

notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any Authority Premises in any manner it sees fit.

31.3 Security of Authority Premises

- 31.4 The Authority shall be responsible for maintaining the security of the Authority Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Authority while on the Authority Premises.
- 31.5 The Authority shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

32. AUTHORITY PROPERTY

- 32.1 Where the Authority issues Authority Property free of charge to the Supplier such Authority Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Authority Property.
- 32.2 The Supplier shall not in any circumstances have a lien or any other interest on the Authority Property and at all times the Supplier shall possess the Authority Property as fiduciary agent and bailee of the Authority.
- 32.3 The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Authority Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Authority Property separately and securely and ensure that it is clearly identifiable as belonging to the Authority.
- 32.4 The Authority Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within 5 Working Days of receipt.
- 32.5 The Supplier shall maintain the Authority Property in good order and condition (excluding fair wear and tear) and shall use the Authority Property solely in connection with this Contract and for no other purpose without Approval.
- 32.6 The Supplier shall ensure the security of all the Authority Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Authority's Security Policy and the Authority's reasonable security requirements from time to time.
- 32.7 The Supplier shall be liable for all loss of, or damage to the Authority Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Authority Cause. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in or losses or damage occurring to the Authority Property.

33. SUPPLIER EQUIPMENT

- 33.1 The Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.

- 33.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Authority Premises without obtaining Approval.
- 33.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal.
- 33.4 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.
- 33.5 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 Contract, including the Service Level Performance Measures.
- 33.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Authority Premises in a safe, serviceable and clean condition.
- 33.7 The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- 33.7.1 remove from the Authority Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with this Contract; and
 - 33.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 33.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes two (2) or more Service Failures in any twelve (12) Month period, the Supplier shall notify the Authority in writing and shall, at the Authority's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).
- 33.9 Where the Supplier identifies Supplier Equipment that it wishes to lease or hire from a third party provider and utilise in its provision of the Services ("**Leveraged Equipment**") it shall notify the Authority and request the prior written Approval of the Authority to use such Leveraged Equipment in the provision of the Services. Notwithstanding the foregoing, the Supplier shall not use any Leveraged Equipment in the provision of the Services without prior written Approval of the Authority.

34. INTELLECTUAL PROPERTY RIGHTS

34.1 Allocation of title to IPR

- 34.1.1 Save as expressly granted elsewhere under this Contract:
- 34.1.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

- (a) the Supplier Background IPR;
- (b) the Third Party IPR; and
- (c) the Project Specific IPR.

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

- (a) Authority Background IPR; and
- (b) Authority Data.

34.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 34.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

34.1.3 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.

34.2 Licences granted by the Supplier: Project Specific IPR

The Supplier hereby grants to the Authority, or shall procure the direct grant to the Authority of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.

34.3 Licences granted by the Supplier: Supplier Background IPR

34.3.1 The Supplier hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.

34.3.2 At any time during the Contract Period or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under clause 34.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties).

34.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to clause 34.3.2, the Authority shall:

- 34.3.3.1 immediately cease all use of the Supplier Background IPR;
- 34.3.3.2 at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, 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 Background IPR; and

- 34.3.3.3 ensure, so far as reasonably practicable, that any Supplier Background IPR that is 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 Supplier Background IPR.

34.4 Authority's right to sub-license

- 34.4.1 The Authority shall be freely entitled to sub-license the rights granted to it pursuant to clause 34.2 (*Licences granted by the Supplier: Project Specific IPR*).
- 34.4.2 The Authority may sub-license:
- 34.4.2.1 the rights granted under clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
- (a) the sub-license is on terms no broader than those granted to the Authority; and
 - (b) the sub-license only authorises the third party to use the rights licensed in clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) for purposes relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function; and
- 34.4.2.2 the rights granted under clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Authority.

34.5 Authority's right to assign/novate licences

- 34.5.1 The Authority:
- 34.5.1.1 shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to clause 34.2 (*Licences granted by the Supplier: Project Specific IPR*); and
- 34.5.1.2 may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) to:
- (a) a Central Government Body; or
 - (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

34.5.2 Where the Authority is a Central Government Body, 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 34.2 (*Licences granted by the Supplier: Project Specific IPR*) and/or clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*). 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 licences granted in clause 34.2 (*Licences granted by the Supplier: Project Specific IPR*) and clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*).

34.5.3 If a licence granted in clause 34.2 (*Licences granted by the Supplier: Project Specific IPR*) and/or clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) is novated under clause 34.5.1.2 or there is a change of the Authority's status (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Authority.

34.6 Third Party IPR

The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Authority on terms at least equivalent to those set out in clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) and clause 34.5.1.2 (*Authority's right to assign/novate licences*). If the Supplier cannot obtain for the Authority a licence materially in accordance with the licence terms set out in clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) and clause 34.5.1.2 (*Authority's right to assign/novate licences*) in respect of any such Third Party IPR, the Supplier shall:

34.6.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and

34.6.2 only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.

34.7 Licence granted by the Authority

The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority Background IPR and the Authority Data solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

34.7.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 35.3 (*Confidentiality*); and

34.7.2 the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

34.8 Termination of licenses

34.8.1 Subject to clauses 34.3.2 and/or 34.3.3 (*Licences granted by the Supplier: Supplier Background IPR*), all licences granted pursuant to this clause 34 (*Intellectual Property Rights*) (other than those granted pursuant to clause 34.6

(Third Party IPR) and 34.7.1 (*Licence granted by the Authority*)) shall survive the Expiry Date.

