



## Contract

Relating to the provision of ERP/SI  
services

- (1) Secretary of State for Work and Pensions
- (2) Oracle Corporation UK Limited
- (3) IBM United Kingdom Limited

Dated

2024

## Contents

### Clauses

Section A – Preliminaries .....	2
1    Definitions and interpretation.....	2
2    Due diligence .....	3
3    Warranties .....	4
Section B - The Services .....	6
4    Term .....	6
5    Services .....	7
6    Implementation .....	11
7    Performance Indicators .....	12
8    Services improvement .....	14
9    Equipment and maintenance.....	15
Section C - Payment, taxation and value for money provisions .....	16
10   Financial and taxation matters .....	16
Section D - Contract governance .....	18
11   Governance .....	18
12   Records, reports, Audits and Open Book Data .....	18
13   Change .....	19
Section E - Supplier Personnel and supply chain .....	20
14   Supplier Personnel .....	20
15   Supply chain rights and protections .....	23
Section F - Intellectual property, data and confidentiality .....	30
16   Intellectual Property Rights .....	30
17   IPRs indemnity .....	30
18   Authority Data and Security Requirements .....	31
19   Confidentiality .....	33
20   Transparency and Freedom of information .....	36
21   Protection of Personal Data .....	37
22   Publicity and branding .....	45
Section G - Liability, indemnities and insurance.....	45
23   Limitations on liability.....	45
24   Insurance .....	48
Section H - Remedies and relief.....	49
25   Rectification Plan Process.....	49
26   Delay Payments .....	51
27   Remedial Adviser .....	51
28   Step-In rights .....	53
29   Authority Cause .....	55
30   Force Majeure .....	57
Section I - Termination and Exit Management .....	58

31	Termination rights.....	58
32	Consequences of expiry or termination.....	60
Section J - Miscellaneous and governing law .....		63
33	Compliance.....	63
34	Assignment and novation .....	66
35	Waiver and cumulative remedies .....	67
36	Relationship of the parties .....	67
37	Prevention of fraud and bribery .....	67
38	Severance .....	69
39	Further assurances.....	69
40	Entire agreement .....	69
41	Third party rights.....	70
42	Notices.....	70
43	Disputes.....	72
44	Counterparts .....	72
45	Governing law and jurisdiction .....	72

## Schedules

1	Definitions
2	Services Description
3	Performance Levels
4	Standards
5	Security Management
6A	Insurance Requirements: Supplier A
6B	Insurance Requirements: Supplier B
7	Authority Responsibilities
8	Supplier Solution
9A	Commercially Sensitive Information - Supplier A
9B	Commercially Sensitive Information - Supplier B
10A	Key Sub-contractors - Supplier A
10B	Key Sub-contractors: Supplier B
11A	Third Party Contracts: Supplier A
11B	Third Party Contracts: Supplier B
12A	Software: Supplier A
12B	Software: Supplier B
13	Implementation Plan
14	Testing Procedures
15	Charges and Invoicing
16A	Payments on Termination: Supplier A
16B	Payments on Termination: Supplier B
17	Benchmarking
18	Financial Distress
19	Financial Reports and Audit Rights
20	Not Used
21	Governance
22	Change Control Procedure
23	Dispute Resolution Procedure
24	Reports and Records Provisions
25	Exit Management
26A	Service Continuity Plan and Corporate Resolution Planning: Supplier A
26B	Service Continuity Plan and Corporate Resolution Planning: Supplier B
27	Conduct of Claims

28A	Staff Transfer: Supplier A
28B	Staff Transfer: Supplier B
29A	Key Personnel: Supplier A
29B	Key Personnel: Supplier B
30A	Deed of Guarantee: Supplier A
30B	Deed of Guarantee: Supplier B
31A	Processing Personal Data: Supplier A
31B	Processing Personal Data: Supplier B
32A	Intellectual Property Rights: Supplier A
32B	Intellectual Property Rights: Supplier B
33	Social Value & Sustainability Delivery Plan
34	ERP Supplier Terms

This Contract is made on

2024

**Between:**

- (1) **Secretary of State for Work and Pensions** whose registered office is at Caxton House, Tothill St, London SW1H 9NA (the **Authority**) contracting on behalf of Synergy as described in Recital (A);
- (2) **Oracle Corporation UK Limited** a company registered in England and Wales under company number 01782505 whose registered office is at Oracle Parkway, Thames Valley Park, Reading, Berkshire, RG6 1RA (**Supplier A**); and
- (3) **IBM United Kingdom Limited** a company registered in England and Wales under company number 00741598 whose registered office is at P.O. Box 41, North Harbour, Portsmouth, Hants, PO6 3AU (**Supplier B**) (together the **Suppliers**),

each a **Party** and together the **Parties**.

**Introduction**

- (A) The Authority is a member of a cluster of Central Government Departments known as Synergy. The Synergy cluster comprises the following Central Government Departments: Ministry of Justice (**MoJ**); Department for Work and Pensions (**DWP**); Department for the Environment, Food and Rural Affairs (**Defra**); and the Home Office (**HO**). DWP is the lead contracting authority for Synergy and is the Authority for the purposes of this Contract. Synergy has been established to bring together individual Government Department plans in line with the Shared Services Strategy for Government published by the Government Business Service.
- (B) To support the provision of the Services, MoJ, Defra, HO and the Authority have entered into a memorandum of understanding (the **Synergy MOU**) to support: the Authority's role in this Contract; the joint working arrangements for Synergy; and the management of third party rights to MOJ, Defra and HO. Each Service Recipient shall have limited third party rights in this Contract.
- (C) As part of this strategy, Synergy has been tasked with driving significant business transformation across the four Central government Departments listed in Recital (A). To achieve this objective, Synergy will develop a new Common Operating Model and introduce a new user-centric service. It is intended that the COM design will evolve throughout five programme delivery phases. As a result, benefits will also continue to evolve over time.
- (D) To meet these objectives, Synergy has undertaken a "bundled procurement" for an Enterprise Resource Planning (**ERP**) platform and for System Integration (**SI**) services. The intention is for Supplier A and Supplier B to work together to deliver a cohesive solution and delivery approach. This Contract will facilitate the provision of the ERP and SI services through a Co-signatory model.
- (E) The Services have been procured under a Competitive Procedure with Negotiation in accordance with Regulation 29 of the Public Contract Regulations 2015. On 26 May 2023, the Authority advertised on Find a Tender (reference 2023/S 000-015180), inviting prospective suppliers to submit proposals for the Services.
- (F) The Parties acknowledge that the Suppliers have bid together as a consortium and this Contract is not intended to govern the relationship between Supplier A and Supplier B, save for where otherwise expressly stated, in respect of their obligations to each other, each acting as a "Supplier" under this Contract. Supplier A and Supplier B have entered into a separate agreement for those purposes (the **Consortium Agreement**). The Consortium Agreement shall govern the roles and responsibilities as between Supplier A and Supplier B for their respective obligations to each other resulting from this Contract.

- (G) The Parties have structured this Contract to allow for Supplier A and Supplier B to be severally liable to the Authority with respect to their individual obligations and jointly liable to the Authority for their joint obligations.
- (H) The Parties acknowledge that as at the Effective Date, the BPS Provider is in the process of being procured by the Authority and the Parties agree that all obligations related to and in connection with Other Suppliers in this Contract shall also apply to the BPS Provider once they are appointed.
- (I) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**It is agreed** as follows:

## **Section A – Preliminaries**

### **1 Definitions and interpretation**

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 Interpretation is as set out in Schedule 1 (Definitions).
- 1.3 Subject to Clause 1.4 if there is any conflict between the Clauses and the Schedules and/or any Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.3.1 the Clauses and Schedule 1 (Definitions);
  - 1.3.2 Schedules 2 (Services Description) and Schedule 3 (Performance Levels) and their Appendices;
  - 1.3.3 any other Schedules and their Appendices (other than Schedule 8 (Supplier Solution) and its Appendices); and
  - 1.3.4 Schedule 8 (Supplier Solution) and its Appendices (if any) unless any part of Schedule 8 offers a better commercial position for the Authority (as decided by the Authority, in its absolute discretion), in which case that aspect of Schedule 8 will take precedence over the documents above.
- 1.4 In respect of any Operational Services provided by Supplier A, any conflict between the Schedules or between the Clauses and the Schedules (and/or any Appendices to the Schedules) shall be resolved in accordance with Schedule 34 (ERP Supplier Terms).
- 1.5 The Schedules and their Appendices form part of this Contract.
- 1.6 In entering into this Contract the Authority is acting as part of the Crown. Under this Contract the Authority is procuring the Services for the benefit of each Service Recipient. Each Service Recipient shall have the right to benefit from the Services that shall be provided by each Supplier and shall have the rights as granted under Clause 41 (Third party rights) as if they were Parties to this Contract.
- 1.7 Where the term Supplier is used in this Contract it shall refer to both Supplier A and Supplier B as the context requires. Each Supplier accepts several liability under this Contract for the obligations that are particular to them. Neither Supplier shall be jointly liable under this Contract save for:
  - 1.7.1 where expressly stated otherwise;
  - 1.7.2 as expressly stated in Clause 6 (Implementation);
  - 1.7.3 as expressly stated in Clause 26 (Delay Payments);

- 1.7.4 as expressly stated in Schedule 5 (Security Management) in relation to a joint Security Management Plan (if applicable);
  - 1.7.5 as expressly stated in Schedule 13 (Implementation Plan);
  - 1.7.6 as expressly stated in Schedule 15 (Charges and Invoicing);
  - 1.7.7 as expressly stated in Schedule 21 (Governance); or
  - 1.7.8 as expressly stated in Schedule 25 (Exit Management).
- 1.8 The primary intention of this Contract is to set in place the necessary legal framework to facilitate the provision of the Services by Supplier A and Supplier B to the Authority. The Parties therefore agree that the remedies in this Contract are exclusively for:
- 1.8.1 the benefit of the Authority where either or both Suppliers are in Default; and
  - 1.8.2 the benefit of either Supplier where the Authority is in Default.
- Therefore it is agreed that Supplier A and Supplier B shall resolve any dispute between them under the terms of the Consortium Agreement and hereby expressly agree not to enforce this Contract against each other under the terms of this Contract.
- 1.9 Attached to the main terms are the Schedules which each Supplier must comply with. Each Schedule to this Contract is designated as either Shared, Duplicate or Separate where:
- 1.9.1 **Shared Schedule** means a Schedule to this Contract under which as at the Effective Date is shared by both Suppliers which can only be changed during the Term by the Change Control Procedure with the agreement of all three Parties to this Contract;
  - 1.9.2 **Duplicate Schedule** means a Schedule to this Contract which as at the Effective Date is identical for both Supplier A and Supplier B but which during the Term can be changed by the Change Control Procedure with the agreement of Supplier A or Supplier B as applicable, and the Authority; and
  - 1.9.3 **Separate Schedule** means a Schedule to this Contract under which as at the Effective Date is particular in its content to the Services being supplied by either Supplier as applicable and which during the Term can be changed by the Change Control Procedure with the agreement of Supplier A or Supplier B as applicable, and the Authority.
- 1.10 As at the Effective Date the Schedules are located in the form of PDF files in the Virtual Library hosted by Supplier B in the folder titled: "MSC Contract for ERP/SI Services".

## **2 Due diligence**

- 2.1 Each Supplier acknowledges that:
- 2.1.1 the Authority has delivered or made available to each Supplier all of the information and documents that each Supplier considers necessary or relevant for the performance of its obligations under this Contract;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
  - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
    - (a) the Authority Requirements;

- (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
- (c) the operating processes and procedures and the working methods of the Authority;
- (d) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
- (e) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by each Supplier under this Contract and/or which each Supplier will require the benefit of for the provision of the Service; and

2.1.4 it has advised the Authority in writing of:

- (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (b) the actions needed to remedy each such unsuitable aspect; and
- (c) a timetable for and, to the extent that such costs are to be payable to either Supplier, the costs of those actions,

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

2.2 No Supplier shall be excused from the performance of any of its obligations under this Contract, nor shall either Supplier be entitled to recover any additional costs or charges, arising as a result of:

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

### **3 Warranties**

3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
- 3.1.2 this Contract is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law); and
- 3.1.5 the Authority will be responsible for ensuring that use of the Services/Deliverables provided by Supplier B comply with all laws and regulations applicable to the Authority or the applicable Service Recipients, as the case may be.



