost to the Authority) and to the extent and not for not less than the period required by Law or any Regulator, but in any event not less than six (6) years after final payment of all sums due under this Agreement, keep secure and maintain documents or copies of documents relating to, and full, detailed and accurate records of the Services, including all Authority Bank Accounts and all banking transactions (including receipts and payments) undertaken in the course of providing the Services, the Supplier Systems, Supplier's Sites, Software and Hardware used to perform the Services and its compliance with the terms of this Agreement.

In addition, if within such period the Authority or any Authority Customer requests the Supplier to retain any particular document(s) or record(s) for a longer period, the Supplier shall keep secure and maintain such document(s) or record(s) for such period as the Authority or Authority Customer may require.

57. Audits

57.1 General

The Authority Audit Representatives may from time to time perform full and detailed audits and inspections of:

- (a) the Supplier's performance of the Services;
- (b) the Supplier Systems, Supplier's Sites, Software and Hardware used by the Supplier to perform the Services;
- (c) the amounts charged to the Authority under this Agreement and the data used to justify payments claimed by the Supplier;
- (d) the Supplier's compliance with the provisions of the Agreement generally; and
- (e) the Supplier's compliance with applicable Laws and Authority Security Requirements.

57.2 Authority and the Supplier to Act Reasonably

- (a) The Supplier must, at no additional cost to the Authority, provide all reasonably necessary assistance in order to enable the Authority Audit

Representatives to initiate, carry out and complete any such audit contemplated in this Clause 57.

- (b) Such assistance must include the right of the Authority to access the Supplier's Sites and Supplier Systems and Personnel during the Term (and during normal office hours at times to be agreed by the Parties, acting reasonably provided that the Authority shall have such right of access at any time if it has reasonable grounds to suspect fraud on the part of the Supplier or the Personnel or any material non-performance by the Supplier of its obligations under this Agreement).
- (c) The Supplier shall provide to the Authority Audit Representative such information relating to the provision of the Services as the Authority reasonably requires and which the Supplier is reasonably able to provide provided that nothing in this Clause 57 shall require the Supplier to disclose any confidential information relating to other customers of the Supplier.
- (d) The Authority shall take all reasonable steps to ensure that an audit does not hinder the Supplier's ability to provide the Services or carry out its normal business and shall take account of the Supplier's reasonable requirements in relation to security, confidentiality and regulatory requirements.

57.3 Rights of the National Audit Office, the Comptroller and Auditor General

As a separate obligation, for the purpose of:

- (a) the examination and certification of the Authority's accounts; and
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

the Comptroller and Auditor General must be entitled to:

- (a) access the Supplier's Sites during the Term (and during normal office hours) and fully access the Supplier Systems;
- (b) examine and take copies of such documents and Materials as he may reasonably require which are owned, held or otherwise within the control of

the Supplier and may require the Supplier to provide such oral and/or written explanations as he considers necessary; and

- (c) provide all necessary assistance that may be required.

This condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under Section 6(3)(d) and (5) of the National Audit Act 1983. If required by the Comptroller and Auditor General the Supplier shall (and shall procure that any Subcontractor shall) enter into a direct agreement with the Comptroller and Auditor General in such form as the Comptroller and Auditor General may require in relation to or for the purposes of any such examination.

57.4 The Supplier's Reports

The Supplier must monitor and audit its own performance of the Services and must:

- (a) promptly provide to the Authority all relevant extracts of any review or audit conducted by or on behalf of the Supplier relating to the Services (or part of them), including any finding or report concerning any actual or suspected error with respect to amounts charged to the Authority under this Agreement; and
- (b) provide to the Authority a summary of its internal audits and monitoring to a format and content agreed by the Parties, on a quarterly basis during the Term.

57.5 Overpayments

If any audit identifies that the Authority has overpaid any Service Charges, the Supplier shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Service Charges if the Supplier fails to make this payment.

57.6 Subcontractors

If required by the Authority or the Comptroller and Auditor General, the Supplier shall procure that each Subcontractor shall grant to the Authority or the Comptroller and Auditor General (as the case may be) the same access and other rights as the Authority and the Comptroller and Auditor General enjoy in relation to the Supplier under this Clause.

57.7 Costs of Audit

The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material Default by the Supplier in the performance or observance of its obligations under this Agreement in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of or in relation to the audit.

58. Governance

The Parties shall comply with Schedule 6 (**Governance and Co-operation**).