34.8.2 The Supplier shall, if requested by the Authority in accordance with schedule 10 (*Exit*), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in clause 34.3.1 (*Licences granted by the Supplier: Supplier Background IPR*) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

34.8.3 The licence granted pursuant to clause 34.7.1 (*Licence granted by the Authority*) and any sub-licence granted by the Supplier in accordance with clause 34.7.1 (*Licence granted by the Authority*) shall terminate automatically on the Expiry Date and the Supplier shall:

34.8.3.1 immediately cease all use of the Authority Background IPR and the Authority Data (as the case may be);

34.8.3.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data, provided that if the Authority has not made an election within six Months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data (as the case may be); and

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

34.9 IPR Indemnity

34.9.1 The Supplier shall at during and after the Contract Period, on written demand indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

34.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

34.9.2.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or

34.9.2.2 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;
- (c) there is no additional cost to the Authority; and
- (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.

34.9.3 If the Supplier elects to procure a licence in accordance with clause 34.9.2.1 or to modify or replace an item pursuant to clause 34.9.2.2, but this has not avoided or resolved the IPR Claim, then:

34.9.3.1 the Authority may terminate this Contract by written notice with immediate effect; and

34.9.3.2 without prejudice to the indemnity set out in clause 34.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute Services including the additional costs of procuring, implementing and maintaining the substitute items.

35. SECURITY AND PROTECTION OF INFORMATION

35.1 Security Requirements

35.1.1 The Supplier shall comply with the Security Policy and the requirements of schedule 8 (*Security*) including the Security Management Plan and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

35.1.2 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.

35.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Charges shall then be subject to the Variation Procedure.

35.1.4 Until and/or unless a change to the Contract Charges is agreed by the Authority pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

35.2 Protection of Authority Data

35.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

35.2.2 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 Contract or as otherwise Approved by the Authority.

35.2.3 To the extent that the 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 and in the format (if any) specified by the Authority and in any event as specified by the Authority from time to time in writing.

- 35.2.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 35.2.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with the BCDR Plan. 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 six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 35.2.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan.
- 35.2.7 If at any time the Supplier suspects or has reason to believe that the Authority Data is 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.
- 35.2.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:
 - 35.2.8.1 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 9 (*Business Continuity and Disaster Recovery*) or as required by the Authority and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
 - 35.2.8.2 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 9 (*Business Continuity and Disaster Recovery*) or as required by the Authority.

35.3 Confidentiality

- 35.3.1 For the purposes of this clause 35.3, 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.
- 35.3.2 Except to the extent set out in this clause 35.3 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
 - 35.3.2.1 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); and

- 35.3.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
 - 35.3.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
 - 35.3.2.4 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.
- 35.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 35.3.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that clause 35.5 (*Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - 35.3.3.2 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 Contract;
 - (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 Contract; or
 - (c) the conduct of a Central Government Body review in respect of this Contract; or
 - 35.3.3.3 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.
- 35.3.4 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.
- 35.3.5 Subject to clauses 35.3.2 and 35.3.7, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:
- 35.3.5.1 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 Contract; and
 - 35.3.5.2 its professional advisers for the purposes of obtaining advice in relation to this Contract.

35.3.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this clause 35.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

35.3.7 The Authority may disclose the Confidential Information of the Supplier:

35.3.7.1 to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;

35.3.7.2 to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;

35.3.7.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

35.3.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 35.3.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

35.3.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or

35.3.7.6 to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality Contract or arrangement containing terms no less stringent than those placed on the Authority under this clause 35.3.

35.3.8 Nothing in this clause 35.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract 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.

35.3.9 In the event that the Supplier fails to comply with clauses 35.3.2 to 35.3.5, the Authority reserves the right to terminate this Contract for material Default.

35.4 Transparency

35.4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 35.4.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives his consent for the Authority to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time.
- 35.4.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

35.5 Freedom of Information

- 35.5.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 35.5.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
 - 35.5.1.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 35.5.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 35.5.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 35.5.2 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 Contract) 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/or the EIRs.

35.6 Protection of Personal Data

- 35.6.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.
- 35.6.2 The Supplier shall:
- 35.6.2.1 Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Contract;

- 35.6.2.2 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in clauses 35.1 (*Security Requirements*) and 35.2 (*Protection of Authority Data*);
- 35.6.2.3 not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Contract);
- 35.6.2.4 take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
- (a) are aware of and comply with the Supplier's duties under this clause 35.6.2 and clauses 35.1 (*Security Requirements*), 35.2 (*Protection of Authority Data*) and 35.3 (*Confidentiality*);
 - (b) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- 35.6.2.5 notify the Authority within 5 Working Days if it receives:
- (a) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (b) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (c) 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;
- 35.6.2.6 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at clause 35.6.2.5), including by promptly providing:
- (a) the Authority with full details and copies of the complaint, communication or request;

- (b) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
- (c) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and

35.6.2.7 if requested by the Authority, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 35.6.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

35.6.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

35.6.3.1 the Supplier shall propose a Variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with the Variation Procedure and clauses 35.6.3.2 to 35.6.3.4;

35.6.3.2 the Supplier shall set out in its proposal to the Authority for a Variation details of the following:

- (a) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
- (b) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
- (c) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;

35.6.3.3 how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;

35.6.3.4 in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

35.6.3.5 the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:

- (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Contract or a separate data processing Contract between the Parties; and
- (b) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (i) a direct data processing Contract with the Authority on such terms as may be required by the Authority; or
 - (ii) a data processing Contract with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-Contractor relating to the relevant Personal Data transfer, and
- (c) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have.

