



DATED: 2022

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

KELLOGG BROWN & ROOT LIMITED

AGREEMENT

relating to DWP Estates Integrator Services

Contents

Clauses

1	Definitions and Interpretation.....	1
2	Due Diligence	3
3	Warranties	4
4	Term	6
5	Services	7
6	Mobilisation	13
7	Performance Indicators	16
8	Services Improvement	18
9	Equipment and Maintenance	19
10	Financial and Taxation Matters	21
11	Governance	23
12	Records, Reports, Audits & Open Book Data	23
13	Change.....	23
14	Supplier Personnel	25
15	Sub-contractor Rights and Protections	28
16	Intellectual Property Rights	35
17	Transfer and Licences Granted by the Supplier.....	35
18	Licences Granted by the Authority	40
19	IPRs Indemnity	41
20	Open Source Publication	41
21	Authority Data and Security Requirements	42
22	Confidentiality	44
23	Transparency and Freedom of Information	46
24	Protection of Personal Data.....	47
25	Publicity and Branding	52
26	Limitations on Liability	54
27	Insurance	57
28	Rectification Plan Process	58
29	Increased Monitoring	59
30	Service Exclusion	60
31	Remedial Adviser	61
32	Step-in Rights	63
33	Authority Cause.....	64
34	Force Majeure.....	66
35	Termination Rights	68
36	Consequences of Expiry or Termination.....	69
37	Compliance	72
38	Assignment and Novation	72
39	Waiver and Cumulative Remedies.....	73
40	Relationship of the Parties.....	73
41	Prevention of Fraud and Bribery	73
42	Severance.....	75
43	Further Assurances	75
44	Entire Agreement.....	75
45	Third Party Rights.....	75
46	Notices	76
47	Guarantee.....	77
48	Disputes	77
49	Governing Law and Jurisdiction	77
50	Brexit.....	78

Schedules

1 Definitions

2 Service Requirements

2.1 Statement of Requirements

2.2 Performance Levels

2.3 Standards

2.4 Security Management

2.5 Insurance Requirements

2.6 Authority Policies

3 Authority Responsibilities

4 Supplier Matters

4.1 Detailed Solutions

4.2 Commercially Sensitive Information

4.3 Notified Key Sub-Contractors

4.4 Third Party Contracts

5 Software

6 Mobilisation and Testing

6.1 Mobilisation

6.2 Acceptance Criteria and Tests

7 Financial Matters

7.1 Charges and Invoicing

7.2 Payments on Termination

7.3 Benchmarking

7.4 Financial Distress

7.5 Financial Reports and Audit Rights

7.6 Savings

7.7 Pricing Schedule

8 Governance

8.1 Governance

8.2 Change Control Procedure

8.3 Dispute Resolution Procedure

8.4 Reports and Records Provisions

8.5 Exit Management

8.6 Conduct of Claims

9	Employment
9.1	Staff Transfer
9.2	Key Personnel
9.3	Equality
10	Guarantee
11	Outline Solutions
12	Approval
13	Processing Personal Data

BETWEEN:

- (1) **The Secretary of State for Work and Pensions** (the “**Authority**”) acting as part of the Crown; and
- (2) **Kellogg Brown & Root Limited** a company registered in England and Wales under company number 645125 whose registered office is at Hill Park Court, Springfield Drive, Leatherhead, Surrey, KT22 7NL, United Kingdom (the “**Supplier**”)

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

INTRODUCTION

- (A) The Authority is responsible for the operation, maintenance and improvement of the Authority Estate.
- (B) On 20 October 2020 the Authority published a Prior Information Notice on Contracts Finder notifying interested suppliers of its intention to put in place a contract for certain integrator services across the Authority Estate. On 10 March 2021 the Authority advertised DWP Estates Integrator Services 2021/S 000-004883, inviting prospective suppliers to submit proposals to act impartially on behalf of the Authority to provide certain integrator services relating to the Authority Estate.
- (C) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (D) The Authority wishes to engage the Supplier to provide integrator services across the Authority Estate.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out in this deed.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 Definitions and Interpretation

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“**EEA**”) agreement (“**EU References**”)

which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;

- 1.2.6 the words **including, other, in particular, for example** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.7 references to **writing** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.9 unless otherwise provided and save for references in Annexes 1 or 2 of Schedule 5 (Software) and in Schedule 10 (Guarantee), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
- 1.2.10 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.4.1 the Clauses and Schedule 1 (Definitions);
 - 1.4.2 Schedules 2.1 (Statement of Requirements), 2.2 (Performance Levels) and 7.1 (Charges and Invoicing) and their respective Annexes;
 - 1.4.3 any other Schedules and their Annexes (other than Schedule 4.1 (Detailed Solutions) and its Annexes (if any) and Schedule 11 (Outline Solutions) and its Annexes (if any));
 - 1.4.4 Schedule 4.1 (Detailed Solutions) and its Annexes (if any) or Annexures A – C to Schedule 13 (Processing Personal Data); and
 - 1.4.5 Schedule 11 (Outline Solutions) and its Annexes (if any).
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement the Authority is acting as part of the Crown.
- 1.7 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

2 Due Diligence

2.1 The Supplier acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (a) the Authority Requirements;
 - (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (c) the operating processes and procedures and the working methods of the Authority;
 - (d) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets;
 - (e) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or of which the Supplier will require the benefit for the provision of the Services; and
 - (f) information as to any contracts being procured (including any requirements for licences, support, maintenance and other agreements relating to the Operating Environment) to the extent provided as part of or referred to in the Due Diligence Information.
- 2.1.4 it has advised the Authority in writing of:
 - (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (b) the actions needed to remedy each such unsuitable aspect; and
 - (c) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- 2.2.1 any unsuitable aspects of the Operating Environment;
- 2.2.2 any misinterpretation of the Authority Requirements; or
- 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 Warranties

3.1 The Authority represents and warrants that:

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

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
- 3.2.3 this Agreement is executed by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
- 3.2.5 it has notified the Authority in writing of any actions, suits, proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- 3.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its responses to the selection questionnaire and the invitation to tender (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

- 3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - 3.2.11 the Contract Inception Report is a true and accurate reflection of the Actual Costs and Supplier Profit Rate forecast by the Supplier and the Supplier does not have any other internal financial model or pricing schedule in relation to the Services inconsistent with the Financial Model;
 - 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
 - 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 (Warranties) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 or 3.2 (Warranties) has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.6 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 Term

4.1 This Agreement shall:

4.1.1 come into force on the Effective Date, save for Clauses 1 (Definitions and Interpretation), 3 (Warranties), 4 (Term), 22 (Confidentiality), 23 (Transparency and Freedom of Information), 24.29 (Publicity and Branding), 26 (Limitations on Liability), 39 (Waiver and Cumulative Remedies), 40 (Relationship of the Parties), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 46 (Notices), 48 (Disputes) and 49 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature;

4.1.2 be subject to the provisions of Clause 35 (Termination Rights); and

4.1.3 expire on:

- (a) the Initial Term Date in accordance with Clause 4.2 (Term); or
- (b) on the Extended Term Date in accordance with Clauses 4.3 and 4.5 (Term) (as the case may be).

4.2 Subject to the provisions of Clause 36 (Consequences of Expiry or Termination), this Agreement shall terminate on the Initial Term Date unless the Authority has extended the Term in accordance with Clauses 4.3 – 4.9 (inclusive) (Term).

4.3 The Authority may twenty four (24) Months before the Initial Term Date, request that the Supplier provides to the Authority for the Authority's consideration the:

4.3.1 Extension Period Maximum Price; and

4.3.2 Extension Period Supplier Profit Rate,

for the provision of the Services during the First Term Extension Period and the Second Term Extension Period and the Supplier shall give full details of the Extension Period Maximum Price and the Extension Period Supplier Profit Rate no later than twenty (20) Months before the Initial Term Date.

4.4 In the event the Extension Period Maximum Price exceeds the Maximum Price for the fifth Contract Year the Supplier shall provide sufficient detail to the Authority to explain the nature of any variance from the Maximum Price and enable the Authority to fully evaluate the Extension Period Maximum Price.

4.5 In preparing the Extension Period Maximum Price and the Extension Period Supplier Profit Rate for the provision of Services for the First Term Extension Period and the Second Term Extension Period the Supplier shall:

4.5.1 act reasonably and in good faith;

4.5.2 not adjust the economic balance of this Agreement; and

4.5.3 comply with the Financial Transparency Objectives.

4.6 The Supplier shall attend such meetings and shall provide such further or other information, data and documents as the Authority reasonably requires in order to fully evaluate the Extension Period Maximum Price and/or the Extension Period Supplier Profit Rate.

- 4.7 The Authority shall give notice to the Supplier either accepting or rejecting the Supplier's proposed Extension Period Maximum Price and proposed Extension Period Supplier Profit Rate for each of the First Term Extension Period and Second Term Extension Period no later than eighteen (18) Months before the Initial Term Date.
- 4.8 Where the Authority gives notice to the Supplier accepting the Extension Period Maximum Price and the Extension Period Supplier Profit Rate for the First Term Extension Period and Second Term Extension Period, the Extension Period Maximum Price and the Extension Period Supplier Profit Rate shall be binding on the Supplier subject to the terms of this Agreement. The Authority's acceptance of the Extension Period Maximum Price and/or the Extension Period Supplier Profit Rate in no way obliges the Authority to extend the Term beyond the Initial Term Date or, where the Initial Term is extended, beyond the First Term Extension Date.
- 4.9 No later than:
- 4.9.1 twelve (12) Months before the Initial Term Date the Authority may at its sole discretion give notice to the Supplier extending the Term to the First Term Extension Date; and
- 4.9.2 ten (10) Months before the First Term Extension Date the Authority may at its sole discretion give notice to the Supplier extending the Term to the Second Term Extension Date.
- 4.10 The term of this Agreement may not be extended beyond the Second Term Extension Date.

5 Services

Standard of Services

- 5.1 The Supplier shall provide the:
- 5.1.1 Mobilisation Services during the Mobilisation Phase; and
- 5.1.2 Operational Services from and including the Operational Services Commencement Date,
- so as to meet the requirements of this Agreement (including, without limitation, Schedule 2.1 (Statement of Requirements)).
- 5.2 The Supplier shall ensure that the Services:
- 5.2.1 are supplied in accordance with and comply in all respects with the Statement of Requirements; and
- 5.2.2 are supplied in accordance with and comply in all respects with the Detailed Solutions and the provisions of this Agreement.
- 5.3 The obligations in Clauses 5.2.1 and 5.2.2 (Standard of Services) are independent obligations. In particular:
- 5.3.1 supply of the Services in accordance with and compliance by the Supplier with the Statement of Requirements does not relieve the Supplier from the obligation to satisfy a requirement of the Detailed Solutions or the provisions of this Agreement; and
- 5.3.2 supply of the Services in accordance with and in compliance with the Detailed Solutions and the provisions of this Agreement does not relieve the Supplier from the obligation to comply with and satisfy the Statement of Requirements.

5.4 The Supplier shall:

5.4.1 perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;
- (d) the Baseline Security Requirements;
- (e) the Account Management Detailed Solution;
- (f) the Authority Policies; and
- (g) the Supplier's:
 - (i) Mobilisation Plan; and
 - (ii) own established procedures and practices,

in each case to the extent the same do not conflict with the requirements of Clauses 5.4.1(a) to 5.4.1(f) (Standard of Services); and

5.4.2 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.5 Without prejudice to Clause 1.4, in the event that either Party becomes aware of any:

5.5.1 inconsistency between the requirements of Clauses 5.4.1(a) to 5.4.1(f) (Standard of Services), that Party shall immediately notify the other Party in writing of such inconsistency; or

5.5.2 inadequacy, discrepancy or divergence in or between any part of this Agreement, that Party shall immediately notify the other Party in writing of such inadequacy, discrepancy or divergence,

in reasonably sufficient detail and the Authority Representative shall, as soon as practicable, instruct the Supplier as to how such inconsistency, inadequacy, discrepancy or divergence shall be resolved. The Supplier shall comply with such instructions at no cost to the Authority.

Supplier Covenants

5.6 The Supplier shall:

5.6.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Key Deliverables and to provide the Services in accordance with this Agreement;

5.6.2 save to the extent that obtaining and maintaining the same are expressly agreed in writing to be the responsibility of the Authority and subject to Clause 13 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

- 5.6.3 ensure that:
- (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (b) the release of any new Software or upgrade to any Software complies with the interface requirements in the Statement of Requirements and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (Security Management)) shall notify the Authority three (3) Months before the release of any new Software or Upgrade;
 - (c) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (d) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Key Deliverables and/or the Services shall enable the Key Deliverables and/or Services to meet the Authority Requirements; and
 - (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;
- 5.6.4 minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- 5.6.5 ensure that any Documentation and training provided by the Supplier to the Authority or any Authority Supply Chain Members are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.6.6 co-operate with the Authority Supply Chain Members and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Authority Supply Chain Member to enable such Authority Supply Chain Member to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- 5.6.7 co-operate with the Authority and/or the Authority Supply Chain Members as the case may be and ensure that the Supplier provides the Authority Supply Chain Members with all information (including any Documentation) advice or assistance required for the timely and successful delivery of the Authority Supply Chain Services;
- 5.6.8 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Key Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.6.9 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.6.8 (Supplier Covenants);

- 5.6.10 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
 - 5.6.11 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
 - 5.6.12 notify the Authority in writing as soon as reasonably possible and in any event within one (1) Month of any Change of Control of the Supplier taking place;
 - 5.6.13 notify the Authority in writing without delay and in any event within five (5) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - 5.6.14 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority; and
 - 5.6.15 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.7 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.8 Without prejudice to Clauses 19.2 and 19.3 (IPRs Indemnity) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- 5.8.1 remedy any breach of its obligations in Clauses 5.6.2 to 5.6.4 (Supplier Covenants) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - 5.8.2 remedy any breach of its obligations in Clause 5.6.1 (Supplier Covenants) and Clauses 5.6.5 to 5.6.9 (Supplier Covenants) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - 5.8.3 meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under Clauses 5.8.1 or 5.8.2 (Supplier Covenants) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software Warranty

- 5.9 Without prejudice to Clauses 5.6 and 5.8 (Supplier Covenants) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:
- 5.9.1 be free from material design and programming errors;
 - 5.9.2 perform in all material respects in accordance with the relevant specifications contained in the Detailed Solutions and Documentation; and

5.9.3 not infringe any Intellectual Property Rights.

Continuing Obligation to Provide the Services

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

5.10.1 any withholding of the Service Charges by the Authority pursuant to Clause 7.2.4(b) (Performance Failures);

5.10.2 the existence of an unresolved Dispute; and/or

5.10.3 any failure by the Authority to pay any Charges.

Power of Attorney

5.11 By way of security for the performance of its obligations under Clauses 5.6.8 and 5.6.9 (Supplier Covenants) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.11 (Power of Attorney) (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

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

Independence, Conflicts of Interest and Proscribed Conduct

5.13 The Supplier shall carry out (and shall procure that Supplier Personnel shall carry out) the Services in the Authority's best interests and independently and impartially.

5.14 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Personnel or any Supplier Related Party is placed in a position of potential or actual conflict between the financial, commercial or other interests of the Supplier and/or any Supplier Related Party and the Supplier's duties to the Authority under this Agreement. Should any conflict arise or become apparent, the Supplier will disclose the same to the Authority immediately with full details.

5.15 Without prejudice to the Supplier's general obligation under Clauses 5.13 and 5.14 (Independence, Conflicts of Interest and Proscribed Conduct), the Supplier shall not and shall procure that any Supplier Personnel or any Supplier Related Party shall not engage in Proscribed Conduct and shall notify the Authority immediately on any breach of this requirement.

5.16 Without prejudice to the Authority's rights under Clauses 15.18 (Termination of Sub-contracts) and/or 35.1 (Termination Rights), where the Supplier is in breach of Clauses 5.13 to 5.15 (Independence, Conflicts of Interest and Proscribed Conduct) the Supplier shall within five (5) Working Days of any breach becoming apparent to it, provide proposals to the Authority for remedying and/or mitigating such breach. Upon any breach of Clauses 5.13 to 5.15 (Independence, Conflicts of Interest and Proscribed Conduct) becoming apparent to the Authority (whether or not notified by the Supplier), the Authority may at the Supplier's cost:

5.16.1 in accordance with Clause 30 (Service Exclusion) remove any or all of the Services from the scope of this Agreement and carry out such Services itself and/or employ a third party to carry out such Services; and/or

- 5.16.2 require the Supplier to put such measures in place (including but not limited to information barriers) as required by the Authority in its absolute discretion to rectify and/or mitigate the effect of any breach of Clauses 5.13 to 5.15 (Independence, Conflicts of Interest and Proscribed Conduct); and/or
 - 5.16.3 undertake additional monitoring activities pursuant to Clause 29 (Increased Monitoring) to ensure that notwithstanding any breach of Clauses 5.13 to 5.15 (Independence, Conflicts of Interest and Proscribed Conduct), the Supplier continues to comply with its other obligations pursuant to this Agreement and in accordance with Clause 5.13 (Independence, Conflicts of Interest and Proscribed Conduct).
- 5.17 Save in the event of and to the extent consequential on removal of the relevant element of the Services pursuant to Clause 30 (Service Exclusion) or termination of all or part of the Services, where as a result of the matter(s) leading or contributing to a breach of Clauses 5.13 to 5.15 (Independence, Conflicts of Interest and Proscribed Conduct) the Supplier or any Supplier Personnel or a Supplier Related Party realises a profit or other financial benefit:
- 5.17.1 the Supplier shall account to the Authority in respect of the same on a monthly basis; and
 - 5.17.2 the Authority shall be entitled to set off an amount equivalent to that financial benefit (as accounted for by the Supplier or otherwise as the Authority may determine) from any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority in accordance with Clause 10.7 (Set-off and Withholding) of this Agreement.

Authority Supply Chain Members

- 5.18 The Supplier shall:
- 5.18.1 comply with the requirements of Schedule 8.1 (Governance);
 - 5.18.2 take into account the obligations of the Authority under any contract entered into by the Authority with any Authority Supply Chain Member (provided that copies of these, or the relevant parts of them, shall have been made available to the Supplier to inspect which such copies may be redacted to the extent that they contain sensitive information). The Supplier shall use Good Industry Practice to ensure that no act, failure to act or default of the Supplier shall constitute, cause or contribute to any breach by the Authority of any of the Authority's obligations under such contract;
 - 5.18.3 not be liable to the Authority for any act or omission of an Authority Supply Chain Member save to the extent that any such act or omission was caused, or contributed to by any act or omission of the Supplier; and
 - 5.18.4 where an Authority Supply Chain Member causes, or the Supplier reasonably believes will cause, the Supplier to be in default in respect of any of its obligations under this Agreement, as soon as reasonably practicable after the relevant circumstances become or should reasonably have become apparent to the Supplier, the Supplier shall give the Authority warning ("**Early Warning**") of the same, including as much detail as possible of how the Authority Supply Chain Member has caused or will cause the relevant default and what steps the Supplier has undertaken or will undertake to mitigate the default.

6 Mobilisation

Account Management Detailed Solution

6.1 Following Approval by the Authority of the Account Management Detailed Solution:

6.1.1 the Supplier shall design and deliver all Key Deliverables; and

6.1.2 any Changes to the Account Management Detailed Solution shall be agreed in accordance with the Change Control Procedure.

Mobilisation Plan

6.2 The Parties shall comply with the provisions of Schedule 6.1 (Mobilisation) in relation to the maintenance of the Mobilisation Plan.

6.3 The Mobilisation Plan sets out the Supplier's strategy and timescales for providing the Mobilisation Services, the Milestones against which the Supplier's progress is measured and against which Milestone Payments under Schedule 7.1 (Charges and Invoicing) will be made.

6.4 The Supplier shall:

6.4.1 comply with the Mobilisation Plan; and

6.4.2 ensure that each Milestone is achieved on or before its Milestone Date.

6.5 The relevant Detailed Solutions to be developed during the Mobilisation Phase shall be prepared by the Supplier based on the relevant Outline Solution set out in Schedule 11 (Outline Solutions).

6.6 In accordance with the terms of the Mobilisation Plan, by the:

6.6.1 Relevant Detailed Solution Draft Submission Date the Supplier shall prepare and submit to the Authority the relevant Draft Detailed Solution relating to the relevant Service Element for review by the Authority pursuant to the terms Paragraph 2 of Part 2 to Schedule 6.1 (Mobilisation); and

6.6.2 Relevant Detailed Solution Submission Date, the Supplier shall prepare and submit to the Authority the relevant Detailed Solution Submission relating to the relevant Service Element for review by the Authority pursuant to the terms of Paragraph 3 of Part 2 to Schedule 6.1 (Mobilisation).

Development of Detailed Solutions

6.7 Each Detailed Solution Submission prepared pursuant to Clause 6.6 (Mobilisation Plan) shall set out the Supplier's solution for:

6.7.1 meeting the requirements of Schedule 2.1 (Statement of Requirements) in respect of each Service Element of the Operational Services;

6.7.2 identifying and delivering the Key Deliverables to be provided in accordance with a proposed timescale during the Mobilisation Phase; and

6.7.3 identifying the relevant Acceptance Criteria and Tests proposed by the Supplier in accordance with the requirements of Schedule 6.2 (Acceptance Criteria and Tests) in order to provide a robust demonstration that each relevant Key Deliverable will ensure that the Supplier is able to meet the requirements of this Agreement and that people, systems, assets developed material and supplier contracts are in place, tested Accepted and available by the relevant Acceptance Test Completion Date.

- 6.8 As soon as reasonably practicable and in any event within two (2) Working Days of the Final Detailed Solution Development End Date the Supplier shall warrant and represent to the Authority that there are no inconsistencies between any of the Detailed Solutions that have been Approved by the Authority pursuant to the terms of this Agreement.
- 6.9 If (at any time) the Supplier becomes aware of any inconsistency between any of the Detailed Solutions or between any Detailed Solution and any requirement of this Agreement, the Supplier shall immediately notify the Authority and the Authority Representative shall as soon as reasonably practicable notify the Supplier which requirement or requirements the Supplier should comply with. The Supplier shall (at its own cost and expense) submit to the Authority such revisions as may be required to the part or parts of a Detailed Solution which was not followed so that any inconsistency is removed and the requirements of Schedule 2.1 (Statement of Requirements) are met in full and the terms of Schedule 8.2 (Change Control Procedure) shall apply accordingly without cost to the Authority.

Mobilisation Phase - Detailed Solution Testing

- 6.10 By the relevant Acceptance Test Completion Date the Supplier shall deliver all of the Key Deliverables identified as required by the relevant Detailed Solution and/or by the Mobilisation Plan. Clauses 6.11 to 6.16 set out the obligations on the Supplier to deliver and achieve Acceptance by the Authority of the Key Deliverables (as set out in each Detailed Solution as Approved by the Authority pursuant to Schedule 6.1 (Mobilisation) and/or as set out in the Mobilisation Plan (as the case may be)).
- 6.11 Following Approval of the Detailed Solutions, the Supplier shall:
- 6.11.1 mobilise the Supplier's resources in accordance with the Mobilisation Plan including the allocation from the Supplier's resources of appropriately qualified and experienced personnel with appropriate competence and expertise to provide all services required to prepare for the delivery of Operational Services;
 - 6.11.2 implement in full the Detailed Solutions;
 - 6.11.3 prepare, submit and deliver the Key Deliverables in accordance with the relevant Detailed Solution and/or the Mobilisation Plan;
 - 6.11.4 (where Acceptance is not given in respect of a Key Deliverable) amend and re-submit each such Key Deliverable to meet the Authority's requirements;
 - 6.11.5 obtain Acceptance of each of the Key Deliverables by the Authority in accordance with Schedule 6.2 (Acceptance Criteria and Tests);
 - 6.11.6 comply with Part 1 to Schedule 6.1 (Mobilisation);
 - 6.11.7 manage and achieve Milestones by the relevant Milestone Dates; and
 - 6.11.8 manage and achieve the commencement of Operational Services by the Operational Services Commencement Date.
- 6.12 The provision of the Operational Services shall be subject to achievement of Acceptance in accordance with Schedule 6.2 (Acceptance Criteria and Tests) including any remedies and sanctions set out in that schedule. A Detailed Solution shall be Accepted where the Authority reasonably considers that all Key Deliverables relating to the relevant Detailed Solution meet the Acceptance Criteria and Tests which form part of the Detailed Solution Approved by the Authority pursuant to Schedule 6.1 (Mobilisation).
- 6.13 During the period that Acceptance Tests of the Detailed Solutions are being undertaken the Supplier shall submit to the Authority for Acceptance in accordance with Schedule 6.2 (Acceptance Criteria and Tests) the Key Deliverables at the times required in the Mobilisation Plan and/or the relevant Detailed Solution relating to such Key Deliverable.

Timing of Operational Services

6.14 The Supplier shall achieve:

6.14.1 Approval of all Detailed Solutions no later than the Final Detailed Solution Development End Date; and

6.14.2 Acceptance by no later than the Acceptance Test Completion Date,

failing which the Authority shall be entitled to terminate this Agreement by giving notice to the Supplier under Clause 35 (Termination Rights).

6.15 Subject to Clause 26 (Limitations on Liability), if:

6.15.1 the Final Detailed Solution Development End Date has not been achieved; and/or

6.15.2 a Milestone is not achieved by the relevant Milestone Date; and/or

6.15.3 the Operational Services are not commenced by the Operational Services Commencement Date,

then the Authority shall be entitled to:

6.15.4 set off any Losses incurred by the Authority against any payments otherwise due during the Mobilisation Phase;

6.15.5 exercise its rights pursuant to Clause 29 (Increased Monitoring);

6.15.6 exercise its rights pursuant to Clause 31 (Remedial Adviser);

6.15.7 exercise its rights pursuant to Clause 32 (Step-In Rights);

6.15.8 claim any Losses incurred by the Authority from the Supplier; and/or

6.15.9 require the Supplier to apply such additional resources as are necessary to remedy the delay.

6.16 Notwithstanding any other provision in this Agreement, the Supplier shall not implement any of the Operational Services and shall not permit any system to be used unless the same has been Approved and Accepted by the Authority.

Testing and Achievement of Milestones

6.17

6.17.1 The Parties shall comply with the provisions of Schedule 6.2 (Acceptance Criteria and Tests) in relation to the procedures to determine whether a Milestone or Test or Key Deliverable has been achieved.

6.17.2 In relation to the ATP Milestone only, the Supplier shall, by no later than [DATE]¹ (the “**ATP Tests Submission Date**”) submit to the Authority the Key Deliverables and the Acceptance Tests and Criteria (including any Detailed Solution Indicators) relating to the ATP Milestone (the “**ATP Tests Submission**”) for each Detailed Solution. The Supplier acknowledges and agrees that:

¹ [Intentionally not populated at contract signature, for ascertainment during Mobilisation Phase]

- (a) the submission of the ATP Tests Submission shall be a Milestone (the “**ATP Tests Submission Milestone**”) for the purposes of each Detailed Solution and the Mobilisation Plan;
- (b) approval of the ATP Tests Submission by [DATE]² shall be a Milestone (the “**ATP Tests Approval Milestone**”) for each Detailed Solution and the Mobilisation Plan;
- (c) the provisions of Schedule 6.1, Part 2 (Mobilisation) (including, for the avoidance of doubt, paragraphs 1 and 2 of Schedule 6.1, Part 2 (Mobilisation)) shall apply mutatis mutandis to Clauses 6.18.2(b) and 6.18.2(b) above;
- (d) neither the ATP Tests Submission Milestone nor the ATP Tests Approval Milestone shall attract payment; and

6.17.3 the Parties agree that the ATP Milestone will not be Accepted by the Acceptance Test Completion Date.

7 Performance Indicators

7.1 The Supplier shall comply with the provisions of Schedule 2.2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

7.2 If in any Service Period:

- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 8 of Schedule 7.1 (Charges and Invoicing);
- 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1 (Performance Failures));
- 7.2.3 a SPI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring; and/or
- 7.2.4 a Material SPI Failure occurs:
 - (a) the Supplier shall comply with the Rectification Plan Process; and
 - (b) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (Set Off and Withholding) until the relevant Material SPI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

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

- 7.3.1 the Supplier has over the previous twelve (12) Month period accrued Service Credits in excess of the Service Credit Cap;
- 7.3.2 the KPI Failure:

² [Intentionally not populated at contract signature, for ascertainment during Mobilisation Phase]

- (a) breaches the relevant KPI Service Threshold;
- (b) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
- (c) results in:
 - (i) the corruption or loss of any Authority Data (in which case the remedies under Clause 21.7 (Authority Data and Security Requirements) shall also be available); and/or
 - (ii) the Authority being required to make a compensation payment to one or more third parties;
- (d) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- (e) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 35.1 (Termination by the Authority).

Unacceptable KPI Failure

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

- 7.4.1 the Authority shall (subject to the Service Credit Cap set out in Clause 26.6 (Financial and other limits)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”); and
- 7.4.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Failure Points (accruing from a KPI Failure only) and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

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

7.5 The Supplier:

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

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 35.1 or 35.2 (Termination by the Authority).

Changes to Performance Indicators and Service Credits

7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least 3 Months’ notice:

- 7.7.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
- 7.7.2 convert one or more:
 - (a) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - (b) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).
- 7.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.7 (Changes to Performance Indicators and Service Credits), or increase the Service Charges as a result of such changes provided that:
 - 7.8.1 the total number of Key Performance Indicators does not exceed fifteen (15);
 - 7.8.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards;
 - 7.8.3 there is no change to the Service Credit Cap; and
 - 7.8.4 there is no change to the aggregate total of Service Failure Points in the table in Annex 1 of Schedule 2.2 (Performance Levels).

8 Services Improvement

- 8.1 In addition to meeting the requirements of Schedule 2 (Service Requirements) and the Contract Administration and Performance Management Detailed Solution, the Supplier shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services and the Authority Supply Chain Services in accordance with this Clause 8 (Services Improvement).
- 8.2 As part of the obligations identified pursuant to Clause 8.1 (Services Improvement) the Supplier shall identify and report to the Project Board once every three (3) Months on:
 - 8.2.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services and/or the Authority Supply Chain Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
 - 8.2.2 new or potential improvements to the Services and/or the Authority Supply Chain Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services and the Authority Supply Chain Services (as the case may be);
 - 8.2.3 new or potential improvements to the interfaces or integration of the Services and/or the Authority Supply Chain Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
 - 8.2.4 changes in business processes and ways of working that would enable the Services and the Authority Supply Chain Services to be delivered at lower cost and/or with greater benefits to the Authority;

- 8.2.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services and the Authority Supply Chain Services; and/or
- 8.2.6 any key benefit categories for the purpose of Schedule 7.6 (Anticipated Savings), whether actual or anticipated and its progress in realising savings against such categories.
- 8.3 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 8.4 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 Equipment and Maintenance

Supplier Equipment

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

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services and/or the Authority Supply Chain Services.

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Authority:

- 9.7.1 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
- 9.7.2 the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for 12 Months after delivery;
- 9.7.3 if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- 9.7.4 without prejudice to any other rights or remedies of the Authority:
- (a) risk in the Goods shall pass to the Authority at the time of delivery; and
 - (b) ownership of the Goods shall pass to the Authority at the time of payment.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 Financial and Taxation Matters

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (Charges and Invoicing).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.10 (Mobilisation Phase – Detailed Solution Testing), 12 (Records, Reports, Audits and Open Book Data), 23 (Transparency and Freedom of Information), 24 (Protection of Personal Data).
- 10.3 Where the Authority:
- 10.3.1 exercises its rights; or
- 10.3.2 requires the Supplier to act,
- pursuant to Clause 28 (Rectification Plan Process), Clause 29 (Increased Monitoring), Clause 30 (Service Exclusion) Clause 31 (Remedial Adviser), and, save where there is no failure or breach by the Supplier, Clause 32 (Step-In Rights) the Supplier shall indemnify and keep indemnified the Authority for all expenses (including professional fees), costs, damages and losses incurred by it thereunder.
- 10.4 If the Authority fails to pay any amount due under this Agreement by the final date for payment of such sum, the Supplier shall have the right to charge interest on the unpaid amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the final date for payment up to the date of actual payment.

VAT

- 10.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.6 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.6 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 10.7 Subject to the provisions of Paragraph 4.5 of Schedule 7.1 (Charges and Invoicing) the Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.

Benchmarking

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

Financial Distress

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

Promoting Tax Compliance

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

10.10.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

10.10.2 promptly provide to the Authority:

- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

SECTION D - CONTRACT GOVERNANCE

11 Governance

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

Representatives

- 11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (Supplier Personnel).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 Records, Reports, Audits & Open Book Data

- 12.1 The Supplier shall comply with the provisions of:
- 12.1.1 Schedule 8.4 (Reports and Records Provisions) in relation to the maintenance and retention of Records; and
 - 12.1.2 Paragraph 3 of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- 12.2.1 Paragraph 4 of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the provision of the Financial Reports; and
 - 12.2.2 Paragraphs 5 to 7 of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 Change

Change Control Procedure

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

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- 13.2.1 a General Change in Law; or
 - 13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in and subject to Clause 13.2.2 (Change in Law)), the Supplier shall:

- 13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
- (a) whether any Change is required to the Services, the Charges or this Agreement; and
 - (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to achieve a Milestone and/or to meet the Target Performance Levels; and
- 13.3.2 provide the Authority with evidence:
- (a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (b) that the Supplier's profit margin is equal to or less than the profit margin contained in the Supplier's Final Bid Submission;
 - (c) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (d) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (Services Improvement), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2 (Change in Law)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL

14 Supplier Personnel

14.1 The Supplier shall:

- 14.1.1 provide at least seven (7) days' in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 14.1.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (Statement of Requirements) and Schedule 2.4 (Security Management); and
 - (c) comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel and all reasonable requirements of the Authority concerning conduct at or outside of the Authority Premises, including the security requirements as set out in Schedule 2.4 (Security Management);
- 14.1.3 subject to Schedule 9.1 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

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

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

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may acting reasonably from time to time identify any further roles as being Key Roles and the relevant person in or selected to fill those Key Roles as the case may be shall on the Authority's written notice be included on the list of and for all purposes be Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 14.5.1 requested to do so by the Authority;
 - 14.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave, shared parental leave or long-term sick leave;
 - 14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 14.5.4 the Supplier first consults with the Authority and thereafter obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- 14.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 14.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 14.6.3 give at least sixty (60) Working Days' notice of its intention to remove or replace any Key Personnel or, in the cases of:
 - (a) death, or unexpected ill health of any Key Personnel; or
 - (b) a material breach of any Key Personnel's employment contract,as much notice as is reasonably practicable;
 - 14.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - 14.6.5 ensure that in relation to any replacement for a Key Role:
 - (a) the replacement has a level of qualifications and experience appropriate to the relevant Key Role;
 - (b) the replacement is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced; and

- (c) the Supplier first consults with the Authority and thereafter obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

Employment Indemnity

14.7 The Parties agree that:

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

Income Tax and National Insurance Contributions

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

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

Staff Transfer

14.9 The Parties agree that:

- 14.9.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (Staff Transfer) shall apply as follows:
 - (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 9.1 (Staff Transfer) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (Staff Transfer) shall apply; and
 - (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees:
 - (i) Parts A and B of Schedule 9.1 (Staff Transfer) shall apply; and
 - (ii) Part C of Schedule 9.1 (Staff Transfer) shall not apply;

- 14.9.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer of Transferring Authority Employees, Part C of Schedule 9.1 (Staff Transfer) shall apply and Parts A of Schedule 9.1 (Staff Transfer) shall not apply; and
- 14.9.3 Part D of Schedule 9.1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

15 Sub-contractor Rights and Protections

Appointment of Sub-contractors

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
 - 15.1.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 15.1.2 comply with its obligations under this Agreement in the delivery of the Services; and
 - 15.1.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
 - 15.2.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 15.2.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 15.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on arm's-length terms.
- 15.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (Appointment of Sub-contractors), the Supplier shall also provide:
 - 15.3.1 a copy of the proposed Sub-contract; and
 - 15.3.2 any further information reasonably requested by the Authority.
- 15.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (Appointment of Sub-contractors) (or, if later, receipt of any further information requested pursuant to Clause 15.3 (Appointment of Sub-contractors)), object to the appointment of the relevant Sub-contractor if it considers that:
 - 15.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
 - 15.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 15.4.3 the proposed Sub-contractor employs unfit persons; and/or

- 15.4.4 the proposed Sub-contractor should be excluded in accordance with Clause 15.23 (Exclusion of Sub-contractors),

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

15.5 If:

- 15.5.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days after receipt of:

- (a) the Supplier's notice issued pursuant to Clause 15.2 (Appointment of Sub-contractors); and
- (b) any further information requested by the Authority pursuant to Clause 15.3 (Appointment of Sub-contractors); and

- 15.5.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.6 (Appointment of Key Sub-contractors),

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

Appointment of Key Sub-contractors

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

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.23 (Exclusion of Sub-contractors).

- 15.7 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).

- 15.8 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- 15.8.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;

- 15.8.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;

- 15.8.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;

- 15.8.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 15.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
- (a) data protection requirements set out in Clauses 21 (Authority Data and Security Requirements) and 24 (Protection of Personal Data);
 - (b) FOIA requirements set out in Clause 23 (Transparency and Freedom of Information);
 - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.6.14 (Supplier Covenants);
 - (d) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (e) the conduct of Audits set out in Schedule 7.5 (Financial Reports and Audit Rights);
- 15.8.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 35.1 (Termination by the Authority);
- 15.8.7 terms equivalent to Clauses 36.3 to 36.5 (Payments by the Authority) and Schedule 7.2 (Payment on Termination) of this Agreement;
- 15.8.8 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 15.8.9 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 31 (Remedial Adviser);
- 15.8.10 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 32 (Step-in Rights); and
- 15.8.11 a provision requiring the Key Sub-contractor to:
- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (ii) any fact, circumstance, event or matter which could give rise to the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

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

- (b) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (Financial Distress), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

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

Sub-contractor Protection

- 15.10 The Supplier shall ensure that all Sub-contracts (which in this Clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- 15.10.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- 15.10.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- 15.10.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.10.2 (Sub-contractor Protection), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.10.4 (Sub-contractor Protection) after a reasonable time has passed;
- 15.10.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed; and
- 15.10.5 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 15.10.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 15.10 (Sub-contractor Protection) in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

- 15.11 The Supplier shall:

- 15.11.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- 15.11.2 include within the Performance Monitoring Report produced by it pursuant to Schedule 2.2 (Performance Levels) a summary of its compliance with Clause 15.11.1 (Sub-contractor Protection), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

- 15.12 Without prejudice to Clause 15.11.1, the Supplier shall:

- 15.12.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:

- (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (b) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 15.12.2 include within the Performance Monitoring Report produced by it as required under and pursuant to Schedule 2.2 (Performance Levels) a summary of its compliance with Clause 15.12.1, such data to be certified every six Months by a director of the Supplier as being accurate and not misleading.
- 15.13 If any Performance Monitoring Report shows that in either of the last two six Month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall submit to the Authority within 15 Working Days of submission of the latest Performance Monitoring Report an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:
 - 15.13.1 identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - 15.13.2 actions to address each of the causes set out in Clause 15.13.1; and
 - 15.13.3 mechanism for and commitment to regular reporting on progress to the Supplier's Board.
- 15.14 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is submitted to the Authority.
- 15.15 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.16 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier Solution (to the extent it is not already included).
- 15.17 Notwithstanding any provision of Clauses 22 (Confidentiality) and 24.29 (Publicity and Branding), if the Supplier notifies the Authority (whether in a Performance Monitoring Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within 30 days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 15.18 The Authority may require the Supplier to terminate:
 - 15.18.1 a Sub-contract where:
 - (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 35.1.2 (Termination by the Authority);

- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
- (d) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.23 (Exclusion of Sub-contractors);
- (e) there is a Change of Control of the relevant Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) Months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control; and
- (f) a Supplier Related Party breaches or causes the Supplier to breach Clauses 5.14-5.17 (Independence, Conflicts of Interest and Proscribed Conduct).

Competitive Terms

- 15.19 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- 15.19.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - 15.19.2 subject to Clause 15.18 (Termination of Sub-contracts), enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.20 If the Authority exercises either of its options pursuant to Clause 15.19 (Competitive Terms), then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.21 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 15.21.1 the Authority making the relevant item available to the Supplier where necessary for the Supplier to provide the Services; and
 - 15.21.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 15.22 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15 (Sub-contractor Rights and Protections), the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

Exclusion of Sub-contractors

- 15.23 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- 15.23.1 if the Authority finds there are mandatory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and/or
 - 15.23.2 if the Authority finds there are discretionary grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with any such requirement.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 Intellectual Property Rights

16.1 Except as expressly set out in this Agreement:

16.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Supplier Software;
- (b) the Third Party Software;
- (c) the Third Party IPRs; and
- (d) the Supplier Background IPRs; and

16.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- (a) the Authority Software;
- (b) the Authority Data; and
- (c) the Authority Background IPRs.

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

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

16.4 Unless the Authority otherwise agrees in advance in writing:

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

16.4.2 where the Specially Written Software and Project Specific IPRs are written in a format that requires conversion before publication as Open Source software, the Supplier shall also provide the converted format to the Authority.

17 Transfer and Licences Granted by the Supplier

Specially Written Software and Project Specific IPRs

17.1 Subject to Clause 17.16 (Patents) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights in the Specially Written Software and the Project Specific IPRs including:

17.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software;

17.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**"); and

- 17.1.3 the Project Specific IPRs and any items containing any Project Specific IPRs.
- 17.2 The Supplier:
- 17.2.1 shall:
- (a) inform the Authority of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software;
 - (b) deliver to the Authority the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Key Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
 - (c) provide copies of all items containing Project Specific IPRs in native format and in any other format reasonably requested by the Authority; and
- 17.2.2 acknowledges and agrees that the ownership of the media referred to in Clause 17.2.1(b) (Specially Written Software and Project Specific IPRs) shall vest in the Authority upon their receipt by the Authority; and
- 17.2.3 shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Supplier Software and Supplier Background IPRs

- 17.3 The Supplier hereby grants to the Authority:
- 17.3.1 subject to the provisions of Clause 17.16 (Patents) and Clause 36.11.2 (Payments by the Supplier), perpetual, royalty-free, sub-licensable and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
- (a) the Supplier Non-COTS Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
 - (b) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
- 17.3.2 a perpetual licence to use the Supplier COTS Software and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (Software) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.6 (Authority's right to sub-licence) and 17.7 (Authority's right to assign/novate licences) (in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs).

17.4 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.3.1(a) (Supplier Software and Supplier Background IPRs) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.3.1(b) (Supplier Software and Supplier Background IPRs) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 17.6 (Authority's Right to Sub-licence) commits any material breach of the terms of Clause 17.3.1(a) or 17.6.1(b) (Authority's Right to Sub-licence) or 17.7.1 (Authority's right to assign/novate licences) (as the case may be) which, if the breach is capable of remedy, is not remedied within one hundred and twenty (120) Working Days after the Supplier gives the Authority written notice specifying:

17.4.1 the specific licence, or Supplier Non-COTS Software, or Supplier Non-COTS Background IPRs, or Supplier COTS Software, or Supplier COTS Background IPRs that the Authority or its sub- licensee has used in material breach of Clause 17.1 (Specially Written Software and Project Specific IPRs);

17.4.2 how such use has materially breached these terms; and

17.4.3 requiring its remedy,

the Supplier may issue a second written notice, stating that the material breach has not been remedied and that the Authority shall have a further sixty (60) Working Days from the date of the second written notice to remedy the material breach (a "**Final Breach Notice**"). If the Authority has not remedied the material breach within sixty (60) Working Days of a Final Breach Notice then the Supplier may terminate the parts of the licence granted under Clause 17.3 (Supplier Software and Supplier Background IPRs) that the Authority has materially breached by issuing a Termination Notice and this relevant licence shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). The Supplier's right to terminate a licence under this Clause is limited to terminating the Authority's licence in relation to the specific part of the Supplier System that the Authority has used in material breach of the terms of Clause 17.3 (Supplier Software and Supplier Background IPRs), and such breach will not permit the Supplier to terminate any other licence or right granted to the Authority or this Agreement which will remain in full force and effect.

17.5 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.4 (Supplier Software and Supplier Background IPRs), the Authority shall:

17.5.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);

17.5.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and

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

17.5A If a licence is terminated by the Supplier in accordance with Clause 17.4 (Supplier Software and Supplier Background IPRs), the Authority shall have the right to terminate this Agreement (in whole or in part) by giving not less than sixty (60) Working Days' notice to the Supplier.

Authority's Right to Sub-license

- 17.6 Subject to Clause 17.16 (Patents) the Authority may sub-license:
- 17.6.1 the rights granted under Clause 17.3.1 (Supplier Software and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
- (a) the sub-licence is on terms no broader than those granted to the Authority;
 - (b) the sub-licence authorises the third party to use the rights licensed in Clause 17.3.1 (Supplier Software and Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function including, without limitation, any services to be provided pursuant to an Authority Supply Chain Contract; and
 - (c) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (Software); and
- 17.6.2 the rights granted under Clause 17.3.1 (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
- (a) the sub-licence is on terms no broader than those granted to the Authority; and
 - (b) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (Software) duly executed by the Approved Sub-Licensee.

Authority's Right to Assign/Novate Licences

- 17.7 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.3.1 (Supplier Software and Supplier Background IPRs) to:
- 17.7.1 A Central Government Body; or
- 17.7.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- 17.8 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.3 (Supplier Software and Supplier Background IPRs). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 17.3 (Supplier Software and Supplier Background IPRs).
- 17.9 If a licence granted in Clause 17.3 (Supplier Software and Supplier Background IPRs) is novated under Clause 17.7 (Authority's Right to Assign/Novate Licences) or there is a change of the Authority's status pursuant to Clause 17.8 (Authority's Right to Assign/Novate Licences), the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

- 17.10 The Supplier shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:
- 17.10.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a perpetual royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.3.1 and 17.4 (Supplier Software and Supplier Background IPRs) and Clause 17.7 (Authority's Right to Assign/Novate Licences); or
 - 17.10.2 complied with the provisions of Clause 17.11 (Third Party Software and Third Party IPRs) .
- 17.11 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.10.1 (Third Party Software and Third Party IPRs), the Supplier shall:
- 17.11.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - 17.11.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first Approved in writing the terms of the licence from the relevant third party.
- 17.12 The Supplier shall:
- 17.12.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - 17.12.2 unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause 17.11.1 (Third Party Software and Third Party IPRs), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those granted by the Supplier in respect of the Supplier COTS Software pursuant to Clause 17.3.2 (Supplier Software and Supplier Background IPRs).
- 17.13 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

- 17.14 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17 (Transfer and Licences Granted by the Supplier).
- 17.15 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (Exit Management) and at the Supplier's cost:
- 17.15.1 grant (or procure the grant) to any Replacement Supplier of:

- (a) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 (Transfer and Licences Granted by the Supplier) subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (Software) duly executed by the Replacement Supplier;
 - (b) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- 17.15.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

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

18 Licences Granted by the Authority

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- 18.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (Confidentiality); and
 - 18.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 (Licences Granted by the Authority) and any sub-licence granted by the Supplier in accordance with Clause 18.1 (Licences Granted by the Authority) shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- 18.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - 18.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) Months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and

- 18.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

19 IPRs Indemnity

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 19.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- 19.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2.1 (IPRs Indemnity) or to modify or replace an item pursuant to Clause 19.2.2 (IPRs Indemnity), but this has not avoided or resolved the IPRs Claim, then:
- 19.3.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
- 19.3.2 without prejudice to the indemnity set out in Clause 19.1 (IPRs Indemnity), the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

20 Open Source Publication

- 20.1 The Supplier agrees that the Authority may at its sole discretion publish as Open Source software all or part of the Specially Written Software and the Project Specific IPRs after the Operational Services Commencement Date.
- 20.2 The Supplier hereby warrants that the Specially Written Software and the Project Specific IPRs:
- 20.2.1 are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;

- 20.2.2 shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
 - 20.2.3 do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
 - 20.2.4 do not contain any Non-Party IPRs which are not licensed to the Authority under Clause 17.11 (Third Party Software and Third Party IPRs); and
 - 20.2.5 will be supplied in a format suitable for publication as Open Source (the “**Open Source Publication Material**”) no later than the date in Clause 20.1 (Open Source Publication).
- 20.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Background IPRs save that any Supplier Background IPRs that the Supplier is willing to allow to be included in any Open Source publication can remain in the Open Source Publication Material supplied to the Authority. In such a case, the Supplier hereby acknowledges that any such Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.
- 20.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and the Project Specific IPRs as Open Source under Clause 20.1 (Open Source Publication).
- 20.5 In this Clause Non-Party IPRs means any Intellectual Property Right owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs.

21 Authority Data and Security Requirements

- 21.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 21.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 21.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (Statement of Requirements).
- 21.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 21.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Health & Safety and Risk Management Detailed Solution. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than three (3) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 21.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that:
 - 21.6.1 complies with the Baseline Security Requirements;

- 21.6.2 complies with the DWP Information Security Policy;
- 21.6.3 is capable of implementing and enforcing appropriate security standards as specified by DWP from time to time including but not limited to the result of any information risk assessment undertaken pursuant to the DWP Enterprise Security Risk Management Strategy;
- 21.6.4 as part of the HMG Security Policy Framework, complies with and shall have certificated the HMG Cyber Essentials Scheme or approved equivalent as defined under the HMG Cyber Essentials Scheme (further details available at: www.cyber-essentials-scheme.co.uk);
- 21.6.5 complies with all relevant aspects of the Government Digital Service Open Standards;
- 21.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
 - 21.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 2.1 (Statement of Requirements) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - 21.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 2.1 (Statement of Requirements).
- 21.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 21.9 The Supplier shall comply with the requirements of Schedule 2.4 (Security Management).
- 21.10 The Supplier its Sub-contractors and Key Sub-contractors shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.
- 21.11 In accordance with the DWP Offshoring Policy and without limiting any other provision of this Agreement, the Supplier and any of its Sub-contractors or Key Sub-contractors, shall not offshore Authority Data outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Supplier shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- 21.12 Where the Authority has given its prior written consent to the Supplier to process, host or access Authority Data from premises outside the United Kingdom (in accordance with Clause 21.11 (Authority Data and Security Requirements)):
 - 21.12.1 the Supplier must notify the Authority (in so far as they are not prohibited by Law) where any regulatory bodies seek to gain or has gained access to such Authority Data; and
 - 21.12.2 the Supplier shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any regulatory bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.
- 21.13 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements. The Supplier shall comply with any such changes required by the Authority and the Change Control Procedure shall not apply.

Malicious Software

- 21.14 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 21.15 Notwithstanding Clause 21.14 (Malicious Software), if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 21.16 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 21.12 (Authority Data and Security Requirements) shall be borne by the Parties as follows:
- 21.16.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 21.13 (Authority Data and Security Requirements)) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and
- 21.16.2 otherwise by the Authority.

22 Confidentiality

- 22.1 For the purposes of this Clause 22 (Confidentiality), the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 22.2 Except to the extent set out in this Clause 22 (Confidentiality) or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 22.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- 22.2.2 not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner’s prior written consent;
- 22.2.3 not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
- 22.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 22.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 22.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

- 22.3.2 the need for such disclosure arises out of or in connection with:
- (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement;
 - (c) the proper request from either Party's insurance advisers, or insurers on placing or renewing any insurance policies; or
 - (d) the conduct of a Central Government Body review in respect of this Agreement; or
- 22.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 22.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 22.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 22.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - 22.5.2 its auditors; and
 - 22.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 22.5 (Confidentiality), it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 22.6 The Authority may disclose the Confidential Information of the Supplier:
- 22.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 22.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 22.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 22.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 22.6.1 (Confidentiality) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;

- 22.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 32 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 31 (Remedial Adviser) and Exit Management rights; or
- 22.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 22.

- 22.7 Nothing in this Clause 22 (Confidentiality) shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

23 Transparency and Freedom of Information

- 23.1 The Parties acknowledge that:

- 23.1.1 reports generated by the Supplier pursuant to the terms of this Agreement; and
- 23.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
 - (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority;
 - (b) Commercially Sensitive Information; and
 - (c) the Publishable Performance Information,

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

- 23.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 23.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.
- 23.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 23.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

- 23.6 The Supplier agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 22.6.3 (Confidentiality)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 23.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 23.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - 23.7.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 23.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 23.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 23.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

24 Protection of Personal Data

Status of Controller

- 24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- 24.1.1 "Controller" (where the other Party acts as the "Processor");
 - 24.1.2 "Processor" (where the other Party acts as the "Controller");
 - 24.1.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
 - 24.1.4 "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 13 (Processing Personal Data) which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

- 24.2 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Schedule 13 (Processing Personal Data) by the Controller.
- 24.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 24.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- 24.4.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 24.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 24.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 24.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 24.5 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
- 24.5.1 Process that Personal Data only in accordance with Schedule 13 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
 - 24.5.2 ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 21 (*Authority Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 24.5.3 ensure that:
 - (a) the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Schedule 13 (Processing Personal Data));
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause, Clauses 22 (*Confidentiality*) and 21 (*Authority Data and Security Requirements*);

- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data
- 24.5.4 not transfer Personal Data to a Third Country, other than to the Controller, unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA Section 75) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- 24.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 24.6 Subject to Clause 24.7, the Processor shall notify the Controller immediately if it:
 - 24.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 24.6.2 receives a request to rectify, block or erase any Personal Data;
 - 24.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 24.6.4 receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data Processed under this Agreement;
 - 24.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 24.6.6 becomes aware of a Data Loss Event.
- 24.7 The Processor's obligation to notify under Clause 24.6 shall include the provision of further information to the Controller in phases, as details become available.
- 24.8 Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 24.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- 24.8.1 the Controller with full details and copies of the complaint, communication or request;
- 24.8.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- 24.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- 24.8.4 assistance as requested by the Controller following any Data Loss Event; and/or
- 24.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 24.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - 24.9.1 the Controller determines that the Processing is not occasional;
 - 24.9.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 24.9.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 24.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 24.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 24.12 Before allowing any Sub-processor to Process any Personal Data related to this Agreement, the Processor must:
 - 24.12.1 notify the Controller in writing of the intended Sub-processor and Processing;
 - 24.12.2 obtain the written consent of the Controller;
 - 24.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 24 such that they apply to the Sub-processor; and
 - 24.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 24.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 24.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 24.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 24.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 to Schedule 13 (Processing Personal Data).

Where the Parties are Independent Controllers of Personal Data

- 24.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 24.18 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 24.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 24.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 24.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the Processing of Personal Data for the purposes of this Agreement.
- 24.21 The Parties shall only provide Personal Data to each other:
- 24.21.1 to the extent necessary to perform the respective obligations under this Agreement;
 - 24.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - 24.21.3 where it has recorded it in Schedule 13 (Processing Personal Data).
- 24.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 24.23 A Party Processing Personal Data for the purposes of this Agreement shall maintain a record of its Processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 24.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("**the Request Recipient**"):
- 24.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 24.24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and

- (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 24.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:
 - 24.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 24.25.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 24.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 24.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 24.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 13 (Processing Personal Data).
- 24.27 Personal Data shall not be retained or Processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 13 (Processing Personal Data).
- 24.28 Notwithstanding the general application of Clauses 24.2 to 24.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clauses 24.17 to 24.27.
- 24.29 If the Supplier is located within a Third Country the parties shall agree (where applicable) to enter into standard data protection clauses adopted by the UK Secretary of State or the Information Commissioner's Office applicable to the arrangement between the Authority and the Supplier, or in the absence of such clauses, the standard data protection clauses adopted by the European Commission (the "EU SCCs"), incorporating the Information Commissioner's Office guidance that changes are permissible to the EU SCCs in a UK context provided the legal meaning of the EU SCCs does not change.
- 24.30 The Supplier shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses howsoever arising out of, in respect of or in connection with, any breach by the Supplier or any Supplier Personnel of this Clause 24 or Schedule 13 (Processing Personal Data) of this Agreement.

25 Publicity and Branding

- 25.1 The Supplier shall not:
 - 25.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
 - 25.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;

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

- 25.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 25.3 Each Party shall take reasonable steps to ensure that its employees, agents, Sub-contractors, Key Sub-contractors, suppliers, professional advisors and consultants comply with this Clause 25 (Publicity and Branding).

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

26 Limitations on Liability

Unlimited liability

26.1 Neither Party limits its liability for:

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

26.2 The Supplier's liability in respect of the indemnities in Clause 10.6 (VAT), Clause 14.7 (Employment Indemnity), Clause 14.8 (Income Tax and National Insurance Contributions), Clause 19 (IPRs Indemnity), Clause 24.30 (Protection of Personal Data), Schedule 8.5 (Exit Management), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited.

26.3 The Authority's liability in respect of the indemnities in Clause 14.7 (Employment Indemnity), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited.

Financial and Other Limits

26.4 Subject to Clauses 26.1 and 26.2 (Unlimited Liability) and Clauses 26.9 (Consequential Losses):

26.4.1 the Supplier's aggregate liability in the Mobilisation Phase or in each and any Contract Year as relevant in respect of loss of or damage to the Authority Premises which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them) or property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier shall in no event exceed:

the greater of:

(a) in relation to Defaults occurring in each and any Contract Year the Maximum Price for the Services in the relevant Contract Year or in relation to Defaults occurring in the Mobilisation Phase the total Milestone Prices (including the ATP Milestone) payable under or in relation to the Mobilisation Phase, and

(b) ten million pounds (£10,000,000);

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

(a) in relation to Defaults occurring in the Mobilisation Phase, an amount equal to one hundred and fifty per cent (150%) of the total Milestone Prices (including the ATP Milestone) payable under or in relation to the Mobilisation Phase;

- (b) in relation to Defaults occurring during any Contract Year, an amount equal to one hundred and fifty per cent (150%) of the Maximum Price payable to the Supplier under this Agreement in that Contract Year; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to one hundred and fifty per cent (150%) of the Maximum Price payable to the Supplier in the twelve (12) Month period immediately prior to the last day of the Term,

(each being a “**Supplier's Capped Liability**” and collectively the “**Supplier's Capped Liabilities**” and in the aggregate the “**Supplier's Liability Cap**”)

provided that where any Losses referred to in Clauses 26.4.2(a) to 26.4.2(c) (inclusive) (Financial and Other Limits) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to one hundred and fifty per cent (150%) shall be deemed to be references to two hundred per cent (200%).

- 26.5 If the Supplier's Capped Liability exceeds seventy-five per cent (75%) of the Supplier's Liability Cap, the Supplier may request in writing that the Authority resets the utilised portion of the Supplier's Liability Cap to zero (0), provided always that:

- 26.5.1 any written request pursuant to this Clause 26.5 (Financial and Other Limits) to reset the Supplier's Liability Cap may be refused at the Authority's absolute discretion; and
- 26.5.2 if the Authority agrees to the request by the Supplier pursuant to Clause 26.5.1 (Financial and Other Limits) above, the Supplier's Liability Cap shall, for all purposes in connection with this Agreement, be adjusted accordingly.

- 26.6 Subject to Clauses 26.1 and 26.2 (Unlimited Liability) and Clauses 26.9 and 26.10 (Consequential Losses) the Supplier's aggregate liability in respect of all:

- 26.6.1 Service Credits; and
- 26.6.2 Compensation for Unacceptable KPI Failure;

incurred in any Contract Year of twelve (12) Months shall be subject to the Service Credit Cap.

- 26.7 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 26.4.2 (Financial and Other Limits).

- 26.8 Subject to Clauses 26.1 and 26.3 (Unlimited Liability) and Clause 26.9 (Consequential Losses) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

- 26.8.1 the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 35.1.1 (Termination by the Authority) or by the Supplier pursuant to Clause 35.3.1 (Termination by the Supplier) shall in no event exceed the following amounts:
 - (a) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (Payments on Termination);
 - (b) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (Payments on Termination); and

- (c) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (Payments on Termination); and
- 26.8.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:
 - (a) in relation to Defaults occurring in the Mobilisation Phase, an amount equal to the total of the Milestone Prices paid in relation to the Mobilisation Phase;
 - (b) in relation to Defaults occurring during any Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in that Contract Year; and
 - (c) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the twelve (12) Month period immediately prior to the last day of the Term.

Consequential Losses

- 26.9 Subject to Clauses 26.1, 26.2 and 26.3 (Unlimited Liability) and Clause 26.10 (Consequential Losses), neither Party shall be liable to the other Party for:
 - 26.9.1 any indirect, special or consequential Losses; or
 - 26.9.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 26.10 Notwithstanding Clause 26.9 (Consequential Losses) but subject to Clause 26.4 and Clause 26.6 (Financial and Other Limits), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority, without double counting, to the extent that they arise as a result of a Default by the Supplier:
 - 26.10.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 26.10.2 any wasted expenditure or charges;
 - 26.10.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Key Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Key Deliverables above those which would have been payable under this Agreement;
 - 26.10.4 any compensation or interest paid to a third party by the Authority; and
 - 26.10.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Conduct of Indemnity Claims

- 26.11 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.6 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

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

27 Insurance

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

SECTION H – REMEDIES AND RELIEF

28 Rectification Plan Process

28.1 In the event that:

28.1.1 there is, or is reasonably likely to be, a Delay; and/or

28.1.2 in any Service Period there has been:

(a) a Material KPI Failure; and/or

(b) a Material SPI Failure; and/or

28.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

Notification

28.2 If:

28.2.1 the Supplier notifies the Authority pursuant to Clause 28.1 (Rectification Plan Process) a Notifiable Default has occurred; or

28.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

Submission of the draft Rectification Plan

28.3 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 28.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

28.4 The draft Rectification Plan shall set out:

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

28.4.2 the actual or anticipated effect of the Notifiable Default; and

- 28.4.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 28.5 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with the terms of Schedule 8.3 (Dispute Resolution Procedure).

Agreement of the Rectification Plan

- 28.6 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 28.6.1 is insufficiently detailed to be capable of proper evaluation;
 - 28.6.2 will take too long to complete;
 - 28.6.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 28.6.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 28.7 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 28.8 If the Authority consents to the Rectification Plan:
- 28.8.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 28.8.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default,
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.

29 Increased Monitoring

- 29.1 At any time the Authority may by notice to the Supplier increase the level of its monitoring of the Supplier, and/or (at the Authority's option), of the Supplier's monitoring of its own performance of its obligations under this Agreement in respect of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Agreement.
- 29.2 For the purposes of Clause 29.1 (Increased Monitoring), the Authority acknowledges that if the Supplier has otherwise failed to have demonstrated to the reasonable satisfaction of the Authority as required by Clause 29.1 (Increased Monitoring) but:
- 29.2.1 if the Supplier has removed the person or persons responsible for the fraudulent reporting; or

- 29.2.2 if in the following three (3) Month period following the Authority notice (if it has not already been established) there have been no further erroneous reports of any kind,

this shall be regarded as sufficient demonstration that the Supplier will perform and is capable of performing its obligations.

- 29.3 If the Authority issues a notice under Clause 29.1 (Increased Monitoring) as a result of any failure by the Supplier to perform the Services in accordance with this Agreement, the Supplier shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses (including internal management costs and professional fees) incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to circumstances under Clause 29.1 (Increased Monitoring).
- 29.4 If the Authority issues a notice under Clause 29.1 (Increased Monitoring) other than as a result of any failure by the Supplier to perform the Services in accordance with this Agreement, the Authority shall bear its own costs and indemnify and keep the Supplier indemnified at all times from and against all reasonable costs and expenses incurred by the Supplier in relation to such increased level of monitoring arising due to circumstances under Clause 29.1 (Increased Monitoring) provided always that the Supplier shall notify the Authority of any such reasonable costs and expenses prior to incurring those costs and/or expenses.

30 Service Exclusion

30.1 Where:

- 30.1.1 the Supplier has not achieved a Key Deliverable within thirty (30) days of the relevant Milestone Date;
- 30.1.2 a breach of Clauses 5.13 to 5.16 (inclusive) (Independence, Conflicts of Interest and Proscribed Conduct) has occurred or the Authority reasonably believes that a breach of Clause 5.13 to 5.16 (inclusive) (Independence, Conflicts of Interest and Proscribed Conduct) has or is likely to occur; and/or
- 30.1.3 there is a material breach of part of the Services,

(each a “**Service Exclusion Cause**”) the Authority may give notice to the Supplier (a “**Service Exclusion Notice**”) giving reasonable details of the Service Exclusion Cause.

30.2 The Service Exclusion Notice shall set out the following:

- 30.2.1 the relevant Service Exclusion Cause that has occurred (or in the case of Clause 30.1.2 (Service Exclusion) is likely to occur);
- 30.2.2 the date on which the Authority wishes to commence provision of the relevant part or parts of the Service whether by itself or through a third party;
- 30.2.3 whether the Authority or any third party appointed by the Authority will require access to the Supplier's premises and/or any premises owned by the Authority; and
- 30.2.4 to the extent practicable, the impact that the Authority anticipates the action set out in the Service Exclusion Notice will have on the Supplier's obligations to provide the remaining Services.

30.3 Following service of a Service Exclusion Notice:

- 30.3.1 the Authority shall and/or shall procure that a third party shall take the action set out in the Service Exclusion Notice and any consequential additional action as it reasonably believes is necessary to ensure that the Services (or relevant

part thereof) are delivered to the standard required pursuant to the terms of this Agreement and so that the Authority is not in breach of any Law and/or its statutory duties;

- 30.3.2 the Supplier shall co-operate fully with the Authority and/or any third party appointed by the Authority in order to enable the Authority and/or any third party appointed by the Authority to provide the Services identified in the Service Exclusion Notice so as to ensure that such Services are provided to: the standard required pursuant to the terms of this Agreement and so that the Authority is not in breach of any Law and/or its statutory duties;
- 30.3.3 without double counting with Clause 30.3.4 (Service Exclusion) the Supplier shall be responsible for the Authority's reasonable and properly incurred costs and expenses (including any internal management time and/or procurement costs associated with appointing a third party) relating to the exercise of the Authority's rights under this Clause 30 (Service Exclusion); and
- 30.3.4 the Service Charges shall be adjusted to reflect the removal of the relevant parts of the Services identified in the Service Exclusion Notice.

31 Remedial Adviser

31.1 If:

- 31.1.1 any of the Intervention Trigger Events occur; or
- 31.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

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

- (a) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (b) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 31 (Remedial Adviser).

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 31.1 (Remedial Adviser) prior to or instead of exercising its right to terminate this Agreement.

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

- 31.2.1 the Remedial Adviser shall be:
 - (a) a person selected by the Supplier and Approved by the Authority; or
 - (b) if none of the persons selected by the Supplier have been Approved by the Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- 31.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be Approved by the Authority; and
- 31.2.3 any right of the Authority to terminate this Agreement pursuant to Clause 35.1.2 (Termination by the Authority) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of

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

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

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

31.4 The Supplier shall:

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

31.5 The Supplier shall be responsible for:

- 31.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
- 31.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 31 (Remedial Advisor).

31.6 If:

- 31.6.1 the Supplier:
 - (a) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

- (b) is in Default of any of its obligations under Clause 31.4 (Remedial Advisor); and/or

31.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Agreement pursuant to Clause 35.1.2 (Termination by the Authority).

32 Step-in Rights

- 32.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 32 (Step-in Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 22 (Confidentiality)). The Step-In Notice shall set out the following:
 - 32.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
 - 32.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
 - 32.1.3 the date on which it wishes to commence the Required Action;
 - 32.1.4 the time period which it believes will be necessary for the Required Action;
 - 32.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites (where applicable); and
 - 32.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 32.2 Following service of a Step-In Notice, the Authority shall:
 - 32.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 32.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 32.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
 - 32.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 32 (Step-in Rights).
- 32.3 For so long as and to the extent that the Required Action is continuing, then:
 - 32.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 32.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 32.4 (Step-in Rights) shall apply to Deductions from Charges in respect of other Services; and

- 32.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 32.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 32.4.1 the degradation of any Services not subject to the Required Action; or
- 32.4.2 the non-Achievement of a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 32.5 Before ceasing to exercise its step in rights under this Clause 32 (Step-in Rights) the Authority shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:
- 32.5.1 the Required Action it has actually taken; and
- 32.5.2 the date on which the Authority plans to end the Required Action (the **"Step-Out Date"**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 32.6 (Step-in Rights).
- 32.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for Approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 32.7 If the Authority does not Approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not Approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Approval. The Authority shall not withhold or delay Approval of the draft Step-Out Plan unnecessarily.
- 32.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 32 (Step-in Rights), provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- 32.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- 32.8.2 limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

33 Authority Cause

- 33.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:
- 33.1.1 achieve a Milestone by its Milestone Date;
- 33.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or
- 33.1.3 comply with its obligations under this Agreement,
- (each a **"Supplier Non-Performance"**), and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 33 (Authority Cause)):

- (a) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (i) to terminate this Agreement pursuant to Clause 35.1.2 (Termination by the Authority); or
 - (ii) to take action pursuant Clauses 31 (Remedial Adviser) or 32 (Step-In);
- (c) where the Supplier Non-Performance constitutes the failure to achieve Acceptance of a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause; and
 - (ii) if the Authority, acting reasonably, considers it appropriate, the Mobilisation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and
- (d) where the Supplier Non-Performance constitutes a Performance Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits and/or Service Failure Points;
 - (ii) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2.4(b) (Performance Failures);
 - (iii) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4.1 (Unacceptable KPI Failure); and
 - (iv) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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

33.2 In order to claim any of the rights and/or relief referred to in Clause 33.1 (Authority Cause), the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:

33.2.1 the Supplier Non-Performance;

33.2.2 the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Agreement; and

33.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

33.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as

to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

- 33.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 33.5 Without prejudice to Clause 5.10 (Continuing obligation to provide the Services), if a Dispute arises as to:
- 33.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
 - 33.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier, either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 33.6 Any Change that is required to the Mobilisation Plan or to the Charges pursuant to this Clause 33 (Authority Cause) shall be implemented in accordance with the Change Control Procedure.

34 Force Majeure

- 34.1 Subject to the remaining provisions of this Clause 34 (Force Majeure) (and, in relation to the Supplier, subject to its compliance with its obligations pursuant to Paragraphs 6.6, 6.7 and 7.12 in Schedule 2.1 (Statement of Requirements) and the Health & Safety and Risk Management Detailed Solution), a Party may claim relief under this Clause 34 (Force Majeure) from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 34.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 34.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 34 (Force Majeure) to the extent that consequences of the relevant Force Majeure Event:
- 34.3.1 are capable of being mitigated, but the Supplier has failed to do so;
 - 34.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - 34.3.3 are the result of the Supplier's failure to comply with its BCDR Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the BCDR Plan).
- 34.4 Subject to Clause 34.5 (Force Majeure), as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

- 34.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 34.6 Where, as a result of a Force Majeure Event:
- 34.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 35.1.3 (Termination by the Authority) or Clause 35.3.2 (Termination by the Supplier); and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
- 34.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
- (a) the Authority shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 31 (Remedial Adviser) and/or subject to Clause 34.8 (Force Majeure), Clause 32 (Step-in Rights) as a result of such failure; and
 - (ii) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2.4 (Performance Failures) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4.1 (Unacceptable KPI Failure) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 34.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 34.8 Where the Services or a substantial part of them cannot be performed for a continuous period in excess of thirty (30) days or such shorter period as the Authority acting reasonably but in its absolute discretion may determine to be appropriate in the circumstances, the Authority, on giving written notice may exercise its rights under Clause 32 (Step-In Rights). Where the Authority elects to do so it shall be responsible for its own costs.
- 34.9 Relief from liability for the Affected Party under this Clause 34 (Force Majeure) shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 34.7 (Force Majeure).

SECTION I – TERMINATION AND EXIT MANAGEMENT

35 Termination Rights

Termination by the Authority

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

35.1.1 for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

35.1.2 if a Supplier Termination Event occurs;

35.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

35.1.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

35.2 Where the Authority:

35.2.1 is terminating this Agreement under Clause 35.1.2 (Termination by the Authority) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

35.2.2 has the right to terminate this Agreement under Clause 35.1.2 (Termination by the Authority) or Clause 35.1.3 (Termination by the Authority), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

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

35.3.1 this Agreement if, without prejudice to Clause 10.7 (Set-off and Withholding), the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds [REDACTED] and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or

35.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 35.3.2 (Termination by the Supplier) would result in a Partial Termination, the provisions of Clause 35.4 (Partial Termination) shall apply.

Partial Termination

- 35.4 If the Supplier notifies the Authority pursuant to Clause 35.3.2 (Termination by the Supplier) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) Month of receiving the Supplier's Termination Notice. For the purpose of this Clause 35.4 (Partial Termination), in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 35.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- 35.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- 35.5.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- 35.5.3 the Supplier shall not be entitled to reject the Change.

36 Consequences of Expiry or Termination

General Provisions on Expiry or Termination

- 36.1 The provisions of Clauses 5.9 (Specially Written Software warranty), 10.5 and 10.6 (VAT), 10.7 (Set-off and Withholding), 12 (Records, Reports, Audits and Open Book Data), 14.7 (Employment Indemnity), 14.8 (Income Tax and National Insurance Contributions), 16 (Intellectual Property Rights), 17 (Transfer and Licences Granted by the Supplier), 19.1 (IPRs Indemnity), 22 (Confidentiality), 23 (Transparency and Freedom of Information), 24 (Protection of Personal Data), 26 (Limitations on Liability), 36 (Consequences of Expiry or Termination), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 48 (Disputes), 49 (Governing Law and Jurisdiction) and 50 (Brexite) and the provisions of Schedules 1 (Definitions), 7.1 (Charges and Invoicing), 7.2 (Payments on Termination), 7.5 (Financial Reports and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Reports and Records Provisions), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Agreement.

Exit Management

- 36.2 The Parties shall comply with the provisions of Schedule 8.5 (Exit Management) and any current Exit Detailed Solution in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

- 36.3 If this Agreement is terminated by the Authority pursuant to Clause 35.1.1 (Termination by the Authority) or by the Supplier pursuant to Clause 35.3.1 (Termination by the Supplier), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):
- 36.3.1 the Termination Payment; and
- 36.3.2 the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:

- (a) the period from (but excluding) the date that the Termination Notice is given by the Authority pursuant to Clause 35.1.1 (Termination by the Authority) to (and including) the Termination Date; or
 - (b) the period from (and including) the date of the non-payment by the Authority referred to in Clause 35.3.1 (Termination by the Supplier) to (and including) the Termination Date.
- 36.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 35.1.2, 35.1.3 and/or 35.2 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
 - 36.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (Exit Management);
 - 36.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date; and
 - 36.4.3 in relation to a termination pursuant to Clause 35.1.3 (Termination by the Authority).
- 36.5 The costs of termination incurred by the Parties shall lie where they fall if:
 - 36.5.1 either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 35.1.3 or 35.2.2 (Termination by the Authority) or 35.3.2 (Termination by the Supplier); or
 - 36.5.2 the Authority terminates this Agreement under Clause 35.1.4 (Termination by the Authority).

Payments by the Supplier

- 36.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 36.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 35.1.2 (Termination by the Authority) prior to Achievement of one or more Milestones, the Authority may at any time on or within twelve (12) Months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each Milestone to which the Milestone Adjustment Payment Notice relates.
- 36.8 A Milestone Adjustment Payment Notice shall specify:
 - 36.8.1 each Milestone to which it relates;
 - 36.8.2 in relation to each such Milestone, each Key Deliverable relating to that Milestone that the Authority wishes to retain, if any (each such Key Deliverable being a "**Retained Key Deliverable**") together with the Allowable Price; and

and may form part of a Termination Notice.
- 36.9 The Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:
 - 36.9.1 notify the Authority whether it agrees that the Retained Key Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as

- specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- 36.9.2 in relation to each such Retained Key Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for Approval;
 - 36.9.3 provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - (a) all relevant Milestone Payments; and
 - (b) the Allowable Price of each Retained Key Deliverable; and
 - 36.9.4 provide the Authority with such supporting information as the Authority may require.
- 36.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within twenty (20) Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.
- 36.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 36.7 (Payments by the Supplier):
- 36.11.1 the Authority shall:
 - (a) securely destroy or return to the Supplier all Non-retained Key Deliverables that are in tangible form; and
 - (b) ensure that all Non-retained Key Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such all Non-retained Key Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and
 - 36.11.2 all licences granted pursuant to Clause 17 (Transfer and Licences Granted by the Supplier) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Key Deliverables.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

37 Compliance

Health and Safety

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

37.1.1 all applicable Law regarding health and safety; and

37.1.2 the Health and Safety Policy whilst at the Authority Premises.

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

Equality and Diversity

37.3 The Supplier shall:

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

(a) all applicable equality Law;

(b) the Authority Policies;

(c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

(d) the provisions of Schedule 9.3 (Equality).

37.3.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

37.3.3 not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

Official Secrets Act and Finance Act

37.4 The Supplier shall comply with the provisions of:

37.4.1 the Official Secrets Acts 1911 to 1989; and

37.4.2 section 182 of the Finance Act 1989.

38 Assignment and Novation

- 38.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 38.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- 38.2.1 any Central Government Body;
 - 38.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; or
 - 38.2.3 to a devolved government or assembly (or any agency thereof) which performs any of the functions that previously had been performed by the Authority,
- and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 38.2 (Assignment and Novation).
- 38.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 38.4 (Assignment and Novation)) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 38.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a **Successor Body**), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

39 Waiver and Cumulative Remedies

- 39.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 39.2 The Authority's rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.
- 39.3 Without prejudice to any entitlement of the Supplier to specific performance of any obligation under this Agreement or to injunctive relief the Supplier's sole remedy in relation to matters for which an express right or remedy is stated in this Agreement shall be that right or remedy and the Supplier shall have no additional right or remedy arising by common law in equity by statute or otherwise.

40 Relationship of the Parties

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

41 Prevention of Fraud and Bribery

- 41.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Related Party, have at any time prior to the Effective Date:
- 41.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 41.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 41.2 The Supplier shall not during the term of this Agreement:
- 41.2.1 commit a Prohibited Act; and/or
 - 41.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 41.3 The Supplier shall during the term of this Agreement:
- 41.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 41.3.2 keep appropriate records of its compliance with its obligations under Clause 41.3.1 (Prevention of Fraud and Bribery) and make such records available to the Authority on request.
- 41.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 41.1 and/or 41.2 (Prevention of Fraud and Bribery), or has reason to believe that it has or any of the Supplier Related Party have:
- 41.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 41.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 41.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 41.5 If the Supplier makes a notification to the Authority pursuant to Clause 41.4 (Prevention of Fraud and Bribery), the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (Records, Reports, Audits and Open Book Data).
- 41.6 If the Supplier is in Default under Clauses 41.1 and/or 41.2 (Prevention of Fraud and Bribery), the Authority may by notice:
- 41.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - 41.6.2 immediately terminate this Agreement.

- 41.7 Any notice served by the Authority under Clause 41.6 (Prevention of Fraud and Bribery) shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

42 Severance

- 42.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 42.2 In the event that any deemed deletion under Clause 42.1 (Severance) is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 42.3 If the Parties are unable to agree on the revisions to this Agreement within thirty-five (35) Working Days of the matter being referred pursuant to Clause 42.2 (Severance), this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 42.3 (Severance).

43 Further Assurances

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

44 Entire Agreement

- 44.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 44.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 44.3 Nothing in this Clause 44 (Entire Agreement) shall exclude any liability in respect of misrepresentations made fraudulently.

45 Third Party Rights

- 45.1 The provisions of Clause 19.1 (IPRs Indemnity), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.2, 2.3 and 2.4 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together **Third Party Provisions**) confer benefits on persons named or identified in such provisions other than the Parties (each such person a **Third Party Beneficiary**) provided always that the enforceability of such benefits shall at all times remain subject to the Authority's rights pursuant to Clause 45.3 (Third Party Rights).
- 45.2 Subject to Clause 45.1 (Third Party Rights), a person who is not a Party to this Agreement has no right under CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.


- 45.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 45.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 45.1 (Third Party Rights) may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

46 Notices

- 46.1 Any notices sent under this Agreement must be in writing.
- 46.2 Subject to Clause 46.4 (Notices) the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Electronic communication	9:00am on the first Working Day after sending	Dispatched as a pdf attachment to a secure message via DWP e-Procurement Solution without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by way of a signature / delivery receipt.
Prepaid, Royal Mail Signed For 1st Class or other prepaid, next Working Day service Providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by way of a signature / delivery receipt.

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

	Supplier	Authority
Contact	The Company Secretary	
Address	Kellogg Brown & Root Limited. Hill Park Court, Springfield Drive, Leatherhead, Surrey KT22 7NL, United Kingdom	Department for Work & Pensions, Caxton House London, SW1H 9NA

Electronic communications	
----------------------------------	--

46.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 46.2 (Notices):

- 46.4.1 Step-In Notices;
- 46.4.2 Force Majeure Notices;
- 46.4.3 notices issued by the Supplier pursuant to Clause 35.3 (Termination by the Supplier);
- 46.4.4 Termination Notices; and
- 46.4.5 Dispute Notices.

46.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 46.4 (Notices) shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 46.2 (Notices)) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

46.6 This Clause 46 (Notices) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

47 Guarantee

47.1 On or before the Effective Date the Supplier shall procure that the Guarantor shall:

- 47.1.1 execute and deliver to the Authority the Guarantee substantially in the form set out in Schedule 10 (Guarantee) or in such other form as the Authority may, in its absolute discretion agree; and
- 47.1.2 deliver to the Authority a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

48 Disputes

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

48.2 Notwithstanding that the Parties are in Dispute, the Supplier shall continue to provide the Services in accordance with the terms of this Agreement.

49 Governing Law and Jurisdiction

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

49.2 Subject to Clause 48 (Disputes) and Schedule 8.3 (Dispute Resolution Procedure) the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any

dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

50 Brexit

- 50.1 The Parties agree that on the date when the United Kingdom leaves the European Union as a consequence of a notice under Article 50 of the Treaty of the European Union, this Agreement shall be amended as follows:
- 50.1.1 in Clause 35.1.1 (Termination by the Authority) delete all words after “for convenience at any time”;
- 50.1.2 in Schedule 1 (Definitions):
- (a) delete the definition of Acquired Rights Directive; and
 - (b) in the definition of Employment Regulations delete the words “or any other Regulations implementing the Acquired Rights Directive”;
- 50.1.3 in Schedule 2.3 (Standards):
- (a) in Paragraph 8.2 replace the words “in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU)” with the words “and any regulations which amend or replace those Regulations.”;
 - (b) in Paragraph 8.3 insert after the words “ensure compliance with” the words “any relevant obligations replacing”; and
 - (c) replace Paragraph 8.4 with the following: “The Supplier shall comply with any code or guidance on energy efficiency issued by the UK Government or statutory body.”;
- 50.1.4 in Annex 1 (Baseline Security Requirements) to Schedule 2.4 (Security Management)
- (a) in paragraph 3.2.3 delete the words “which have been defined as adequate by the EU Commission”; and
- 50.1.5 in Schedule 9.1 (Staff Transfer) delete the words “and/or the Acquired Rights Directive” in Part A paragraphs. 2.1.6; 2.3; Part C paragraph 1.2; and Part D paragraphs 2.1; 2.3.6; and 2.5.

In witness of which this Agreement has been duly executed as a deed by the Parties on the date which appears at the head of its page 1.

Executed as a deed, but not delivered)
until the date specified on this deed,)
by **KELLOGG BROWN & ROOT LIMITED**)
acting by [REDACTED] a director)
in the presence of)

Witness signature:)

Witness name: [REDACTED]

Witness address: [REDACTED]
[REDACTED]
[REDACTED]

Witness occupation: [REDACTED]

The corporate seal of the Secretary of)
State for Work and Pensions is hereunto)
affixed and authenticated by:)

SEAL OF THE SECRETARY OF STATE FOR
WORK AND PENSIONS



.....

Authorised Signatory

SCHEDULE 1

DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

Acceptance	<p>(a) such tests as are appropriate in respect of a Key Deliverable to demonstrate that such Key Deliverable meets the requirements of this Agreement and shall include, but not be limited to, such of the Acceptance Tests set out under Paragraph 3 of Schedule 6.2 (Acceptance Criteria and Tests) as are agreed by the Authority pursuant to this Agreement; and</p> <p>(b) in relation to the ATP Milestone only, such tests as are appropriate in respect of a Key Deliverable to demonstrate that such Key Deliverable meets the requirements of this Agreement and shall include, but not be limited to, such of the Acceptance Tests set out under Paragraph 3 of Schedule 6.2 (Acceptance Criteria and Tests) as are agreed by the Authority pursuant to this Agreement;.</p>
Acceptance Criteria and Tests	<p>(a) the criteria including the Detailed Solutions Indicators and Acceptance Tests proposed by the Supplier pursuant to Schedule 6.2 (Acceptance Criteria and Tests), which relate to Key Deliverables and are contained within the Detailed Solutions;</p> <p>(b) in relation to the ATP Milestone only, the criteria including the Detailed Solutions Indicators and Acceptance Tests proposed by the Supplier pursuant to this Agreement and relating to the Key Deliverables developed by the Supplier pursuant to Clause 6.18.2 (Testing and Achievement of Milestones);.</p>
Acceptance Test Completion Date	(a) the date falling one (1) Month prior to Operational Services Commencement Date.
Acceptance Tests	such tests as are appropriate in respect of a Key Deliverable to demonstrate that such Key Deliverable meets the requirements of this Agreement and shall include, but not be limited to, such of the Acceptance Tests set out under Paragraph 3 of Schedule 6.2 (Acceptance Criteria and Tests) as are agreed by the Authority pursuant to this Agreement;
Acceptance Tests Quality Audit	has the meaning given in Paragraph 7.1 of Schedule 6.2 (Acceptance Criteria and Tests);
Account Management Detailed Solution	the account management Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and

	which shall meet the requirements of Schedule 2.1B (Account Management);
Achieve	means in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (Acceptance Criteria and Tests), and “Achieved” and “Achievement” shall be construed accordingly;
Acquired Rights Directive	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
Action Plan	has the meaning given to it in Clause 15.13;
Actual Costs	has the meaning given in Schedule 7.1 (Charges and Invoicing);
Affected Party	the Party seeking to claim relief in respect of a Force Majeure Event;
Affiliate	In relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
Aggregate Guarantee Amount	has the meaning given to it in clause 1 of the Guarantee;
Allowable Price	<p>in relation to the Retained Key Deliverables relating to a Milestone, if any, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>(a) A is an amount equal to the Actual Costs incurred by the Supplier in providing or developing the relevant Retained Key Deliverables as reflected in the Financial Model together with an amount equal to the Supplier Profit Rate thereon; and</p> <p>(b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Key Deliverables, if any, or if there is no such Allowable Price Adjustment, zero (0), provided that the Allowable Price for any Retained Key Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that Milestone;</p>
Allowable Price Adjustment	the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment

	on the grounds that the Key Deliverables do not or will not perform in all material respects in accordance with the Statement of Requirements;
Annual Contract Report	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
Annual Guarantee Amount	has the amount given to it in clause 1 of the Guarantee;
API	application programme interface;
Approval	<p>(a) in relation to the development of Detailed Solutions, means Approved in accordance with Part 2 (Detailed Solution Development) to Schedule 6.1 (Mobilisation); and</p> <p>(b) in respect of the remainder of this Agreement, Approved in accordance with Schedule 12 (Approval),</p> <p>(excluding Routine Approval) and Approve, Approves, Approved and Approving shall be construed accordingly;</p>
Approved Sub-Licensee	<p>any of the following:</p> <p>(a) a Central Government Body;</p> <p>(b) any third party providing services to a Central Government Body; and/or</p> <p>(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;</p>
Asset Management Detailed Solution	the asset management Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and which shall meet the requirements of Schedule 2.1D (Asset Management);
Asset Register Assets	has the meaning given to it in Schedule 2.1 (Statement of Requirements);
Assets	<p>all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding:</p> <p>(a) the Authority Assets; and</p> <p>(b) the Asset Register Assets;</p>
ATP Milestone	the Milestone linked to Authority to Proceed for the Operational Services as set out in the Mobilisation Plan falling payable twenty (20) Working Days after the Operational Services Commencement Date;

ATP Tests Approval Milestone	has the meaning given to it in Clause 6.18.2(a) (Testing and Achievement of Milestones);
ATP Tests Submission	has the meaning given to it in Clause 6.18.2 (Testing and Achievement of Milestones);
ATP Tests Submission Date	has the meaning given to it in Clause 6.18.2 (Testing and Achievement of Milestones);
ATP Tests Submission Milestone	has the meaning given to it in Clause 6.18.2(a) (Testing and Achievement of Milestones);
Audit	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (Records, Reports, Audit and Open Book Data) and Schedule 7.5 (Financial Reports and Audit Rights);
Audit Agents	<ul style="list-style-type: none"> (a) the Authority's internal and external auditors; (b) the Authority's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
Audit Rights	the audit and access rights referred to in Schedule 7.5 (Financial Reports and Audit Rights);
Authority Assets	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services including the Asset Register Assets;
Authority Background IPRs	<ul style="list-style-type: none"> (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures; (b) IPRs created by the Authority independently of this Agreement; and/or (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; <p>but excluding IPRs owned by the Authority subsisting in the Authority Software;</p>
Authority Cause	any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

	<p>(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or</p> <p>(b) caused by the Supplier, any Sub-contractor or any Supplier Related Party;</p>
Authority Data	<p>the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:-</p> <p>(a) supplied to the Supplier by or on behalf of the Authority; or</p> <p>(b) supplied to the Supplier directly or indirectly by or from any Authority Supply Chain Member in connection with this Agreement, the Authority Estate, and/or the Authority Supply Chain Services;</p> <p>(c) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(d) any Personal Data for which the Authority is the Controller;</p>
Authority Estate	<p>the Authority's property portfolio as more particularly described in the Statement of Requirements and as the same may be changed, varied, or adapted by the Authority from time to time during the Term;</p>
Authority Materials	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <p>(a) are owned or used by or on behalf of the Authority; and</p> <p>(b) are or may be used in connection with the provision or receipt of the Services,</p> <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
Authority Premises	<p>premises:</p> <p>(a) owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them); and/or</p> <p>(b) any premises forming part of the Authority Estate;</p>
Authority Policies	<p>the policies of the Authority set out in Schedule 2.6 (Authority Policies);</p>

Authority Representative	the representative appointed by the Authority pursuant to Clause 11.4 (Representatives);
Authority Requirements	the requirements of the Authority set out in Schedules 2.1 (Statement of Requirements), 2.2 (Performance Levels), 2.3 (Standards), 2.4 (Security Management), 2.5 (Insurance Requirements), 6.1 (Mobilisation), 8.4 (Reports and Records Provisions) and 8.5 (Exit Management);
Authority Responsibilities	the responsibilities of the Authority specified in Schedule 3 (Authority Responsibilities);
Authority Software	software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
Authority Supply Chain Member	any supplier to the Authority (but excluding the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
Authority Supply Chain Contract	a contract between the Authority and the relevant Authority Supply Chain Member and references to Authority Supply Chain Contracts shall be construed accordingly;
Authority Supply Chain Services	the services provided by the Authority Supply Chain Members;
Authority System	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
Authority to Proceed or ATP	the authorisation to the Supplier to commence the provision of the Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
Baseline Security Requirements	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (Security Management), as updated from time to time by the Authority and notified to the Supplier;
BCDR Plan	means the business continuity and disaster recovery plan required by and pursuant to the Account Management Statement of Requirements at Schedule 2.1 (Statement of Requirements);
Breakage Costs Payment	has the meaning given in Schedule 7.2 (Payments on Termination);

Central Government Body	<p>(a) a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (i) Government Department; (ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (iii) Non-Ministerial Department; (iv) Executive Agency; (v) Government Property Unit; <p>(b) a statutory corporation; or</p> <p>(c) a body corporate to the extent a body listed in limb (a) of this definition is a shareholder;</p>
Certificate of Costs	has the meaning given in Schedule 7.1 (Charges and Invoicing);
Change	any change to this Agreement;
Change Authorisation Note	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (Change Control Procedure);
Change Control Procedure	the procedure for changing this Agreement set out in Schedule 8.2 (Change Control Procedure);
Change in Law	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
Change Request	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (Change Control Procedure);
Charges	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (Charges and Invoicing), including any Milestone Payment or Service Charge;
Commercially Sensitive Information	<p>the information listed in Schedule 4.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier's IPRs; and (c) the Supplier's business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>

Comparable Supply	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
Compensation for Unacceptable KPI Failure	has the meaning given in Clause 7.4.1 (Unacceptable KPI Failure);
Compensation Payment	has the meaning given in Schedule 7.2 (Payments on Termination);
Confidential Information	<p>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:</p> <ul style="list-style-type: none"> (i) the Disclosing Party Group; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; <p>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;</p> <p>(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and</p> <p>(d) Commercially Sensitive Information;</p> <p>(e) Information derived from any of the above, but not including any Information which:</p> <ul style="list-style-type: none"> (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party; (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach

	<p>of this Agreement or breach of a duty of confidentiality;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier's:</p> <p>(A) performance under this Agreement; or</p> <p>(B) failure to pay any Sub-contractor as required pursuant to Clause 15.1.1 (Supply Chain Protection);</p>
Contract Administration and Performance Management Detailed Solution	means the Detailed Solution relating to the provision of <i>inter alia</i> certain contract administration and performance management services to the Authority as required pursuant to the Statement of Requirements;
Contract Change	any change to this Agreement other than an Operational Change;
Contract Inception Report	The initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
Contract Year	the twelve (12) calendar Month period commencing on 1 May 2022 and thereafter each subsequent twelve (12) calendar Months commencing on 1 May in any year provided that the final Contract Year shall commence on and include 1 May in the relevant year and end on and include the date of expiry or earlier termination of this Agreement (as the case may be);
Control	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and Controls; Controlled and Change of Control shall be interpreted accordingly;
Cost and Financial Management Detailed Solution	the cost and financial management Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and which shall meet the requirements of Schedule 2.1E (Cost and Management Information);
Critical Performance Failure	<p>(a) the Supplier accruing in aggregate ■■■ or more Service Failure Points (in terms of the number of points allocated) in any period of three (3) Months; or</p> <p>(b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;</p>
CRTPA	the Contracts (Rights of Third Parties) Act 1999;

Controller	shall have the same meaning as given in Data Protection Legislation;
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
Data, Analytics and Reporting Detailed Solution	the data, analytics and reporting Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and which shall meet the requirements of Schedule 2.1F (Data and Reporting);
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
Data Protection Legislation	means <ul style="list-style-type: none"> • the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time, • the DPA 2018, • the Data Protection Regulations 2018, • the Criminal Law Enforcement Data Protection Directive 2016/680, • the Regulation of Investigatory Powers Act 2000, • the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), • the Electronic Communications Data Protection Directive 2002/58/EC, • the Privacy and Electronic Communications (EC Directive) Regulations 2003 and • all applicable Law relating to the Processing of Personal Data;
Data Protection Officer	shall have the same meaning as given in Data Protection Legislation;
Data Protection Regulations	the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
Data Subject	shall have the same meaning as given in Data Protection Legislation;

Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
Deductions	all Service Credits, Compensation for Unacceptable KPI Failure or any other deduction, compensation and/or other amount which is paid or payable to the Authority under this Agreement;
Default	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <p>(a) in the case of the Authority, of its employees, servants, agents; or</p> <p>(b) in the case of the Supplier, of any Supplier Related Party,</p> <p>in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;</p>
Defect	<p>(a) any error, damage or defect in the manufacturing of a Key Deliverable; or</p> <p>(b) any error or failure of code within the Software which causes a Key Deliverable to malfunction or to produce unintelligible or incorrect results; or</p> <p>(c) any failure of any Key Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Key Deliverable from meeting its associated Test Success Criteria; or</p> <p>(d) any failure of any Key Deliverable to operate in conjunction with or interface with any other Key Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Key Deliverable from meeting its associated Acceptance Criteria and Tests;</p>
Delay	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or Mobilisation of a Key Deliverable by the relevant date set out in the Mobilisation Plan;</p>
Detailed Solution Submission	has the meaning given to it in Paragraph 3.1 of Part 2 to Schedule 6.1 (Mobilisation);


Detailed Solutions	<p>means as the context so requires the form of Detailed Solutions Submission for each Service Element as Approved by the Authority and the Key Deliverables Accepted by the Authority pursuant to the terms of this Agreement including the:</p> <ul style="list-style-type: none"> (a) Account Management Detailed Solution; (b) Helpdesk and Work Order Management Detailed Solution; (c) Asset Management Detailed Solution; (d) Cost and Financial Management Detailed Solution; (e) Data, Analytics and Reporting Detailed Solution; (f) Systems Detailed Solution; (g) Supply Chain Transition Detailed Solution; and (h) Exit Detailed Solution, <p>and references to any Detailed Solution shall be construed accordingly;</p>
Detailed Solutions Indicators	has the meaning given to it in Paragraph 5.1.1(c) of Schedule 6.2 (Acceptance Criteria and Tests);
Disclosing Party	has the meaning given in Clause 22.1 (Confidentiality);
Disclosing Party Group	<ul style="list-style-type: none"> (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;
Dispute	Any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
Dispute Notice	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
Dispute Resolution Procedure	the dispute resolution procedure set out in Schedule 8.3 (Dispute Resolution Procedure);
Documentation	descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development

	<p>information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none"> (a) is required to be supplied by the Supplier to the Authority under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
DOTAS	The Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
DPA	means the Data Protection Act 2018;
Draft Detailed Solution	means in relation to the relevant Outline Solution relating to the relevant Service Element an updated detailed draft and containing sufficient information to satisfy the requirements of this Agreement;
Due Diligence Information	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
DWP	has the meaning given to the Authority under this Agreement;
DWP Enterprise Security Risk Management Strategy	means the Authority Policy set out at Part 12 (DWP Enterprise Security Risk Management Strategy) to Schedule 2.6 (Authority Policies);
DWP Information Security Policy	means the Authority's Information Security Policy at Part 13 to Schedule 2.6 (Authority Policies) as may be replaced, updated or amended from time to time;
DWP Offshoring Policy	means the Authority's policy in respect of offshoring of Authority Data the current version of which is at Part 14 to Schedule 2.6 (Authority Policies) as replaced updated or amended from time to time;

EEA	has the meaning given to it in Clause 1.2.5;
Effective Date	the date of this Agreement;
EIRs	The Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner's Office or any Central Government Body in relation to such Regulations;
Emergency Maintenance	<p>ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;
Employee Liabilities	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
End User	any person authorised by the Authority to use the IT Environment and/or the Services;
Euro Compliant	<p>means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <ul style="list-style-type: none"> (a) be able to perform all such functions in any number of currencies and/or in euros; (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro; (d) incorporate protocols for dealing with rounding and currency conversion; (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;
Exit Day	shall have the meaning in the European Union (Withdrawal) Act 2018;
Exit Detailed Solution	the exit management Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and which shall meet the requirements of this Agreement including Schedule 2.1 (Statement of Requirements);

Exit Management	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (Exit Management);
Exit Price	has the meaning given to it in Paragraph 1 (Definitions) of Schedule 7.1 (Charges and Invoicing);
Extended Term Date	the First Term Extension Date and/or the Second Term Extension Date as the context so requires;
Extension Period Maximum Price	in relation to each of the First Term Extension Period and the Second Term Extension Period the: (a) Operational Price; and (b) Exit Price for any Termination Assistance Period;
Extension Period Supplier Profit Rate	the Supplier's profit rate applicable to each of the First Term Extension Period and the Second Term Extension Period which shall be equal to or less than the Supplier Profit Rate as at the Effective Date;
Final Bid Submission	means the final bid submitted by the Supplier to the Authority on 30th September 2021 at 12:00 Noon;
Final Detailed Solution Development End Date	means the date on which the final Detailed Solution Submission for the final Service Element is Approved by the Authority pursuant to the terms of the Part 2 to Schedule 6.1 (Mobilisation);
Financial Distress Event	has the meaning given it in Paragraph 3 of Schedule 7.4 (Financial Distress);
Financial Distress Service Continuity Plan	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
Financial Model	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
Financial Reports	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
Financial Transparency Objectives	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
First Term Extension Date	the date falling twelve (12) Months from the Initial Term Date;
First Term Extension Period	the period from the expiry of the Initial Term to the First Term Extension Date;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner's

	Office or any relevant Central Government Body in relation to such Act;
Force Majeure Event	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or a Supplier Related Party or any other failure in the Supplier's or a Sub-contractor's supply chain;
Force Majeure Notice	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
Former Supplier	has the meaning given in Schedule 9.1 (Staff Transfer);
General Anti-Abuse Rule	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
General Change in Law	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
Good Industry Practice	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
Goods	has the meaning given in Clause 9.7 (Supply of Goods);
Government Digital Service Open Standards	has the meaning given in Paragraph 4.15 of Schedule 2.1 (Statement of Requirements);
Guarantee	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (Guarantee)), or any guarantee acceptable to the Authority that replaces it from time to time;
Guarantor	

Halifax Abuse Principle	the principle explained in the CJEU Case C-255/02 Halifax plc and others;
Health and Safety Policy	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
Health & Safety and Risk Management Detailed Solution	means the Detailed Solution relating to the provision of <i>inter alia</i> certain health and safety, risk management and business continuity services to the Authority as required pursuant to the Statement of Requirements;
Helpdesk and Work Order Management Detailed Solution	the helpdesk and work order management Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and which shall meet the requirements of Schedule 2.1C (Helpdesk and Works Order Management);
HMG Cyber Essentials Scheme	has the meaning given in Paragraph 4.17 of Schedule 2.1 (Statement of Requirements);
HMG Security Policy Framework	the security policy framework (April 2014) published by the Cabinet Office at: https://www.gov.uk/government/publications/security-policy-framework as replaced updated or amended from time to time;
HMRC	HM Revenue & Customs;
Impact Assessment	has the meaning given in Schedule 8.2 (Change Control Procedure);
Independent Controllers	where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data;
Indemnified Person	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
Information	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

Information Commissioner's Office	the Central Government Body dealing with <i>inter alia</i> the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 together with any amendments or variations to such legislation (including replacement legislation) from time to time;
Initial Term Date	5 years from Effective Date and references to Initial Term shall be construed accordingly;
Insolvency Event	<p>(a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;</p> <p>(c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;</p> <p>(d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within fourteen (14) days;</p> <p>(e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where the other Party is a company, a LLP or a partnership:</p>

	<ul style="list-style-type: none"> (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party; (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or (g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
Insurances	has the meaning given to it in Paragraph 1.1 of Schedule 2.5 (Insurance Requirements) and references to Insurance shall be construed accordingly;
Intellectual Property Rights or IPRs	<ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;
Intervention Cause	has the meaning given in Clause 31.1 (Remedial Adviser);

Intervention Notice	has the meaning given in Clause 31.1 (Remedial Adviser);
Intervention Period	has the meaning given in Clause 31.2.3 (Remedial Adviser);
Intervention Trigger Event	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) the Supplier accruing in aggregate ■■■ or more Service Failure Points (in terms of the number of points allocated) in any period of three (3) Months;</p> <p>(d) the Supplier accruing Service Credits which meet or exceed seventy-five per cent (75%) of the Service Credit Cap; and/or</p> <p>(e) the Supplier not Achieving a Milestone within seventy-five (75) days of its relevant Milestone Date;</p>
IPRs Claim	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Statement of Requirements or the provisions of this Agreement;
IT	information and communications technology;
IT Environment	the Supplier System and any interface with or element of the Authority System for which the Supplier is responsible (including, without limitation, any web pages, APIs or portals);
Joint Controllers	where two or more Controllers jointly determine the purposes and means of Processing;
Key Deliverables	means the key deliverables being all designs, plans, programmes, guidelines, processes, systems, documents, tenders, specifications, recommendations and other outputs identified in the Detailed Solutions and prepared by the Supplier as required for the implementation of the Operational Services set out in Schedule 2.1 (Statements of Requirements);
Key Performance Indicator	the key performance indicators as identified in Annex 1 of Schedule 2.2 (Performance Levels);

Key Personnel	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (Key Personnel) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (Key Personnel);
Key Roles	a role described as a Key Role in Schedule 9.2 (Key Personnel) and any additional roles added from time to time in accordance with Clause 14.4 (Key Personnel);
Key Sub-contract	each Sub-contract with a Key Sub-contractor;
Key Sub-contractor	any Sub-contractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Agreement;
Know-How	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;
KPI Failure	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
KPI Service Threshold	shall be as set out against the relevant Key Performance Indicator in Annex 1 of Schedule 2.2 (Performance Levels);
Landed Resources	has the meaning given to it in Paragraph 3 of Part 14 (DWP Offshoring Policy) to Schedule 2.6 (Authority Policies);
Law	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
LED	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
Licensed Software	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;

Losses	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
Maintenance Schedule	shall have the meaning set out in Clause 9.4 (Maintenance);
Malicious Software	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
Management Information	the management information specified in Schedule 2.2 (Performance Levels), Schedule 7 (Charges and Invoicing) and Schedule 8.1 (Governance) to be provided by the Supplier to the Authority;
Material KPI Failure	<ul style="list-style-type: none"> (a) a Serious KPI Failure; (b) a Severe KPI Failure; or (c) a failure by the Supplier to meet a KPI Service Threshold;
Material SPI Failure	a failure by the Supplier to meet the SPI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period;
Maximum Price	has the meaning given to it in Paragraph 1.1 of Schedule 7.1 (Charges and Invoicing);
Milestone	an event or task described in the Mobilisation Plan which, if applicable, shall be completed by the relevant Milestone Date;
Milestone Achievement Certificate	the certificate to be granted by the Authority when the Supplier has achieved a Milestone, which shall be in substantially the same form as that set out in Annex 1 of Schedule 6.2 (Acceptance Criteria and Tests);
Milestone Adjustment Payment Amount	<p>in respect of each Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <ul style="list-style-type: none"> (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that Milestone; and

	(b) B is an amount equal to the aggregate Allowable Price for the Retained Key Deliverables relating to that Milestone or, if there are no such Retained Key Deliverables, zero (0);
Milestone Adjustment Payment Notice	has the meaning given in Clause 36.7 (Payments by the Supplier);
Milestone Date	the target date set out against the relevant Milestone in the Mobilisation Plan by which the Milestone must be achieved;
Milestone Payment	a payment identified in Schedule 7.1 (Charges and Invoicing) to be made following the issue of a Milestone Achievement Certificate and Milestone Payments shall be construed accordingly;
Milestone Price	has the meaning given in Schedule 7.1 (Charges and Invoicing);
Minor KPI Failure	shall be as set out against the relevant Key Performance Indicator in Annex 1 of Schedule 2.2 (Performance Levels);
Mobilisation Phase	means the period commencing on the Effective Date and ending on the Operational Services Commencement Date;
Mobilisation Plan	means the mobilisation plan set out in Annex 1 to Schedule 6.1 (Mobilisation);
Mobilisation Services	the services to be provided by the Supplier pursuant to Clauses 6.2 to 6.17 (Mobilisation Plan and the Mobilisation Phase) and/or as otherwise required by or reasonably to be inferred from this Agreement;
Month	a calendar Month and monthly shall be interpreted accordingly;
New Releases	an item produced primarily to extend, alter or improve the Software and/or any Key Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Key Deliverable are also corrected) while still retaining the original designated purpose of that item;
Non-Party IPR	has the meaning given to it in Clause 20.5;
Non-trivial Customer Base	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
Non-retained Key Deliverables	in relation to a Milestone Payment Notice and each Milestone the subject of that Milestone Payment Notice, Key Deliverables provided to the Authority which relate to the relevant Milestone(s) and which are not Retained Key Deliverables;

Notifiable Default	shall have the meaning given in Clause 28.1 (Rectification Plan Process);
Object Code	software and/or data in machine-readable, compiled object code form;
Occasion of Tax Non-Compliance	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
Open Book Data	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
Open Source	Computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
Operating Environment	the Authority System and the Sites;
Operational Change	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"> (a) will not affect the Charges and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and (d) will not require a change to this Agreement;

Operational Price	has the meaning given to it in Paragraph 1 (Definitions) of Schedule 7.1 (Charges and Invoicing);
Operational Services	means the services to be delivered by the Supplier from and including the Operational Services Commencement Date as more particularly described in Schedule 2.1 (Statement of Requirements) and/or as otherwise required by or reasonably to be inferred from this Agreement;
Operational Services Commencement Date	means 3 May 2022;
Outline Solutions	the Supplier's outline solutions set out in Schedule 11 (Outline Solutions) and references to Outline Solution shall be construed accordingly;
Partial Termination	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clauses 35.2.1 (Termination by the Authority) or 36.3.2 (Termination by the Supplier);
Parties and Party	have the meanings respectively given on page 1 of this Agreement;
Performance Failure	a KPI Failure or a SPI Failure;
Performance Indicators	the Key Performance Indicators and the Subsidiary Performance Indicators;
Permitted Maintenance	has the meaning given in Clause 9.4 (Maintenance);
Performance Monitoring Report	has the meaning given in Schedule 2.2 (Performance Levels);
Personal Data	shall have the same meaning as given in Data Protection Legislation;
Personal Data Breach	shall have the same meaning as given in Data Protection Legislation;
Process	has the meaning given to it under the Data Protection Legislation and Processed and Processing shall be construed accordingly;
Processor	shall have the same meaning as given in the Data Protection Legislation;
Processor Personnel	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;
Programme Management Detailed Solution	means the Detailed Solution relating to the provision of certain programme management services to the Authority as required pursuant to the Statement of Requirements;

Prohibited Act	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) an offence:</p> <p>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</p> <p>(ii) under legislation or common law concerning fraudulent acts; or</p> <p>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or</p> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
Project Board	the body described in Paragraph 2 of Schedule 8.1 (Governance);
Project Specific IPRs	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p>
Proscribed Conduct	<p>the following activities or circumstances:</p> <p>(a) performing or delivering any works or services in or in relation to the Authority Estate other than the Services;</p> <p>(b) agreeing, permitting or entering into any arrangement (whether by contract, joint venture or otherwise) other than by this Agreement to carry out any Authority Supply Chain Services, either as an Authority Supply Chain Member or as any part of the Supply Chain;</p>

	<p>(c) receiving or being entitled to receive any benefit, financial, commercial or otherwise which is derived expressly or impliedly from the Authority Estate or the Supply Chain, save for the consideration and/or benefit expressly provided for or impliedly permitted by this Agreement;</p> <p>(d) being connected by a shareholding (controlling or otherwise) or by any arrangement (whether written or oral, by contract (other than this Agreement), joint venture or otherwise) in any member of the Supply Chain (including but not limited to the Authority Supply Chain Members);</p> <p>(e) allowing any member of the Supply Chain (including but not limited to the Authority Supply Chain Members) to exercise any control or influence over the Supplier or any Sub-contractor save as expressly or impliedly permitted by this Agreement;</p> <p>(f) exercising any control or influence over or permitting any Sub-contractor to exercise and control or influence over any member of the Supply Chain (including but not limited to the Authority Supply Chain Members) save as expressly or impliedly permitted by this Agreement; or</p> <p>(g) appointing any member of the Supply Chain (including but not limited to the Supply Chain members) as a Sub-contractor.</p>
Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
Pseudonymisation	shall have the same meaning as given in Data Protection Legislation;
Publishable Performance Information	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;
Quarter	the first three (3) Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
Recipient	has the meaning given in Clause 22.1 (Confidentiality);

Records	has the meaning given in Schedule 8.4 (Reports and Records Provisions);
Rectification Plan	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
Rectification Plan Failure	<ul style="list-style-type: none"> (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 28.3 (Submission of the draft Rectification Plan) or 28.6 (Agreement of the Rectification Plan); (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 28.6 (Agreement of the Rectification Plan); (c) the Supplier failing to rectify a material Default within the later of: <ul style="list-style-type: none"> (i) thirty (30) Working Days of a notification made pursuant to Clause 28.2 (Notification); and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the three (3) Months subsequent to the Month in which the initial Material KPI Failure occurred; and/or (e) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) Months for the same (or substantially the same) root cause as that of the original Notifiable Default;
Rectification Plan Process	the process set out in Clauses 28.3 (Submission of the draft Rectification Plan) to 28.8 (Agreement of the Rectification Plan);
Relevant Detailed Solution Draft Submission Date	means the date identified on the Mobilisation Plan by which the Supplier shall have submitted the relevant Service Element to the Authority in accordance with Part 2 of Schedule 6.1 (Mobilisation);
Relevant Detailed Solution Submission Date	has the meaning given to it in Paragraph 3.1 of Part 2 to Schedule 6.1 (Mobilisation);
Relevant IPRs	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations

	under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
Relevant Requirements	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
Relevant Tax Authority	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
Relevant Transfer	a transfer of employment to which the Employment Regulations applies;
Relief Notice	has the meaning given in Clause 33.2 (Authority Cause);
Remedial Adviser	the person appointed pursuant to Clause 31.2 (Remedial Adviser);
Remedial Adviser Failure	has the meaning given in Clause 31.6 (Remedial Adviser);
Replacement Services	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
Replacement Supplier	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
Request For Information	a request for information under the FOIA or the EIRs and Requests for Information shall be construed accordingly;
Required Action	has the meaning given in Clause 32.1.1 (Step-In Rights);
Retained Key Deliverables	has the meaning given in Clause 36.8.2 (Payments by the Supplier);
Routine Approval	has the meaning given in Schedule 2.1A (Overview);
Routine Rejection	has the meaning given in Schedule 2.1A (Overview);
Second Term Extension Date	one year from and including the date of expiry of the First Term Extension Period;

Second Term Extension Period	the period from and including the date of expiry of the First Term Extension Period to the Second Term Extension Date;
Serious Fraud Office	the Central Government Body responsible for investigating and prosecuting serious or complex fraud and corruption;
Serious KPI Failure	shall be as set out against the relevant Key Performance Indicator in Annex 1 of (Schedule 2.2 (Performance Levels));
Service Charges	the periodic payments made in accordance with Schedule 7.1 (Charges and Invoicing) in respect of the supply of the Operational Services;
Service Credit Cap	the per year figure derived from the total “at risk” per year percentage specified in Annex 1 of Schedule 2.2
Service Credits	credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Paragraph 8 of Schedule 7.1 (Charges and Invoicing);
Service Element	any individual element of the Operational Services to be provided by the Supplier as more particularly described in Schedule 2.1 (Statement of Requirements);
Service Exclusion Notice	has the meaning given to it in Clause 30.1 (Service Exclusion)
Service Exclusion Cause	has the meaning given to it in Clause 30.1 (Service Exclusion)
Service Failure Points	in relation to a: (a) KPI Failure; or (b) SPI Failure, the points that are set out against the relevant Key Performance Indicator and/or Subsidiary Performance Indicator (as the case may be) in the table in Annex 1 of Schedule 2.2 (Performance Levels);
Service Period	a calendar month, save that: (a) the first service period shall begin on the first Operational Services Commencement Date and shall expire at the end of the calendar month in which the first Operational Services Commencement Date falls; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
Services	(a) the Mobilisation Services;

	<p>(b) the Operational Services; and</p> <p>(c) any other services as otherwise required by or reasonably to be inferred from this Agreement;</p>
Service Transfer Date	has the meaning given in Schedule 9.1 (Staff Transfer);
Severe KPI Failure	shall be as set out against the relevant Key Performance Indicator in Annex 1 of Schedule 2.2 (Performance Levels);
Severe SPI Failure	shall be as set out against the relevant Subsidiary Performance Indicator in Annex 1 of Schedule 2.2 (Performance Levels);
Sites	<p>any premises (including the Authority Premises, the Supplier's premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services;</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place; or</p> <p>(c) any premises forming part of the Authority Estate;</p>
Software	Specially Written Software, Supplier Software and Third Party Software;
Software Supporting Materials	has the meaning given in Clause 17.1.2 (Specially Written Software and Project Specific IPRs);
Source Code	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
Specially Written Software	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement.

Specific Change in Law	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
SPI Failure	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
SPI Service Threshold	shall be as set out against the relevant Subsidiary Performance Indicator in Annex 1 of Schedule 2.2 (Performance Levels);
Standards	the standards, policies and/or procedures identified in Schedule 2.3 (Standards);
Statement of Requirements	the statement of requirements set out in Schedule 2.1 (Statement of Requirements);
Step-In Notice	has the meaning given in Clause 32.1 (Step-In Rights);
Step-In Trigger Event	<ul style="list-style-type: none"> (a) any event falling within the definition of a Supplier Termination Event; (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement; (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 32 (Step-In Rights) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; (f) a need by the Authority to take action to discharge a statutory duty; and/or (g) a Force Majeure Event occurs;
Step-Out Date	has the meaning given in Clause 32.5.2 (Step-In Rights);
Step-Out Notice	has the meaning given in Clause 32.5 (Step-In Rights);
Step-Out Plan	has the meaning given in Clause 32.6 (Step-In Rights);
Sub-contract	any contract or agreement (or proposed contract or agreement) entered in to by the Supplier (or a Sub-contractor) and any third parties in relation to any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

Sub-contractor	any sub-contractor of the Supplier of any tier and any of their officers, servants or agents;
Sub-processor	any third party appointed to Process Personal Data on behalf of the Supplier related to this Agreement;
Subsidiary Performance Indicator	those performance indicators which are not identified as Key Performance Indicators in Annex 1 of Schedule 2.2 (Performance Levels);
Successor Body	has the meaning given in Clause 38.4 (Assignment and Novation);
Supplier Background IPRs	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
Supplier COTS Background IPRs	<p>Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
Supplier COTS Software	<p>Supplier Software (including Open Source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
Supplier Equipment	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
Supplier Non-COTS Background IPRs	any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;

Supplier Non-COTS Software	Supplier Software that is not Supplier COTS Software;
Supplier Non-Performance	has the meaning given in Clause 33.1 (Authority Cause);
Supplier Personnel	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
Supplier Profit Rate	has the meaning given in Paragraph 1.1 of Schedule 7.1 (Charges and Invoicing);
Supplier Related Party	all Supplier Personnel, any Affiliate of the Supplier and any directors, officers, employees, agents, consultants and contractors of such Affiliate;
Supplier Representative	the representative appointed by the Supplier pursuant to Clause 11.3 (Representatives);
Supplier Software	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (Software);
Supplier Solution	has the meaning given to it in Schedule 4 (Supplier Matters);
Supplier System	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
Supplier Termination Event	<ul style="list-style-type: none"> (a) the Supplier's level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable; (c) the Supplier's Capped Liability reaches seventy-five per cent (75%) save where the Authority agrees to the Supplier's written request pursuant to Clause 26.5.1 (Limitations on Liability); (d) a Remedial Adviser Failure; (e) a Rectification Plan Failure; (f) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> (i) Clause 19 (IPRs Indemnity); (ii) Clause 41.6.2 (Prevention of Fraud and Bribery); and/or

	<ul style="list-style-type: none"> (iii) Paragraph 4 of Schedule 7.4 (Financial Distress); (g) the representation and warranty given by the Supplier pursuant to Clause 3.2.9 (Warranties) being materially untrue or misleading; (h) the Supplier committing a material Default under Clause 10.10 (Promoting Tax Compliance) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (Promoting Tax Compliance) which in the reasonable opinion of the Authority are acceptable; (i) the Supplier committing a material Default under any of the following Clauses: <ul style="list-style-type: none"> (i) 5.6.11 (Supplier Covenants); (ii) 24 (Protection of Personal Data); (iii) 23 (Transparency and Freedom of Information); (iv) 22 (Confidentiality); and (v) 37 (Compliance); and/or in respect of any security requirements set out in Schedule 2.1 (Statement of Requirements), Schedule 2.4 (Security Management) or the Baseline Security Requirements and/or in respect of Paragraph 5.3.3 of Schedule 2.2 (Performance Levels) and/or any requirements set out in Schedule 9.1 (Staff Transfer); (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (Benchmarking); (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor; (l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority); (m) a Change of Control of the Supplier or a Guarantor unless: <ul style="list-style-type: none"> (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or (ii) the Authority has not served its notice of objection within six (6) Months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
--	--

	<p>(n) a Change of Control of a Key Sub-contractor unless, within six (6) Months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is Approved by the Authority pursuant to Clause 15.6 (Appointment of Key Sub-contractors);</p> <p>(o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (Staff Transfer);</p> <p>(p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;</p> <p>(q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;</p> <p>(r) in relation to Schedule 2.4 (Security Requirements):</p> <ul style="list-style-type: none"> (i) the Authority has issued two rejection notices in respect of the Risk Management Document Set under Paragraph 4.5(b) (Part A)/ Paragraph 6.8(b) (Part B); (ii) the Supplier fails to implement a change required by the Required Changes Register (as defined in Schedule 2.4 (Security Requirements)) in accordance with the timescales set out in the Required Changes Register; (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Authority has agreed in writing; (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or, (v) the Supplier fails to comply with the Incident Management Process; <p>(s) where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial, commercial or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Agreement;</p> <p>(t) the Supplier breaches its obligations pursuant to Clauses 5.13 to 5.15 (Independence, Conflicts and Prescribed Conduct);</p>
--	--

	<p>(u) the Aggregate Guarantee Amount and/or Annual Guarantee Amount (as the case may be) reaches seventy-five per cent (75%) of the relevant cap save where the Authority agrees to the Guarantor's written request pursuant to clause 7.3 of the Guarantee; or</p> <p>(v) a breach of paragraph 10 of Annex 1 to Schedule 2.4 (Security);</p>
Supplier's Capped Liabilities and Supplier's Capped Liability	has the meaning given to it in Clause 26.4.2 (Financial and Other Limits);
Supplier's Liability Cap	has the meaning given in Clause 26.4.2 (Financial and Other Limits);
Supply Chain	the Supplier and the Authority Supply Chain Members and its and their sub-contractors, suppliers, agents and consultants, of any tier and all employees and agents engaged by any of them in relation to the Authority Estate;
Supply Chain Transition Detailed Solution	the supply chain transition Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and which shall meet the requirements of Schedule 2.1H (Supply Chain Transition);
Systems Detailed Solution	the Systems Detailed Solution to be developed by the Supplier and Approved by the Authority in accordance with this Agreement including without limitation Schedule 6.1 (Mobilisation) and which shall meet the requirements of Schedule 2.1G (System Requirements);
Target Performance Level	the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the column headed 'Target Performance' in the tables in Annex 1 of Schedule 2.2 (Performance Levels);
Term	<p>the duration of this Agreement being the period commencing on the Effective Date and ending on the:</p> <p>(a) Initial Term Date; or</p> <p>(b) on the Term Date; or</p> <p>(c) on earlier termination of this Agreement;</p>
Term Date	31 March 2022 or, in the event of an extension pursuant to Clause 4 (Term), the First Term Extension Date and/or the Second Term Extension Date (as the case may be);
Termination Assistance Notice	has the meaning given in Paragraph 5.1 of Schedule 8.5 (Exit Management);
Termination Assistance Period	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice

	for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (Exit Management);
Termination Date	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
Termination Notice	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
Termination Payment	the payment determined in accordance with Schedule 7.2 (Payments on Termination);
Termination Services	the services and activities to be performed by the Supplier pursuant to the Exit Detailed Solution, including those activities listed in Annex 1 of Schedule 8.5 (Exit Management), and any other services required pursuant to the Termination Assistance Notice;
Third Country	any country other than the United Kingdom that the UK Secretary of State has not deemed to provide an adequate level of protection for personal data under the Data Protection Legislation at the time of transfer of Personal Data;
Third Party Beneficiary	has the meaning given in Clause 45.1 (Third Party Rights);
Third Party COTS IPRs	Third Party IPRs that: (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base;
Third Party COTS Software	Third Party Software (including Open Source software) that: (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer base;
Third Party IPRs	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

Third Party Non-COTS IPRs	Third Party IPRs that are not Third Party COTS IPRs;
Third Party Non-COTS Software	Third Party Software that is not Third Party COTS Software;
Third Party Provisions	has the meaning given in Clause 45.1 (Third Party Rights);
Third Party Software	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (Software);
Transferring Authority Employees	has the meaning given in Schedule 9.1 (Staff Transfer);
Transferring Former Supplier Employees	has the meaning given in Schedule 9.1 (Staff Transfer);
Transferring Supplier Employees	has the meaning given in Schedule 9.1 (Staff Transfer);
UK	the United Kingdom;
UK GDPR	means the "UK GDPR" as defined in the Data Protection Regulations;
Unacceptable KPI Failure	the Supplier failing to achieve the KPI Service Threshold in respect of more than fifty per cent (50%) of the Key Performance Indicators that are measured in that Service Period;
Unconnected Sub-contract	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment and Performance Regulations 2017;
Unconnected Sub-contractor	any third party with whom the Supplier enters into an Unconnected Sub-contract;
Unrecovered Payment	has the meaning given in Schedule 7.2 (Payments on Termination);
Updates	in relation to any Software and/or any Key Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
Upgrades	any patch, New Release or upgrade of Software and/or a Key Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;

VAT	value added tax as provided for in the Value Added Tax Act 1994; and
Working Day	any day other than a Saturday, Sunday or public holiday in England and Wales.