59. Notices

59.1 Notices

A Party notifying or giving notice under this Agreement will give notice:

- (a) in writing (which includes by facsimile or email);
- (b) addressed to the other Party (for the attention of the Authority Relationship Manager or the Supplier Relationship Manager, as the case may be) at the address of the other Party specified at the head of this Agreement, or in the case of facsimile or email, sent to the telephone number or email address notified to it by the other Party as being the appropriate number or address for service of notice, as altered from time to time by notice given in accordance with this Clause; and
- (c) delivered by hand, sent by prepaid post with a return receipt requested, sent by an express courier with a reliable system for tracking delivery (next day delivery against receipt), or sent by facsimile or email.

59.2 Service of Notice

A notice given in accordance with Clause 59.1 is received:

- (a) if left at the recipient's address, on the date of delivery;
- (b) if sent by prepaid post, five (5) days after the date of posting;
- (c) if sent by express courier, one (1) day after being given to the courier;

- (d) if sent by facsimile, once the recipient has confirmed its receipt in writing; and
- (e) if sent by email, once the recipient has confirmed its receipt in writing.

60. Change Control Procedure

Changes to the scope of the Services and/or the Agreement shall be made and implemented in accordance with the Change Control Procedures set out in Schedule 8 (**Change Control Procedures**).

61. Dispute Resolution

61.1 Escalation

Subject to Clause 61.2, the Parties shall attempt to resolve disputes between the Parties arising out of or relating to this Agreement using the Escalation Procedure set out in Schedule 6 (**Governance and Co-operation**) prior to the initiation of the alternative dispute resolution procedure set out below.

61.2 Legal Proceedings

Nothing in this Clause shall at any time restrict either Party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect confidentiality or any Intellectual Property Rights or trade or national secret.

61.3 Alternative Dispute Resolution

- (a) If the dispute or difference is not resolved pursuant to the Escalation Procedure, either Party may (within fourteen (14) days of the last meeting pursuant to the Escalation Procedure), propose to the other in writing that the dispute be settled by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure (the "**Model Procedure**").
- (b) To initiate a mediation, a Party must give notice in writing (an "**ADR Notice**") to the other Party requesting a mediation in accordance with the Model Procedure. A copy of the ADR Notice should be sent to CEDR.
- (c) If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within fourteen (14) days from the date of the ADR Notice, CEDR will, at the

request of any Party, decide that point for the Parties, having consulted with them.

- (d) Mediation will commence no later than twenty-eight (28) days after the date of the ADR Notice.

61.4 Continued Performance

The Parties must continue to perform their respective obligations under this Agreement pending the resolution of a dispute, provided that nothing in this Clause prevents or restricts the Authority from lawfully exercising any of its rights pursuant to Clause 48 at any time.

61.5 Equitable Remedies

The Supplier acknowledges that:

- (a) if the Supplier breaches (or attempts or threatens to breach) its obligations under this Agreement the Authority and/or Authority Customers will be irreparably harmed; and
- (b) the nature of the Services and the importance to the Authority and to Authority Customers of the continuity of provision of the Services are such that in the event of a failure by the Supplier to perform or observe its obligations under this Agreement damages may not be an adequate remedy.

In such circumstances, the Authority may proceed directly to court. If a court of competent jurisdiction should find that the Supplier has breached (or attempted or threatened to breach) any such obligations (including without limitation its obligations under Clause 37 (**Data Protection**), Clause 39 (**Confidential Information**) and Clause 50 (**Exit Management**)), the Supplier agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it shall not oppose any application for an order compelling performance by the Supplier and/or restraining it from any further breaches (or attempted or threatened breaches) of this Agreement.

SECTION O - MISCELLANEOUS AND GOVERNING LAW**62. Assignment**

- (a) The Authority may assign, novate, transfer and/or otherwise dispose of its rights and obligations under this Agreement in whole or in part to:
- (i) any Crown Body; or
 - (ii) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (iii) any private sector body which substantially performs the functions of the Authority; or
 - (iv) any other entity of a credit worthiness which is acceptable to the Supplier (acting reasonably),

without the Supplier's prior written consent provided that the Authority gives reasonable notice of that assignment, novation, transfer or other disposal to the Supplier.

- (b) The Supplier must not assign its rights or transfer its obligations under this Agreement to any person or entity unless it obtains the Authority Relationship Manager's prior written consent (such consent not to be unreasonably withheld or delayed in the case of an assignment of the benefit and burden of this Agreement to a Supplier Group Company to which the Supplier is transferring all or a material part of its banking business in the United Kingdom and provided the Authority (acting reasonably) is satisfied as to the financial standing of the proposed assignee and its ability to provide the Services and perform this Agreement).