36. PUBLICITY AND BRANDING

36.1 The Supplier shall not:

- 36.1.1 make any press announcements or publicise this Contract in any way; or
- 36.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;
- 36.1.3 without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

36.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods, Services and Supplier Equipment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

36.3 If any incident should arise during the Contract Period that may attract media attention, including but not limited to data loss, defective mail shots or incorrect addressing, the

Supplier shall immediately notify the Authority as soon as it is aware of such incident. The Authority shall (in its ultimate discretion) decide upon the most appropriate strategy for dealing with the aforementioned incident and the Supplier shall assist in implementing such strategy where reasonably requested to do so by the Authority.

37. LIABILITY

37.1 Neither Party excludes or limits its liability for:

- 37.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- 37.1.2 fraud or fraudulent misrepresentation by it or its employee;
- 37.1.3 the wilful abandonment by the Supplier of its obligations in relation to the provision of the Services or Exit Management; or
- 37.1.4 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.

Financial Limits

37.2 Subject to clause 37.1, the Supplier's total aggregate liability:

- 37.2.1 in respect of the indemnities in clause 23.5 , clause 34.9 (*IPR Indemnity*) and schedule 11 (*Staff Transfer*) shall be unlimited;
- 37.2.2 for all loss of or damage to the Authority Premises, property or assets (including technical infrastructure, Authority Assets or equipment but excluding any loss or damage to the Authority Data or any other data) of the Authority caused by the Supplier's Default shall be limited to ten million pounds sterling (£10,000,000);
- 37.2.3 for all loss, destruction, corruption, degradation, inaccuracy or damage to the Authority Data or any other data, or any copy of such Authority Data or other data, caused by the Supplier's Default shall be limited to seventy five percent (75%) of the aggregate annual Contract Charges paid, due or which would have been payable under this Contract in the twelve (12) Month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) Months of the Contract Period the amount estimated to be paid in the first twelve (12) Months) and prior to the calculation of any reduction to those Contract Charges pursuant to this Contract;
- 37.2.4 in respect of Delay Payments, Transformation Delay Payments and Service Credits shall be limited in each Contract Year to twenty five percent (25%) (of the aggregate annual Contract Charges payable to the Supplier under this Contract (or if such event occurs in the first twelve (12) Months of the Contract Period, the amount estimated to be paid in the first twelve (12) Months) and prior to the calculation of any reduction to those Contract Charges pursuant to this Contract; and
- 37.2.5 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract shall be limited to an amount equivalent to one hundred and twenty five percent (125%) (of the aggregate annual Contract Charges paid, due

or which would have been payable under this Contract in the twelve (12) Month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) Months of the Contract Period, the amount estimated to be paid in the first twelve (12) Months) and prior to the calculation of any reduction to those Contract Charges pursuant to this Contract.

37.3 Subject to clause 37.1 the Authority's total aggregate liability, in addition to its obligation to pay the Contract Charges as and when they fall due for payment:

37.3.1 for all Defaults by the Authority resulting in loss of or damage to the property or assets (including technical infrastructure, Supplier Assets or equipment) of the Supplier shall be limited to seven hundred and fifty thousand pounds sterling (£750,000);

37.3.2 in respect of the indemnities in schedule 11 (*Staff Transfer*) shall be unlimited;

37.3.3 in respect of compensation payments due under this Contract in respect of Authority Cause shall be limited to thirty percent (30%) of the aggregate annual Contract Charges paid, due or which would have been payable under this Contract in the twelve (12) Month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) Months of the Term, the amount estimated to be paid in the first twelve (12) Months) and prior to the calculation of any reduction to those Contract Charges pursuant to this Contract.

37.3.4 for any Termination Payment payable under the Contract shall not exceed one hundred percent (100%) of the aggregate annual Contract Charges paid due or which would have been payable under this Agreement in the 6 Month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) Months of the contract Period, the amount estimated to be paid in the first 6 Months and period to the calculation of any reduction to those Contract Charges pursuant to this Contract; and

37.3.5 in respect of all other Defaults (taken together) by the Authority (including clause 37.3.3 but not clauses 37.3.1 and 37.3.4) shall be limited to an amount equivalent to one hundred percent (100%) of the aggregate annual Contract Charges paid, due or which would have been payable under this Contract in the twelve (12) Month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) Months of the Contract Period, the amount estimated to be paid in the first twelve (12) Months) and prior to the calculation of any reduction to those Contract Charges pursuant to this Contract.

37.4 Non-recoverable Losses

Subject to clause 37.1 neither Party shall be liable to the other Party for any indirect, special or consequential Loss.

37.5 Recoverable Losses

Subject to clause 37.2 (*Financial Limits*), and notwithstanding clause 37.4 (*Non-recoverable Losses*), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

- 37.5.1 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;
- 37.5.2 any wasted expenditure or charges;
- 37.5.3 the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- 37.5.4 any compensation or interest paid to a third party by the Authority; and
- 37.5.5 any fine, penalty or costs incurred by the Authority pursuant to Law.

37.6 Miscellaneous

- 37.6.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- 37.6.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under clause 37.2 (*Financial Limits*).

38. INSURANCE

- 38.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract, and shall procure that Sub-Contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with schedule 15 (*Insurance Requirements*).
- 38.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Contract.

39. AUTHORITY REMEDIES FOR DEFAULT

39.1 Remedies

- 39.1.1 Without prejudice to any other right or remedy of the Authority howsoever arising (including under schedule 6 (*Service Levels, Service Credits, KPI's and Performance Monitoring*)) and subject to the exclusive financial remedy provisions in clauses 12.6 (*Service Levels and Service Credits*) clause 7.4.1 (*Delay Payments*) and clause 9.5.1 (*Transformation Delay Payments*), if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Services have been Delivered) do any of the following:
 - 39.1.1.1 at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
 - 39.1.1.2 carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;

39.1.1.3 if the Default is 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):

- (a) instruct the Supplier to comply with the Rectification Plan Process;
- (b) suspend this Contract (whereupon the relevant provisions of clause 46 (*Partial Termination, Suspension and Partial Suspension*) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
- (c) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of clause 46 (*Partial Termination, Suspension and Partial Suspension*) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;

39.1.2 Where the Authority exercises any of its step-in rights under clauses 39.1.1.3(b) or 39.1.1.3(c), the Authority shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

39.2 Rectification Plan Process

39.2.1 Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to clause 39.1.1.3(a):

39.2.1.1 the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 3 Working Days (or such other period as may be agreed between the Parties) from the date of Authority's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan.

39.2.1.2 the draft Rectification Plan shall set out:

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

recurring, including timescales for such steps and for the rectification of the Default (where applicable).

- 39.2.2 The Supplier shall promptly provide to the Authority any further documentation that the Authority 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 by an expert in accordance with paragraph 5 of schedule 12 (*Dispute Resolution Procedure*).
- 39.2.3 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:
- 39.2.3.1 is insufficiently detailed to be capable of proper evaluation;
 - 39.2.3.2 will take too long to complete;
 - 39.2.3.3 will not prevent reoccurrence of the Default; and/or
 - 39.2.3.4 will rectify the Default but in a manner which is unacceptable to the Authority.
- 39.2.4 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 3 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 39.2.5 If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

40. SUPPLIER RELIEF DUE TO AUTHORITY CAUSE

40.1 If the Supplier has failed to:

- 40.1.1 Achieve an Implementation Milestone by its Implementation Milestone Date;
- 40.1.2 Achieve a Transformation Milestone by its Transformation Milestone Date;
- 40.1.3 provide the Services in accordance with the Service Levels;
- 40.1.4 comply with its obligations under this Contract,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Authority Cause, then (subject to the Supplier fulfilling its obligations in clause 16 (*Supplier Notification of Authority Cause*));

40.1.4.1 the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

40.1.4.2 the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to clause 43 (*Authority Termination Rights*) except clause 43.6 (*Termination Without Cause*);

40.1.4.3 where the Supplier Non-Performance constitutes the failure to Achieve an Implementation Milestone by its Implementation Milestone Date:

- (a) the Implementation 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;
- (b) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Implementation Milestone Dates resulting from the Authority Cause;
- (c) if failure to Achieve an Implementation Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Implementation Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause;

40.1.4.4 where the Supplier Non Performance constitutes the failure to Achieve a Transformation Milestone by its Transformation Milestone Date:

- (a) the Transformation 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;
- (b) if the Authority, acting reasonably, considers it appropriate, the Transformation Plan shall be amended to reflect any consequential revisions required to subsequent Transformation Milestone Dates resulting from the Authority Cause;
- (c) if failure to Achieve a Transformation Milestone attracts a Transformation Delay Payment, the Supplier shall have no liability to pay any such Transformation Delay Payment associated with the Transformation Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause.

40.1.4.5 where the Supplier Non-Performance constitutes a Service Level Failure:

- (a) the Supplier shall not be liable to accrue Service Credits;

- (b) the Authority shall not be entitled to any Compensation for Critical Service Level Failure pursuant to clause 13 (*Critical Service Level Failure*); and
- (c) the Supplier shall be entitled to invoice for the Contract Charges for the provision of the relevant Services affected by the Authority Cause,
- (d) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Authority Cause.

40.2 In order to claim any of the rights and/or relief referred to in clause 40.1, the Supplier shall:

40.2.1 comply with its obligations under clause 16 (*Notification of Authority Cause*); and

40.2.2 within 10 Working Days of becoming aware that a Authority Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Authority notice (a "Relief Notice") setting out details of:

40.2.2.1 the Supplier Non-Performance;

40.2.2.2 the Authority Cause and its effect on the Supplier's ability to meet its obligations under this Contract; and

40.2.2.3 the relief from its obligations claimed by the Supplier.

40.3 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, consulting with the Supplier where necessary.

40.4 Without prejudice to clause 8.6 (*Continuing obligation to provide the Services and Goods*), if a Dispute arises as to:

40.4.1 whether a Supplier Non-Performance would not have occurred but for a Authority Cause; and/or

40.4.2 the nature and/or extent of the relief 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.

40.5 Any Variation that is required to the Implementation Plan or to the Contract Charges pursuant to this clause 40 shall be implemented in accordance with the Variation Procedure.

41. FORCE MAJEURE

41.1 Subject to the remainder of this clause 41 (and, in relation to the Supplier, subject to its compliance with its obligations in clause 14 (*Business Continuity and Disaster Recovery*)), a Party may claim relief under this clause 41 from liability for failure to meet its obligations

under this Contract 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 Contract 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.

- 41.2 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.
- 41.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 41 to the extent that consequences of the relevant Force Majeure Event:
 - 41.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or
 - 41.3.2 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 Contract.
- 41.4 Subject to clause 41.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 41.5 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.
- 41.6 Where, as a result of a Force Majeure Event:
 - 41.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - 41.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - 41.6.1.2 the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;

41.6.2 the Supplier fails to perform its obligations in accordance with this Contract:

41.6.2.1 the Authority shall not be entitled:

- (a) during the continuance of the Force Majeure Event to exercise its step-in rights under clause 39.1.1.2 and 39.1.1.3 (*Authority Remedies for Default*) as a result of such failure;
- (b) to receive Delay Payments pursuant to clause 7.5 (*Delay Payments*) to the extent that the Achievement of any Implementation Milestone is affected by the Force Majeure Event;
- (c) to receive Transformation Delay Payments pursuant to clause 9.5 to the extent that Achievement of any Transformation Milestone is affected by the Force Majeure Event; and
- (d) to receive Service Credits or withhold and retain any of the Contract Charges as Compensation for Critical Service Level Failure pursuant to clause 13 (*Critical Service Level Failure*) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and

41.6.2.2 the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

41.7 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 Contract.

41.8 Relief from liability for the Affected Party under this clause 41 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 Contract and shall not be dependent on the serving of notice under clause 41.7.

42. STEP-IN RIGHTS

42.1 The Authority may take action under this clause 42 in the following circumstances:

- 42.1.1 the Authority is entitled to terminate in accordance with clauses 43.1 to 43.5;
- 42.1.2 there is a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any part thereof;
- 42.1.3 there is a Delay that has or the Authority reasonably anticipates will result in the Supplier's failure to Achieve the Completion Implementation Milestone or the Completion Transformation Milestone by the respective Completion Implementation Milestone Date or Completion Transformation Milestone Date (as appropriate);

- 42.1.4 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part thereof;
- 42.1.5 the Supplier has accrued Delay Payments relating to the Implementation Milestone (plus any applicable Grace Periods) in question in excess of two calendar Months;
- 42.1.6 where the Supplier is not in Default of its obligations under this Contract but the Authority considers that the circumstances constitute an emergency;
- 42.1.7 where a Regulatory Body has advised the Authority that the exercise by the Authority of its rights under this clause 42 is necessary;
- 42.1.8 because a serious risk exists to the health or safety of persons, property or the environment;
- 42.1.9 to discharge a statutory duty; and/or
- 42.1.10 on the occurrence of an Insolvency Event in respect of the Supplier.

Action to be taken before the exercise of the right of Step-in

- 42.2 Before the Authority exercises its right of step-in under this clause 42 it shall permit the Supplier the opportunity to demonstrate to the Authority's reasonable satisfaction within 10 Working Days of the step in right arising that the Supplier is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.
- 42.3 If the Authority is not satisfied with the Supplier's demonstration pursuant to clause 42.2, the Authority may:
 - 42.3.1 where the Authority considers it expedient to do so, require the Supplier by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rise to the Authority's right to step-in;
 - 42.3.2 appoint any person to work with the Supplier in performing all or a part of the Services (including those provided by any Sub-contractor); or
 - 42.3.3 take the steps that the Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-contractor).
- 42.4 The Supplier shall cooperate fully and in good faith with the Authority, or any other person appointed in respect of clause 42.3.2, and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.

Exercise of the right of Step-in

- 42.5 If the Supplier fails to:
 - 42.5.1 confirm within 3 Working Days of a notice served pursuant to clause 42.3.1 that it is willing to comply with that notice;
 - 42.5.2 work with a person appointed in accordance with clause 42.3.2; or

- 42.5.3 take the steps notified to it by the Authority pursuant to clause 42.3.3,
then the Authority may take action under this clause 42.
- 42.6 If the Authority takes action pursuant to clause 42.5, the Authority shall serve written notice ("**Step-In Notice**") on the Supplier. The Step-in Notice shall set out the following:
- 42.6.1 the action the Authority wishes to take and in particular the Services it wishes to control;
 - 42.6.2 the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Supplier's Default;
 - 42.6.3 the date it wishes to commence the action;
 - 42.6.4 the time period which it believes will be necessary for the action;
 - 42.6.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - 42.6.6 to the extent practicable, the effect on the Supplier and its obligations to provide the Services during the period the action is being taken.
- 42.7 Following service of a Step-in Notice, the Authority shall:
- 42.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**");
 - 42.7.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 42.7.3 cooperate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide any Services in relation to which the Supplier Authority is not assuming control; and
 - 42.7.4 take such steps as are reasonably open to it to limit the amount of the cost that the Supplier shall incur as a result of the exercise of the Authority's rights under this clause 42 (provided that this does not prejudice achievement of the Customer Authority's objectives).
- 42.8 For so long as and to the extent that the Required Action is continuing, then the Supplier shall:
- 42.8.1 cooperate fully with the Authority to facilitate the steps taken;
 - 42.8.2 suspend performance of the Services subject to the step-in rights (the "**Step-In Services**") to the extent that the Authority so requests for the purposes of its exercise of step-in rights, provided always that the exercise of the step-in right shall not excuse the Supplier from its obligation to provide the Services (excluding the Step-In Services for the period only of exercise of the step-in right) in accordance with this Contract or be deemed to frustrate or waive performance of that obligation;

- 42.8.3 grant and procure that any Sub-contractor or relevant third party grants such licences and permissions as are reasonably required provided that these are no more expensive than the charges that would have been payable by the Supplier; and
- 42.8.4 afford (and procure that its Sub-contractors afford as applicable) to the Authority such cooperation, access to and use of (as applicable):
 - 42.8.4.1 the Supplier Assets and Authority Assets used to provide the Services and other goods and services used to provide the Services;
 - 42.8.4.2 all necessary and associated documentation relating to those Supplier Assets and Authority Assets used by the Supplier to provide the Services to the Authority and any other goods and services used to provide the Services so as to enable the same to be operated;
 - 42.8.4.3 the Supplier's Intellectual Property Rights used in relation to the Services; and
 - 42.8.4.4 premises, equipment, personnel, documents, information or other items as are reasonably required.
- 42.9 For so long as and to the extent that the Required Action is continuing, then:
 - 42.9.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 42.9.2 subject to clauses 42.10 and 42.14, the Authority shall pay to the Supplier the Charges after deduction of any applicable Service Credits, Delay Payments, Transformation Delay Payments and the Authority's reasonable and direct costs of taking the Required Action. If the Supplier retains partial responsibility for a Service under clause 42.9.1, then the reduction in Contract Charges shall be proportionate to the reduction in the Supplier's responsibility.
- 42.10 If the Required Action results in:
 - 42.10.1 the degradation of any Services not subject to the Required Action; or
 - 42.10.2 the non-Achievement of the Implementation Milestone or Transformation 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 Contract Charges, provided that the Supplier can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-Achievement.
- 42.11 Before ceasing to exercise its step-in rights under this clause 42 the Authority shall deliver a written notice to the Supplier ("**Step-Out Notice**"), specifying:
 - 42.11.1 the Required Action it has actually taken; and
 - 42.11.2 the date on which the Authority plans to end the Required Action ("**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 42.12.

- 42.12 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days before the Step-Out Date, develop for the Authority's Approval a draft plan ("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 Contract.
- 42.13 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 Authority's Approval. The Authority shall not withhold or delay its Approval of the draft Step-Out Plan unnecessarily.
- 42.14 The Supplier shall bear its own costs in connection with any step-in by the Authority under this clause 42 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:
- 42.14.1 clauses 42.1.4 or 42.1.6; or
- 42.14.2 clauses 42.1.7, 42.1.8 and 42.1.9 provided that the primary cause of the Authority serving the Step-In Notice was not a Supplier's Default.

43. AUTHORITY TERMINATION RIGHTS

43.1 Termination in relation to Conditions

- 43.1.1 This Contract is conditional on the Supplier procuring a Guarantee pursuant to clause 4.1.1 (*Conditions*) by no later than 29th May 2015, the Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 43.1.1.1 the Guarantor withdraws the Guarantee for any reason whatsoever;
- 43.1.1.2 the Guarantor is in breach or anticipatory breach of the Guarantee;
- 43.1.1.3 an Insolvency Event occurs in respect of the Guarantor;
- 43.1.1.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever;
- 43.1.1.5 and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee Contract acceptable to the Authority within the period of time specified by the Authority;
- 43.1.1.6 the Supplier fails to provide the Guarantee and accompanying documentation required by clause 4.1.
- 43.1.2 This Contract is further conditional on satisfaction of the conditions outlined in clauses 4.1.2 to 4.1.4 by the dates stated in each clause. If the Supplier fails to satisfy a condition outlined in clauses 4.1.2 to 4.1.4 by the relevant date the Authority may terminate this Contract by issuing a Termination Notice to the Supplier.

43.2 Termination on Material Default

- 43.2.1 The Authority may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- 43.2.1.1 the Supplier commits a Critical Service Level Failure;
 - 43.2.1.2 the representation and warranty given by the Supplier pursuant to clause 3.2.5 (*Representations and Warranties*) is materially untrue or misleading and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
 - 43.2.1.3 as a result of any Defaults, the Authority incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in clause 37 (*Liability*);
 - 43.2.1.4 the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following clauses 7.3.5 (*Implementation Plan*), 8.4.2 (*Provision of Services*), 13.1 (*Critical Service Failure*), 15.4 (*Disruption*), 21.5 (*Records, Audit Access and Open Book Data*), 24 (*Promoting Tax Compliance*) 35.3.9 (*Confidentiality*), 52.6.2 (*Prevention of Fraud and Bribery*);
 - 43.2.1.5 the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
 - 43.2.1.6 the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process;
- 43.2.2 For the purpose of clause 43.2.1, 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.

43.3 Termination in Relation to Financial Standing

The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- 43.3.1 adversely impacts on the Supplier's ability to supply the Services under this Contract; or
- 43.3.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Contract.

43.4 Termination on Insolvency

The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

43.5 Termination on Change of Control

43.5.1 The Supplier shall notify the Authority immediately if the Supplier is intending to undergo, undergoes or has undergone a Change of Control and provided this does not contravene any Law shall notify the Authority immediately in writing of any circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place. The Authority may terminate this Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

43.5.1.1 being notified in writing that a Change of Control is planned or in contemplation or has occurred; or

43.5.1.2 where no notification has been made, the date that the Authority becomes aware that a Change of Control is planned or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

43.6 Termination Without Cause

The Authority shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving at least six (6) Months written notice.

43.7 Termination in Relation to Variation

The Authority may terminate this Contract by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Variation Procedure.

44. SUPPLIER TERMINATION RIGHTS

44.1 Termination on Authority Cause for Failure to Pay

44.1.1 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £750,000 and such amount remains outstanding 40 Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Authority of a written notice of non-payment from the Supplier specifying:

44.1.1.1 the Authority's failure to pay; and

44.1.1.2 the correct overdue and undisputed sum; and

44.1.1.3 the reasons why the undisputed sum is due; and

44.1.1.4 the requirement on the Authority to remedy the failure to pay,

this Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under this Contract including clause 23.3 (*Retention and Set off*).

- 44.1.2 The Supplier shall not suspend the supply of the Services for failure of the Authority to pay undisputed sums of money (whether in whole or in part).

45. TERMINATION BY EITHER PARTY

45.1 Termination for continuing Force Majeure Event

A Party may, by issuing a Termination Notice to the other Party terminate this Contract in accordance with clause 41.6.1.1 (*Force Majeure*).

46. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

- 46.1 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

- 46.2 Any suspension of this Contract under clause 46.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

- 46.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Contract Charges, provided that the Supplier shall not be entitled to:

- 46.3.1 an increase in the Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under clause 43 (*Authority Termination Rights*) except clause 43.6 (*Termination Without Cause*); and

- 46.3.2 reject the Variation.

47. CONSEQUENCES OF EXPIRY OR TERMINATION

- 47.1 Consequences of termination under clauses 43.1 (*Termination in Relation to Guarantee*), 43.2 (*Termination on Material Default*), 43.3 (*Termination in Relation to Financial Standing*) and 43.7 (*Termination in Relation to Variation*)**

- 47.1.1 Where the Authority:

- 47.1.1.1 terminates (in whole or in part) this Contract under any of the clauses referred to in clause 47.1; and

- 47.1.1.2 then makes other arrangements for the supply of the Services,

the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

47.2 Consequences of termination under clauses 43.5 (*Termination on Change of Control*); 43.6 (*Termination without Cause*); 43.7 (*Termination in relation to Variation*) and 44.1 (*Termination on Authority Cause for Failure to Pay*); and/or clause 45 (*Termination for Force Majeure*)

47.2.1 Where:

47.2.1.1 the Authority terminates (in whole or in part) this Contract under clauses 43.5 (*Termination on Change of Control*); 43.6 (*Termination without Cause*); 43.7 (*Termination in relation to Variation*) and/or clause 45 (*Termination for Force Majeure*); or

47.2.1.2 the Supplier terminates this Contract pursuant to clause 44.1 (*Termination on Authority Cause for Failure to Pay*),

the Authority shall pay a Termination Payment to the Supplier calculated (depending on the nature of the termination) in accordance with part D to schedule 3 (*Termination Payment*).

47.3 Consequences of Termination for Any Reason

Save as otherwise expressly provided in this Contract:

47.3.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

47.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses 21 (*Records, Audit Access & Open Book Data*), 34 (*Intellectual Property Rights*), 35.3 (*Confidentiality*), 35.5 (*Freedom of Information*) 35.6 (*Protection of Personal Data*), 37 (*Liability*), 47 (*Consequences of Expiry or Termination*), 53 (*Severance*), 55 (*Entire Contract*), 56 (*Third Party Rights*) 58 (*Dispute Resolution*) and 59 (*Governing Law and Jurisdiction*), and the provisions of schedule 1 (*Definitions*), schedule 3 (*Contract Charges, Delay Payment and Payment and Invoicing*), schedule 10 (*Exit*), schedule 11 (*Staff Transfer*), schedule 12 (*Dispute Resolution Procedure*) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

47.4 Exit management

The Parties shall comply with the exit management provisions set out in schedule 10 (*Exit Management*).

48. COMPLIANCE

48.1 Health and Safety

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

48.1.1.1 all applicable Law regarding health and safety; and

48.1.1.2 the Authority's health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises.

48.1.2 Each Party shall promptly notify the other of as soon as possible 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 Contract

48.1.3 While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Supplier Personnel and other persons working there and any instructions from the Authority on any necessary associated safety measures.

48.2 Equality and Diversity

The Supplier shall perform its obligations under this Contract (including those in relation to provision of the Services) in accordance with schedule 24 (*Equality and Diversity*).

48.3 Apprenticeship & Skills

The Supplier shall perform its obligations under this Contract (including those in relation to provision of the Services) in accordance with schedule 25 (*Apprenticeship and Skills*).