3.2 Each Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Contract;
- 3.2.3 this Contract is executed by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Contract;
- 3.2.5 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 3.2.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 3.2.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.8 all written statements and representations in any written submissions made by it as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the relevant Supplier has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by each Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the relevant Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
- 3.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by each Supplier and each Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of either Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the relevant Supplier's assets or revenue; and
- 3.2.14 within the previous three (3) years, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress

Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by each Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Parties of the relevant occurrence in sufficient detail to enable the other Parties to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the relevant Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## Section B - The Services

### 4 Term

- 4.1 This Contract shall:
  - 4.1.1 come into force on the Effective Date, save for Clauses 1 (Definitions and interpretation), 3 (Warranties), 4 (Term), 19 (Confidentiality), 20 (Transparency and Freedom of information), 22 (Publicity and branding), 23 (Limitations on liability), 35 (Waiver and cumulative remedies), 36 (Relationship of the parties), 38 (Severance), 40 (Entire agreement), 41 (Third party rights), 42 (Notices), 43 (Disputes) and 45 (Governing law and jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature; and
  - 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 31 (Termination rights), terminate:
    - (a) at the end of the Initial Term; or
    - (b) if the Authority elects to extend the Term by giving either Supplier at least seventy (70) Working Days' notice before the end of the Initial Term, at the end of the Extension Period as it applies to that Supplier.

### Condition Precedent

- 4.2 Save for Clauses 1 (Definitions and Interpretation), 3 (Warranties), 4 (Term), 19 (Confidentiality), 20 (Transparency and Freedom of information), 22 (Publicity and branding), 23 (Limitations on liability), 35 (Waiver and cumulative remedies), 36 (Relationship of the parties), 38 (Severance), 40 (Entire agreement), 41 (Third party rights), 42 (Notices), 43 (Disputes) and 45 (Governing law and jurisdiction), this Contract is conditional upon the valid execution and delivery to the Authority of the Guarantee (the **Condition Precedent**). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving either Supplier as applicable notice in writing.
- 4.3 Each Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within twenty (20) Working

Days after the date of this Contract then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:

4.3.1 this Contract shall automatically cease and shall not come into effect; and

4.3.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

4.4 REDACTED

4.5 REDACTED

## **5 Services**

### **Standard of services**

5.1 Each Supplier shall provide as applicable:

5.1.1 the Implementation Services from (and including) the Implementation Services Commencement Date; and

5.1.2 the Operational Services in each case from (and including) the relevant Operational Service Commencement Date(s),

and time for delivery of the Services as set out above in Clauses 5.1.1 and 5.1.2 shall be of the essence to the Contract, notwithstanding that the Authority shall rely on its rights and remedies under this Contract for non-delivery of the Services in the first instance and shall only resort to exercising its rights to terminate this Contract as a remedy of last resort with respect to the non-delivery of the Services.

5.2 Each Supplier shall ensure that:

5.2.1 the Services:

(a) comply in all respects with the applicable Services Description; and

(b) are supplied in accordance with the Supplier Solution and the provisions of this Contract.

5.3 Each Supplier shall:

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

(a) all applicable Law;

(b) Good Industry Practice;

(c) the Standards;

(d) the Baseline Security Requirements;

(e) the Quality Plans;

(f) the Authority IT Strategy; and

(g) the relevant Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3.1(a) to 5.3.1(f); and

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

5.4 In the event that either Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3.1(a) to 5.3.1(f), then that Supplier shall immediately notify the

Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify that Supplier which requirement that Supplier shall comply with.

### **Supplier covenants**

#### **5.5 Each Supplier shall:**

- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- 5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (Change), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 5.5.3 ensure that:
  - (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by that Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of that Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
  - (b) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (Security Management)) and in respect of Supplier B only shall notify the Authority three (3) months before the release of any new Software or Upgrade;
  - (c) all Software including Upgrades, Updates and New Releases used by or on behalf of that Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
  - (d) any products or services recommended or otherwise specified by that Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements;
  - (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority); and
  - (f) it shall minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;
- 5.5.4 ensure that any Documentation and training provided by the relevant Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.5.5 co-operate with the other Supplier and any Other Supplier notified to either Supplier as applicable by the Authority from time to time by providing:
  - (a) reasonable information (including any Documentation);
  - (b) advice; and
  - (c) reasonable assistance,

in connection with the Services to the other Supplier or any such Other Supplier to enable the other Supplier or such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of

this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier in accordance with the following collaborative working principles:

- (i) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- (ii) being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;
- (iii) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with the other Supplier and such Other Suppliers;
- (iv) providing reasonable cooperation, support, information and assistance to the other Supplier and such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (v) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle;

- 5.5.6 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to that Supplier;
- 5.5.7 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of that Supplier any such warranties and/or indemnities as are referred to in Clause 5.5.6;
- 5.5.8 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.5.9 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining that Supplier's compliance with its obligations under this Contract;
- 5.5.10 notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place;
- 5.5.11 notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- 5.5.12 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority;
- 5.5.13 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards; and
- 5.5.14 be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the relevant Supplier in connection with the supply of the Services and shall pay the Authority any extra costs occasioned due to the

Authority as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Authority.

- 5.6 An obligation on either Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon either Supplier as applicable to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 17.2 and 17.3 (IPRs Indemnity) and any other rights and remedies of the Authority howsoever arising, each Supplier shall:
- 5.7.1 remedy any breach of its obligations in Clauses 5.5.2 to 5.5.3 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
- 5.7.2 remedy any breach of its obligations in Clause 5.5.1 and Clauses 5.5.4 to 5.5.9 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of either Supplier to comply with its obligations under Clause 5.7.1 or Clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default by that Supplier.

**Specially Written Software warranty**

- 5.8 Without prejudice to Clauses 5.5 (Supplier covenants) and 5.7 and any other rights and remedies of the Authority howsoever arising, each Supplier warrants to the Authority that all components of the Specially Written Software shall:
- 5.8.1 be free from material design and programming errors;
- 5.8.2 perform in all material respects in accordance with the relevant specifications contained in the applicable Supplier Solution and Documentation; and
- 5.8.3 not infringe any Intellectual Property Rights.

**Continuing obligation to provide the Services**

- 5.9 Each Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
- 5.9.1 any withholding of the Service Charges by the Authority pursuant to Clause 7.2.4(b) (Performance Failures);
- 5.9.2 the existence of an unresolved Dispute; and/or
- 5.9.3 any failure by the Authority to pay any Charges,

unless that Supplier is entitled to terminate this Contract under Clause 31.3.1 (Termination by the Supplier) for the Authority's failure to pay undisputed Charges.

**Optional Services**

- 5.10 The Authority may require either Supplier to provide any or all of the Optional Services at any time by giving notice to that Supplier in writing. Each Supplier acknowledges that the Authority is not obliged to take any Optional Services from that Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.

- 5.11 If a Change Request is submitted, each Supplier shall, as part of the Impact Assessment provided by that Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.12 Following receipt of the Authority's notice pursuant to Clause 5.10:
- 5.12.1 the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the relevant Supplier shall provide the relevant Optional Services have already been agreed;
  - 5.12.2 each Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
  - 5.12.3 any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 7 (Optional Services) of Part 2 of Schedule 15 (Charges and Invoicing); and
  - 5.12.4 each Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Appendix A of Schedule 3 (Performance Levels) as applicable.

**Power of attorney**

- 5.13 By way of security for the performance of its obligations under Clauses 5.5.6 and 5.5.7 (Supplier covenants) each Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in that Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

**Authority Responsibilities**

- 5.14 The Authority shall comply with its responsibilities set out in Schedule 7 (Authority Responsibilities).

**Supplier Interdependencies and Responsibilities**

- 5.15 The Suppliers shall comply with their respective responsibilities set out in Schedule 13 (Implementation Plan).

**Social Value**

- 5.16 Each Supplier shall comply with the provisions of Schedule 33 (Social Value & Sustainability Delivery Plan) as applicable.

**6 Implementation**

**Quality Plans**

- 6.1 The Suppliers shall develop, within forty (40) Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (**Quality Plans**).
- 6.2 The Suppliers shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. Each Supplier acknowledges and accepts that the Authority's approval shall not act as an

endorsement of the Quality Plans and shall not relieve the Suppliers of their joint responsibility for ensuring that the Implementation Services are provided to the standard required by this Contract.

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

6.3.1 the Suppliers shall design and deliver all Deliverables in accordance with the Quality Plans; and

6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

#### **Implementation Plan and delays**

6.4 The Parties shall comply with the provisions of Schedule 13 (Implementation Plan) and comply in relation to the agreement and maintenance of the Detailed Implementation Plan.

6.5 The Suppliers shall:

6.5.1 comply with the Implementation Plan; and

6.5.2 ensure that each Milestone is Achieved on or before its Milestone Date.

6.6 If either Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

6.6.1 it shall:

(a) notify the Authority in accordance with Clause 25.1 (Rectification Plan Process);

(b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and

(c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

6.6.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 26 (Delay Payments) shall apply.

#### **Testing and Achievement of Milestones**

6.7 The Parties shall comply with the provisions of Schedule 14 (Testing Procedures) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

### **7 Performance Indicators**

7.1 Each Supplier shall:

7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator; and

7.1.2 comply with the provisions of Schedule 3 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

#### **Performance Failures**

7.2 If in any Service Period:

7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part 3 of Schedule 15 (Charges and Invoicing);

7.2.2 a Material KPI Failure occurs, the relevant Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1);



- 7.2.3 a PI Failure occurs, the relevant Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- 7.2.4 a Material PI Failure occurs:
- (a) the relevant Supplier shall comply with the Rectification Plan Process; and
- (b) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.12 (Set-off and withholding) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.
- 7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:
- 7.3.1 the relevant Supplier has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap;
- 7.3.2 the KPI Failure:
- (a) breaches the relevant KPI Service Threshold;
- (b) has arisen due to the wilful default by the relevant Supplier or any relevant Supplier Personnel; or
- (c) results in:
- (i) the corruption or loss of any Authority Data (in which case the remedies under Clause 18.7 (Authority Data and Security Requirements) shall also be available); and/or
- (ii) the Authority being required to make a compensation payment to one or more third parties;
- 7.3.3 the relevant Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- 7.3.4 the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 31.1.2 (Termination by the Authority).

#### **Unacceptable KPI Failure**

- 7.4 If in any Service Period an Unacceptable KPI Failure occurs:
- 7.4.1 the Authority shall (subject to the Service Credit Cap set out in Clause 23.6.3 (Financial and other limits)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the relevant Supplier in respect of that Service Period (such sum being **Compensation for Unacceptable KPI Failure**); and
- 7.4.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,
- provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Contract and/or to claim damages from the relevant Supplier as a result of such Unacceptable KPI Failure.
- 7.5 Each Supplier:
- 7.5.1 agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and

- 7.5.2 acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

**Critical Performance Failure**

- 7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 31.1 or 31.2 (Termination by the Authority).

**Changes to Performance Indicators and Service Credits**

- 7.7 Not more than once in each Contract Year the Authority may, on giving either Supplier at least three (3) months' notice:

- 7.7.1 convert three (3) or fewer:

- (a) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
- (b) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

- 7.8 Changes made by the Authority under Clause 7.7 shall be implemented in accordance with the Change Control Procedure and neither Supplier shall be entitled to object to such changes made by the Authority under Clause 7.7, or increase the Service Charges as a result of such changes provided that:

- 7.8.1 the total number of Key Performance Indicators does not exceed twenty (20);

- 7.8.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and

- 7.8.3 there is no change to the Service Credit Cap.

**8 Services improvement**

- 8.1 Each Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation each Supplier shall identify and report to the Programme Board once every twelve (12) months on:

- 8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the relevant Supplier and the Authority which the Parties may wish to adopt;

- 8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

- 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;

- 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

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

- 8.2 Each Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. Each Supplier shall provide any further information that the Authority requests.
- 8.3 If the Authority wishes to incorporate any improvement identified by either Supplier the Authority shall send the relevant Supplier a Change Request in accordance with the Change Control Procedure.
- 8.4 The Authority shall be entitled to take all reasonable steps to investigate any complaint it receives regarding:
- 8.4.1 the standard of Services;
  - 8.4.2 the manner in which any Services have been supplied;
  - 8.4.3 the manner in which work has been performed;
  - 8.4.4 the Equipment, materials or procedures either Supplier uses; or
  - 8.4.5 any other matter connected with the performance of either Supplier's obligations under the Contract.
- 8.5 Without prejudice to its other rights and remedies under the Contract or otherwise, the Authority may, in its sole discretion, uphold a complaint and take further action in accordance with Clause 25 (Rectification Plan Process) of the Contract (as appropriate).

## 9 Equipment and maintenance

### Supplier Equipment

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

### Maintenance

- 9.4 Where applicable, each Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the **Maintenance Schedule**) which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, either Supplier shall only undertake such planned maintenance (which shall be known as **Permitted Maintenance**) in accordance with the Maintenance Schedule.
- 9.5 Each Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 Each Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall

be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

### **Supply of Goods**

- 9.7 Where, as part of the Services, either Supplier is to sell goods or equipment (**Goods**) to the Authority:
- 9.7.1 the relevant Goods and their prices shall be as set out in Schedule 8 (Supplier Solution);
  - 9.7.2 either Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
  - 9.7.3 either Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
  - 9.7.4 if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the relevant Supplier and the relevant Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
  - 9.7.5 without prejudice to any other rights or remedies of the Authority:
    - (a) risk in the Goods shall pass to the Authority at the time of delivery; and
    - (b) ownership of the Goods shall pass to the Authority at the time of payment.

## **Section C - Payment, taxation and value for money provisions**

### **10 Financial and taxation matters**

#### **Charges and invoicing**

- 10.1 In consideration of Supplier A and Supplier B as applicable carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to each Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (Charges and Invoicing) as applicable.
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (Testing and Achievement of Milestones), 12 (Records, reports, Audits and Open Book Data), 20 (Transparency and Freedom of information ), 21 (Protection of Personal Data) and, to the extent specified therein, Clause 27 (Remedial Adviser) and Clause 28 (Step-in rights).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the relevant Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.4 Each Supplier shall ensure that each invoice contains a valid reference number. All appropriate references, a detailed breakdown of the Services supplied, and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied with the invoice unless otherwise agreed by the Parties.

## VAT

- 10.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.6 Each Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the relevant Supplier's failure to account for or to pay any VAT relating to payments made to the relevant Supplier under this Contract. Any amounts due under this Clause 10.6 shall be paid in cleared funds by the relevant Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 10.7 Without prejudice to Clause 10.5, for the avoidance of doubt, it shall at all times remain the sole responsibility of each Supplier to:
- 10.7.1 assess the VAT rate(s) and tax liability arising out of or in connection with the Contract; and
  - 10.7.2 account for or pay any VAT (and any other tax liability) relating to payments made to the relevant Supplier under the Contract to HM Revenue & Customs (**HMRC**).
- 10.8 The Authority shall not be liable to either Supplier in any way whatsoever for any error or failure made by either Supplier (or the Authority) in relation to VAT, including without limit:
- 10.8.1 where either Supplier is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
  - 10.8.2 where either Supplier has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid;
  - 10.8.3 where either Supplier's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
  - 10.8.4 where either Supplier has specified a rate of VAT, or a VAT classification, to the Authority (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the relevant Supplier subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in the scenario described in this Clause 10.8.4, the relevant Supplier shall be obliged to repay any overpayment by the Authority on demand.
- 10.9 Where either Supplier does not include VAT on an invoice, the Authority will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.
- 10.10 Each Supplier acknowledges that the Authority has advised both Suppliers that each Supplier should seek its own specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, each Supplier should seek clarification of the Contract's VAT status with HMRC.

### **Set-off and withholding**

- 10.11 The Authority may set off any amount owed by a Supplier to the Authority and/or the Service Recipients against any amount due to that Supplier under this Contract or under any other agreement between that Supplier and the Authority.
- 10.12 If the Authority wishes to:
- 10.12.1 set off any amount owed by the relevant Supplier to the Authority and/or the Service Recipients against any amount due to the relevant Supplier pursuant to Clause 10.11; or

10.12.2 exercise its right pursuant to Clause 7.2.4(b) (Performance Failures) to withhold payment of a proportion of the Service Charges,

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

### **Benchmarking**

10.13 The Parties shall comply with the provisions of Schedule 17 (Benchmarking) in relation to the benchmarking of any or all of the Services.

### **Financial Distress**

10.14 The Parties shall comply with the provisions of Schedule 18 (Financial Distress) in relation to the assessment of the financial standing of either Supplier and other specified entities and the consequences of a change to that financial standing.

### **Promoting tax compliance**

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

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

10.15.2 promptly provide to the Authority:

(a) details of the steps which the relevant Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

## **Section D - Contract governance**

### **11 Governance**

11.1 The Parties shall comply with the provisions of Schedule 21 (Governance) in relation to the management and governance of this Contract.

#### **Representatives**

11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 29A or 29B (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (Supplier Personnel).

11.4 The Authority shall notify each Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the relevant Supplier, revoke or amend the Authority of the Authority Representative or appoint a new Authority Representative.

### **12 Records, reports, Audits and Open Book Data**

12.1 Each Supplier shall comply, to the extent applicable, with the provisions of:

12.1.1 Schedule 24 (Reports and Records Provisions) in relation to the maintenance and retention of Records; and

- 12.1.2 Part 1 of Schedule 19 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.
- 12.2 With respect to the provision of Implementation Services only, the Parties shall comply with the provisions of:
  - 12.2.1 Part 2 of Schedule 19 (Financial Reports and Audit Rights) in relation to the provision of the Financial Reports; and
  - 12.2.2 Part 3 of Schedule 19 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

### **13 Change**

#### **Change Control Procedure**

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

#### **Change in Law**

- 13.2 Either Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:
  - 13.2.1 a General Change in Law;
  - 13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date; or
  - 13.2.3 a change in guidance and/or best practice as set out by the Information Commissioner's Office.
- 13.3 Any Contract Change required as a result of a General Change in Law shall be made by the Authority to the Contract without the requirement to be made through the Change Control Procedure.
- 13.4 Any Contract Change to the Contract including, for the avoidance of doubt, the Contract Price or relief from either Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.
- 13.5 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2.2), each Supplier shall:
  - 13.5.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
    - (a) whether any Change is required to the Services, the Charges or this Contract; and
    - (b) whether any relief from compliance with the relevant Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels;
  - 13.5.2 provide the Authority with evidence:
    - (a) that the relevant Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
    - (b) as to how the Specific Change in Law has affected the cost of providing the Services; and

- (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (Services improvement), has been taken into account in amending the Charges.
- 13.6 Any variation in the Charges or relief from either Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.
- 13.7 The Parties acknowledge and agree that no Contract Change or Operational Change may be made to this Contract which has the effect of:
  - 13.7.1 rendering this Contract materially different in character from the original terms of this Contract as at the original signature date of this Contract;
  - 13.7.2 changing the economic balance of this Contract in favour of either Supplier in a manner which is not provided for in this Contract as at the signature date of this Contract; and/or
  - 13.7.3 extending the scope of this Contract substantially.
- 13.8 The Parties agree that any change in guidance set out by the Information Commissioner's Office which alters the roles of the Parties in respect of their Controller and Processor relationship shall not require a Change and the Parties shall abide by the terms as set out in Clause 21 (Protection of Personal Data) in respect of their new roles.

## **Section E - Supplier Personnel and supply chain**

### **14 Supplier Personnel**

- 14.1 Each Supplier shall:
  - 14.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
  - 14.1.2 ensure that all Supplier Personnel:
    - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
    - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (Services Description) and Schedule 5 (Security Management); and
    - (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 5 (Security Management);
  - 14.1.3 subject to Schedules 28A (Staff Transfer – Supplier A) and 28B (Staff Transfer – Supplier B), retain overall control of the relevant Supplier's Supplier Personnel at all times so that the relevant Supplier's Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
  - 14.1.4 be liable at all times for all acts or omissions of the relevant Supplier's Supplier Personnel, so that any act or omission of a member of any the relevant Supplier's Supplier Personnel which results in a Default under this Contract shall be a Default by the relevant Supplier;
  - 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;



- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel;
  - 14.1.8 procure that the relevant Supplier's Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract;
  - 14.1.9 comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. Each Supplier confirms that all persons employed or engaged by the relevant Supplier shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises;
  - 14.1.10 provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the Standards; and
  - 14.1.11 use all reasonable endeavours to ensure that the relevant Supplier's Supplier Personnel who are not UK nationals are legally entitled to reside in the United Kingdom and have a work permit, where applicable. Each Supplier shall promptly take all reasonable steps to ensure compliance with this Clause.
- 14.2 The Authority may, by written notice to either Supplier, refuse to admit on to, or withdraw permission for the relevant Supplier's Supplier Personnel to remain on, the Authority's Premises where the admission or continued presence of:
- 14.2.1 any member of the relevant Supplier's Supplier Personnel; or
  - 14.2.2 any person employed or engaged by any member of the relevant Supplier's Supplier Personnel,
- would, in the reasonable opinion of the Authority, be undesirable, and the decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether either Supplier has failed to comply with Clause 14.1.2(a) shall be final and conclusive).

#### **Key Personnel**

- 14.3 Each Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29A or 29B (Key Personnel) lists the Key Roles and names of the persons who each Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the relevant Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 Neither Supplier shall remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 14.5.1 requested to do so by the Authority;
  - 14.5.2 the person concerned resigns, transfers their employment to a Supplier Group, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
  - 14.5.3 the person's employment or contractual arrangement with the relevant Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - 14.5.4 the relevant Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed),

- 14.6 Schedule 29A or 29B (Key Personnel), as appropriate, shall be updated by the relevant Supplier from time to time to reflect any changes to Key Personnel.
- 14.7 Each Supplier shall:
- 14.7.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the relevant Supplier shall ensure appropriate temporary cover for that Key Role);
  - 14.7.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 14.7.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
  - 14.7.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
  - 14.7.5 ensure that any replacement for a Key Role:
    - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

**Employment indemnity**

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

**Income tax and national insurance contributions**

- 14.9 Where either Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, each Supplier shall:
- 14.9.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - 14.9.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the relevant Supplier or any of the relevant Supplier's Supplier Personnel.

**Staff transfer**

- 14.10 The Parties agree that:

- 14.10.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 28A (Staff Transfer – Supplier A) and Schedule 28B (Staff Transfer – Supplier B) shall apply as follows:
- (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part 4 of Schedule 28A (Staff Transfer – Supplier A) and Part 4 of Schedule 28B (Staff Transfer – Supplier B) shall apply;
  - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part 4 of Schedule 28A (Staff Transfer – Supplier A) and Part 4 of Schedule 28B (Staff Transfer – Supplier B) shall apply;
  - (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Part 4 of Schedule 28A (Staff Transfer – Supplier A) and Part 4 of Schedule 28B (Staff Transfer – Supplier B) shall apply; and
  - (d) Part 3 of Schedule 28A (Staff Transfer – Supplier A) and Part 3 of Schedule 28B (Staff Transfer – Supplier B) shall not apply;
- 14.10.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer:
- (a) Part 3 of Schedule 28A (Staff Transfer – Supplier A) and Part 3 of Schedule 28B (Staff Transfer – Supplier B) shall apply;
  - (b) Part 4 of Schedule 28A (Staff Transfer – Supplier A) and Part 4 of Schedule 28B (Staff Transfer – Supplier B) may apply; and
  - (c) Parts 1 and 2 of Schedule 28A (Staff Transfer – Supplier A) and Parts 1 and 2 of Schedule 28B (Staff Transfer – Supplier B) shall not apply; and
- 14.10.3 Part 5 of Schedule 28A (Staff Transfer – Supplier A) and Part 5 of Schedule 28B (Staff Transfer – Supplier B) shall apply on the expiry or termination of the Services or any part of the Services.

### **Offers of Employment**

- 14.11 For the duration of the Contract and for a period of twelve (12) months thereafter neither the Authority nor either Supplier (for the purposes of this clause the Parties) shall, as between the Authority and either Supplier but not as between Supplier A and Supplier B, employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent. The foregoing restriction shall not apply where an employee of a Party seeks employment with another Party in response to an advertisement placed into public domain for that position unless the other Party has solicited, directly or indirectly, the application from that employee for that position.

### **Industrial Action**

- 14.12 Each Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 14.12 In the event of industrial action by the relevant Supplier's Supplier Personnel, each Supplier as applicable shall seek approval in relation to its proposals to continue to perform its obligations under the Contract. If the relevant Supplier's proposals are considered insufficient or unacceptable by the Authority (acting reasonably), the Authority may terminate the Contract with immediate effect or such period as specified by the Authority by notice in writing.

## **15 Supply chain rights and protections**

**Advertising sub-contract opportunities**

- 15.1 Each Supplier shall:
- 15.1.1 subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of Goods and/or Services and/or Works exclusively under this Contract above a minimum threshold of £25,000 that arise during the Term;
  - 15.1.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
  - 15.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
  - 15.1.4 provide reports on the information at Clause 15.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
  - 15.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the relevant Supplier.
- 15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

**Appointment of sub-contractors**

- 15.5 Each Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that each Supplier is able to:
- 15.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
  - 15.5.2 comply with its obligations under this Contract in the delivery of the Services; and
  - 15.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 15.6 Prior to sub-contracting any of its obligations under this Contract, each Supplier shall notify the Authority in writing of:
- 15.6.1 the proposed Sub-contractor's name, registered office and company registration number;
  - 15.6.2 the scope of any Services to be provided by the proposed Sub-contractor; and
  - 15.6.3 where the proposed Sub-contractor is an Affiliate of the relevant Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.7 If requested by the Authority within ten (10) Working Days of receipt of the relevant Supplier's notice issued pursuant to Clause 15.6, the relevant Supplier shall also provide:
- 15.7.1 a copy of the proposed Sub-contract; and
  - 15.7.2 any further information reasonably requested by the Authority.

15.8 The Authority may, within ten (10) Working Days of receipt of the relevant Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:

- 15.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- 15.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 15.8.3 the proposed Sub-contractor employs unfit persons; and/or
- 15.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 15.23.1(d) (Termination of Sub-contracts);

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

15.9 If:

- 15.9.1 the Authority has not notified the relevant Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
  - (a) the relevant Supplier's notice issued pursuant to Clause 15.6; and
  - (b) any further information requested by the Authority pursuant to Clause 15.7; and
- 15.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.10 (Appointment of Key Sub-contractors)),

the relevant Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract. Supplier A and Supplier B shall be responsible for updating Schedules 11A and 11B (Third Party Contracts) respectively with details of all Third Party Contracts.

#### **Appointment of Key Sub-contractors**

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

- 15.10.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- 15.10.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 15.10.3 the proposed Key Sub-contractor employs unfit persons; and/or
- 15.10.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 15.23.1(d) (Termination of Sub-contracts).

15.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedules 10A and 10B (Notified Key Sub-contractors).

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

- 15.12.1 provisions which will enable the relevant Supplier to discharge its obligations under this Contract;

- 15.12.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- 15.12.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the relevant Supplier;
- 15.12.4 a provision enabling the relevant Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 15.12.5 obligations no less onerous on the Key Sub-contractor than those imposed on each Supplier under this Contract in respect of:
  - (a) data protection requirements set out in Clauses 18 (Authority Data and Security Requirements) and 21 (Protection of Personal Data);
  - (b) FOIA requirements set out in Clause 20 (Transparency and Freedom of information);
  - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5.12 (Services);
  - (d) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
  - (e) the conduct of Audits set out in Part 3 of Schedule 19 (Financial Reports and Audit Rights);
- 15.12.6 provisions enabling the relevant Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the relevant Supplier than those imposed on the Authority under:
  - (a) Clauses 31.1.1 (Termination by the Authority) and 32.4 (Payments by the Authority);
  - (b) (in relation to Supplier A only) Section 9.2 of the Supplier A ERP Terms (as amended by Paragraph 7.1 (Termination and Suspension) of Part A of Appendix A to Schedule 34 (ERP Supplier Terms); and
  - (c) (in relation to Supplier B only) Schedule 16B (Payments on Termination);
- 15.12.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the relevant Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 15.12.8 a provision enabling the relevant Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 27 (Remedial Adviser);
- 15.12.9 a provision enabling the relevant Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 28 (Step-in rights);
- 15.12.10 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and

- 15.12.11 a provision requiring the Key Sub-contractor to:
- (a) promptly notify the relevant Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
    - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
    - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
  - (b) co-operate with the relevant Supplier and the Authority in order to give full effect to the provisions of Schedule 18 (Financial Distress), including meeting with the relevant Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3.2(b) of Schedule 18 (Financial Distress).
- 15.13 Neither Supplier shall terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.
- Supply chain protection**
- 15.14 Each Supplier shall ensure that all Sub-contracts (which in this Clause means any contract in the relevant Supplier's supply chain entered into after the Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:
- 15.14.1 giving the relevant Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
  - 15.14.2 requiring the relevant Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
  - 15.14.3 that if the relevant Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.14.2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.14.4 after a reasonable time has passed;
  - 15.14.4 requiring the relevant Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - 15.14.5 giving the Authority a right to publish the relevant Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
  - 15.14.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 15.15 Each Supplier shall take reasonable endeavours to ensure that all Sub-contracts (which in this Clause means any contract in either Supplier's supply chain entered into before the Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- 15.15.1 giving the relevant Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
  - 15.15.2 requiring the relevant Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
  - 15.15.3 that if the relevant Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.15.2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.15.4 after a reasonable time has passed;
  - 15.15.4 requiring the relevant Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - 15.15.5 giving the Authority a right to publish the relevant Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
  - 15.15.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 15.15 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 15.16 Each Supplier shall:
- 15.16.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed; and
  - 15.16.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (Performance Levels) a summary of its compliance with Clause 15.16.1, such data to be certified each Quarter by a director of the relevant Supplier as being accurate and not misleading.
- 15.17 Without prejudice to Clause 15.16.1, each Supplier shall:
- 15.17.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
    - (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
    - (b) the date that falls sixty (60) days after the day on which the relevant Supplier receives an invoice (or otherwise has notice of an amount for payment); and
  - 15.17.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (Performance Levels) as applicable a summary of its compliance with Clause 15.17.1, such data to be certified every six (6) months by a director of the relevant Supplier as being accurate and not misleading.
- 15.18 If any Balanced Scorecard Report shows that in either of the last two six (6) month periods the relevant Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the relevant Supplier shall upload to the Virtual Library within fifteen (15) Working Days of submission of the latest Balanced Scorecard Report an action plan (the **Action Plan**) for improvement. The Action Plan shall include, but not be limited to, the following:



- 15.18.1 identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
  - 15.18.2 actions to address each of the causes set out in Clause 15.18.1; and
  - 15.18.3 mechanisms for and commitment to regular reporting on progress to the relevant Supplier's Board.
- 15.19 The Action Plan shall be certificated by a director of the relevant Supplier and the Action Plan or a summary of the Action Plan published on the relevant Supplier's website within ten (10) Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
- 15.20 Where the relevant Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the relevant Supplier will take to address this.
- 15.21 The relevant Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the relevant Supplier's Solution (to the extent it is not already included).
- 15.22 Notwithstanding any provision of Clauses 19 (Confidentiality) and 22 (Publicity and branding), if the relevant Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the relevant Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the relevant Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

#### **Termination of Sub-contracts**

- 15.23 The Authority may require either Supplier to terminate:
- 15.23.1 a Sub-contract where:
    - (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 31.1.2 (Termination by the Authority);
    - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
    - (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law; and/or
    - (d) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.27; and
  - 15.23.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
    - (a) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or

- (b) the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

#### **Competitive terms**

- 15.24 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the relevant Supplier or the relevant Supplier Personnel in the supply of the Services, then the Authority may require the relevant Supplier to use all reasonable commercial endeavours to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item.
- 15.25 If the Authority exercises its right pursuant to Clause 15.24, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

#### **Retention of legal obligations**

- 15.26 Notwithstanding either Supplier's right to sub-contract pursuant to this Clause 15, each Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the relevant Supplier, an obligation on the relevant Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the relevant Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

#### **Exclusion of sub-contractors**

- 15.27 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- 15.27.1 if the Authority finds there are compulsory grounds for exclusion, the relevant Supplier shall replace or shall not appoint the Sub-contractor; or
- 15.27.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the relevant Supplier to replace or not to appoint the Sub-contractor and the relevant Supplier shall comply with such a requirement.

#### **Reporting SME/VCSE sub-contracts**

- 15.28 In addition to any other Management Information requirements set out in this Contract, the relevant Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 24 (Reports and Records Provisions) Appendix D and in accordance with any guidance issued by the Authority from time to time.
- 15.29 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

### **Section F - Intellectual property, data and confidentiality**

#### **16 Intellectual Property Rights**

The Parties agree that the terms set out in Schedule 32A or 32B (Intellectual Property Rights) shall apply to this Contract.

#### **17 IPRs indemnity**

- 17.1 Each Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 17.2 If an IPRs Claim is made, or either Supplier anticipates that an IPRs Claim might be made, the relevant Supplier may, at its own expense and sole option, either:
- 17.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
  - 17.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
    - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
    - (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
    - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 17.3 If the relevant Supplier elects to procure a licence in accordance with Clause 17.2.1 or to modify or replace an item pursuant to Clause 17.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 17.3.1 the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the relevant Supplier; and
  - 17.3.2 without prejudice to the indemnity set out in Clause 17.1, the relevant Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## **18 Authority Data and Security Requirements**

- 18.1 No Supplier shall delete or remove any proprietary notices contained within or relating to the Authority Data.
- 18.2 Neither Supplier shall store, copy, disclose, or use the Authority Data except as necessary for the performance by either Supplier, as applicable, of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 18.3 To the extent that Authority Data is held and/or processed by either Supplier, that Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (Services Description).
- 18.4 Each Supplier shall preserve the integrity of the Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 18.5 Each Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored in accordance with the Service Continuity Plan. Each 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.
- 18.6 Each Supplier shall ensure that any system on which either Supplier as applicable holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.

- 18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the relevant Supplier's Default so as to be unusable, the Authority may:
- 18.7.1 require the relevant Supplier (at the relevant Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in (i) Section 17.12 of Exhibit A to Appendix A of Schedule 34 (ERP Supplier Terms) or (ii) Schedule 26B (Service Continuity Plan and Corporate Resolution Planning), and the relevant Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
  - 18.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the relevant Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in (i) Section 17.12 of Exhibit A to Appendix A of Schedule 34 (ERP Supplier Terms) or (ii) Schedule 26B (Service Continuity Plan and Corporate Resolution Planning), as applicable.
- 18.8 If at any time either Supplier reasonably suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then that Supplier shall notify the Authority immediately and inform the Authority of the remedial action that Supplier proposes to take and the timescale within which it proposes to take the remedial action.
- 18.9 Each Supplier shall comply with the requirements of Schedule 5 (Security Management).
- 18.10 The Authority shall notify the relevant Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 18.11 If either Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, that 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 Charges shall then be agreed in accordance with the Change Control Procedure.
- 18.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 18.11 each Supplier shall continue to perform the Services in accordance with its existing obligations.
- 18.13 Each Supplier shall, and shall procure that any Sub-Contractor (as applicable) shall, comply with the Authority's Security Requirements. The Authority's Security Requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Authority Assets, the Authority's Systems Environment and the Contractor's Systems Environment.
- 18.14 Each Supplier shall ensure that the Supplier Personnel comply with the Authority's Security Requirements.
- 18.15 In the event that either Supplier goes into Liquidation or the Contract is terminated by the Authority pursuant to the provisions of the Contract relating to termination on insolvency in accordance with Clause 31.1 (Termination by the Authority), that Supplier (or a liquidator or provisional liquidator acting on behalf of the Contractor) shall at its own cost and at no cost to the Authority:
- 18.15.1 conduct a full and thorough search for any electronic and paper records held by that Supplier which contain Authority Data and/or Information relating to a customer/service user; in accordance with the Authority instructions;
  - 18.15.2 return all such records as described in Clause 18.15.1 to the Authority in accordance with their instructions;
  - 18.15.3 permanently destroy all copies of any relevant electronic records; and

- 18.15.4 provide written confirmation to the Authority that the actions outlined above in this Clause have been completed.
- 18.16 In the event of a Sub-Contractor being in Liquidation, then it is the responsibility of the relevant Supplier to recover records held by the Sub-Contractor and provide assurance to the Authority that they have been recovered.
- 18.17 In the event that either Supplier is put into administration, the Authority will work closely with the administrator to ensure that Supplier is able to maintain Authority and other records they have created and held in accordance with this Contract and maintain these standards in the safekeeping of Authority Data. All such records must be stored in accordance with Authority information assurance and HMG Cabinet Office information security standards.

#### **Malicious Software**

- 18.18 Each Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, and prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 18.19 If Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 18.20 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 18.19 shall be borne by the parties as follows:
- 18.20.1 by the relevant Supplier where the Malicious Software originates from the relevant Supplier's Supplier Software, the Third Party Software supplied by the relevant Supplier or the Authority Data (whilst the Authority Data was under the control of the relevant Supplier) unless the relevant Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority, when provided to the relevant Supplier; and
- 18.20.2 by the Authority, in any other circumstance.

#### **19 Confidentiality**

- 19.1 For the purposes of this Clause 19, the term **Disclosing Party** shall mean a Party which discloses or makes available directly or indirectly (including, in respect of a Supplier, via its Affiliates and Sub-contractors) its Confidential Information and **Recipient** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 19.2.1 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);
- 19.2.2 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;
- 19.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and

- 19.2.4 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.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 19.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (Transparency and Freedom of information ) shall apply to disclosures required under the FOIA or the EIRs;
- 19.3.2 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
- 19.3.3 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.
- 19.4 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.
- 19.5 Either Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 19.5.1 the relevant Supplier's Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the relevant Supplier's obligations under this Contract;
- 19.5.2 the other Supplier;
- 19.5.3 its auditors; and
- 19.5.4 its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where either Supplier discloses Confidential Information of the Authority pursuant to this Clause 19.5, 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.

- 19.6 The Authority may disclose the Confidential Information of either Supplier:
- 19.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body. All government departments and any part of the Crown receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments and other parts of the Crown on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, or the Crown;

- 19.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 19.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 19.6.4 on a confidential basis to a professional adviser, consultant, Supplier or other person engaged by any of the entities described in Clause 19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 19.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 28 (Step-in rights), its rights to appoint a Remedial Adviser pursuant to Clause 27 (Remedial Adviser) and Exit Management rights; or
- 19.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 19.

- 19.7 Nothing in this Clause 19 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.
- 19.8 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or Confidential Information, which is specified as being exempt from disclosure under this Contract, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 19.9 Notwithstanding any other term of this Contract, each Supplier hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.
- 19.10 Each Supplier waives any contractual right or other confidentiality obligation in connection with the customers mentioned in the list of contracts provided by the relevant Supplier in its tender to demonstrate evidence of past performance. Each Supplier agrees that these customers may provide information to the Authority in the form of certificates of performance and answer any clarifications that the Authority or anyone acting on behalf of the Authority in connection with this procurement may have. Each Supplier confirms that save for any deceitful or maliciously false statements of fact or purported fact included in a certificate or subsequent clarification from the Authority the customer will not owe either Supplier any duty of care for or otherwise have any legal liability to either Supplier in respect of any factual inaccuracies, whether innocent or negligent, and/or in respect of any expressions of opinion by the customer. This provision is for the benefit of each customer and may be relied on by them for the purposes of the Contracts (Rights of Third Parties) Act 1999.
- 19.11 The Authority confirms that it will keep confidential and will not disclose to any third parties other than the Cabinet Office and other government departments, for the purposes of verification, the content of any certificates of performance from a customer.
- 19.12 If, in breach of Clause 19.10, either Supplier commences legal proceedings against a customer in relation to any certificate of performance or subsequent clarification provided by it to the Authority, the relevant Supplier agrees that the customer shall be entitled to bring proceedings against that Supplier in the English Courts to enforce the terms of this provision

(regardless of whether it is enforceable in the jurisdiction where the proceedings are brought) and to be indemnified in full for any legal costs incurred in defending such proceedings and indemnified in respect of any compensation that the customer is ordered to pay to that Supplier as a result of such proceedings. This provision will not relate to any proceedings commenced in good faith for any liability that falls outside the scope of this provision.

## **20 Transparency and Freedom of information**

20.1 The Parties acknowledge that:

20.1.1 the Transparency Reports;

20.1.2 the content of this Contract, including any changes to this Contract agreed from time to time, except for:

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(b) Commercially Sensitive Information; and

20.1.3 the Publishable Performance Information,

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

20.2 Notwithstanding any other provision of this Contract, each Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with each Supplier as applicable on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

20.3 Each Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 24 (Reports and Records Provisions).

20.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the relevant Supplier.

20.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the relevant Supplier.

20.6 Each Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6.3) and Open Book Data) publish such Information. Each Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

20.7 Each Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. Each Supplier shall:



- 20.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - 20.7.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 20.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 20.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 20.8 Each 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 relevant Supplier. The Authority shall take reasonable steps to notify the relevant 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 EIRs.
- 20.9 Each Supplier acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of FOIA (the **Code**), be obliged under the FOIA, or the Environmental Information Regulations, to disclose information concerning either Supplier or the Services:
- 20.9.1 in certain circumstances without consulting the relevant Supplier; or
  - 20.9.2 following consultation with the relevant Supplier and having taken their views into account.
- 20.10 Where Clause 20.9.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the relevant Supplier advance notice, or failing that, to draw the disclosure to the relevant Supplier's attention after any such disclosure.
- 20.11 Each Supplier shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 20.12 Each Supplier acknowledges that the Commercially Sensitive Information listed in Schedule 9A or 9B (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with Clause 20.9 and/or any other legal requirement.

## 21 Protection of Personal Data

### Status of the controller

- 21.1 The Parties shall comply with Data Protection Legislation and acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- 21.1.1 **Controller** (where the other Party acts as the **Processor**);

- 21.1.2 **Processor** (where the other Party acts as the **Controller**);
- 21.1.3 **Joint Controller** (where both Parties are considered to jointly control the same Personal Data); or
- 21.1.4 **Independent Controller** of the Personal Data where the other Party is also **Controller** of the same Personal Data in its own right (but there is no element of joint control),

and the Parties shall set out in Schedule 31A or 31B (Processing Personal Data) which scenario or scenarios are intended to apply under this Contract.

- 21.2 It is anticipated that the Authority, acting in the capacity as lead contracting authority for Synergy, will be Processor for each of the Service Recipients when Processing Personal Data on behalf of those Service Recipients. It is further anticipated that the Authority will then flow down those processing requirements to the Supplier as Sub-Processor as further described in Schedule 31A or 31B as applicable. Accordingly, where a Service Recipient is a Controller, then Clauses 21.3 to 21.16 shall apply, provided that all references therein to “the Controller” shall be construed to mean the Authority, and all references therein to “the Processor” shall mean Supplier A or Supplier B (as applicable).

**Where one party is controller and the other party its processor**

- 21.3 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 31A or 31B (Processing Personal Data) by the Controller.
- 21.4 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 21.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - 21.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 21.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 21.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 21.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 21.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - 21.6.1 process that Personal Data only in accordance with Schedule 31A or 31B (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - 21.6.2 ensure that it has in place Protective Measures, including in the case of each Supplier the measures set out in Clause 18 (Authority Data and Security Requirements), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and

- (d) cost of implementing any measures;
- 21.6.3 ensure that:
- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 31A or 31B (Processing Personal Data));
  - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Processor's duties under this Clause 21, Clauses 18 (Authority Data and Security Requirements) and 19 (Confidentiality);
    - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 21.6.4 where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) either:
    - (i) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or
    - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's Standard Contractual Clauses (**SCCs**) as published by the Information Commissioner's Office and as set out in Appendix B to Schedule 31A or 31B (Processing Personal Data), as well as any additional measures determined by the Controller;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- 21.6.5 where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) either:
    - (i) the transfer is in accordance with Article 45 of the EU GDPR; or

- (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Appendix C to Schedule 31A or 31B (Processing Personal Data) or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the Controller;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Processor complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- 21.6.6 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 21.7 Subject to Clause 21.8, the Processor shall notify the Controller without undue delay if it:
- 21.7.1 receives a Data Subject Request (or purported Data Subject Request);
  - 21.7.2 receives a request to rectify, block or erase any Personal Data;
  - 21.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation relating to this Contract;
  - 21.7.4 receives any communication from the Information Commissioner's Office or any other regulatory Authority in connection with Personal Data processed under this Contract;
  - 21.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 21.7.6 becomes aware of a Data Loss Event.
- 21.8 The Processor's obligation to notify under Clause 21.7 shall include the provision of further information to the Controller in phases, as details become available.
- 21.9 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 21.7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing at as applicable the relevant Processor's own cost:
- 21.9.1 the Controller with full details and copies of the complaint, communication or request;
  - 21.9.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 21.9.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 21.9.4 assistance as requested by the Controller following any Data Loss Event; and/or

- 21.9.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory Authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory Authority.
- 21.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 21.10.1 the Controller determines that the processing is not occasional;
  - 21.10.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 21.10.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.11 The Processor shall allow for audits of its Personal Data processing activity by the Controller or the Controller's designated auditor.
- 21.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 21.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
  - 21.13.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 21.13.2 obtain the written consent of the Controller;
  - 21.13.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 21 such that they apply to the Sub-processor; and
  - 21.13.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 21.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 21.15 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 21 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 21.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to either Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**Where the parties are joint controllers of personal data**

- 21.17 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Appendix A of Schedule 31A or 31B (Processing Personal Data).

**Where the parties are independent controllers of personal data**

- 21.18 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the joint control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

- 21.19 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 21.20 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.18, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 21.21 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 21.22 The Parties shall only provide Personal Data to each other:
- 21.22.1 to the extent necessary to perform the respective obligations under this Contract;
  - 21.22.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
  - 21.22.3 where the Personal Data is subject to UK GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
    - (a) either:
      - (i) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
      - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Appendix B to Schedule 31A or 31B (Processing Personal Data), as well as any additional measures determined by the non-transferring Party;
    - (b) the Data Subject has enforceable rights and effective legal remedies;
    - (c) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations);
    - (d) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
    - (e) should the appropriate safeguards implemented by the transferring Party at any time cease to provide an adequate level of protection in relation to the Personal Data, the transferring Party will implement such alternative measures as may be required by the Data Protection Legislation to ensure that the relevant transfer and all resulting Processing are compliant with the Data Protection Legislation.
  - 21.22.4 where the Personal Data is subject to EU GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the EU, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
    - (a) either:

- (i) the transfer is in accordance with Article 45 of the EU GDPR; or
    - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Appendix C to Schedule 31A or 31B (Processing Personal Data) or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
  - (d) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 21.22.5 where it has recorded it in Schedule 31A or 31B (Processing Personal Data).
- 21.23 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 21.24 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 21.25 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract (the **Request Recipient**):
- 21.25.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - 21.25.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
    - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
    - (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 21.26 Each party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other party pursuant to this Contract and shall:
- 21.26.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;

- 21.26.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 21.26.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory Authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 21.26.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 21.27 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 31A or 31B (Processing Personal Data).
- 21.28 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 31A or 31B (Processing Personal Data).
- 21.29 Notwithstanding the general application of Clauses 21.3 to 21.16 to Personal Data, where either Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 21.17 to 21.28.

#### **Standard Contractual Clauses**

- 21.30 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of Personal Data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the **UK Adequacy Decision**). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Contract is not covered by the UK Adequacy Decision or at any time during the term of the Contract the UK Adequacy Decision is:
- 21.30.1 withdrawn, invalidated, overruled or otherwise ceases to have effect; or
  - 21.30.2 amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Contract,
- Clauses 21.31 to 21.32 below shall apply.
- 21.31 The Parties agree:
- 21.31.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Appendix D to Schedule 31A or 31B (Processing Personal Data) in respect of data transfers by either Supplier outside of the EU to the UK;
  - 21.31.2 that, where no other appropriate safeguard or exemption applies, the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
  - 21.31.3 to use best endeavours to complete the Appendix to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
  - 21.31.4 that if there is any conflict between this Contract and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.
- 21.32 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:



- 21.32.1 that the most up-to-date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in Appendix D to Schedule 31A or 31B (Processing Personal Data) and that such incorporation is not a Change;
- 21.32.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up-to-date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- 21.32.3 to use best endeavours to complete any part of the most up-to-date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- 21.32.4 that if there is any conflict between this Contract and the most up-to-date Standard Contractual Clauses the terms of the most up-to-date Standard Contractual Clauses shall apply.

## **22 Publicity and branding**

### **22.1 Neither Supplier shall:**

- 22.1.1 make any press announcements or publicise this Contract or its contents in any way; or
- 22.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,

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

- 22.2 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 Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **Section G - Liability, indemnities and insurance**

### **23 Limitations on liability**

#### **Losses of Service Recipients**

- 23.1 The Supplier acknowledges and agrees that, subject to the remaining provisions of this Clause 23, any Losses suffered by a Service Recipient that are caused by a Default of the Supplier which may be recoverable by the relevant Service Recipient pursuant to Clause 41 shall be deemed to be Losses that have been suffered by, and which may be recoverable by, the Authority (**Service Recipient Losses**).
- 23.2 The Supplier acknowledges and agrees that for Service Recipient Losses the Authority shall be entitled to:
  - 23.2.1 act as agent for Service Recipients and bring any claims of Service Recipients on behalf and in lieu of such Service Recipients; and
  - 23.2.2 treat Losses of Service Recipients as Losses of the Authority,and to the extent such Losses of the Authority would be recoverable under this Contract, such Service Recipient Losses shall be recoverable by the Authority as though they were Losses suffered by the Authority.

#### **Unlimited liability**

- 23.3 Neither Party limits its liability for:

- 23.3.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - 23.3.2 fraud or fraudulent misrepresentation by it or its employees;
  - 23.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 23.3.4 any liability to the extent it cannot be limited or excluded by Law.
- 23.4 Each Supplier's liability in respect of the indemnities in Clause 10.6 (VAT), Clause 14.8 (Employment indemnity), Clause 14.9 (Income tax and national insurance contributions), Clause 17 (IPRs Indemnity), Schedule 28A (Staff Transfer – Supplier A) and Schedule 28B (Staff Transfer – Supplier B) shall be unlimited.
- 23.5 The Authority's liability in respect of the indemnities in Clause 14.8 (Employment indemnity), Schedule 28A (Staff Transfer – Supplier A) and Schedule 28B (Staff Transfer – Supplier B) shall be unlimited.

**Financial and other limits**

- 23.6 Subject to Clauses 23.3 and 23.4 (Unlimited liability) and Clauses 23.10 (Consequential losses):
- 23.6.1 each Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the relevant Supplier occurring in each and any Contract Year shall:
    - (a) for Supplier A in no event exceed [REDACTED]; and
    - (b) for Supplier B in no event exceed [REDACTED];
  - 23.6.2 each Supplier's aggregate liability in respect of loss of or damage to Authority Data or Losses incurred by the Authority due to breach of Data Protection Legislation that is caused by Default of the relevant Supplier occurring in each and any Contract Year shall:
    - (a) for Supplier A in no event exceed [REDACTED]; and
    - (b) for Supplier B in no event exceed [REDACTED];
  - 23.6.3 each Supplier's aggregate liability in respect of all:
    - (a) Service Credits; and
    - (b) Compensation for Unacceptable KPI Failure,  
incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap; and
  - 23.6.4 each Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the relevant Supplier shall in no event exceed:
    - (a) [REDACTED]
    - (b) [REDACTED]
    - (c) [REDACTED]

- (d) provided that where any Losses referred to this Clause 23.6.4 have been incurred by the Authority as a result of the relevant Supplier's abandonment of this Contract or the relevant Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause [REDACTED] shall be deemed to be references [REDACTED]. It is further acknowledged by the Authority that notwithstanding the Authority's ability to recover against either or both Suppliers where either or both Suppliers are in Default (as described in Clause 1.8) and where the Suppliers may be jointly liable as described in Clause 1.7 or jointly and severally liable under Paragraph 1.2 of Schedule 13 (Implementation Plan), in no event will the total amount that the Authority is able to recover against the Suppliers exceed the total amount that the Authority could recover against either one of the Suppliers individually under the financial and other limits described in this Clause 23.
- 23.7 [REDACTED].
- 23.8 Deductions from Charges shall not be taken into consideration when calculating each Supplier's liability under Clause 23.6.3.
- 23.9 Subject to Clauses 23.3 and 23.5 (Unlimited liability) and Clause 23.10 (Consequential losses) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- 23.9.1 the Authority's total aggregate liability in respect of all Losses incurred by Supplier A under or in connection with this Contract as a result of:
- (a) early termination of this Contract by the Authority pursuant to
- (i) Clause 31.1.1 (Termination by the Authority) or
- (ii) Section 9.2 of the Supplier A ERP Terms, as amended by Paragraph 7.1 (Termination and Suspension) of Part A of Appendix A of Schedule 34; or
- (b) early termination of this Contract by the Supplier pursuant to
- (i) Clause 31.3.1 (Termination by the Supplier) or
- (ii) Section 9.4 of the Supplier A ERP Terms, as amended by Paragraph 7.1 (Termination and Suspension) of Part A of Appendix A of Schedule 34,
- shall in no event exceed the amount set out in Section 9.2 of the Supplier A ERP Terms, as amended by Paragraph 7.1 (Termination and Suspension) of Part A of Appendix A of Schedule 34.
- 23.9.2 the Authority's total aggregate liability in respect of all Losses incurred by Supplier B under or in connection with this Contract as a result of early termination of this Contract by the Authority pursuant to Clause 31.1.1 (Termination by the Authority) or by Supplier B pursuant to Clause 31.3.1 (Termination by the Supplier) shall in no event exceed the following amounts:
- (a) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 16B (Payments on Termination);
- (b) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 16B (Payments on Termination); and
- (c) in relation to the Compensation Payment (where applicable), the amount set out in Paragraph 6 of Schedule 16B (Payments on Termination); and
- 23.9.3 the Authority's aggregate liability in respect of all Losses incurred by either Supplier under or in connection with this Contract as a result of Defaults of the Authority shall in no event exceed to each Supplier as applicable:

- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the relevant Supplier in the twelve (12) month period immediately prior to the last day of the Term.

**Consequential losses**

23.10 Subject to Clauses 23.3, 23.4 and 23.5 (Unlimited liability) and Clause 23.11, neither Party shall be liable to the other Party for:

23.10.1 any indirect, special or consequential Loss; or

23.10.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

23.11 Notwithstanding Clause 23.10 but subject to Clause 23.6, each Supplier acknowledges that the Authority may, amongst other things, recover from the relevant Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the relevant Supplier:

23.11.1 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;

23.11.2 any wasted expenditure or charges;

23.11.3 the additional cost of procuring Replacement Services for the remainder of the Term 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;

23.11.4 any compensation or interest paid to a third party by the Authority; and

23.11.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

**Conduct of indemnity claims**

23.12 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 27 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

**Mitigation**

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

**24 Insurance**

Each Supplier shall comply with the provisions of Schedules 6A and 6B (Insurance Requirements) in relation to obtaining and maintaining insurance.

## **Section H - Remedies and relief**

### **25 Rectification Plan Process**

25.1 In the event that:

25.1.1 there is, or is reasonably likely to be, a Delay;

25.1.2 in any Service Period there has been:

(a) a Material KPI Failure; and/or

(b) a Material PI Failure; and/or

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

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

#### **Notification**

25.2 If:

25.2.1 Either Supplier notifies the Authority pursuant to Clause 25.1 that a Notifiable Default has occurred; or

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

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

25.3 The **Rectification Plan Process** shall be as set out in Clauses 25.4 (Submission of the draft Rectification Plan) to 25.9 (Agreement of the Rectification Plan).

#### **Submission of the draft Rectification Plan**

25.4 The relevant Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 25.2 (Notification). The relevant Supplier shall submit a draft Rectification Plan even if the relevant Supplier disputes that it is responsible for the Notifiable Default.

25.5 The draft Rectification Plan shall set out:

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

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

- 25.5.3 the steps which the relevant Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 25.6 The relevant Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the relevant Supplier's root cause analysis. If the Authority and/or the relevant Supplier do not agree on the root cause set out in the draft Rectification Plan, either the Authority or the relevant Supplier may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (Dispute Resolution Procedure).

#### **Agreement of the Rectification Plan**

- 25.7 The Authority may reject the draft Rectification Plan by notice to the relevant Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 25.7.1 is insufficiently detailed to be capable of proper evaluation;
  - 25.7.2 will take too long to complete;
  - 25.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
  - 25.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 25.8 The Authority shall notify the relevant 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 relevant Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The relevant Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 25.9 If the Authority consents to the Rectification Plan:
- 25.9.1 the relevant Supplier shall immediately start work on the actions set out in the Rectification Plan; and
  - 25.9.2 the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default,
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.

#### **Capacity Management**

- 25.10 It is agreed that, as at the Effective Date, there is no requirement for either Supplier to provide an Outline Capacity Management Plan. Thereafter, during the Term, if there is a change to the information supplied by the relevant Supplier in Schedule 8 (Supplier Solution) to demonstrate evidence of its Capacity to deliver the Services, the relevant Supplier shall notify the Authority of the Change in Capacity as soon as practicable but in any event within three (3) Working Days of becoming aware of the Change in Capacity, detailing the actual or anticipated effect of the Change in Capacity in the form of the Outline Capacity Management Plan within the time period specified in Clause 25.11.
- 25.11 The relevant Supplier shall submit a draft Capacity Management Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 25.10. The relevant Supplier shall submit a draft Capacity Management Plan even if the relevant Supplier disputes that it is responsible for the Change in Capacity.

- 25.12 The draft Capacity Management Plan shall set out:
- 25.12.1 full details of the Change in Capacity that has occurred, including a root cause analysis;
  - 25.12.2 the actual or anticipated effect of the Change in Capacity; and
  - 25.12.3 the steps which the relevant Supplier proposes to take to rectify the Change in Capacity (if applicable) and to prevent such a Change in Capacity from recurring, including timescales for such steps and for the rectification of the Change in Capacity (where applicable).
- 25.13 The relevant Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the relevant Supplier's root cause analysis. If the Authority and/or the relevant Supplier do not agree on the root cause set out in the draft Capacity Management Plan, either the Authority or the relevant Supplier may refer the matter to be determined by an expert in accordance with Schedule 23 (Dispute Resolution Procedure).
- 25.14 The Authority may reject the draft Capacity Management Plan by notice to the relevant Supplier if, acting reasonably, it considers that the draft Capacity Management Plan is inadequate, for example because the draft Capacity Management Plan:
- 25.14.1 is insufficiently detailed to be capable of proper evaluation;
  - 25.14.2 will take too long to complete;
  - 25.14.3 will not prevent reoccurrence of the Change in Capacity; and/or
  - 25.14.4 will rectify the Change in Capacity but in a manner which is unacceptable to the Authority.
- 25.15 The Authority shall notify the relevant Supplier whether it consents to the draft Capacity Management Plan as soon as reasonably practicable. If the Authority rejects the draft Capacity Management Plan, the Authority shall give reasons for its decision and the relevant Supplier shall take the reasons into account in the preparation of a revised Capacity Management Plan. The relevant Supplier shall submit the revised draft of the Capacity Management Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 25.16 If the Authority consents to the Capacity Management Plan, the relevant Supplier shall immediately start work on the actions set out in the Capacity Management Plan:

## **26 Delay Payments**

- 26.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part 3 of Schedule 15 (Charges and Invoicing) shall apply in relation to the payment of Delay Payments.
- 26.2 Delay Payments shall be the Authority's exclusive financial remedy for the relevant Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:
- 26.2.1 the Authority is entitled to or does terminate this Contract pursuant to Clause 31.1.2 (Termination by the Authority); or
  - 26.2.2 the Delay exceeds the Delay Deduction Period.

## **27 Remedial Adviser**

- 27.1 If:
- 27.1.1 any of the Intervention Trigger Events occur; or

27.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

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

- (a) a meeting between the Authority Representative and the relevant Supplier's Supplier Representative to discuss the Intervention Cause; and/or
- (b) the appointment as soon as practicable by the relevant Supplier of a Remedial Adviser, as further described in this Clause 27.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 27.1 prior to or instead of exercising its right to terminate this Contract.

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

27.2.1 the Remedial Adviser shall be:

- (a) a person selected by the relevant Supplier and approved by the Authority; or
- (b) if none of the persons selected by the relevant Supplier have been approved by the Authority (or no person has been selected by the relevant Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

27.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and

27.2.3 any right of the Authority to terminate this Contract pursuant to Clause 31.1.2 (Termination by the Authority) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the **Intervention Period**).

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

27.3.1 observe the conduct of and work alongside the relevant Supplier's Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;

27.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;

27.3.3 write reports and provide information to the Authority in connection with the steps being taken by the relevant Supplier to remedy the Intervention Cause;

27.3.4 make recommendations to the Authority and/or the relevant Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or

27.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

27.4 The relevant Supplier shall:



- 27.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
  - 27.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
  - 27.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
  - 27.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
  - 27.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).
- 27.5 The relevant Supplier shall be responsible for:
- 27.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
  - 27.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 27.
- 27.6 If:
- 27.6.1 the relevant Supplier:
    - (a) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
    - (b) is in Default of any of its obligations under Clause 27.4; and/or
  - 27.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a **Remedial Adviser Failure**), the Authority shall be entitled to terminate this Contract pursuant to Clause 31.1.2 (Termination by the Authority) in respect of the relevant Supplier, but without prejudice to the other Supplier continuing to be a signatory to this Contract.

## 28 Step-In rights

- 28.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on either Supplier during the Implementation Services period (a **Step-In Notice**), (save that this Clause will not apply to Supplier A in respect of the Services provided by Supplier A as identified in Schedule 34 (ERP Supplier Terms)), that it will be taking action under this Clause 28 (Step-in rights), either itself or with the assistance of a third party (provided that the relevant Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 19 (Confidentiality)). The Step-In Notice shall set out the following:
- 28.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the **Required Action**);
  - 28.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the relevant Supplier's Default;
  - 28.1.3 the date on which it wishes to commence the Required Action;
  - 28.1.4 the time period, the determination of which will be decided by the Authority acting reasonably and will be the shortest period of time necessary, which it believes will be necessary for the Required Action;

- 28.1.5 whether the Authority will require access to the relevant Supplier's premises and/or the Sites; and
- 28.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the relevant Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 28.2 Following service of a Step-In Notice, the Authority shall:
  - 28.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - 28.2.2 keep records of the Required Action taken and provide information about the Required Action to the relevant Supplier;
  - 28.2.3 co-operate wherever reasonable with the relevant Supplier in order to enable the relevant Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
  - 28.2.4 act reasonably in mitigating the cost that the relevant Supplier will incur as a result of the exercise of the Authority's rights under this Clause 28.
- 28.3 For so long as and to the extent that the Required Action is continuing, then:
  - 28.3.1 the relevant Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
  - 28.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 28.4 shall apply to Deductions from Charges in respect of other Services; and
  - 28.3.3 the Authority shall pay to the relevant Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 28.4 If the relevant Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
  - 28.4.1 the degradation of any Services not subject to the Required Action; or
  - 28.4.2 the non-Achievement of a Milestone,beyond that which would have been the case had the Authority not taken the Required Action, then the relevant Supplier shall be entitled to an agreed adjustment of the Charges.
- 28.5 Before ceasing to exercise its step in rights under this Clause 28 the Authority shall deliver a written notice to the relevant Supplier (a **Step-Out Notice**), specifying:
  - 28.5.1 the Required Action it has actually taken; and
  - 28.5.2 the date on which the Authority plans to end the Required Action (the **Step-Out Date**) subject to the Authority being satisfied with the relevant Supplier's ability to resume the provision of the Services and the relevant Supplier's plan developed in accordance with Clause 28.6.
- 28.6 The relevant Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a **Step-Out Plan**) relating to the resumption by the relevant Supplier of the Services, including any action the relevant Supplier proposes to take to ensure that the affected Services satisfies the requirements of this Contract.
- 28.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the relevant Supplier of its reasons for not approving it. The relevant 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.

- 28.8 The relevant Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 28, provided that the Authority shall reimburse the relevant Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

28.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

28.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the relevant Supplier's Default).

## 29 Authority Cause

- 29.1 Notwithstanding any other provision of this Contract, if the relevant Supplier has failed to:

29.1.1 Achieve a Milestone by its Milestone Date;

29.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

29.1.3 comply with its obligations under this Contract,

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

and can demonstrate that the relevant Supplier's Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the relevant Supplier fulfilling its obligations in this Clause 29):

- (a) the relevant Supplier shall not be treated as being in breach of this Contract to the extent the relevant Supplier can demonstrate that the relevant Supplier's Supplier Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier's Supplier Non-Performance:
  - (i) to terminate this Contract pursuant to Clause 31.1.2 (Termination by the Authority); or
  - (ii) to take action pursuant to Clauses 27 (Remedial Adviser) or 28 (Step-in rights);
- (c) where the relevant Supplier's Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the relevant Supplier can demonstrate was caused by the Authority Cause;
  - (ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
  - (iii) if the Milestone is a Key Milestone, the relevant Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the relevant Supplier can demonstrate that such failure was caused by the Authority Cause; and

- (iv) the relevant Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part 3 of Schedule 15 (Charges and Invoicing); and/or
- (d) where the relevant Supplier's Supplier Non-Performance constitutes a Performance Failure:
  - (i) the relevant Supplier shall not be liable to accrue Service Credits;
  - (ii) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2.4(b) (Performance Failures);
  - (iii) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4.1 (Unacceptable KPI Failure); and
  - (iv) the relevant Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

in each case, to the extent that the relevant Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.
- 29.2 In order to claim any of the rights and/or relief referred to in Clause 29.1, the relevant Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a **Relief Notice**) setting out details of:
  - 29.2.1 the relevant Supplier Non-Performance;
  - 29.2.2 the Authority Cause and its effect, or likely effect, on the relevant Supplier's ability to meet its obligations under this Contract;
  - 29.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
  - 29.2.4 the relief and/or compensation claimed by the relevant Supplier.
- 29.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the relevant Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the relevant Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the relevant Supplier where necessary.
- 29.4 The relevant Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the relevant Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 29.5 Without prejudice to Clause 5.9 (Continuing obligation to provide the Services), if a Dispute arises as to:
  - 29.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
  - 29.5.2 the nature and/or extent of the relief and/or compensation claimed by the relevant Supplier,

either the relevant Supplier or the Authority may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both the relevant Supplier and the Authority shall continue to resolve the causes of, and mitigate the effects of, the relevant Supplier Non-Performance.
- 29.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 29 shall be implemented in accordance with the Change Control Procedure.

### **30 Force Majeure**

- 30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to each Supplier, subject to its compliance with its obligations in (i) Section 17.12 of Exhibit A to Appendix A of Schedule 34 (ERP Supplier Terms) or (ii) Schedule 26B (Service Continuity Plan and Corporate Resolution Planning), as applicable, a Party may claim relief under this Clause 30 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 either 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 relevant Supplier.
- 30.2 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.
- 30.3 If either Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated, but the relevant Supplier has failed to do so;
  - 30.3.2 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; or
  - 30.3.3 are the result of the relevant Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 30.4 Subject to Clause 30.5, 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.
- 30.5 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 either 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.
- 30.6 Where, as a result of a Force Majeure Event:
- 30.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
    - (a) no other Party shall be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 31.1.3 (Termination by the Authority) or Clause 31.1.2 (Termination by the Supplier); and
    - (b) no Party shall be liable for any Default arising as a result of such failure;
  - 30.6.2 the relevant Supplier fails to perform its obligations in accordance with this Contract:
    - (a) the Authority shall not be entitled:
      - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 27 (Remedial Adviser) and/or Clause 28 (Step-in rights) as a result of such failure;

- (ii) to receive Delay Payments pursuant to Clause 26 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
    - (iii) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2.4(b) (Performance Failures) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4.1 (Unacceptable KPI Failure) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
  - (b) the relevant Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 30.7 The Affected Party shall notify the other Parties 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.
- 30.8 Relief from liability for the Affected Party under this Clause 30 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 30.7.

## **Section I - Termination and Exit Management**

### **31 Termination rights**

#### **Termination by the Authority**

- 31.1 The Authority may terminate this Contract (in part or in whole) by issuing a Termination Notice to the relevant Supplier:
- 31.1.1 [REDACTED]
  - 31.1.2 subject to Clause 31.7 (Replacement of a Supplier), if a Supplier Termination Event occurs;
  - 31.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
  - 31.1.4 if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Contract (in part or in whole) shall terminate on the date specified in the Termination Notice.
- 31.2 Where the Authority:
- 31.2.1 is terminating this Contract under Clause 31.1.2 due to the occurrence of either limb (b),(f) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
  - 31.2.2 has the right to terminate this Contract under Clause 31.1, it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

### Termination by the Supplier

31.3 Either Supplier may, by issuing a Termination Notice to the Authority, terminate:

31.3.1 this Contract if the Authority fails to pay in respect of:

(a) Supplier A, one undisputed quarterly invoice pursuant to Part 5 (invoicing and payment terms) of Schedule 15 (Charges and Invoicing); and

(b) Supplier B, two undisputed monthly invoices pursuant to Part 5 (invoicing and payment terms) of Schedule 15 (Charges and Invoicing),

due to the relevant Supplier under this Contract and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the relevant Supplier; or

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

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 31.3.2 would result in a Partial Termination, the provisions of Clause 31.4 (Partial Termination) shall apply. For the avoidance of doubt, nothing in this Clause 31.3 shall affect or exclude any other rights of either Supplier under this Contract in relation to non-payment by the Authority. It is further agreed that the Authority shall act reasonably and in good faith in relation to any conduct under this clause.

### Partial Termination

31.4 If either Supplier notifies the Authority pursuant to Clause 31.3.2 (Termination by the Supplier) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the relevant Supplier within one (1) month of receiving the relevant Supplier's Termination Notice. For the purpose of this Clause 31.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

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

31.5.1 either Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;

31.5.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

31.5.3 either Supplier shall not be entitled to reject the Change.

31.6 Not used.

### Replacement of a Supplier

31.7 If a Supplier Termination Event occurs with respect to either Supplier (**Defaulting Supplier**): the Authority may, prior to any termination of this Contract, request (in consultation with the Supplier) that the Supplier that is not in Default (**Non-Defaulting Supplier**) proposes in writing a shortlist of organisations who the Non-Defaulting Supplier considers are suitable to replace

the Defaulting Supplier for the purpose of delivering the Services under the Contract (such request being a **Replacement Consortium Party Request**).

- 31.8 Within five (5) Working Days or such longer period as is specified by the Authority, after receipt of the Replacement Consortium Party Request, the Non-Defaulting Supplier shall prepare and deliver to the Authority a notice containing the requested shortlist of organisations (such notice being a **Replacement Consortium Party Response**).
- 31.9 Within five (5) Working Days of receipt of the Replacement Consortium Party Response, the Authority shall notify the Non-Defaulting Supplier whether it has any comments on the shortlist of organisations (if applicable).
- 31.10 If the Authority has raised comments on the suitability of any organisation or organisations contained in the Replacement Consortium Party Response, the Non-Defaulting Supplier shall co-operate in good faith with the Authority in seeking to resolve any particular issues pertaining to the suitability of such organisation(s). In the event the Authority and the Non-Defaulting Supplier are unable to resolve any such issues, the matter shall be dealt with in accordance with the Dispute Resolution Procedure.
- 31.11 If the Authority does not raise any comments within five (5) Working Days of receipt of the Replacement Consortium Party Response or where the Authority has raised comments on the suitability of any organisation(s), those have been resolved pursuant to Clause 31.10, the Non-Defaulting Supplier shall proceed to assess the suitability of the shortlisted organisation(s) in accordance with the principles set out below:
- 31.11.1 the Non-Defaulting Supplier shall request that each shortlisted organisation (as the case may be) supplies a response to the original selection questionnaire and invitation to tender for this Contract;
- 31.11.2 the Non-Defaulting Supplier shall procure that each shortlisted organisation (as the case may be) attends any meetings with officers of the Authority or make representations to the Authority's Representative in relation to their ability to carry out the Services; and
- 31.11.3 the Non-Defaulting Supplier will assess each selection questionnaire and invitation to tender it receives from each shortlisted organisation and will select its preferred organisation to replace the Defaulting Supplier (the **Replacement Consortium Party**).
- 31.12 The Non-Defaulting Supplier will notify the Authority of the identity of the Replacement Consortium Party within one (1) Working Day of concluding its assessment pursuant to Clause 31.11 and the Authority shall confirm within three (3) Working Days its agreement to the Replacement Consortium Party replacing the Defaulting Supplier for the purpose of delivering the Services under this Contract and the Authority and the Non-Defaulting Supplier shall co-operate in good faith to facilitate the appointment of the Replacement Consortium Party to perform the Services under this Contract.
- 31.13 For the avoidance of doubt, the Non-Defaulting Supplier shall ensure:
- 31.13.1 that the Replacement Consortium Party fulfils the criteria for qualitative selection initially established for the purposes of this Contract and is awarded the position in compliance with the Public Contracts Regulations 2015; and
- 31.13.2 it enters into a consortium agreement with the Replacement Consortium Party on substantially similar terms to the Consortium Agreement entered into between Supplier A and Supplier B for the purposes of this Contract.

## **32 Consequences of expiry or termination**



**General provisions on expiry or termination**

- 32.1 The provisions of Clauses 5.8 (Specially Written Software warranty), 10.5 and 10.6 (VAT), 10.11 and 10.12 (Set-off and withholding), 12 (Records, reports, Audits and Open Book Data), 14.8 (Employment Indemnity), 14.9 (Income tax and national insurance contributions), 16 (Intellectual Property Rights), 17.1 (IPRs Indemnity), 19 (Confidentiality), 20 (Transparency and Freedom of information), 21 (Protection of Personal Data), 23 (Limitations on liability), 32 (Consequences of expiry or termination), 38 (Severance), 40 (Entire agreement), 41 (Third party rights), 43 (Disputes) and 45 (Governing law and jurisdiction), and the provisions of Schedules 1 (Definitions), 15 (Charges and Invoicing), 16 (Payments on Termination), 19 (Financial Reports and Audit Rights), 23 (Dispute Resolution Procedure), 24 (Reports and Records Provisions), 25 (Exit Management), 28 (Staff Transfer), and 32 (Intellectual Property Rights) and, subject to Clause 33.9 (Conflicts of Interest), Clauses 33.6 (Official Secrets Act and Finance Act) and 33.7 (Conflicts of Interest), shall survive the termination or expiry of this Contract.

**Exit Management**

- 32.2 The Parties shall comply with the provisions of Schedule 25 as applicable (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

**Payments by the Authority**

- 32.3 If this Contract is terminated by the Authority pursuant to Clause 31.1.1 (Termination by the Authority) or by the relevant Supplier pursuant to Clause 31.3.1 (Termination by the Supplier), the Authority shall pay the relevant Supplier the following payments (which shall be the relevant Supplier's sole remedy for the termination of this Contract):

32.3.1 the Termination Payment; and

32.3.2 REDACTED

- 32.4 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 31.1.2, 31.1.3 and/or 31.2 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

32.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 25 to each Supplier as applicable (Exit Management); and

32.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date.

- 32.5 The costs of termination incurred by the Parties shall lie where they fall if:

32.5.1 either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 31.1.3 or 31.2.2 (Termination by the Authority) or 31.3.2 (Termination by the Supplier); or

32.5.2 the Authority terminates this Contract under Clause 31.1.4.

**Payments by the Supplier**

- 32.6 In the event of termination or expiry of this Contract, each Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the relevant Supplier as at the date of expiry or termination.

- 32.7 If this Contract is terminated (in whole or in part) by the Authority pursuant to Clause 31.1.2 (Termination by the Authority) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the relevant Supplier of written notice (a **Milestone**

**Adjustment Payment Notice**) require the relevant Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

32.8 A Milestone Adjustment Payment Notice shall specify:

- 32.8.1 each CPP Milestone to which it relates;
- 32.8.2 in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Authority wishes to retain, if any (each such Deliverable being a **Retained Deliverable**); and
- 32.8.3 those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an **Allowable Price Adjustment**),

and may form part of a Termination Notice.

32.9 Either Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

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

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

32.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 32.7:

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

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

- 32.11.2 all licences granted by either Supplier relating to Non-retained Deliverables pursuant to Schedule 32A or 32B (Intellectual Property Rights) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment.

### **Partial Termination**

- 32.12 On expiry or partial termination of the Contract with respect to Supplier B or on Supplier B Exit (SI) in accordance with Schedule 25 (Exit Management), the Parties acknowledge that Supplier A shall not be responsible for delivering any part of the Supplier Solution that is set out in Schedule 8 (Supplier Solution) as being delivered by Supplier B; and
- 32.13 On partial termination of the Contract with respect to Supplier A or on Supplier A Exit (ERP) in accordance with Schedule 25 (Exit Management), the Parties acknowledge that Supplier B shall not be responsible for delivering any part of the Supplier Solution that is set out in Schedule 8 (Supplier Solution) as being delivered by Supplier A.

## **Section J - Miscellaneous and governing law**

### **33 Compliance**

#### **Health and Safety**

- 33.1 Each Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- 33.1.1 all applicable Law regarding health and safety; and
- 33.1.2 the Health and Safety Policy whilst at the Authority Premises.
- 33.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The relevant Supplier shall instruct the relevant Supplier's Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 33.3 Each Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.

#### **Employment law**

- 33.4 Each Supplier must perform its obligations, meeting the requirements of all applicable Law regarding employment at all times during the Term.
- 33.5 Each Supplier shall:
- 33.5.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) including but not limited to the Human Rights Act 1998);
- (b) the Authority's equality and diversity policy as provided to the relevant Supplier from time to time; and

- (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- 33.5.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 33.5.3 not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing no Supplier shall unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof; and
- 33.5.4 take all reasonable steps to secure the observance of Clause 35 by all Supplier Personnel.

#### **Official Secrets Act and Finance Act**

- 33.6 Each Supplier shall comply with the provisions of:
  - 33.6.1 the Official Secrets Acts 1911 to 1989; and
  - 33.6.2 section 182 of the Finance Act 1989.

#### **Conflicts of Interest**

- 33.7 Each Supplier:
  - 33.7.1 must take action to ensure that neither it nor its Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest; and
  - 33.7.2 must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 33.8 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract immediately by giving notice in writing to the relevant Supplier where there is or may be an actual or potential Conflict of Interest.
- 33.9 Clauses 33.6 and 33.7 shall apply for the duration of this Contract and for a period of two (2) years after its termination.

#### **Modern slavery**

- 33.10 Each Supplier:
  - 33.10.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
  - 33.10.2 shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
  - 33.10.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
  - 33.10.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

- 33.10.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 33.10.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- 33.10.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 33.10.8 shall within sixty (60) Working Days after the Effective Date complete the Modern Slavery Assessment Tool (MSAT), or share an existing Assessment, the results of which will be reviewed at periodicity to be agreed with the Authority during the Contract Term to reduce the risk of Modern Slavery and human trafficking taking place in the supply chain;
- 33.10.9 shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- 33.10.10 shall not use or allow child or slave labour to be used by its sub-contractors; and
- 33.10.11 shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline;
- 33.10.12 shall comply with any request by the Authority to complete the Modern Slavery Assessment Tool within sixty (60) days of such request;
- 33.10.13 shall, if the relevant Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the guidance Tackling Modern Slavery in Government Supply Chains, which can be found at:
- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830150/September\\_2019\\_Modern\\_Slavery\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf)
- and such remedial action plan shall be deemed to be a Rectification Plan;
- 33.10.14 will assist the Authority with any investigations into reports or risks identified of Modern Slavery or human trafficking in the supply chain;
- 33.10.15 shall comply with any request by the Authority to provide a copy of any reports of any sub-contractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;
- 33.10.16 shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied; and
- 33.10.17 shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Authority and relevant national or local law enforcement agencies.
- 33.11 For the purposes of an audit carried out pursuant to Paragraph 1.1.21 of the definition of the audit and access rights referred to in Part 3 of Schedule 19 (Financial Reports and Audit Rights) in addition to any other rights under the Contract, the Authority may instruct either Supplier to carry out such an audit of any Sub-Contractor by an independent third party and, if

so instructed, the relevant Supplier shall deliver a report to the Authority within ninety (90) days of such instruction.

- 33.12 If the relevant Supplier notifies the Authority pursuant to Clause 33.14 it 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 the Contract.
- 33.13 If the relevant Supplier is in Default under Clause 33.10 the Authority may by notice:
- 33.13.1 require the relevant Supplier to remove from performance of the Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
  - 33.13.2 immediately terminate the Contract in respect of the relevant Supplier.

### **Whistleblowing**

- 33.14 As soon as it is aware of it the relevant Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:
- 33.14.1 Law;
  - 33.14.2 Clauses 33.1 to 33.10 or 33.15; or
  - 33.14.3 Clause 37.
- 33.15 The relevant Supplier must not retaliate against any of the relevant Supplier's Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.
- 33.16 While on the Authority's Premises, each Supplier shall comply with any health and safety measures implemented by the Authority in respect of Supplier Personnel and other persons working there.
- 33.17 Each Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises, where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 33.18 Each Supplier shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Personnel and other persons working on the Authority's Premises in the performance of its obligations under the Contract.

## **34 Assignment and novation**

- 34.1 No Supplier shall assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Authority.
- 34.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
- 34.2.1 any Central Government Body;
  - 34.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; or
  - 34.2.3 any of the Service Recipients,

and the relevant Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 34.2.

- 34.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 34.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.
- 34.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a **Successor Body**), either Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (h) of the definition of Supplier Termination Event (as if references in that limb (h) to the relevant Supplier and the Guarantor were references to the Successor Body).

### **35 Waiver and cumulative remedies**

- 35.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this 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 or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 35.2 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.

### **36 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.

### **37 Prevention of fraud and bribery**

- 37.1 Each Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- 37.1.1 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
  - 37.1.2 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.
- 37.2 No Supplier shall during the term of this Contract:
- 37.2.1 commit a Prohibited Act; and/or
  - 37.2.2 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.
- 37.3 Each Supplier shall during the term of this Contract:
- 37.3.1 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;

- 37.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the relevant Supplier do not commit tax evasion facilitation offences as defined under that Act;
- 37.3.3 keep appropriate records of its compliance with its obligations under Clause 37.3.1 and make such records available to the Authority on request;
- 37.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017; and
- 37.3.5 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, including but not limited to by:
  - (a) having in place an established system that enables the relevant Supplier and Supplier Personnel to report inappropriate behaviour by colleagues in respect of Contract performance claims;
  - (b) ensuring that the relevant Supplier's performance management systems do not encourage individual Supplier Personnel to make false claims regarding achievement of Contract performance targets;
  - (c) ensuring a segregation of duties within the relevant Supplier's and/or Sub-Contractor's operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of Contract performance to the Authority; and
  - (d) ensuring that an audit system is implemented to provide periodic checks, as a minimum at six (6) monthly intervals, to ensure effective and accurate recording and reporting of Contract performance,

and shall provide such policies and procedures to the Authority upon request.

- 37.4 Each Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 37.1 and/or 37.2, or has reason to believe that it has or any of the relevant Supplier's Supplier Personnel have:
  - 37.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 37.4.2 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
  - 37.4.3 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.
- 37.5 If either Supplier makes a notification to the Authority pursuant to Clause 37.4, that Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (Records, reports, Audits and Open Book Data).
- 37.6 If either Supplier is in Default under Clauses 37.1 and/or 37.2, the Authority may by notice:



37.6.1 require the relevant Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or

37.6.2 immediately terminate this Contract.

37.7 Any notice served by the Authority under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **38 Severance**

38.1 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.

38.2 In the event that any deemed deletion under Clause 38.1 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 possible, achieves the Parties' original commercial intention.

38.3 If the Parties are unable to agree on the revisions to this Contract within five (5) Working Days of the date of the notice given pursuant to Clause 38.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 23 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, 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 38.3.

## **39 Further assurances**

39.1 Each Supplier Party undertakes at the request of the Authority and the Authority undertakes at the request of either Supplier (each a requesting party as applicable), and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

39.2 Each Supplier is required to disclose immediately to the Authority any material changes to its organisation that impacts on its on-going financial viability including details of the revenue replacement strategy and impacts awareness on its organisation's profitability and stability where significant contracts are due to end.

39.3 Each Supplier is required to notify the Authority within forty-eight (48) hours of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to that Supplier's financial viability.

39.4 Only where requested by the Authority, the relevant Supplier is required to provide any financial information which could include but is not limited to a copy of the annual accounts and annual returns.

39.5 Where a Parent Company Guarantee has been requested by the Authority, the relevant Supplier is required to provide the documents detailed in Clause 39.4 for the Parent Company, including a translation and conversion (profit and loss, balance sheet and key balance sheet notes) into GBP(£), stating the conversion rate used.

## **40 Entire agreement**

40.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding,

course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

40.2 No 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.

40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **41 Third party rights**

41.1 The provisions of Clause 17.1 (IPRs Indemnity), Paragraphs 2.1 and 2.3 of Part 3 of Schedule 28A (Staff Transfer – Supplier A), Part 4 of Schedule 28A (Staff Transfer – Supplier A), Paragraphs 1.4, 2.3 and 2.8 of Part 5 of Schedule 28A (Staff Transfer – Supplier A), Paragraphs 2.1 and 2.3 of Part 3 of Schedule 28B (Staff Transfer – Supplier B), Part 4 of Schedule 28B (Staff Transfer – Supplier B), Paragraphs 1.4, 2.3 and 2.8 of Part 5 of Schedule 28B (Staff Transfer – Supplier B) and the provisions of Paragraph 6.9 of Schedule 25 (Exit Management) (together **Third Party Provisions**) confer benefits on persons named or identified in such provisions other than the Parties (each such person a **Third Party Beneficiary**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

41.2 Each of the Service Recipients will be a Third Party Beneficiary for the purposes of CRTPA and may enforce the provisions set out below of the Contract pursuant to CRTPA and such other provisions of the Contract as maybe notified by the Authority to each Supplier from time to time:

41.2.1 Clause 9.6 (Emergency maintenance);

41.2.2 Clause 12 (Records, reports, Audits and Open Book Data);

41.2.3 Clause 18 (Authority data and Security Requirements);

41.2.4 Clause 19 (Confidentiality);

41.2.5 Clause 23 (Limitations on liability); and

41.2.6 Clause 32.2 (Exit management).

41.3 Subject to Clause 41.1 and 41.2, a person who is not a Party to this Contract has no right under the CRTPA 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.

41.4 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.

41.5 Any amendments or modifications to this Contract may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

41.6 Except for actions or claims made by Service Recipients pursuant to Clause 41.2, the Authority may enforce the provisions of this Contract on behalf of itself or any and all Service Recipients.

#### **42 Notices**

42.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

42.2 Any notice or other communication which is to be given by either Party shall be given by electronic mail or by letter (such letter may be delivered by hand or sent by registered post or

by recorded delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 42.3.

- 42.3 Subject to Clause 42.4, 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 service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
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
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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

	Supplier A	Supplier B	Authority
<b>Contact</b>	Legal Director, UK	Public Sector Lead for UK & Ireland, IBM Consulting  with a copy to:  Market Counsel for UK & Ireland (Head of Legal), IBM Legal Department	Synergy Commercial Director  with a copy to:  Chief Technology Officer, Synergy Programme
<b>Address</b>	Legal Department, Oracle Parkway, Thames Valley Park, Reading, Berkshire, RG6 1RA	20 York Road, London SE1 7ND	Caxton House, Tothill St, London SW1H 9NA

	Supplier A	Supplier B	Authority
<b>Email</b>	notices_gb@oracle.com	rhodri.arrowsmith@uk.ibm.com  with a copy to:  emma.wright@uk.ibm.com	Aikaterini.Morgan@dwp.gov.uk  with a copy to:  <a href="mailto:chris.murtagh@dwp.gov.uk">chris.murtagh@dwp.gov.uk</a>

- 42.5 Any of the Parties may change its address for service by serving a notice in accordance with this Clause.
- 42.6 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.3:
- 42.6.1 Step-In Notices;
  - 42.6.2 Force Majeure Notices;
  - 42.6.3 notices issued by the relevant Supplier pursuant to Clause 31.3 (Termination by the Supplier);
  - 42.6.4 Termination Notices; and
  - 42.6.5 Dispute Notices.
- 42.7 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 42.6 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 42.3) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 42.8 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 23 (Dispute Resolution Procedure)).

### **43 Disputes**

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

### **44 Counterparts**

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same agreement.

### **45 Governing law and jurisdiction**

- 45.1 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.
- 45.2 Subject to Clause 43 (Disputes) and Schedule 23 (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.

This Contract has been duly executed by the Parties on the date which appears at the head of its page 1.

**Signed** for and on behalf )  
**of Oracle Corporation UK Limited** )  
acting by an authorised signatory )

**Signed** for and on behalf )  
**of IBM United Kingdom Limited** )  
acting by an authorised signatory )

**Signed** for and on behalf of )  
**Secretary of State for Work and Pensions)**  
acting by an authorised officer with delegated )  
authority )