63. Corrupt Gifts and Conflicts of Interest**63.1 Corrupt Gifts - General**

- (a) The Supplier shall not and shall ensure that its Subcontractors do not:

- (i) directly or indirectly offer, promise, give or agree to give to any person working for or engaged by the Authority or any Authority Customer any gift, consideration, financial or other advantage of any kind as an inducement or reward for that person to perform improperly a relevant function or activity; or
- (ii) directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or reward for improper performance of a relevant function or activity in connection with this Agreement; or
- (iii) enter into this Agreement or any other contract with the Authority or any Authority Customer if it has knowledge that, in connection with it, commission has been paid or agreed to be paid by the Supplier or on its behalf, unless before the agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority,

(together "**Prohibited Acts**") and the Supplier in entering into this Agreement warrants and represents that neither it nor its Personnel nor its Subcontractors nor their personnel have committed or done any Prohibited Acts.

- (b) The Supplier shall and shall ensure that the Subcontractors shall:
 - (i) comply with all applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (together the "**Relevant Requirements**");
 - (ii) have and maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - (iii) ensure that all persons associated with the Supplier or any Subcontractor comply with this Clause 63.1,

and for the purpose of this sub-clause (b), the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010

(and any guidance issued under section 9 of that Act) and section 8 of that Act respectively.

63.2 .Termination for Corrupt Gifts

Any:

- (a) breach by the Supplier of this Clause 63 or the commission of any Prohibited Acts by any Personnel or Subcontractor or anyone acting on their behalf; or
- (b) commission of an offence by the Supplier, its Subcontractors or any Personnel under the Bribery Act 2010 in relation to this or any other contract between the Supplier and the Authority Customer;

shall entitle the Authority:

- (i) to take such steps as the Authority may require to ensure that no further Prohibited Acts or any such offence shall be committed and that any of the Personnel or the personnel of any Subcontractor involved or concerned in the commission of any Prohibited Act or such offence shall no longer be directly or indirectly involved in the performance of, or otherwise in relation to, this Agreement; or
- (ii) to terminate the Agreement with immediate effect and without further liability to the Supplier and recover from the Supplier the amount of any loss resulting from such termination; and/or
- (iii) to recover from the Supplier the amount or value of any such gift, consideration, financial or other advantage, or commission.

63.3 Dispute

In any dispute, difference or question arising in respect of:

- (a) the interpretation of this Clause;
- (b) the right of the Authority under this Clause to determine this Agreement; or
- (c) the amount of value of any such gift, consideration or commission;

the decision of the Authority shall be final and conclusive.

63.4 Conflict of Interest

- (a) In providing the Services, the Supplier must not do anything, or knowingly or negligently permit a situation to arise, whereby a conflict of interest may be created between the interests of the Authority or the Authority Customers and the Supplier.
- (b) The Supplier must not accept bribes, commissions or other improper financial inducements from any supplier or Subcontractor in relation to the Services.

64. Prohibited Arrangements

64.1 General

- (a) The Supplier shall ensure, throughout the Term, that neither it nor any company or person affiliated with it (including any Associate or Subcontractor) has in place any arrangements ("**Prohibited Transactions**");
 - (i) involving the use of offshore companies or other offshore entities; and
 - (ii) which have as the main purpose or one of the main purposes reducing any UK taxes which would otherwise be payable by the Supplier or any company or person associated with it (including any Associates or Subcontractors) on the payments made under this Agreement, or on any transaction connected with or resulting from this Agreement.
- (b) The Supplier shall immediately Notify the Authority of any proposal for it or any Subcontractor listed in Schedule 7 (**Subcontractors**) (or any proposal it becomes aware of in respect of any other Subcontractor or any other company or person affiliated with it (including any Associates) to enter into any Prohibited Transactions. The Supplier shall provide the Authority a reasonable period of time in which to consider the proposed Prohibited Transaction before it is due to be effected. The Parties shall consider the proposed Prohibited Transaction and agree timely and appropriate changes to the terms of such Prohibited Transaction to permit the Supplier to ensure its compliance with Clause 64.1.

- (c) Any failure by the Supplier to comply with the provisions of sub-clauses (a) and/or (b) shall constitute a deemed material breach for which the Authority may terminate this Agreement in accordance with Clause 48.1.

65. Tax Compliance

65.1 General warranty

The Supplier represents and warrants that as at the Effective Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

65.2 Ongoing Tax Compliance

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

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

65.3 Termination for Tax Non Compliance

In the event that:

- (a) the representation and warranty given by the Supplier pursuant to Clause 65.1 is materially untrue; or
- (b) the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by this Clause;

and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, the Authority shall be entitled to terminate this Agreement (either immediately or on such notice as the Authority may determine) by giving a Termination Notice to the Supplier on the grounds of a material breach of this Agreement for which the Authority may terminate in accordance with Clause 48.1.