48.4 Official Secrets Act and Finance Act

The Supplier shall comply with the provisions of:

48.4.1 the Official Secrets Acts 1911 to 1989; and

48.4.2 section 182 of the Finance Act 1989.

48.5 Environmental Requirements

48.5.1 The Supplier shall, when working on the Sites, perform its obligations under this Contract in accordance with the Environmental Policy of the Authority and schedule 23 (*Sustainability*).

48.5.2 The Authority shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

49. ASSIGNMENT AND NOVATION

49.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract or any part of it without Approval.

49.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Contract or any part thereof to:

49.2.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

49.2.2 any private sector body which substantially performs the functions of the Authority,

and the Supplier shall, at the Authority's request, enter into a novation Contract in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this clause 49.2.

49.3 A change in the legal status of the Authority shall not, subject to clause 49.4 affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

49.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a private sector body in accordance with clause 49.2.2 (the "Transferee" in the rest of this clause) the right of termination of the Authority in clause 43.4 (*Termination on Insolvency*) shall be available to the Supplier in the event of insolvency of the Transferee as if the references to Supplier in clause 43.4 (*Termination on Insolvency*) and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee.

50. WAIVER AND CUMULATIVE REMEDIES

50.1 The rights and remedies under this Contract may be waived only by notice in accordance with clause 57 (*Notices*) 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 Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.

50.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

51. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, 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.

52. PREVENTION OF FRAUD AND BRIBERY

52.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:

52.1.1 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

- 52.1.2 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.
- 52.2 The Supplier shall not during the Contract Period:
- 52.2.1 commit a Prohibited Act; and/or
- 52.2.2 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.
- 52.3 The Supplier shall during the Contract Period:
- 52.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 52.3.2 keep appropriate records of its compliance with its obligations under clause 52.3.1 and make such records available to the Authority on request;
- 52.3.3 if so required by the Authority, within 20 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
- 52.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 52.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 52.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 52.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 52.4.2 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
- 52.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 52.5 If the Supplier makes a notification to the Authority pursuant to clause 52.4, 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 21 (Records, Audit Access and Open Book Data).

52.6 If the Supplier breaches clause 52.3, the Authority may by notice:

52.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

52.6.2 immediately terminate this Contract for material Default.

52.7 Any notice served by the Authority under clause 52.4 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 Contract shall terminate).

53. SEVERANCE

53.1 If any provision of this Contract (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 Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.

53.2 In the event that any deemed deletion under clause 53.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

53.3 If the Parties are unable to resolve the Dispute arising under this clause 53 within 20 Working Days of the date of the notice given pursuant to clause 53.2, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this clause 53.

54. 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 necessary to give effect to the meaning of this Contract.

55. ENTIRE CONTRACT

55.1 This Contract and the documents referred to in it constitute the entire Contract between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

55.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

55.3 Nothing in this clause 55 shall exclude any liability in respect of misrepresentations made fraudulently.

56. THIRD PARTY RIGHTS

- 56.1 The provisions of paragraphs 2.1.3.1 and 3.3 of part A and paragraphs 1.4, 2.3 and 2.8 of part B to schedule 11 (*Staff Transfer*) and the relevant provisions of schedule 10 (*Exit*) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 56.2 Subject to clause 56.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 56.3 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.
- 56.4 Any amendments or modifications to this Contract may be made, and any rights created under clause 56.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

57. NOTICES

- 57.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of this clause 57, an e-mail is accepted as being "in writing".
- 57.2 Subject to clause 57.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to clauses 57.3 and 57.4))	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
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 signature of a delivery receipt

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

57.3 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 Royal Mail Signed ForTM 1st Class or other prepaid in the manner set out in the table in clause 57.2:

57.3.1 any Termination Notice (clause 43 (*Authority Termination Rights*)),

57.3.2 any notice in respect of:

57.3.2.1 partial termination, suspension or partial suspension (clause 46 (*Partial Termination, Suspension and Partial Suspension*));

57.3.2.2 waiver (clause 50 (*Waiver and Cumulative Remedies*));

57.3.2.3 Default or Authority Cause; and

57.3.3 any Dispute Notice.

57.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 57.3 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 ForTM 1st Class delivery (as set out in the table in clause 57.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

57.5 This clause 57 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 the Dispute Resolution Procedure).

57.6 For the purposes of this clause 57, the address and email address of each Party shall be

57.6.1 For the Authority: Department for Work and Pensions

Address:

For the attention of:

57.6.2 For the Supplier: **Williams Lea Limited**

Address: _____

For the attention of: _____

58. DISPUTE RESOLUTION

- 58.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- 58.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

59. GOVERNING LAW AND JURISDICTION

- 59.1 This Contract 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.
- 59.2 Subject to clause 58 (*Dispute Resolution*) and schedule 12 (*Dispute Resolution Procedure*) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

IN WITNESS of which this Contract has been duly executed by the Parties.

Signed duly authorised for and on behalf of the)
WILLIAMS LEA LIMITED:)

Signature _____

Name (block capitals) _____

Director

Signature _____

Name (block capitals) _____

Secretary/Director

Signed for and on behalf of the **THE**)
DEPARTMENT FOR WORK AND)
PENSIONS:)

Signature _____

Name (block capitals) _____

Authorised Signatory