66. Severance

- (a) If a provision of this Agreement is reasonably capable of an interpretation (a “**valid interpretation**”) which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, in accordance with the valid interpretation.
- (b) Subject to Clause 66(a), if any provision of this Agreement is prohibited by Law or held invalid, illegal or unenforceable for any reason by any court or authority of competent jurisdiction, such provision shall be severed without affecting the remaining provisions. If a provision of this Agreement is held to any extent to be invalid, the Authority and the Supplier shall as soon as reasonably practicable commence good faith negotiations to remedy that invalidity.

67. Waiver and Cumulative Remedies

- (a) The rights and remedies provided by this Agreement may be waived only by notice in writing to the other Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- (b) Unless a right or remedy of either Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party’s other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- (c) A waiver or release of any right or remedy of either Party shall be terminable at any time by notice in writing (unless it is expressed not to be terminable).
- (d) Any consent, approval or agreement given by either Party under this Agreement shall not be construed as a waiver of any rights or obligations

under this Agreement except as (and to the extent) expressly provided in such consent, approval or agreement.

- (e) The rights and remedies provided by this Agreement are cumulative, and are not exclusive of any rights or remedies provided at law or in equity or otherwise under this Agreement.

68. Costs and Expenses

The Parties agree to bear their own legal and other costs and expenses of, and incidental to, the preparation, execution and completion of this Agreement and of any related documentation.

69. Further Assurance

The Parties shall, and shall procure that their agents, employees and Subcontractors shall, do all things reasonably necessary, including executing any additional documents and instruments, to give full effect to the provisions of this Agreement.

70. Entire Agreement

This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect thereto, except in respect of fraudulent misrepresentations made by either Party.

71. Relationship of Parties

Nothing in this Agreement or any circumstances associated with it or its performance give rise to any relationship of agency, partnership or employer and employee between the Authority and/or any Authority Customer and the Supplier or between the Authority and/or any Authority Customer and any of the Personnel or those of any Subcontractor (except where such relationship of agency arises in accordance with general banking law and practice.)

72. Third Party Rights

Save where a right or benefit is expressly provided to a third party in this Agreement, nothing in this Agreement shall be deemed to grant any right or benefit to any person other than the Parties or their respective successors in title

or assignees, or entitle a third party to enforce any provision hereof and (save as aforesaid) the Parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

73. General

73.1 Public Statement

- (a) Except with the prior written approval of the Authority, the Supplier must not make any public statement or press announcement in relation to this Agreement.
- (b) Subject to Clause 73.1(a), the Supplier must (and shall procure that any of its Subcontractors shall):
 - (i) submit to the Authority any advertising, written sales promotions, press releases, public announcements and other promotional, marketing or publicity material relating to this Agreement used by the Supplier or the Subcontractors in which the Authority's and/or any Authority Customer's name or any Authority Mark is mentioned or reproduced or which contains language from which connection with the Authority and/or any Authority Customer, or of any corresponding logo or trade mark may be inferred or implied ("**Publicity Material**");
 - (ii) not publish or use (or authorise the publication or use of) any Publicity Material without the Authority's prior written consent; and
 - (iii) co-ordinate with the Authority any press releases or public announcement that it makes in relation to this Agreement.
- (c) Notwithstanding Clause 73.1(a), the Supplier may use the Authority's name for the purposes of internal announcements within its organisation.
- (d) Any Publicity Material used by the Supplier shall make clear that the Authority does not endorse the Supplier or its provision of the Services and any description of the Services in such Publicity Material shall be in general terms only.
- (e) The Authority's decision to provide or withhold consent in relation to this Clause shall be final and conclusive.

73.2 No Security

The Supplier must not, without the Authority Relationship Manager's prior written consent, give or purport to give any security interest in any of its rights to receive payment from the Authority under this Agreement.

73.3 Counterparts

This Agreement may be executed in separate counterparts, which parts taken together will constitute one single agreement between the Parties.

73.4 Construction

No rule of construction will apply in the interpretation of this Agreement to the disadvantage of one Party on the basis that such Party put forward or drafted this Agreement or any provision of this Agreement.

74. **Governing Law and Jurisdiction**

The construction, performance and validity of this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the Laws of England and Wales and the Parties submit to the exclusive jurisdiction of the Courts of England and Wales for all purposes relating to and in connection with this Agreement or its subject matter (including its formation, enforceability, validity and interpretation).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly Authorised Representatives on the date first above written.

EXECUTED by the Parties

SIGNED

For and on behalf of the **AUTHORITY**

Signature:

Name:

Title:

Date:

SIGNED

For and on behalf of

Signature:

Name:

Title:

Date: