



**(1) THE SECRETARY OF STATE FOR JUSTICE**  
**-and-**

**(2) CGI IT UK LIMITED**

**AGREEMENT**  
relating to

the provision of Hosting Services

**TABLE OF CONTENTS**

SECTION A - PRELIMINARIES ..... 8

1.DEFINITIONS AND INTERPRETATION ..... 8

2.SCOPE OF THE AGREEMENT..... 10

3.DUE DILIGENCE ..... 11

SECTION B - DELIVERY AND ACCEPTANCE ..... 11

4.COMPLIANCE WITH PLANS..... 11

5.MILESTONES, TESTING AND APPROVAL ..... 12

6.DELAYS - GENERAL PROVISIONS ..... 14

7.DELAYS DUE TO HOSTING SUPPLIER DEFAULT ..... 16

8.DELAYS TO MILESTONES DUE TO AUTHORITY CAUSE..... 18

9.DELAYS DUE TO MORE THAN ONE PARTY ..... 19

10. TRANSFER OF ASSETS AND THIRD PARTY AGREEMENTS..... 19

SECTION C - SERVICE SUPPLY ..... 21

11. SERVICES ..... 21

12. SERVICE LEVELS ..... 23

13. LIABILITY IN THE OPERATIONAL PHASE ..... 26

14. STANDARDS AND REFERENCED DOCUMENTS ..... 27

15. QUALITY MONITORING..... 27

16. SERVICES IMPROVEMENT ..... 27

17. EQUIPMENT ..... 29

SECTION D - PAYMENT AND VALUE FOR MONEY PROVISIONS ..... 29

18. CHARGING AND INVOICING..... 29

19. TAX..... 30

20. RECOVERY OF SUMS DUE..... 31

21. NOT USED..... 31

22. FINANCIAL MODEL..... 31

SECTION E - CONTRACT GOVERNANCE ..... 31

---

23.	REPRESENTATIVES.....	31
24.	GOVERNANCE.....	31
25.	SUPPLY CHAIN RIGHTS .....	31
26.	AUDITS.....	36
27.	RECORDS AND REPORTS.....	38
28.	CHANGE CONTROL.....	38
29.	DISPUTES.....	38
	SECTION F - PERSONNEL.....	39
30.	HOSTING SUPPLIER PERSONNEL .....	39
31.	EMPLOYMENT INDEMNITY .....	40
32.	STAFF TRANSFER.....	41
33.	HEALTH AND SAFETY.....	41
34.	EQUALITY AND DIVERSITY .....	41
35.	NON-SOLICITATION.....	41
	SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY .....	42
36.	INTELLECTUAL PROPERTY RIGHTS.....	42
37.	LICENCES GRANTED BY THE HOSTING SUPPLIER.....	42
38.	LICENCES GRANTED BY THE AUTHORITY.....	43
39.	ASSIGNMENT OF IPR IN DATABASES.....	44
40.	PROJECT SPECIFIC IPR AND SPECIALLY WRITTEN SOFTWARE.....	45
41.	ESCROW.....	45
42.	AUTHORITY DATA.....	46
43.	PROTECTION OF PERSONAL DATA.....	47
44.	FREEDOM OF INFORMATION .....	57
45.	CONFIDENTIALITY .....	58
	SECTION H - HOSTING SUPPLIER AND AUTHORITY PROTECTIONS.....	61
46.	GENERAL OBLIGATIONS OF THE PARTIES.....	61
47.	WARRANTIES .....	62

---

48. NOT USED..... 65

49. CHANGE IN LAW ..... 65

SECTION I - RISK PROTECTION ..... 66

50. SECURITY REQUIREMENTS ..... 66

51. BUSINESS CONTINUITY ..... 66

52. FORCE MAJEURE ..... 67

SECTION J - INDEMNITIES, LIABILITY AND INSURANCE ..... 68

53. IPR INDEMNITY ..... 68

54. LIMITATIONS ON LIABILITY ..... 69

55. INSURANCE ..... 72

SECTION K - TERM, TERMINATION AND EXIT MANAGEMENT ..... 72

56. TERM ..... 72

57. TERMINATION RIGHTS ..... 73

58. REMEDIAL PLAN PROCESS ..... 78

59. CONSEQUENCES OF EXPIRY OR TERMINATION ..... 79

60. PAYMENTS MADE ON TERMINATION..... 80

61. EXIT MANAGEMENT ..... 81

62. STEP-IN RIGHTS ..... 82

SECTION L - MISCELLANEOUS AND GOVERNING LAW ..... 85

63. ASSIGNMENT AND NOVATION..... 85

64. WAIVER AND CUMULATIVE REMEDIES ..... 86

65. RELATIONSHIP OF THE PARTIES..... 87

66. PREVENTION OF CORRUPTION..... 87

67. PUBLICITY AND BRANDING..... 89

68. COMMERCIAL EXPLOITATION ..... 90

69. AUTHORITY ACCOMMODATION..... 90

70. SEVERANCE..... 91

71. FURTHER ASSURANCES ..... 92

---

72.	ENTIRE AGREEMENT .....	92
73.	THIRD PARTY RIGHTS.....	92
74.	NOTICES .....	92
75.	GOVERNING LAW AND JURISDICTION .....	93
76.	MODERN SLAVERY.....	93

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**SCHEDULES**

1. **Definitions**
2. **Service Requirements**
  - 2.1 Service Requirements
  - 2.2 Service Performance Management
  - 2.3 Standards
  - 2.4 Not used
  - 2.5 Security Management Plan
  - 2.6 Insurance Requirements
3. **Dependencies**
  - 3.1 Authority Responsibilities
  - 3.2 Other Service Towers Responsibilities
4. **Hosting Supplier Matters**
  - 4.1 Hosting Supplier Solution
  - 4.2 Commercially Sensitive Information
  - 4.3 Notified Sub-contractors
5. **Software**
  - 5.1 Software
  - 5.2 Licence Terms
  - 5.3 Escrow Terms
6. **Implementation and Testing**
  - 6.1 Project Management
  - 6.2 Work in Progress Requirements
  - 6.3 Asset Transfers
7. **Financial Matters**
  - 7.1 Charging and Invoicing
  - 7.2 Payments on Termination
  - 7.3 Not used
  - 7.4 Financial Distress
  - 7.5 Financial Model
8. **Governance**
  - 8.1 Governance
  - 8.2 Change Control Procedure
  - 8.3 Dispute Resolution Procedure
  - 8.4 Records Provisions
  - 8.5 Exit Management
  - 8.6 Business Continuity
  - 8.7 Document Approval Procedure
9. **Employment**
  - 9.1 Staff Transfers
  - 9.2 Key Personnel
10. **Not used**
11. **Referenced Documents**

12. **Data Protection**

**THIS AGREEMENT** is made on

2022

**BETWEEN:**

- (1) **The Secretary of State for Justice** of 102 Petty France, London, SW1H 9AJ, acting as part of the Crown ("**Authority**"); and
- (2) **CGI IT UK Limited** a company registered in England and Wales under company number 00947968 whose registered office is at 20 Fenchurch Street, 14<sup>th</sup> Floor, London EC3M 3BY ("**Hosting Supplier**").

**INTRODUCTION**

- A. The Authority and the Hosting Supplier entered into the Future IT Sourcing hosting agreement dated 19 May 2014. The Authority and Hosting Supplier entered into a further agreement for hosting services dated 17 April 2020 (the "2020 Hosting Agreement").
- B. There is a requirement for certain aspects of the hosting services being provided under the 2020 Hosting Agreement to be provided by the Hosting Supplier beyond the end of the 2020 Hosting Agreement to enable a gradual and flexible exit of services during the Term to the Authority's Replacement Hosting Supplier(s) and/or the Authority (as applicable).
- C. As a result, and following a period of negotiation between the parties in accordance with Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015, this Agreement documents the contractual basis on which the Hosting Supplier will deliver the Hosting Services to the Authority from the Effective Date 2022 onwards. On 31 October 2022 the Authority submitted a voluntary transparency notice to the Find a Tender Service, expressing its intention to enter into this Agreement. The parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- D. As part of the consideration for the Authority entering into this Agreement, the Hosting Supplier has in conjunction with this Agreement also entered into an agreement on the effective date with the Authority and each of its FITS Suppliers dated 2 September 2014 (the "Master Services Agreement").

**IT IS AGREED** as follows:

**SECTION A - PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the definitions set out in schedule 1 (Definitions) shall apply.



- 1.2 In this Agreement, unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it. The impact of any such amendment, extension or re-enactment on this Agreement shall be dealt with in accordance with clause 49 (Change in Law); and
  - 1.2.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.4 References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement.
- 1.5 Without prejudice to clauses 11.4 and 14.2, if there is any conflict between the clauses and the schedules and/or any annexes to the schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.5.1 the Master Services Agreement;
  - 1.5.2 the clauses and schedule 1 (Definitions);
  - 1.5.3 schedule 2.1 (Service Requirements);
  - 1.5.4 schedule 2.2 (Service Performance Management);
  - 1.5.5 any other schedules and their annexes and appendices (except for schedule 4.1);
  - 1.5.6 schedule 4.1 (Hosting Supplier Solution) save that in relation to the clarifications set out in Appendix 5 to schedule 4.1 (Hosting Supplier Solution) each clarification shall have the same order of precedence as the schedule which it clarifies as identified in the said Appendix 5; and
  - 1.5.7 any other document referred to in this Agreement or any other document attached to this Agreement.
- 1.6 Subject to the provisions of clauses 6 - 9 (inclusive) and 13, neither party to this Agreement shall be liable for any Default of its obligations under this Agreement to the extent that such Default is caused by a failure or delay by the other party in performing its obligations under this Agreement, provided and to the extent that the affected party notifies the other party of such failure or delay within thirty (30) days of the affected party becoming aware of its occurrence and of its likely impact.

- 1.7 In this Agreement, where any provision:
- 1.7.1 refers to Other FITS Suppliers or Exiting Suppliers doing something or behaving in a certain way, then (other than as expressly provided in the clauses of this Agreement or the Master Services Agreement) this shall not put any obligation on the Authority to ensure that those bodies do so and no failure by the Other FITS Suppliers or Exiting Suppliers to do so shall excuse the Hosting Supplier from any obligation or liability under this Agreement or the Master Services Agreement; and
  - 1.7.2 refers to the FITS Suppliers or another group to which the Hosting Supplier belongs doing something or behaving in a certain way, the Hosting Supplier shall do so.
- 1.8 In entering into this Agreement, the Authority is acting as part of the Crown.

## 2. SCOPE OF THE AGREEMENT

- 2.1 This Agreement and the Master Services Agreement relate to the provision of the Hosting Services and the Cross Tower Services, comprising the:
- 2.1.1 provision of the Hosting Services in accordance with all of the terms of this Agreement and the Master Services Agreement.
  - 2.1.2 delivery of all Hosting Services to the Sites and to the Users in accordance with all of the terms of this Agreement including, without limitation, schedule 2.1 (Service Requirements), schedule 2.2 (Service Performance Management), schedule 2.3 (Standards), schedule 2.5 (Security Management Plan), schedule 6.1 (Project Management) and schedule 8.6 (Business Continuity);
  - 2.1.3 delivery and support of the Work In Progress and any Future Services in accordance with the terms of the relevant Project Plans and schedule 6.2 (Work In Progress Requirements);
  - 2.1.4 Exit Management Services in accordance with schedule 8.5 (Exit Management) and the Exit Plan (i) upon termination or expiry of the entire Agreement; (ii) upon termination of part of the Hosting Services in accordance with clause 57.3 (Partial Termination); and (iii) at such times as the Authority decides to transition any FITS Services away from any Other FITS Supplier to any Replacement Hosting Supplier; and
  - 2.1.5 co-operation with the Authority and the Suppliers and the Other Authority Providers (including but not limited to compliance with the Master Services Agreement) to deliver the Authority's overall ICT infrastructure and associated services in an efficient, cost-effective, flexible and sustainable way that minimises service disruptions.
- 2.2 The Hosting Supplier shall provide the Hosting Services and the Cross Tower Services during the term of this Agreement in accordance with this Agreement and the Master Services Agreement.

- 2.3 The Hosting Supplier shall provide the Hosting Services and the Cross Tower Services in such manner so as to ensure that at all times the FITS Services are fully interoperable and that any one or more of the FITS Services is capable of being transferred to any Other FITS Supplier, to the Authority itself or to any Replacement Hosting Supplier.

**3. DUE DILIGENCE**

- 3.1 The Hosting Supplier acknowledges that it:
- 3.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
  - 3.1.2 has raised all relevant due diligence questions with the Authority before the Effective Date; and
  - 3.1.3 has entered into this Agreement and the Master Services Agreement in reliance on its own due diligence alone.
- 3.2 The Hosting Supplier acknowledges that it has inspected the End to End ICT Environment and has advised the Authority of any aspect of the End to End ICT Environment that is not suitable for the provision of the Hosting Services and that any necessary actions to remedy the unsuitable aspects of the End to End ICT Environment, together with a timetable for and the costs of those actions, have been specified in schedule 6.1 (Project Management).
- 3.3 If the Hosting Supplier has either failed to inspect the End to End ICT Environment or failed to notify the Authority of any required remedial actions in accordance with clause 3.2 then the Hosting Supplier shall not be entitled to recover any additional costs or charges from the Authority relating to any unsuitable aspects of the End to End ICT Environment except in respect of any latent structural defect in the Authority Premises. The burden of proof shall be on the Hosting Supplier to prove to the Authority that any work to the Authority Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Hosting Supplier shall not incur such additional costs or charges without obtaining the Authority's prior written consent.

**SECTION B - DELIVERY AND ACCEPTANCE**

**4. COMPLIANCE WITH PLANS**

- 4.1 The Hosting Supplier shall deliver and implement its Hosting Supplier Solution in accordance with schedule 4.1 (Hosting Supplier Solution).
- 4.2 When undertaking Projects that have Milestones, the Hosting Supplier shall meet the Acceptance Criteria for each by the due date for each Milestone.
- 4.3 Any changes to any Project Plans and any other Documentary Deliverable shall be handled in accordance with schedule 8.2 (Change Control Procedure).
- 4.4 Not used

**Future Services**

- 4.5 Schedule 6.1 (Project Management) shall also be relevant and be applied to deliver any Future Services.
- 4.6 The Hosting Supplier shall provide Work In Progress and Future Services in accordance with schedule 6.1 (Project Management) and any relevant Project Plans and the Hosting Supplier shall monitor the performance of such services against the Project Plans.
- 4.7 Any changes to any Project Plan or any Documentary Deliverable shall be subject to Configuration Management in accordance with schedule 2.1 (Service Requirements).

**5. MILESTONES, TESTING AND APPROVAL****Milestones**

- 5.1 The Hosting Supplier shall be responsible for Achieving all Milestones in accordance with this Agreement. For a Milestone to be Achieved, a Test Certificate has been issued in respect of all components which are to be tested, all Acceptance Criteria for that Milestone must have been met and a Milestone Achievement Certificate issued by the Authority in relation to it. The Acceptance Criteria for a Milestone shall be established, settled and augmented in accordance with Part 3 of schedule 6.1 (Project Management) and established in accordance with the applicable acceptance, testing and/or evaluation procedure for that Milestone. This shall include without limitation:
- 5.1.1 Approval by the Authority of all Documentary Deliverables associated with that Milestone in accordance with the Document Approval Procedure set out in schedule 8.7 (Document Approval Procedure), schedule 6.1 (Project Management) and their Approval Criteria;
- 5.1.2 Approval by the Authority of all non-documentary Deliverables associated with that Milestone in accordance with the applicable testing procedure, such as any Service Acceptance Testing process, and their agreed Approval Criteria; and
- 5.1.3 Approval by the Authority of the Test Success Criteria in accordance with Part 3 of schedule 6.1 (Project Management).
- 5.2 Any Charges related to the Achievement of a Milestone shall only be payable following the issue by the Authority of a Milestone Achievement Certificate and the Hosting Supplier may not issue an invoice for the Charges prior to receipt of such Milestone Achievement Certificate.
- 5.3 The Authority shall issue Milestone Achievement Certificates within ten (10) Working Days of the Acceptance Criteria for the relevant Milestone having been met and demonstrated as such to the Authority.

**Approval**

- 5.4 All non-documentary Deliverables shall be assessed in accordance with the Quality Criteria, the Service Validation and Testing Policies and Procedures and shall only be

- Approved once the Authority agrees the Deliverable meets its applicable Approval Criteria (which shall include but are not limited to the successful completion of the Service Validation and Testing Policies and Procedures). All Documentary Deliverables shall be subject to the Document Approval Procedure or (as applicable to the Documentary Deliverables referred to therein) the provisions in paragraph 1.11 of schedule 6.1 (Project Management).
- 5.5 Without prejudice to the Charges, each party shall bear its own costs in respect of the application of schedule 6.1 (Project Management), the Service Validation and Testing Policies and Procedures and Document Approval Procedure. However, if a Deliverable does not successfully meet its Approval Criteria or pass the Document Approval Procedure by the Milestone Date or in the case of a Documentary Deliverable by the due date expressly set out in this Agreement, then the provisions of clause 5.6 shall apply. If the Hosting Supplier successfully Achieves the applicable Approval Criteria associated with any Deliverable the Authority shall notify the Hosting Supplier accordingly in accordance with any timescales and processes set out in this Agreement or (failing such provisions) in writing within a reasonable period.
- 5.6 If the Hosting Supplier does not successfully complete or Achieve any Approval, Service Validation and Testing Policies and Procedures or Document Approval Procedure by the relevant Milestone Date or in the case of a Documentary Deliverable by the due date expressly set out in this Agreement, the provisions of clauses 6 (Delays - General Provisions), 7 (Delays Due to Hosting Supplier Default), 8 (Delays to Milestones due to Authority Cause) and 9 (Delays Due to More Than One Party) shall apply as appropriate.
- 5.7 Notwithstanding the issuing of any Milestone Achievement Certificate under clause 5.3 or notification of Approval under clause 5.5, the Hosting Supplier shall remain solely responsible for ensuring that the Hosting Supplier Solution as designed and developed is suitable for the delivery of the Hosting Services and the Cross Tower Services, for ensuring that the Hosting Services are implemented in accordance with this Agreement and that the Service Levels are achieved. No waiver or estoppel shall arise as a result of the issue of (i) a Milestone Achievement Certificate or notification of Approval under clause 5.5, (ii) a conditional Milestone Achievement Certificate or notification of Approval pursuant to clause 7.2.1.
- 5.8 The Hosting Supplier acknowledges that any certificate or notification of the successful completion of any Deliverable or Milestone provided by the Authority pursuant to clauses 5.1 to 5.4 shall not relieve the Hosting Supplier from any liability, responsibility or obligation to provide the Hosting Services in accordance with the Service Descriptions set out in schedule 2.1 (Service Requirements) and the Service Levels set out in schedule 2.2 (Service Performance Management) or from any liability in respect of the application of the Delay Payments or Service Credits pursuant to schedule 7.1 (Charging and Invoicing) or any other obligation of the Hosting Supplier or any remedy of the Authority under this Agreement and/or the Master Services Agreement.

### **Milestone Payments**

- 5.9 Not used.

**Document Approval Procedure**

- 5.10 The Hosting Supplier shall submit any relevant Documentary Deliverable for Approval in accordance with the applicable Document Review Plan, shall follow the applicable provisions of the Document Approval Procedure and shall meet its respective obligations under such Document Review Plan.

*Approval Success*

- 5.11 The Document Approval Procedure shall be recorded as successful where at the end of the review all the relevant Quality Criteria for the review are met and the Authority has notified the Hosting Supplier in writing by means of an Approval Certificate ("**Approval Success**").

*Approval Failure*

- 5.12 The Document Approval Procedure shall record an approval failure where at the end of the review any of the relevant Quality Criteria for a review are not met ("**Approval Failure**"). The Authority may notify the Hosting Supplier of the reasons for such Approval Failure.
- 5.13 Where there is an Approval Failure pursuant to clause 5.12, the Authority may fix revised dates in the Document Review Plan and the Hosting Supplier shall correct the errors which caused the Approval Failure and the Document Approval Procedure shall be re-performed according to such revised dates.
- 5.14 If an Approval Failure (or any proposed extension to the Document Review Plan following such Approval Failure) results in or is likely to result in the failure by the Hosting Supplier to Achieve a Milestone, then without prejudice to the Authority's other rights and remedies under this Agreement, clauses 6 and 7 shall apply as appropriate.
- 5.15 Each party shall bear its own costs in respect of the Document Approval Procedure, unless there is an Approval Failure in which case the Hosting Supplier shall pay any costs incurred by the Authority in further review or re-trialling of a Documentary Deliverable pursuant to clause 5.13 or as a result of an Approval Failure.

**6. DELAYS - GENERAL PROVISIONS**

- 6.1 If, at any time, the Hosting Supplier becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date or obtain the Authority's Approval of any Deliverable by its due date the Hosting Supplier shall as soon as reasonably practicable notify the Authority of the fact of the Delay and summarise the reasons for it. A due date shall include any date that is a contractual time period, a date for Achievement of a Deliverable in any Project Plans or any date that is identified in the extant Project Plans.
- 6.2 The Hosting Supplier shall, as soon as reasonably practicable and in any event not later than ten (10) Working Days after the initial notification under clause 6.1, give the Authority full details in writing of:
- 6.2.1 the reasons for the Delay;

- 6.2.2 the consequences of the Delay; and
- 6.2.3 if the Hosting Supplier claims that the Delay is due to an Authority Cause, the reason for making that claim.
- 6.3 Whether the Delay is due to an Authority Cause or not, the Hosting Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences (including financial, time or otherwise) of the Delay, including but not limited to complying with its obligations under the Master Services Agreement. Where it appears that the Delay may be caused by an Exiting Supplier, any Other FITS Supplier, any Collaborating Supplier or any Other Authority Provider(s), the Hosting Supplier shall provide all necessary assistance in establishing the causes of the Delay and whether the Exiting Supplier, Other FITS Supplier, Collaborating Supplier or Other Authority Provider is indeed responsible for the Delay.
- 6.4 Where the Hosting Supplier considers that a Delay is being caused or contributed to by an Authority Cause, the Authority shall not be liable to compensate the Hosting Supplier for Delays to which clauses 8 or 9 apply unless the Hosting Supplier has fulfilled its obligations set out in, and in accordance with, clauses 6.1, 6.2 and 6.3.
- 6.5 Any Disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, the Delay.

**Correction Plan**

- 6.6 The Hosting Supplier shall submit a draft Correction Plan where:
- 6.6.1 it becomes aware that it will not (or is reasonably likely not to) Achieve a Milestone by the Milestone Date;
- 6.6.2 it has failed to Achieve a Milestone by its Milestone Date, whether that failure arises because of:
- 6.6.2.1 a failure to submit any or all Deliverables in respect of that Milestone for Approval;
- 6.6.2.2 the failure of any or all Deliverables successfully to obtain Approval;  
or
- 6.6.2.3 any other non-conformance or failure to achieve Acceptance Criteria in respect of that Milestone;
- 6.6.3 it becomes aware that it will not (or is reasonably likely not to) be able to submit a Deliverable by the scheduled date for delivery of that Deliverable;
- 6.6.4 any Service Validation and Testing Policies and Procedures, Approval Criteria or Document Approval Procedure is not completed successfully in relation to a Deliverable by the due date; or
- 6.6.5 it becomes aware any Service Validation and Testing Policies and Procedures, Approval Criteria or Document Approval Procedure will not (or is reasonably

likely not to) be completed successfully in relation to a Deliverable by the due date.

- 6.7 The draft Correction Plan shall identify the issues arising out of the Delay and the steps that the Hosting Supplier proposes to take to Achieve the Milestone or obtain Approval of the Deliverable (as appropriate) in accordance with this Agreement.
- 6.8 The draft Correction Plan shall be submitted to the Authority, for its approval as soon as possible and in any event not later than ten (10) Working Days (or such other period as the Authority may permit and notify to the Hosting Supplier in writing) after the initial notification under clause 6.1, the issue of a Non-conformance Report or (if neither of these applies) the relevant event under clause 6.6.
- 6.9 The Authority shall not withhold its approval of a draft Correction Plan unreasonably and shall provide approval or rejection of the draft Correction Plan to the Hosting Supplier within ten (10) Working Days. If the Authority does not approve the draft Correction Plan it shall inform the Hosting Supplier of its reasons promptly following its decision to withhold approval and the Hosting Supplier shall take those reasons into account in the preparation of a further draft Correction Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft.
- 6.10 The Hosting Supplier shall comply with its Correction Plan following its approval by the Authority.
- 6.11 Production, approval and/or implementation of a Correction Plan shall not prevent the Authority from exercising any other rights and remedies under this Agreement or otherwise in relation to the applicable matter.

**Bounded Mechanisms**

- 6.12 Any Bounded Mechanisms agreed to in accordance with schedule 7.1 (Charging and Invoicing) shall apply in accordance with the terms applying to them, and the provisions of this clause 6 and clauses 7 to 9 shall be subject to those Bounded Mechanisms.

**7. DELAYS DUE TO HOSTING SUPPLIER DEFAULT**

- 7.1 If a Deliverable does not satisfy the relevant Approval Criteria and/or a Milestone is not Achieved due to the Hosting Supplier's Default, the Authority shall issue a Non-conformance Report to the Hosting Supplier describing the applicable non-conformities or issues. The Authority will then have the options set out in clause 7.2.
- 7.2 The Authority may at its discretion (without waiving any rights in relation to the other options) choose to:
  - 7.2.1 issue a Milestone Achievement Certificate under clause 5.3 or notification of Approval under clause 5.5 conditional on the remediation of the non-conformities or other issues, in accordance with an approved Correction Plan; and/or
  - 7.2.2 in relation to material non-conformances or issues (including without limitation failure to Achieve Milestones or pass Service Validation and Testing Policies and



Procedures successfully (other than where such Service Validation and Testing Policies and Procedures are agreed in writing not to trigger the right in this clause 7.2.2)) refuse to issue a conditional Milestone Achievement Certificate or notification of Approval in accordance with clause 7.2.1 until the date when the Milestone is Achieved or the Deliverable Approved in accordance with an approved Correction Plan and/or exercise any right it may have under clause 57.1 (Termination for Cause by the Authority).

7.3 Delay Payments shall be payable by the Hosting Supplier on demand, where schedule 7.1 (Charging and Invoicing) or any relevant agreed project documentation identifies that Delay Payments are payable in respect of any Milestone or Deliverable that is not Achieved or Approved by its due date for being Achieved or Approved (as appropriate). The Delay Payments will accrue on a daily basis from the relevant due date and will continue to accrue until the date when the Milestone is Achieved or the Deliverable Approved in accordance with an approved Correction Plan.

7.4 Where neither schedule 7.1 (Charging and Invoicing) nor the relevant agreed project documentation specifies that Delay Payments will be payable in respect of a Milestone or Deliverable the Authority reserves its rights. Otherwise Delay Payments are provided as the primary financial remedy for the Hosting Supplier's failure to Achieve a Milestone by the relevant Milestone Date or provide the relevant Deliverable(s) and it shall be the Authority's exclusive financial remedy except where:

7.4.1 the Authority is otherwise entitled to terminate this Agreement for the Hosting Supplier's Default; or

7.4.2 the failure to Achieve the Milestone or obtain the Authority's Approval of the Deliverable(s) exceeds the expiry of any relevant Exiting Contract(s) (or any relevant services under the relevant Exiting Contract(s)) and/or means that any ATP Milestone will only be Achieved after the expiry of any relevant Exiting Contract(s) (or any relevant services under the relevant Exiting Contract(s)); or

7.4.3 Service Credits become payable in respect of any Service Level in a subsequent Reporting Period where the Authority has used its discretion to issue a Milestone Achievement Certificate or notification of Approval under clause 7.2.1 in respect of any ATP Milestone or SCD Milestone; or

7.4.4 any additional cost or liability is incurred by the Authority to an Exiting Supplier or any other third party; or

7.4.5 the Maximum Delay Payment Period for a Milestone is exceeded,

provided that during the Maximum Delay Payment Period only the Authority shall not be entitled to also claim for Anticipated Savings in addition to Delay Payments under clauses 7.4.2, 7.4.4 and 7.4.5.

7.5 Where the Authority issues a conditional Milestone Achievement Certificate or notification of Approval as specified in clause 7.2.1, it may (at its discretion) extend the Milestone Date (or due date for Approval) and any subsequent dates.

- 7.6 Any Correction Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate or notification of Approval unless the Authority is willing to agree otherwise. In the latter case the Hosting Supplier shall submit a Correction Plan for approval by the Authority within five (5) Working Days of receipt of the Non-conformance Report.
- 7.7 Notwithstanding clause 7.3, where a Correction Plan issued under this clause 7 provides for Authority Testing or Approval of any Deliverable, the Authority shall (without limitation to any other rights or remedies) be entitled to recover from the Hosting Supplier any reasonable additional costs it may incur as a direct result of further approval review or re-Testing of the Deliverable provided that such amounts will be subject to clause 54 (Limitations on Liability).

## 8. DELAYS TO MILESTONES DUE TO AUTHORITY CAUSE

- 8.1 Without prejudice to clause 6.3 and subject to clause 6.4, if the Hosting Supplier would have been able to Achieve the Milestone by its Milestone Date or obtain the Authority's Approval of any Deliverable by its scheduled date (in both cases demonstrated to the Authority's satisfaction) but has failed to do so as a result of an Authority Cause the Hosting Supplier will have the rights and relief set out in this clause 8 provided that the Dependencies Register or Delivery Dependencies Log includes a Dependency on the Authority (or, under clause 27.12 of the Master Services Agreement, is deemed to do so) related to the Authority Cause that is expressly linked to Achievement of the Milestone or completion of the Deliverable.
- 8.2 The Hosting Supplier shall (subject to any provisions of clause 27.10 of the Master Services Agreement):
- 8.2.1 subject to clause 8.3, be allowed an extension of time equal to the Delay caused by that Authority Cause (other than to the extent it can reasonably recover the effect of the Delay in less than that period);
  - 8.2.2 not be in breach of this Agreement as a result of the failure to Achieve the relevant Milestone by its Milestone Date or obtain the Authority's Approval of the relevant Deliverable by its scheduled date;
  - 8.2.3 have no liability for Delay Payments in respect of the relevant Milestone or Deliverable to the extent that the Delay results directly from the Authority Cause; and
  - 8.2.4 be entitled to compensation as set out in clause 8.4.
- 8.3 The Authority Representative, acting reasonably, shall:
- 8.3.1 consider the duration of the Delay, the nature of the Authority Cause and the effect of the Delay and the Authority Cause on the Hosting Supplier's ability to comply with any relevant Project Plan;
  - 8.3.2 consult with the Hosting Supplier Representative in determining the effect of the Delay;

- 8.3.3 fix a Revised Milestone Date or date by which to obtain the Authority’s Approval of any Deliverable; and
- 8.3.4 if appropriate, make any consequential revision to subsequent Milestone Dates and other dates in the Project Plans.
- 8.4 If the Hosting Supplier has demonstrated to the Authority’s satisfaction that the Hosting Supplier has incurred a direct loss and/or expense as a result of a Delay due to an Authority Cause, the Hosting Supplier shall be entitled to compensation to the extent that it cannot mitigate that loss or expense. The Hosting Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Hosting Supplier's claim to compensation.
- 8.5 Any Change that is required to dates in any relevant Project Plan pursuant to clause 8.3 or the Charges pursuant to clause 8.4 shall be implemented in accordance with the Change Control Procedure. If the Hosting Supplier's analysis of the effect of the Delay in accordance with clause 6.2 permits a number of options, then the Authority shall have the right to select which option shall apply.
- 8.6 The Authority shall not delay unreasonably when considering and determining the effect of a Delay under this clause 8 or in agreeing a resulting Change pursuant to the Change Control Procedure.
- 8.7 The Hosting Supplier shall and shall procure that each Sub-contractor shall take and continue to take all reasonable steps to eliminate or, if this is not possible, mitigate any Delays, losses and/or expenses that it incurs as a result of an Authority Cause.

**9. DELAYS DUE TO MORE THAN ONE PARTY**

Without prejudice to clause 6.3 and subject to clause 6.4, where a Delay is attributable in part to the Hosting Supplier's Default (or any other cause for which the Authority is not obliged to provide compensation) and in part to an Authority Cause, the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. The parties agree that Delay Payments and compensation payable pursuant to clause 8.4 (Delays to Milestones Due to Authority Cause) may be recoverable subject to reductions to reflect the extent to which the Authority and any other cause respectively has contributed to the Delay. If necessary, the parties may escalate the matter in accordance with the Dispute Resolution Procedure.

**10. TRANSFER OF ASSETS AND THIRD PARTY AGREEMENTS**

- 10.1 With effect from the applicable Agreed Transfer Date (as this term is defined in schedule 6.3 (Asset Transfers)) relating to the Transferring In Asset(s) or the SCD relating to the Hosting Services to which the applicable Transferring In Third Party Agreement(s) relate the Authority shall:
  - 10.1.1 sell to the Hosting Supplier and the Hosting Supplier shall purchase the Transferring In Assets; and

- 10.1.2 subject to clause 10.5, transfer the Transferring In Third Party Agreements to the Hosting Supplier.
- 10.2 The aggregate purchase price of the Transferring In Assets is £1. Such sum shall be paid by the Hosting Supplier to the Authority by bank transfer on the Effective Date.
- 10.3 Risk and, subject to the Hosting Supplier complying with clause 10.2, title in the Transferring In Assets shall pass to the Hosting Supplier on the applicable Agreed Transfer Date being the date on which the Transferring In Assets are collected by and transfer to the Hosting Supplier. The Hosting Supplier shall be wholly responsible for the packaging, haulage and carriage of the Transferring In Assets from the Exiting Supplier(s)' sites to the Data Centre Facilities and unpacking and removing the packaging from the Data Centre Facilities as and when they are required for provision of the Hosting Services and in each case at the Hosting Supplier's sole cost.
- 10.4 The Hosting Supplier acknowledges that it has had the opportunity of inspecting the Transferring In Assets to satisfy itself as to the condition of the same and its suitability and sufficiency to perform the Hosting Services in accordance with the provisions of clause 11 (Services). As such, the Authority sells the Transferring In Assets, "as is" and hereby excludes in relation to such equipment all representations (unless fraudulent), warranties and conditions and other contractual terms howsoever arising (whether by statute, common law or otherwise) to the maximum extent permitted by Law.
- 10.5 The Authority shall use reasonable endeavours to assign, novate or transfer each of the Transferring In Third Party Agreements with effect from the SCD to which those Transferring In Third Party Agreements relate. If any consent of any third party is required to the assignment, novation or transfer of a Transferring In Third Party Agreement and has not been obtained at or prior to the applicable SCD, the Authority and the Hosting Supplier shall each use all reasonable endeavours to obtain that consent as soon as possible after the applicable SCD. Unless or until any Transferring In Third Party Agreement is assigned, novated or transferred or any necessary consent is obtained, the parties shall work together, in good faith, to agree an alternative solution which may include the Hosting Supplier finding an alternative source of supply and/or the Authority holding the benefit of the relevant Transferring In Third Party Agreement as agent for the Hosting Supplier.
- 10.6 The Hosting Supplier undertakes to observe and fulfil all the Authority's obligations under and to perform the Transferring In Third Party Agreement after the applicable SCD and shall indemnify the Authority against any loss or damage which it may suffer as a result of the Hosting Supplier's breach of any of terms of the Transferring In Third Party Agreement.
- 10.7 The Authority will allow the Hosting Supplier to use those Hardware Assets identified in schedule 6.3 (Asset Transfers) as are reasonably required for the purpose of providing the Hosting Services only.
- 10.8 Whilst the Hardware Assets identified in schedule 6.3 (Asset Transfers) are being used by the Hosting Supplier in the provision of the Hosting Services in accordance with clause 10.7, the Hosting Supplier shall maintain and repair such Hardware Assets, as is

reasonably necessary and in consultation and agreement with the Authority. Such maintenance and repair shall be carried out or procured by the Hosting Supplier at no additional cost to the Authority including, for the avoidance of doubt, during any period after any warranties and/or indemnities in respect of the Hardware Assets have expired. For the avoidance of doubt, the Hosting Supplier's obligation to maintain and repair the Hardware Assets in this clause 10.8 shall only apply to Hardware Assets used by the Hosting Supplier in the provision of the Hosting Services.

- 10.9 The Hosting Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Hosting Supplier, its agents, employees or Sub-contractors to the Hardware Assets in the course of providing the Hosting Services.

**SECTION C - SERVICE SUPPLY**

**11. SERVICES**

- 11.1 The Hosting Supplier shall provide the Hosting Services and the Cross Tower Services from the Effective Date and shall ensure that the Hosting Services and (subject to the Master Services Agreement) the Cross Tower Services:

- 11.1.1 comply in all respects with applicable provisions of the Service Requirements as set out in schedule 2.1 (Service Requirements) in accordance with (from the Effective Date) the Service Levels;

- 11.1.2 are supplied in accordance with the Hosting Supplier's Solution and the terms of this Agreement and the Master Services Agreement; and

- 11.1.3 the Hosting Supplier shall not use Transferring In Assets or the Hosting Supplier ICT Environment (unless where agreed as for "Shared Use" and set out as such in the Assets Registers maintained in accordance with schedule 2.1 (Service Requirements) other than for the provision of the FITS Services except with the prior consent of the Authority.

- 11.2 Without prejudice to clause 11.1, the Hosting Supplier shall supply the Hosting Services (whether in their entirety or in part):

- 11.2.1 from receipt of a Milestone Achievement Certificate in respect of Authority to Proceed for the relevant part of the Hosting Services (and the Hosting Supplier shall ensure that this occurs prior to or on the due date for the applicable ATP Milestone); and

- 11.2.2 in accordance with clause 12.

- 11.3 The Hosting Supplier shall perform its obligations under this Agreement and the Master Services Agreement, including those in relation to the other FITS Services, in accordance with:

- 11.3.1 Good Industry Practice;

- 11.3.2 the Hosting Supplier's own established procedures and practices;

- 11.3.3 the Security Policy;
  - 11.3.4 the Quality Plans;
  - 11.3.5 the HR Policies; and
  - 11.3.6 the HMCTS Introduction, Digital and Technology Services Issue 1.
- 11.4 The Hosting Supplier shall draw any conflict between any of the requirements of clause 11.1 and the requirements of clause 11.3 to the attention of the Authority and shall comply with the Authority's decision on the resolution of that conflict.
- 11.5 The Hosting Supplier shall ensure that the Hosting Services, the Cross Tower Services and the Hosting Supplier ICT Environment integrate with the Authority's ICT Environment and the FITS Supplier ICT Environments, including as set out in schedule 2.1 (Service Requirements) and other provisions of this Agreement and the Master Services Agreement.
- 11.6 In the event of the Hosting Supplier's failure to provide the Hosting Services or the Cross Tower Services or to comply with its obligations in accordance with this Agreement and/or the Master Services Agreement, the Authority may, without prejudice to its other rights, require the Hosting Supplier to re-perform the Hosting Services and/or Cross Tower Services and/or to comply with its obligations.
- 11.7 The provisions of this clause 11 in relation to Cross Tower Services shall be subject to the provisions of the Master Services Agreement, including in relation to liability in respect of them.

#### **Future Services**

- 11.8 The Authority may agree with the Hosting Supplier in accordance with schedule 8.2 (Change Control Procedure) for the Hosting Supplier to provide Future Services. The Hosting Supplier acknowledges that the Authority is not obliged to take any Future Services from the Hosting Supplier and that nothing prevents the Authority from receiving services from any third party.
- 11.9 Following agreement to the provision of a Future Service in accordance with clause 11.8, the Hosting Supplier shall:
- 11.9.1 implement the relevant Future Service in accordance with the applicable Project Plan, schedule 2.3 (Standards) and ITIL; and
  - 11.9.2 subject all non-documentary Deliverables under the relevant Future Service to Approval as agreed or appropriate, with associated Documentary Deliverables being subject to the Document Approval Procedure.
- 11.10 Clauses 5 to 9 shall apply to Future Services.
- 11.11 Following the successful implementation of Future Services:
- 11.11.1 such Future Services implemented in accordance with these clauses 11.8 to 11.11 (inclusive) shall become part of the Hosting Services for the purpose of all other

sections, clauses, obligations and rights contained within this Agreement and/or the Master Services Agreement;

- 11.11.2 any additional or reduced charges for any such new or amended Hosting Services shall be incorporated in the Charges; and
- 11.11.3 any Service Levels in respect of such new or amended Hosting Services shall be incorporated in schedule 2.2 (Service Performance Management).

**12. SERVICE LEVELS**

- 12.1 For any part or parts of the Hosting Services, the Hosting Supplier shall provide the Hosting Services to meet or exceed the Service Levels from the Effective Date or any applicable SCD Milestone as set out in any Project Plan. The remaining provisions of this clause 12 are subject to the provisions of clause 13 (Liability in the Operational Phase).
- 12.2 If there is a Service Failure or if the Hosting Supplier believes that there will be a Service Failure, the Hosting Supplier shall notify the Authority promptly of the Service Failure or likely Service Failure and immediately take all remedial action that is necessary to rectify and/or (as the case may be) to prevent the Service Failure from taking place or recurring.
- 12.3 If there is a Service Level Failure, or if the Hosting Supplier believes that there will be a Service Level Failure, the Hosting Supplier shall:
  - 12.3.1 notify the Authority and immediately take all remedial action that is reasonable to rectify and/or (as the case may be) to prevent the Service Level Failure from taking place or recurring;
  - 12.3.2 where required in accordance with schedule 2.2 (Service Performance Management), provide the Authority with and/or contribute to a Recovery Plan setting out the action that it will take to rectify the Service Level Failure and/or (as the case may be) to prevent the Service Level Failure from taking place or recurring; and
  - 12.3.3 carry out any Recovery Plan agreed in accordance with this clause 12 in accordance with its terms.
- 12.4 Subject to any Service Credit limit set out at paragraph 9.4 of schedule 7.1 (Charging and Invoicing) and other provisions in schedule 2.2 (Service Performance Management), where applicable the Hosting Supplier shall automatically credit the Authority with Service Credits in accordance with schedule 7.1 (Charging and Invoicing). Service Credits shall be shown as a deduction from the amount due from the Authority to the Hosting Supplier in the next invoice then due to be issued under this Agreement. If no invoice is due to be issued then the Hosting Supplier shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Hosting Supplier as a debt within ten (10) Working Days of issue.

- 12.5 Where Service Credits are provided as a remedy for Service Level Failure in respect of the relevant Hosting Services they shall be the Authority's exclusive financial remedy except where:
- 12.5.1 the aggregate number of Service Level Failures which relate to the same or to different parts of the Hosting Services exceeds thirty (30) over a period of three consecutive months, or the aggregate number of Service Level Failures which relate to the same part of the Hosting Services exceeds six (6) over a period of three consecutive months, and for the purposes of this clause 12.5.1 only the Service Level Failures are primarily caused by the Hosting Supplier;
  - 12.5.2 any Service Level Failure exceeds the Service Level Threshold or a Termination Threshold;
  - 12.5.3 the failure to perform the Hosting Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, or wilful default;
  - 12.5.4 a Service Level Failure results in:
    - 12.5.4.1 corruption or loss of data;
    - or
    - 12.5.4.2 subject to the provisions of the clarification numbered 7 in Appendix 5 to schedule 4.1 (Hosting Supplier Solution), a threat to the security of the Authority or any of its operations;
  - 12.5.5 the Authority is otherwise entitled to or does terminate this Agreement for the Hosting Supplier's Default pursuant to clauses 57.1 and 57.3; or
  - 12.5.6 schedule 2.2 (Service Performance Management) provides otherwise.
- 12.6 Where Service Credits are not provided as a remedy for a Service Failure and the Hosting Supplier has failed to address such a Service Failure to the reasonable satisfaction of the Authority, then the Authority may exercise the following rights and remedies:
- 12.6.1 on written notice to the Hosting Supplier, withhold a reasonable and proportionate amount of the Service Charges for those Hosting Services until such time as the relevant Service Failure is remedied. Provided that the relevant Service Failure is remedied (and adequate steps are taken to prevent re-occurrence) to the Authority's satisfaction, the Authority shall resume payment of the relevant part of the Service Charges, including payment of the amount retained; and/or
  - 12.6.2 require the Hosting Supplier to provide a draft Recovery Plan of the action that the Hosting Supplier will take and actions which it considers the Authority and, if appropriate, an Other FITS Supplier should take to restore the Service Levels and to prevent the Service Failure(s) from reoccurring in the future.
- 12.7 Where the Authority invokes its right pursuant to clause 12.6.2, the Hosting Supplier shall:
- 12.7.1 submit the draft Recovery Plan for the Authority's approval within ten (10) Working Days from receipt of the Authority's notice pursuant to clause 12.6.2.



The Authority shall not withhold or delay its approval of a draft Recovery Plan unreasonably. If the Authority does not approve the draft Recovery Plan it shall inform the Hosting Supplier of its reasons within five (5) Working Days of receipt of the draft Recovery Plan and the Hosting Supplier shall take those reasons into account in the preparation of a further draft Recovery Plan, which shall be resubmitted to the Authority within five (5) Working Days of receipt of the Authority's rejection of the first Recovery Plan. Any disputes about or arising out of Service Failure (including any failure by the parties to agree a Recovery Plan) shall be resolved through Dispute Resolution Procedure; and

- 12.7.2 deploy additional resources and take all steps considered necessary to restore the Service Levels and to prevent the Service Failure(s) from being repeated in the future (and where such Service Failure or imminent Service Failure is due to an Authority Cause, or other third party, the Hosting Supplier shall give the Authority prior notification of the steps which it intends to take and the resources which it intends to use and the Authority acknowledges that in determining what resources and steps the Hosting Supplier considers to be reasonable, the Hosting Supplier may take into account its technical capability, experience and knowledge).
- 12.8 Failure of the Hosting Supplier to comply with any of its obligations under clause 12.7.1 or clause 12.7.2 shall entitle the Authority to keep all monies withheld or recovered under clause 12.6.1 in respect of the Service Failure(s) that have been subject to the Recovery Plan.
- 12.9 The Authority may make any changes to the Service Levels in accordance with schedule 2.2 (Service Performance Management).
- 12.10 If there is a Service Level Failure which causes or is likely to cause the Service Level Threshold to be breached, the Hosting Supplier shall:
  - 12.10.1 notify the Authority within two (2) Working Days of becoming aware that the Service Level Threshold has been or is likely to be breached;
  - 12.10.2 provide the Authority with a draft Recovery Plan of the action that it will take and actions which it considers the Authority and if appropriate, an Other FITS Supplier, should take to restore the Service Levels and to prevent the Service Level Thresholds from being breached in the future, for the Authority's approval within 10 Working Days from the day the Hosting Supplier notifies the Authority under clause 12.10.1. The Authority shall not withhold or delay its approval of a draft Recovery Plan unreasonably. If the Authority does not approve the draft Recovery Plan it shall inform the Hosting Supplier of its reasons within 5 Working Days of receipt of the draft Recovery Plan and the Hosting Supplier shall take those reasons into account in the preparation of a further draft Recovery Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. Any disputes about or arising out of Service Level Failure (including any failure by the parties to agree a Recovery Plan shall be resolved through Dispute Resolution Procedure; and

- 12.10.3 deploy all additional resources and take all steps considered necessary to rectify or to prevent the Service Level Failure or Service Level Failures which resulted in the Service Level Thresholds from being breached from recurring in the future.
- 12.11 Each Party shall comply with its obligations in the Recovery Plan following its approval by the Authority under clause 12.10.2.
- 12.12 Failure of the Hosting Supplier to comply with any of its obligations under clauses 12.10 or 12.11 shall entitle the Authority to commence the Remedial Plan Process in accordance with clause 58.
- 12.13 Where a Service Level Failure is being caused or contributed to by an Authority Cause, the Hosting Supplier shall be entitled to claim relief and exercise its remedies pursuant to clause 13.2 provided that the Hosting Supplier has fulfilled its obligations set out in, and in accordance with clause 12.2 and 12.10.

**13. LIABILITY IN THE OPERATIONAL PHASE**

- 13.1 If the Hosting Supplier would have provided the Hosting Services in accordance with the Service Levels and/or this Agreement but has failed to do so as a result of an Authority Cause the Hosting Supplier will have the rights and relief set out in clause 13.2 (subject to any provisions of the Master Services Agreement in relation thereto). The Authority shall not be responsible or liable for (and the Hosting Supplier shall not be excused any obligation under this Agreement in relation to) any failure by an Other FITS Supplier to comply with schedule 3.2 (Other Service Towers Responsibilities) or any other act or omission of an Other FITS Supplier other than to the extent provided in the Master Services Agreement and/or schedule 2.2 (Service Performance Management). Where and to the extent any such excuse applies, clauses 12 and 13 shall apply subject to the applicable provisions of the Master Services Agreement and/or schedule 2.2 (Service Performance Management).
- 13.2 The Hosting Supplier shall:
  - 13.2.1 (in measuring the performance of any affected Service) be treated as though the relevant Hosting Service had met the relevant Service Level to the extent that the Service Level Failure is due to any Authority Cause;
  - 13.2.2 not be treated as being in breach of this Agreement to the extent that non-performance or breach is due to any Authority Cause; and
  - 13.2.3 be entitled to the Charges for the relevant Hosting Services affected by the Authority Cause as if the Authority Cause had not occurred.
- 13.3 If the Hosting Supplier claims that clause 13.1 applies, and in order to claim the rights and reliefs in clause 13.2, it shall provide the Authority with details of the Authority Cause as part of the management information that it is obliged to provide at the end of the relevant Reporting Period (and no later than ten (10) Working Days after the end of the relevant Reporting Period).

- 13.4 Any Disputes about or arising out of whether an Authority Cause applies to the Hosting Supplier's failure to provide the Hosting Services in accordance with the Service Levels and/or this Agreement shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to resolve the causes of, and mitigate the effects of such failure.

#### 14. **STANDARDS AND REFERENCED DOCUMENTS**

- 14.1 The Hosting Supplier shall comply with the Standards and the documents set out in schedule 11 (Referenced Documents) in performing its obligations under this Agreement.
- 14.2 The Hosting Supplier shall discuss with the Authority any conflict that the Hosting Supplier reasonably believes that there is or will be between any of the Standards or Referenced Documents, or between any of the Standards or Referenced Documents and any other obligation under this Agreement and/or the Master Services Agreement, and shall comply with the Authority's decision on the resolution of that conflict.

#### 15. **QUALITY MONITORING**

- 15.1 The Authority Representative may carry out audits of the Hosting Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) at regular intervals. The parties anticipate that these audits will be carried out at intervals of approximately three (3) months, but the Authority Representative may carry out other periodic monitoring or spot checks at any other time. In each case, the Hosting Supplier shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority Representative, including by providing the Authority Representative with all information and documentation, and access to any relevant Hosting Supplier Personnel and/or to any relevant Site, which he reasonably requires in connection with his rights under this clause 15 at no additional charge to the Authority.
- 15.2 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material Default by the Hosting Supplier in which case the Hosting Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

#### 16. **SERVICES IMPROVEMENT**

- 16.1 The Hosting Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Hosting Services and, also, the other FITS Services in accordance with this clause 16 and schedule 2.1 (Service Requirements). As part of this obligation the Hosting Supplier shall identify and report to the Architectural Board on a quarterly basis throughout the Term on:
- 16.1.1 the emergence of new and evolving relevant technologies which could improve the End to End ICT Environment and/or the End to End Services, and those technological advances potentially available to the Hosting Supplier, the FITS

- Suppliers and the Authority in relation to each FITS Service which the parties may wish to adopt; and/or
- 16.1.2 new or potential improvements to the End to End Services including, without limitation, the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the End to End Services; and/or
- 16.1.3 new or potential improvements to the interfaces or integration of the End to End Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and/or
- 16.1.4 changes in business processes and ways of working that would enable the End to End Services to be delivered at lower costs and/or at greater benefits to the Authority; and/or
- 16.1.5 changes to the End to End ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the delivery of the End to End Services.
- 16.2 The Hosting 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, including whether or not such improvement would give rise to any addition to or reduction in the Charges or whether it could be implemented within the current pricing of this Agreement. The Hosting Supplier shall provide any further information that the Authority requests.
- 16.3 The Authority shall at all times be responsible for determining its own ICT strategy. The Authority may notify the Hosting Supplier of any changes to the Authority's ICT strategy and request the Hosting Supplier to consider, review and respond to that strategy. If, in the Hosting Supplier's opinion, any notified change to the Authority ICT strategy would impact upon the provision of the Hosting Services, the Hosting Supplier shall refer the matter to the Change Control Procedure.
- 16.4 If the Authority wishes to incorporate any improvement identified by the Hosting Supplier the Authority shall send the Hosting Supplier a Change Request Part A: Initial Request and the parties shall:
- 16.4.1 develop a plan for the implementation of the improvement within twenty (20) Working Days of the Authority's Change Request Part A: Initial Request for the approval of the Authority;
- 16.4.2 implement the improvement in accordance with the provisions of an implementation plan Approved by the Authority and agreed with any affected Supplier(s); and
- 16.4.3 submit the improvements to testing in accordance with the provisions of clause 5 (Milestones, Testing and Approval).

- 16.5 Where something which can form the subject matter of this clause 16 would also form the subject matter of the continual improvement provisions of the Master Services Agreement, it will be dealt with in accordance with those provisions.

**17. EQUIPMENT**

- 17.1 Risk in all tangible assets used by the Hosting Supplier for the provision of the Hosting Services or Cross Tower Services or provided to the Authority in connection with the provision of the Hosting Services or Cross Tower Services including the Transferring In Assets shall remain with the Hosting Supplier, except where any loss or damage arises as a result of any riot (as defined in the Public Order Act 1986) at any prison, any malicious actions of any prisoners or Authority personnel, or any theft which could not reasonably have been prevented by the Hosting Supplier.
- 17.2 All the Hosting Supplier's property located on the Hosting Supplier's Sites, including Hosting Supplier Equipment, shall remain at the sole risk and responsibility of the Hosting Supplier.
- 17.3 The Hosting Supplier shall be solely responsible for the cost of carriage of Hosting 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, except where transferring to the Authority or to a Replacement Hosting Supplier in accordance with schedule 8.5 (Exit Management), the Hosting Supplier shall be responsible for the removal of all relevant Hosting Supplier Equipment from the Authority Premises, including the cost of packing, carriage and making good the Authority Premises following removal.
- 17.4 Subject to any express provision of the Business Continuity and Disaster Recovery Plan to the contrary, the loss or destruction for any reason of the Hosting Supplier Equipment held on any Site shall not relieve the Hosting Supplier of its obligation to supply the Hosting Services and Cross Tower Services in accordance with the Service Levels, this Agreement and the Master Services Agreement.

**SECTION D - PAYMENT AND VALUE FOR MONEY PROVISIONS**

**18. CHARGING AND INVOICING**

- 18.1 In consideration of the Hosting Supplier carrying out its obligations, including the provision of the Hosting Services and Cross Tower Services under this Agreement and the Master Services Agreement, the Authority shall pay the Charges to the Hosting Supplier in accordance with the payment profile and the invoicing procedure specified in schedule 7.1 (Charging and Invoicing).
- 18.2 The Hosting Supplier shall ensure that a term is included in any Sub-contract permitted under this Agreement which requires the Hosting Supplier to pay any undisputed sums due to the relevant Sub-contractor within a specified period that does not exceed thirty (30) days from the date the Hosting Supplier receives the Sub-contractor's invoice. The Hosting Supplier shall ensure that the Sub-contractor shall include suitable provisions to

- impose requirements in any subcontract which it awards for the purposes of delivering Hosting Services under this Agreement to the same effect as those required by this clause 18.2.
- 18.3 The Hosting Supplier shall not suspend the supply of the Services unless the Hosting Supplier is entitled to terminate this Agreement under clause 57.6 for failure to pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 18.4 Except as otherwise expressly provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under clauses 5 (Testing and Acceptance), 15 (Quality Assurance and Performance Monitoring), 26 (Audits), 43 (Protection of Personal Data), 44 (Freedom of Information) and, to the extent specified therein, clause 62 (Step-In Rights).

19. **TAX**

- 19.1 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.
- 19.2 The Hosting Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Hosting Supplier's failure to account for or to pay any VAT relating to payments made to the Hosting Supplier under this Agreement. Any amounts due under this clause 19.2 shall be paid in cleared funds by the Hosting 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 (or, if later, five (5) Working Days following the date on which the Authority has provided written notice to the Hosting Supplier of the liability).
- 19.3 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Hosting Supplier shall:
- 19.3.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - 19.3.2 promptly provide to the Authority:
    - 19.3.2.1 details of the steps which the Hosting 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
    - 19.3.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

20. **RECOVERY OF SUMS DUE**

The Authority may retain or set off any amount owed to it by the Hosting Supplier against any amount due to the Hosting Supplier under this Agreement or under any other agreement between the Hosting Supplier and the Authority.

21. **NOT USED**

22. **FINANCIAL MODEL**

The provisions of schedule 7.5 (Financial Model) shall apply in relation to the Financial Model and the parties shall comply with their respective obligations in schedule 7.5 (Financial Model).

**SECTION E - CONTRACT GOVERNANCE**

23. **REPRESENTATIVES**

- 23.1 Each party appoints the persons named as such in schedule 9.2 (Key Personnel) as the Authority Representative and the Hosting Supplier Representative respectively. The Representatives shall have the authority to act on behalf of their respective party on the matters set out in, or in connection with, this Agreement. Either party may, by further written notice to the other party, revoke or amend the authority of its Representative or appoint a new Representative.
- 23.2 The respective Representatives shall be sufficiently senior within the organisation of the appointing party, and granted sufficient authority by that party, to ensure full cooperation in relation to the operation and the management of this Agreement.
- 23.3 The Authority may require the Hosting Supplier to replace the Hosting Supplier Representative in accordance with clause 30.9 (Key Personnel).

24. **GOVERNANCE**

The parties agree to manage this Agreement through the governance structure detailed in schedule 8.1 (Governance) and the Master Services Agreement.

25. **SUPPLY CHAIN RIGHTS**

**Sub-contracting**

- 25.1 The Hosting Supplier shall not sub-contract any of its obligations under this Agreement without the Authority's prior written consent which, subject to clause 25.2, shall not be unreasonably withheld or delayed.

- 25.2 The Authority may withhold or delay its consent where it considers that:
- 25.2.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
  - 25.2.2 the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to the Authority or its other customers; and/or
  - 25.2.3 the proposed Sub-contractor employs unfit persons.
- 25.3 Subject to clause 25.4, in making a request pursuant to clause 25.1 the Hosting Supplier shall provide the Authority with the following information about the proposed Sub-contractor:
- 25.3.1 its name, registered office and company registration number;
  - 25.3.2 a copy of the proposed Sub-contract;
  - 25.3.3 the purposes for which the proposed Sub-contractor will be employed, including the scope of any services to be provided by the proposed Sub-contractor;
  - 25.3.4 if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant Service Levels;
  - 25.3.5 where the proposed Sub-contractor is an Affiliate of the Hosting Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arms-length" terms; and
  - 25.3.6 any further information reasonably requested by the Authority.
- 25.4 If the supply of information required pursuant to clause 25.3 would amount to a breach of any rules or regulations of any exchange on which the shares of the Hosting Supplier are admitted for listing and/or trading, or any other rules or regulations with which the Hosting Supplier is obliged to comply as a result of that listing, the Hosting Supplier shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.
- 25.5 The Authority has consented to the engagement of the Sub-contractors as listed in schedule 4.3 (Notified Sub-contractors) subject to: i) the provision by the Hosting Supplier of the information listed in clause 25.3 within twenty (20) Working Days of the Effective Date (or such other period that the Authority may permit and notify to the Hosting Supplier in writing); and ii) such information not giving the Authority grounds for concern in relation to the fitness of the Sub-contractor for its given role.
- 25.6 The Hosting Supplier shall not make use of a pre-existing contract with any Sub-contractor, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 25.7 Except where the Authority has given its prior written consent under clause 25.6 or the Authority has required the Key Sub-contract to be novated or assigned from an Exiting Supplier (in both of which cases the Hosting Supplier shall use reasonable endeavours to



ensure that the applicable Key Sub-contract complies with the following), the Hosting Supplier shall ensure that each Key Sub-contract shall include:

- 25.7.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce the terms of that Key Sub-contract as if it were the Hosting Supplier;
- 25.7.2 a provision enabling the Hosting Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority;
- 25.7.3 a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Authority on the same terms as set out in clause 45 (Confidentiality);
- 25.7.4 a provision requiring the Key Sub-contractor to comply with protection of data requirements pursuant to clauses 42 (Authority Data) and 43 (Protection of Personal Data);
- 25.7.5 a provision requiring the Key Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to clause 66 (Prevention of Corruption);
- 25.7.6 a provision restricting the ability of the Key Sub-contractor to further Sub-contract elements of the service provided to the Hosting Supplier without first seeking the consent of the Authority;
- 25.7.7 a provision enabling the Hosting 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 62 (Step-in Rights);
- 25.7.8 a provision requiring the Key Sub-contractor to notify the Authority promptly in writing of any material non-payment or late payment of any sums properly due to the Key Sub-contractor from the Hosting Supplier under the Sub-contract, under a specified valid invoice and not subject to a genuine dispute; and
- 25.7.9 a provision requiring the Key Sub-contractor to:
  - 25.7.9.1 promptly notify the Hosting Supplier and the Authority in writing of a Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Sub-contractor Financial Distress Event (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 the Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause the Sub-contractor Financial Distress Event); and
  - 25.7.9.2 co-operate with the Hosting Supplier and the Authority in order to give full effect to the provisions of schedule 7.4 (Financial Distress), including meeting with the Hosting Supplier and the Authority to discuss and review the effect of the Sub-contractor Financial Distress Event on the continued performance and delivery of the Hosting Services and/or the Cross Tower Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

- 25.8 As a condition of its consent under clause 25.1 and in relation to any consents under clause 25.5, the Authority may require that the relevant Key Sub-contractor enters into the Master Services Agreement or a direct agreement with the Authority, in which case the Hosting Supplier shall procure that such Key Sub-contractor enters into the Master Services Agreement or direct agreement with the Authority as soon as reasonably practicable and on such terms as may be reasonably requested by the Authority.

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

- 25.9 The Hosting Supplier shall not terminate or materially amend the terms of any Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.
- 25.10 The Authority may require the Hosting Supplier to terminate a Key Sub-contract where the acts or omissions of the relevant Key Sub-contractor have given rise to the Authority's right of termination pursuant to clause 57.1 (Termination for Cause by the Authority) and where the Authority reasonably believes that there is a Liquid Sub-Contractor Market in respect of the relevant Key Sub-contractor.
- 25.11 Any dispute as to the existence of a Liquid Sub-Contractor Market for the Key Sub-contract to be terminated pursuant to the Authority's right under clause 25.10 should be dealt with through the Dispute Resolution Procedure.
- 25.12 The Authority may terminate this Agreement or require the Hosting Supplier to terminate the relevant Sub-contract if there is a Change of Control of a Key Sub-contractor on the same terms as those set out in clause 57.5 (Termination for Change of Control).

#### **Competitive Terms**

- 25.13 If the Authority is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Hosting Supplier or the Hosting Supplier Personnel in the supply of the Hosting Services or the Cross Tower Services, then the Authority may:
- 25.13.1 require the Hosting Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- 25.13.2 subject to clause 25.15, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 25.14 If the Authority exercises either of its options pursuant to clause 25.13, then the Charges shall be reduced by an appropriate amount in accordance with the Change Control Procedure. Disputes over what constitutes an appropriate amount shall be resolved in accordance with the Dispute Resolution Procedure.
- 25.15 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

- 25.15.1 the Authority making the relevant item available to the Hosting Supplier where this is necessary for the Hosting Supplier to provide the Hosting Services and/or the Cross Tower Services; and
- 25.15.2 any reduction in the Charges taking into account any unavoidable costs payable by the Hosting Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges (provided that the Hosting Supplier notifies the Authority of the existence of such unavoidable costs prior to the Authority entering into the relevant direct agreement).

### **Retention of Legal Obligations**

- 25.16 The Hosting 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. Any obligation on the Hosting Supplier to do, or to refrain from doing, any act or thing shall be construed as including an obligation upon the Hosting Supplier to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

### **Improving visibility of Sub-contract opportunities available to SMEs and VCSEs in the supply chain**

- 25.17 The Hosting Supplier shall:
- 25.17.1 subject to clause 25.17.3, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Hosting Services above a minimum threshold of £25,000 that arise during the Term;
- 25.17.2 within 90 days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- 25.17.3 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;
- 25.17.4 provide reports on the information at clause 25.17.3 to a Authority in the format and frequency as reasonably specified by the Authority; and
- 25.17.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 25.18 Each advert referred to at clause 25.17.1 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 Hosting Supplier.
- 25.19 The obligation at clause 25.17.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 25.20 Notwithstanding clause 25.17, the Authority may by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

**26. AUDITS**

- 26.1 Except where an audit is imposed on the Authority by a Regulatory Body, the Authority may, at any time during the Term and for a period of twelve (12) months following the Term, conduct an audit for the following purposes:
- 26.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement), any cost reduction and income generation initiatives carried out pursuant to clause 16 (Services Improvement), any costs relating to Hosting Supplier's compliance with the Master Services Agreement and this Agreement and/or the costs of all suppliers (including Sub-contractors) of the Hosting Services and Cross Tower Services at the level of detail in schedule 7.1 (Charging and Invoicing) or schedule 7.5 (Financial Model);
  - 26.1.2 to review the integrity, confidentiality and security of the Authority Data and all security measures under this Agreement and the Master Services Agreement;
  - 26.1.3 to review the Hosting Supplier's compliance with the Data Protection Legislation, the Freedom of Information Act 2000 in accordance with clauses 43.2.10 (Protection of Personal Data) and 44 (Freedom of Information) and any other legislation applicable to the Hosting Services and/or the Cross Tower Services;;
  - 26.1.4 to review the Hosting Supplier's compliance with its obligations under clauses 4 to 10, 11.1 and 11.3 (Services) and 15 (Quality Assurance and Performance Monitoring);
  - 26.1.5 not used
  - 26.1.6 to review any records created during the design and development of the Hosting Supplier ICT Environment and Non-live Environment such as information relating to Testing;
  - 26.1.7 to review any books of account kept by the Hosting Supplier in connection with the provision of the Hosting Services and/or Cross Tower Services;
  - 26.1.8 to carry out the audit and certification of the Authority's accounts;
  - 26.1.9 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 26.1.10 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement and/or the Master Services Agreement;
  - 26.1.11 to inspect the Hosting Supplier ICT Environment (or any part of it);
  - 26.1.12 to inspect the Authority Assets, including the Authority's IPRs, equipment, facilities and maintenance, for the purposes of ensuring that the Authority's assets are secure and that any register of assets is up to date;
  - 26.1.13 to ensure that the Hosting Supplier is complying with the Standards; and/or

- 26.1.14 to review the accuracy and completeness of the Registers.
- 26.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Hosting Supplier or delay the provision of the FITS Services.
- 26.3 Subject to the Authority's obligations of confidentiality, the Hosting Supplier shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - 26.3.1 all information requested by the Authority within the permitted scope of the audit;
  - 26.3.2 reasonable access to any Sites controlled by the Hosting Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Hosting Services and/or the Cross Tower Services;
  - 26.3.3 access to the Hosting Supplier ICT Environment; and
  - 26.3.4 access to Hosting Supplier Personnel.
- 26.4 The Hosting Supplier shall implement all measurement and monitoring tools and procedures required by the Authority and/or the SIAM Supplier to measure and report on the Hosting Supplier's performance of the Hosting Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 26.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 26.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material Default by the Hosting Supplier in which case the Hosting Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 26.7 If an audit identifies that:
  - 26.7.1 the Hosting Supplier has failed to perform its obligations under this Agreement and/or the Master Services Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Hosting Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Hosting Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information; and
  - 26.7.2 the Authority has overpaid any Charges, the Hosting Supplier shall repay to the Authority the amount overpaid within twenty (20) Working Days. The Authority may deduct the relevant amount from the Charges if the Hosting Supplier fails to make this payment.

**27. RECORDS AND REPORTS**

The parties shall comply with the provisions of schedule 8.4 (Records Provisions) in relation to the keeping of records and the making of reports.

**28. CHANGE CONTROL**

- 28.1 Any requirement for a Change to the provisions of this Agreement shall be subject to the provisions of schedule 8.2 (Change Control Procedure).
- 28.2 The Hosting Supplier shall consider throughout the Term the extent to which any actual or potential Change (whether proposed by it or someone else) might have an impact on wider FITS Services and Cross Tower Services, services and arrangements with Exiting Suppliers and its or any Other FITS Supplier's Tower Service Agreement or any Collaborating Supplier's Supply Agreement, shall identify this clearly as early as possible and shall co-operate with the Other FITS Suppliers, the Authority and applicable Exiting Suppliers to ensure that Change is dealt with as efficiently and effectively as possible from the Authority's perspective. In particular and without limitation to the generality of this, the Hosting Supplier shall provide information and cooperation to Other FITS Suppliers, Collaborating Suppliers and to Exiting Suppliers to enable all bodies involved to assess the impact of and potential approaches to dealing with Changes. Where a particular Change may or will require amendments to more than one of the Agreement, Master Services Agreement, Tower Service Agreement, Supply Agreement and/or Exiting Contract, the Hosting Supplier shall work with Other FITS Suppliers, Collaborating Suppliers and the Authority (and, where applicable, the relevant Exiting Supplier) to ensure that the applicable change control procedures are aligned and operate to implement the Changes and associated amendments consistently. This may include, at the Authority's discretion and without limitation, amending timescales which apply to change control procedures (without this counting as use of the Fast-track Change procedure) and swapping between change control procedures (in which case the detailed steps under change control procedures may, at the Authority's discretion, be amended to reflect analysis already carried out and agreements and discussions already held).

**29. DISPUTES**

- 29.1 The parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 29.2 Subject to clause 29.3, the Hosting Supplier shall continue to provide the Hosting Services and the Cross Tower Services in accordance with the terms of this Agreement and the Master Services Agreement until a Dispute has been resolved.
- 29.3 The application of the Dispute Resolution Procedure in relation to a Dispute shall not prevent the Authority from exercising any right to terminate under clause 57 in relation to matters affected by the Dispute, including exercising such right prior to or during the process of the Dispute Resolution Procedure.

**SECTION F - PERSONNEL****30. HOSTING SUPPLIER PERSONNEL**

- 30.1 The Authority may refuse admission to the Authority Sites and Extended Locations and/or direct the Hosting Supplier to end the involvement in the provision of the Hosting Services and the Cross Tower Services of any of the Hosting Supplier Personnel whom the Authority believes represents a security risk or does not have the required levels of training and expertise or where the Authority has other grounds for doing so. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.
- 30.2 The Hosting Supplier shall use all reasonable endeavours to ensure continuity of personnel engaged in the provision or management of the Hosting Services and the Cross Tower Services.

**Relevant Convictions**

- 30.3 The Hosting Supplier shall ensure that no person who discloses that he/she has a Relevant Conviction, or who is found by the Hosting Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), is employed or engaged in the provision of any part of the Hosting Services or Cross Tower Services without the Authority's prior and express written consent.
- 30.4 For each of the Hosting Supplier Personnel who, in providing the Hosting Services or Cross Tower Services, has, will have or is likely to have access to children, vulnerable persons, prisoners or other members of the public to whom the Authority owes a special duty of care the Hosting Supplier shall (and shall procure that the relevant Sub-contractor shall):
- 30.4.1 carry out a policy check with the records held by the Department for Education;
  - 30.4.2 conduct thorough questioning regarding any Relevant Convictions; and
  - 30.4.3 ensure an enhanced police check is completed and such other checks as may be carried out through the Disclosure and Barring Service,

and the Hosting Supplier shall not (and shall ensure that a Sub-contractor shall not) engage or continue to employ in the provision of the Hosting Services or Cross Tower Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

**Key Personnel**

- 30.5 The parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Hosting Supplier shall and shall procure that any Sub-contractor shall obtain the prior written consent of the Authority before removing or replacing any member of the Key Personnel from their corresponding role during the Term (including when carrying out Exit Management), and, where possible, at least three (3) months' written notice must be

provided by the Hosting Supplier of its intention to replace any member of Key Personnel from their corresponding role.

- 30.6 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of Key Personnel by the Hosting Supplier or Sub-contractor. The Authority may interview the candidates for Key Personnel roles before such candidate is appointed to such role.
- 30.7 The Hosting Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Hosting Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) consecutive Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 30.8 The Hosting Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Authority otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Hosting Supplier shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 30.9 Throughout the Term, the Authority may identify any of the roles performed by Hosting Supplier Personnel as Key Personnel, who will then be included on the list of Key Personnel by the Hosting Supplier. The Authority may also require the Hosting Supplier to remove any member of the Key Personnel that the Authority considers in any respect unsatisfactory.
- 30.10 The Authority shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Hosting Supplier shall indemnify the Authority against all Employee Liabilities that may arise in this respect.

**Staffing Security**

- 30.11 The Hosting Supplier shall comply with the Staff Vetting Procedures in respect of all Hosting Supplier Personnel employed or engaged in the provision of the Hosting Services or the Cross Tower Services. The Hosting Supplier confirms that all Hosting Supplier Personnel employed or engaged by the Hosting Supplier at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 30.12 The Hosting Supplier shall provide training on a continuing basis for all Hosting Supplier Personnel employed or engaged in the provision of the Hosting Services or Cross Tower Services in compliance with the Security Policy and Security Management Plan.

31. **EMPLOYMENT INDEMNITY**

- 31.1 The parties agree that:



31.1.1 the Hosting Supplier shall 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 Hosting Supplier or any Hosting Supplier Personnel; and

31.1.2 the Authority shall indemnify the Hosting Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Hosting Supplier by any person where such claim arises from any act or omission of the Authority or any Authority Personnel.

**32. STAFF TRANSFER**

The parties acknowledge that the start of this Agreement and the expiry or termination of this Agreement may constitute relevant transfers for the purposes of the Employment Regulations. The parties shall comply with schedule 9.1 (Staff Transfers).

**33. HEALTH AND SAFETY**

33.1 The Hosting Supplier acknowledges that it has been supplied with a copy of the Authority's rules regarding health and safety and that the prison environment creates particular risks and constraints that will impact the Hosting Supplier and the FITS Services. The Hosting Supplier agrees to comply with these rules, and any additional rules made known to the Hosting Supplier from time to time by the Authority together with all applicable statutory rules and regulations regarding these matters. The Authority will be responsible for procuring that its employees and agents also comply with these rules and regulations.

33.2 Either party shall notify the other as soon as practicable of any health and safety hazards at the Authority Sites of which it becomes aware. The Hosting Supplier shall draw these hazards to the attention of the Hosting Supplier Personnel and shall instruct those persons in connection with any necessary associated safety measures.

**34. EQUALITY AND DIVERSITY**

34.1 The Hosting Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act of 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment.

34.2 The Hosting Supplier shall take all reasonable steps to ensure the observance of the provisions of clause 34.1 by all servants, employees, agents and consultants of the Hosting Supplier and all Sub-contractors.

**35. NON-SOLICITATION**

Except in respect of any Staff Transfer, the Authority and the Hosting Supplier shall not, and the Hosting Supplier shall procure that any Sub-contractor shall not (other than by general advertising), during the Term and for twelve (12) months following the termination of this

Agreement, either directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed by such other party in the provision of the End to End Services or (in the case of the Authority) in the receipt and/or administration of the End to End Services.

**SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

**36. INTELLECTUAL PROPERTY RIGHTS**

36.1 Except as expressly set out in this Agreement:

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

36.1.1.1 the Hosting Supplier Software;

36.1.1.2 the Third Party Software; or

36.1.1.3 the Hosting Supplier's Background IPRs,

and

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

36.1.2.1 the Authority Software;

36.1.2.2 the Authority Data;

36.1.2.3 the Databases;

36.1.2.4 the Project Specific IPRs;

36.1.2.5 the Specially Written Software;

36.1.2.6 the Other Supplier IPRs;

36.1.2.7 the Authority's documentation, processes and procedures; and

36.1.2.8 the Authority's Know-How.

36.2 Where either party acquires, whether by operation of law or otherwise, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 36.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).

**37. LICENCES GRANTED BY THE HOSTING SUPPLIER**

37.1 The Hosting Supplier hereby grants, or shall procure the direct grant, to the Authority of a licence of any Hosting Supplier's Background IPRs or Embedded Third Party IPRs on the Enhanced Licence Terms.

- 37.2 The Hosting Supplier hereby grants to the Authority a licence of the Hosting Supplier Software (to the extent not licensed under clause 37.1) on the Standard Licence Terms.
- 37.3 The Hosting Supplier shall procure that the Third Party Software and, subject to the restrictions in clause 37.6, the REDACTED Background IPRs are licensed to the Authority on the Standard Licence Terms.
- 37.4 The Hosting Supplier shall, if requested by the Authority in accordance with schedule 8.5 (Exit Management) or otherwise, grant or procure the grant to the Replacement Hosting Supplier of a licence to Use any Hosting Supplier Software, Hosting Supplier's Background IPRs or Third Party Software in accordance with schedule 5.2.
- 37.5 The Hosting Supplier hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose that is either connected with the receipt of the Hosting Services or incidental to the exercise of the rights granted to the Authority under this Agreement.
- 37.6 The Hosting Supplier grants to the Authority a licence to use the REDACTED Gold Build Security Configuration on the terms set out in Part C of schedule 5.2 (Licence Terms).
- 37.7 Except as expressly set out in this Agreement, if the Hosting Supplier's Key Sub-contractor REDACTED owns any Intellectual Property Rights that are required by the Authority in order to perform its obligations or receive the benefits under this Agreement, the Hosting Supplier shall procure that REDACTED grants to the Authority, for the Term a licence to use any such Intellectual Property Rights on the following terms:
  - 37.7.1 the licence is royalty-free, non transferable, non sub-licensable (except to the extent that the Authority requires to use any such licence and in accordance always with the provisions of this clause 37.7) and non-exclusive;
  - 37.7.2 the beneficiary of the licence shall not, in relation to the relevant material, copy, modify, reverse engineer, adapt, translate, decompile, disassemble or correct errors, save to the extent that it cannot be prevented under Law; and
  - 37.7.3 each licence starts when necessary for the performance or receipt of the Hosting Services and ends when the applicable Hosting Service ends.

**38. LICENCES GRANTED BY THE AUTHORITY**

- 38.1 The Authority hereby grants to the Hosting Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:
  - 38.1.1 the Authority Software;
  - 38.1.2 the Databases from the date the relevant rights are transferred to the Authority in accordance with clause 39.2;
  - 38.1.3 the Authority's documentation, processes and procedures;
  - 38.1.4 the Authority's Know-How;

- 38.1.5 the Specially Written Software from the date the relevant rights are transferred to the Authority in accordance with clause 40.2;
- 38.1.6 the Project Specific IPRs from the date the relevant rights are transferred to the Authority in accordance with clause 40.2; and
- 38.1.7 the Authority Data.
- 38.2 The licence granted in clause 38.1:
- 38.2.1 includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Hosting Supplier on the same terms as set out in clause 45 (Confidentiality); and
- 38.2.2 is granted solely to the extent necessary for performing the Hosting Services and the Cross Tower Services in accordance with this Agreement and the Master Services Agreement. The Hosting Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 38.3 The Hosting Supplier shall comply with the obligations and restrictions contained in the licences under which any Authority Software is provided to the Authority by a third party.
- 38.4 In the event of the termination or expiry of this Agreement, the licence referred to in clause 38.1 and any sub-licence granted in accordance with clause 38.2.1 shall terminate automatically and the Hosting Supplier shall deliver to the Authority all material licensed to the Hosting Supplier pursuant to clause 38.1 in the Hosting Supplier's possession or control.
- 39. ASSIGNMENT OF IPR IN DATABASES**
- 39.1 The Hosting Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Databases or shall procure that the first owner of any Database assigns it to the Authority on the same basis.
- 39.2 The assignment under clause 39.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Databases, as appropriate.
- 39.3 The Hosting Supplier shall waive or procure a waiver of any moral rights in the Databases assigned to the Authority under this Agreement.
- 39.4 To the extent that it is necessary for the Authority to obtain the full benefits of ownership of the Databases, the Hosting Supplier hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license any Hosting Supplier's Background IPRs or Embedded Third Party IPRs.

**40. PROJECT SPECIFIC IPR AND SPECIALLY WRITTEN SOFTWARE**

- 40.1 The Hosting Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software or shall procure that the first owner of the Project Specific IPRs and the Specially Written Software assigns them to the Authority on the same basis.
- 40.2 The assignment under clause 40.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate.
- 40.3 The Hosting Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.
- 40.4 If requested to do so by the Authority, the Hosting Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under clause 40.1 or shall procure that the owner of the Project Specific IPRs and the Specially Written Software does so on the same basis.
- 40.5 The Hosting Supplier shall deliver to the Authority the Specially Written Software in both Source Code and binary code forms in accordance with any agreed plan for delivery of Specially Written Software, including any applicable Project Plan and shall provide updates of the Source Code on each new release of the Specially Written Software on media that is reasonably acceptable to the Authority.

**41. ESCROW**

- 41.1 The Hosting Supplier shall not less than thirty (30) Working Days after the Effective Date, or such other periods as the Authority may require (whether for new or existing software), deposit the Source Code of Deposited Software in escrow with NCC on the basis of the appropriate Authority agreement with NCC (as set out in schedule 5.3 (Escrow Terms)) or on such other terms as the Authority, the Hosting Supplier and NCC shall agree. The Hosting Supplier shall ensure that the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Hosting Supplier shall pay the initial storage fees, any testing fees and any annually recurring fees under the escrow agreement and the Authority shall pay the release fees.
- 41.2 Where the Hosting Supplier is unable to procure compliance with the provisions of clause 41.1 in respect of any Third Party Software, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall agree with the Authority a suitable alternative to escrow that affords the Authority the nearest equivalent protection. The Hosting Supplier shall be excused from its obligations under clause 41.1 only to the extent that the parties have agreed on a suitable alternative.
- 41.3 In circumstances where the Authority obtains the release of the Source Code from escrow, the Hosting Supplier hereby grants to the Authority a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of the Deposited

Software to the extent necessary for the receipt of the FITS Services or any Replacement Hosting Services or the Authority's normal business undertakings.

#### 42. AUTHORITY DATA

- 42.1 The Hosting Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 42.2 The Hosting Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Hosting Supplier of its obligations under this Agreement, the Master Services Agreement or as otherwise expressly authorised in writing by the Authority.
- 42.3 To the extent that Authority Data is held and/or processed by the Hosting Supplier, the Hosting Supplier shall supply that Authority Data to the Authority within five (5) working days, or such other timescale as may be agreed by the parties acting reasonably and having regard to the nature and extent of the Authority Data, of a request by the Authority in an appropriate format as may be agreed by the parties acting reasonably.
- 42.4 The Hosting Supplier shall be responsible for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 42.5 The Hosting Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan and other relevant provisions of this Agreement and the Master Services Agreement. The Hosting Supplier shall ensure that such back-ups are available and delivered to the Authority at all times upon request.
- 42.6 The Hosting Supplier shall ensure that any ICT Environment on which the Hosting Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 42.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Hosting Supplier's Default so as to be unusable, the Authority may:
- 42.7.1 require the Hosting Supplier (at the Hosting Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and other relevant provisions of this Agreement and the Hosting Supplier shall do so as soon as practicable but not later than any agreed RPO or RTO; and/or
- 42.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Hosting Supplier any reasonable expenses incurred in doing so.
- 42.8 If at any time the Hosting Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Hosting Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Hosting Supplier proposes to take.

- 42.9 In the event that the Hosting Supplier is unable to meet its obligations under clause 42.3, and without prejudice to any other rights or remedies arising as a result of such failure, then the Hosting Supplier shall ensure that unfettered access is granted to the Authority or an agent of the Authority to gather and format the Authority Data as required. Any additional costs incurred by the Authority in doing so shall be recoverable from the Hosting Supplier.

#### 43. PROTECTION OF PERSONAL DATA

- 43.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Hosting Supplier is the Processor. The only processing which the Authority has authorised the Hosting Supplier to do is described in this Agreement and at schedule 12. The Hosting Supplier shall not assume any responsibility for determining the purposes for which and the manner in which the Personal Data is DP Processed, but nevertheless shall comply at all times with the Data Protection Requirements.
- 43.2 Each Party will DP Process the Personal Data in compliance with Data Protection Legislation.
- 43.3 The Hosting Supplier shall (and shall procure that the Sub-contractors shall):
- 43.3.1 DP Process any Personal Data only in accordance with this Agreement (in particular, this clause 43 and Schedule 12) and the Authority's instructions from time to time and shall not DP Process the Personal Data for any purpose other than those expressly authorised by the Authority, except where otherwise required by any UK law applicable to the Hosting Supplier and, in such case, the Hosting Supplier shall inform the Authority of that legal requirement before DP Processing unless that law prohibits such information on important grounds of public interest;
  - 43.3.2 DP Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Hosting Services, the Cross Tower Services or as is required by Law or any Regulatory Body;
  - 43.3.3 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the nature of the data to be protected as described in schedule 12, harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures;
  - 43.3.4 take reasonable steps to ensure the reliability and integrity of any Hosting Supplier Personnel who have access to the Personal Data;
  - 43.3.5 neither disclose nor transfer the Personal Data to any Sub-contractors or Affiliates other than where strictly necessary for the provision of the Services and in such event the Hosting Supplier shall obtain prior written consent from the Authority in order to transfer the Personal Data to any Suppliers, Sub-contractors or Affiliates for the provision of the End to End Services. Where such consent has already been provided by the Authority prior to the introduction of the GDPR on 25 May 2018, then that consent will remain valid and the Hosting Supplier shall not be

- required to obtain additional consent in respect of the same transfer(s) of Personal Data on or after that date. The Authority has already consented to the appointment of the Sub-contractors identified in schedule 4.3 (Notified Sub-contractors) for the purposes of delivering, and solely to the extent required to deliver, the End to End Services;
- 43.3.6 ensure the reliability and integrity of any Hosting Supplier Personnel who have access to the Personal Data and that any person (including all Hosting Supplier Personnel) it authorises to DP Process Personal Data or that are required to access the Personal Data:
- 43.3.6.1 are informed of the confidential nature of the Personal Data;
  - 43.3.6.2 are aware of and comply with the obligations set out in this clause 43;
  - 43.3.6.3 do not DP Process Personal Data except in accordance with this Agreement;
  - 43.3.6.4 are subject to appropriate confidentiality undertakings with the Hosting Supplier or any Sub-processor; and
  - 43.3.6.5 have undergone training in the use, care, protection and handling of the Personal Data;
- 43.3.7 ensure that none of the Hosting Supplier Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 43.3.8 notwithstanding clause 43.6 notify the Authority without undue delay and in any event within 48 hours if it:
- 43.3.8.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 43.3.8.2 receives a complaint, request or communication relating to either party's obligations under the Data Protection Legislation;
  - 43.3.8.3 receives a request to rectify, block or erase any Personal Data;
  - 43.3.8.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 43.3.8.5 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
  - 43.3.8.6 becomes aware of a Personal Data Breach and/or any Data Loss Event and/or destruction of data integrity (unauthorised changes) to Personal Data;



and shall provide such information as the Authority may reasonably require so that the Authority can fulfil any Personal Data Breach reporting or recording obligations it may have under (and in accordance with the timescales required by) Data Protection Legislation.

The Hosting Supplier's obligation to notify under clause 43.3.8 includes the reasonable provision of further information to the Authority in phases as details become available.

43.3.9 taking into account the nature of the DP Processing, provide the Authority with full cooperation and assistance in relation to either party's obligations under the Data Protection Legislation and without any additional cost to the Authority provide reasonable and timely assistance to the Authority, without undue delay, to enable the Authority to respond to:

43.3.9.1 any request from a Data Subject to exercise any of its rights under Data Protection Legislation in connection with the Data Processing under this Agreement (including its rights of access, correction, objection, erasure and data portability, as applicable); and

43.3.9.2 any other correspondence, enquiry or complaint received from a Data Subject, regulator or other third party in connection with the DP Processing of the Personal Data or relating to the Authority's obligations under the Data Protection Legislation.

43.3.9A In the event that any such request, correspondence, enquiry or complaint is made directly to the Hosting Supplier, the Hosting Supplier shall comply with the applicable Data Protection Requirements and promptly inform the Authority providing full details of the same, including by promptly providing:

43.3.9A.1 the Authority with full details and copies of the complaint, communication or request;

43.3.9A.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

43.3.9A.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject (within the timescales reasonably required by the Authority);

43.3.9A.4 the Authority with any information reasonably requested by the Authority;

43.3.9A.5 assistance as requested by the Authority following any Data Loss Event; and

43.3.9A.6 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office or any consultation by

the Authority with the Information Commissioner's Office in connection with the Personal Data processed under this Agreement;

43.3.9B The Hosting Supplier's provision of assistance shall be subject to the following:

- (a) if the Authority or the Hosting Supplier receives (i) any request from a Data Subject to exercise any of its rights under Data Protection Legislation (including its rights of access, correction, objection, erasure and data portability, as applicable); or (ii) any other correspondence, enquiry or complaint from a Data Subject, regulator or other third party, in either case in connection with the DP Processing of the Personal Data or relating to the Authority's obligations under the Data Protection Legislation, then the Authority will first use reasonable endeavours to manage and respond itself to such requests, correspondence, enquiry or complaint before requesting the assistance of the Hosting Supplier under clause 43.3.9;
- (b) if the Authority requires the assistance of the Hosting Supplier to remedy a Personal Data Breach that is caused by the Authority, the Authority will reimburse the Hosting Supplier on a time and materials basis for the actual reasonable costs incurred (based on the agreed current rate card) in the provision of such assistance.

43.3.10 permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 26 (Audits), the Hosting Supplier's DP Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Hosting Supplier is in full compliance with its obligations under this Agreement and the Master Services Agreement;

43.3.11 where such information is not readily available to the Authority or set out in the Agreement, provide a written description of the Protective Measures employed by the Hosting Supplier or Sub-contractor (as the case may be) for DP Processing Personal Data (within the timescales reasonably required by the Authority and in accordance with Article 30(2)(d) of the UK GDPR); and

43.3.12 not DP Process or otherwise transfer any Personal Data outside the United Kingdom Mainland. If, after the Effective Date, the Hosting Supplier (or any Sub-contractor) wishes to DP Process and/or transfer any Personal Data outside the United Kingdom Mainland, the following provisions shall apply:

43.3.12.1 the Hosting Supplier shall submit a Change Request Part A: Initial Request to the Authority which shall be dealt with in accordance with

the Change Control Procedure and clauses 43.3.12.2 to 43.3.12.4 below;

43.3.12.2 the Hosting Supplier shall set out in its Change Request Part A: Initial Request and/or Change Request B1: Technical and Business Impact Assessment details of the following:

- (a) the Personal Data which will be DP Processed and/or transferred outside the United Kingdom Mainland;
- (b) the country or countries in which the Personal Data will be DP Processed and/or to which the Personal Data will be transferred outside the United Kingdom Mainland;
- (c) any Sub-contractors or other third parties who will be DP Processing and/or transferring Personal Data outside the United Kingdom Mainland;
- (d) how the Hosting Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Authority's compliance with the Data Protection Legislation) in respect of the Personal Data that will be DP Processed and/or transferred outside the United Kingdom Mainland; and
- (e) whether Data Subjects will have enforceable rights and effective legal remedies;

43.3.12.3 in providing and evaluating the Change Request Part A: Initial Request, Change Request Part B1: Technical and Business Impact Assessment and Change Request Part B2: Financial Impact Assessment, the parties shall ensure that they have regard to and comply with then-current Authority, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the DP Processing and/or transfers of Personal Data outside the United Kingdom Mainland and/or overseas generally; and

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

- (a) incorporating standard and/or model clauses (which are approved by the UK Government as offering adequate safeguards under the Data Protection Legislation) in this Agreement or a separate data processing agreement between the parties; and

- (b) procuring that any Sub-contractor or other third party who will be DP Processing and/or transferring the Personal Data outside the United Kingdom enters into a direct data processing agreement with the Authority on such terms as may be required by the Authority, which the Hosting Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the UK Government as offering adequate safeguards under the Data Protection Legislation).
- 43.3.13 not include Personal Data in any product or service offered by the Hosting Supplier or Sub-contractor (as the case may be) to third parties unless it is specifically required as part of the provision of the Services; and
- 43.3.14 not carry out any research, analysis or profiling activity which involves the use of any element of Personal Data (including in aggregate form) or any information derived from any DP Processing of such Personal Data unless it is specifically required as part of the provision of the Services.
- 43.4 The Hosting Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement or the Master Services Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 43.5 Subject to clauses 43.20, 54.2A, 54.4, 54.7 and 54.9, the Hosting Supplier shall on written demand indemnify the Authority and keep the Authority indemnified against all Losses (excluding legal costs) incurred by, awarded against or agreed to be paid by the Authority arising from any breach of this clause 43.
- 43.6 Without prejudice to clause 43.3.8, each Party shall inform the other as soon as reasonably practicable if it becomes aware of any material breach or potential material breach of Data Protection Legislation in relation to the Personal Data, regardless of who may be responsible for the breach.
- 43.7 At the written direction of the Authority, the Hosting Supplier shall delete or return Personal Data (and any copies of it) to the Authority on expiry or the earlier termination of the Agreement unless the Hosting Supplier is required by Law to retain the Personal Data.
- 43.8 The Hosting Supplier shall provide reasonable assistance to the Authority in the preparation by the Authority of any Data Protection Impact Assessment prior to starting any DP Processing. Such assistance may, at the Authority's discretion, include:
  - 43.8.1 a systematic description of the envisaged DP Processing operations and the purpose of the DP Processing;
  - 43.8.2 an assessment of the necessity and proportionality of the DP Processing operations in relation to the Hosting Services;
  - 43.8.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

- 43.8.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 43.9 The Hosting Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 43. This requirement does not apply if the Hosting Supplier employs fewer than 250 people unless the Authority determines that the DP Processing:
- 43.9.1 is not occasional;
- 43.9.2 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; and
- 43.9.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 43.10 The Hosting Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 43.11 Before allowing any Sub-processor to process any Personal Data in connection with the Contract, the Hosting Supplier shall:
- 43.11.1 send written notice to the Authority of the intended Sub-processor and DP Processing with the information set out in clause 25.3:
- 43.11.2 obtain the Authority's approval by submitting a request in writing (and where such approval has already been provided by the Authority prior to the introduction of the GDPR on 25 May 2018, then that approval will remain valid and the Hosting Supplier shall not be required to obtain additional approval in respect of the same Sub-processing on or after that date. The Authority has already granted its approval to the appointment of the Sub-contractors identified in schedule 4.3 (Notified Sub-contractors) for the purposes of delivering, and solely to the extent required to deliver, the End to End Services); and
- 43.11.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 43 and at schedule 12 such that they apply to the Sub-processor.
- The Authority shall confirm whether or not it approves of the Sub-processor within 15 working days of receiving a compliant clause 43.11.1 notice (such approval not to be unreasonably withheld or delayed).
- 43.12 The Hosting Supplier remains fully liable for the acts and omissions of any Sub-processor.
- 43.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause 43 by replacing it with any applicable Data Controller to Data Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement). Where such standard clauses, similar terms or certification scheme are mandated as a matter of Law, such a revision to this Agreement shall be made at no additional cost to the Authority. Where such standard clauses, similar terms or certification scheme are not mandated but are issued by HM

Government, the Information Commissioner's Office or other data protection authority as guidance, best practice or optional only, then the proposed amendments to this clause 43 shall be proposed, and any changes to the Charges agreed, in accordance with the Change Control Procedure.

43.14 The Parties shall take account of any guidance published by the Information Commissioner's Office.

43.15 In relation to Personal Data processed for Law Enforcement Purposes, the Hosting Supplier shall:

43.15.1 maintain logs for its DP Processing operations in respect of:

43.15.1.1 collection;

43.15.1.2 alteration;

43.15.1.3 consultation;

43.15.1.4 disclosure (including transfers);

43.15.1.5 combination; and

43.15.1.6 erasure,

(together the "Logs");

43.15.2 ensure that:

43.15.2.1 the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;

43.15.2.2 the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure; and so far as possible the identity of the person who disclosed the data and the identity of the recipients of the data; and

43.15.2.3 the Logs are made available to the Information Commissioner's Office on request;

43.15.3 use the Logs only to:

43.15.3.1 verify the lawfulness of DP Processing;

43.15.3.2 assist with self-monitoring by the Authority or (as the case may be) the Hosting Supplier, including the conduct of internal disciplinary proceedings;

43.15.3.3 ensure the integrity of Personal Data; and

43.15.3.4 assist with criminal proceedings;

43.15.4 work together in good faith with the Authority to agree a format for the Logs which the Parties consider meets the requirements of the Data Protection Legislation and this Agreement (both Parties acting reasonably and not to unreasonably withhold or delay their agreement to the format for such Logs). Once the format for the Logs has been agreed, this format shall be used by the Hosting Supplier, provided at all times that:

43.15.4.1 in the event that the Authority requires the Hosting Supplier to provide additional functionality for the Logs which goes beyond the requirements of the Data Protection Legislation and this Agreement, then such additional Authority requirements shall constitute a Contract Change to be processed in accordance with schedule 8.2 (Change Control Procedure)); and

43.15.4.2 where any changes to the format for the Logs is required in order to comply with the requirements of the Data Protection Legislation and this Agreement, then such changes shall be made at no additional cost to the Authority;

43.15.5 as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and

43.15.6 where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:

43.15.6.1 persons suspected of having committed or being about to commit a criminal offence;

43.15.6.2 persons convicted of a criminal offence;

43.15.6.3 persons who are or maybe victims of a criminal offence; and

43.15.6.4 witnesses or other persons with information about offences.

43.16 Subject to clauses 43.20, 54.2A, 54.4, 54.7 and 54.9 the Hosting Supplier shall indemnify the Authority and keep the Authority indemnified in respect of

43.16.1 any Loss (excluding legal costs) incurred by, awarded against or agreed to be paid by the Authority arising from a failure by the Hosting Supplier or any Hosting Supplier Personnel to comply with the confidentiality obligations set out in this clause 43 and in clause 45 of this Agreement

43.16.2 any loss, destruction, corruption or degradation of data (including the Personal Data) arising by reason of any Default of the Hosting Supplier or any Sub-contractor;

43.16.3 any breach of clause 43 to the extent that such breach in turn causes the Authority to be in breach of Data Protection Legislation and in addition with any such breach:

43.16.3.1 indemnify and keep indemnified the Authority; and

43.16.3.2 such indemnity for the benefit of the Authority shall not apply:

- (a) where the liability arises from information supplied by the Authority which is shown to have been incomplete or incorrect;
- (b) unless the Authority notifies the Hosting Supplier as soon as possible of any action, claim or demand to which this indemnity applies, commits the Hosting Supplier to deal with the action, claim or demand by settlement or otherwise and renders the Hosting Supplier all reasonable assistance in so dealing; or
- (c) to the extent that the Authority makes any admission which may be prejudicial to the defence of the action, claim or demand;

43.16.4 any failure by the Hosting Supplier or Sub-contractor to comply with its obligations pursuant to clause 44.2 resulting in the Authority failing to comply with its obligations under the FOIA.

43.17 If the Authority does, or omits to do, something that is in conflict with the Hosting Supplier's Reasonable Recommendation, and this results in a GDPR Claim against the Hosting Supplier, the Authority shall indemnify the Hosting Supplier in respect of any Loss suffered by the Hosting Supplier to the extent that:

43.17.1 the Loss results directly from such GDPR Claim; and

43.17.2 such GDPR Claim arises out of, or in connection with, the Authority acting in conflict with or failing to act in accordance with the Reasonable Recommendation.

43.18 If the Authority is required to indemnify the Hosting Supplier in accordance with clause 43.17, the Hosting Supplier must notify the Authority in writing of any GDPR Claim against it in respect of which it wishes to rely on the indemnity and shall:

43.18.1 allow the Authority at its own cost, to conduct all negotiations and proceedings and to settle the GDPR Claim, always provided that the Authority shall obtain the Hosting Supplier's prior approval of any settlement terms (such approval not to be unreasonably withheld);

43.18.2 provide the Authority with such reasonable assistance regarding the GDPR Claim as is required by the Authority; and

43.18.3 not, without prior consultation with the Authority, make any admission relating to the GDPR Claim or attempt to settle it, provided that the Authority considers and defends any GDPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Hosting Supplier into disrepute.

43.19 If following a breach of the Data Protection Legislation that is caused by the Authority the Hosting Supplier is joined as a defendant (whether or not formal legal proceedings are in fact issued) into a third party claim as a result of its status as the Hosting Supplier and



Data Processor of the Authority, and the Hosting Supplier incurs legal and related costs in defending itself, the Authority shall indemnify the Hosting Supplier for such reasonable direct legal and related costs incurred In defending itself against such a third party claim.

- 43.20 Where a third party claim requires or is likely to require the Hosting Supplier to indemnify the Authority in accordance with clauses 43.5 or 43.16, the Authority shall notify the Hosting Supplier in writing of the claim and shall:
- 43.20.1 where the claim solely relates to acts or omissions by the Hosting Supplier, or its personnel, agents or subcontractors:
    - 43.20.1.1 allow the Hosting Supplier at its own cost to conduct all negotiations and proceedings and to settle the claim (subject to obtaining the Authority’s prior approval of any settlement terms (such approval not to be unreasonably withheld));
    - 43.20.1.2 provide the Hosting Supplier with such reasonable assistance regarding the claim as is required by the Hosting Supplier;
    - 43.20.1.3 not, without prior consultation with the Hosting Supplier, make any admission relating to the claim or attempt to settle it, provided that the Hosting Supplier considers and defends any claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute;
  - 43.20.2 where the claim does not solely relate to acts or omissions by the Hosting Supplier (or its personnel, agents or subcontractors), consult and work with the Hosting Supplier (who shall bear its own costs) in conducting all negotiations and proceedings and to settle the claim, including obtaining the Hosting Supplier’s prior approval of any settlement terms (such approval not to be unreasonably withheld).

**44. FREEDOM OF INFORMATION**

- 44.1 The Hosting Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 44.2 The Hosting Supplier shall and shall procure that its Sub-contractors shall:
  - 44.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 44.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

44.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

44.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

44.4 In no event shall the Hosting Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.

44.5 The Hosting Supplier acknowledges that (notwithstanding the provisions of clause 45) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Hosting Supplier or its obligations (and performance and arrangements in relation to them) under this Agreement and the Master Services Agreement:

44.5.1 in certain circumstances without consulting the Hosting Supplier; or

44.5.2 following consultation with the Hosting Supplier and having taken their views into account,

provided always that where clause 44.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Hosting Supplier advance notice, or failing that, to draw the disclosure to the Hosting Supplier's attention after any such disclosure.

44.6 The Hosting Supplier shall ensure that all Information is retained for disclosure in accordance with schedule 8.4 (Records Provisions) and shall permit the Authority to inspect such records as requested from time to time.

44.7 The Hosting Supplier acknowledges that the Commercially Sensitive Information listed in schedule 4.2 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause 44.5.

45. **CONFIDENTIALITY**

45.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement or the Master Services Agreement, each party shall:

45.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

45.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 45.2 Clause 45.1 shall not apply to the extent that:
- 45.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Data Protection Legislation, or the FOIA or the Environmental Information Regulations pursuant to clause 44 (Freedom of Information);
  - 45.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 45.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 45.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
  - 45.2.5 it is independently developed without access to the other party's Confidential Information.
- 45.3 The Hosting Supplier may only disclose the Authority Confidential Information to the Hosting Supplier Personnel who are directly involved in the provision of the Hosting Services or Cross Tower Services and who need to know the information, and shall ensure that such Hosting Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.
- 45.4 The Hosting Supplier shall not, and shall procure that the Hosting Supplier Personnel do not, use any of the Authority Confidential Information received otherwise than for the purposes of this Agreement or the Master Services Agreement.
- 45.5 The Hosting Supplier may only disclose the Authority Confidential Information to the Hosting Supplier Personnel and who need to know the information, and shall ensure that such Hosting Supplier Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Hosting Supplier Personnel causes or contributes (or could cause or contribute) to the Hosting Supplier breaching its obligations as to confidentiality under or in connection with this Agreement or the Master Services Agreement, the Hosting Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Hosting Supplier Personnel, the Hosting Supplier shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Hosting Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Hosting Supplier Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Hosting Supplier Personnel in connection with obligations as to confidentiality.
- 45.6 At the written request of the Authority, the Hosting Supplier shall procure that those members of the Hosting Supplier Personnel identified in the Authority's notice sign a

confidentiality undertaking prior to commencing any work in accordance with this Agreement or the Master Services Agreement.

45.7 Nothing in this Agreement or the Master Services Agreement shall prevent the Authority from disclosing the Hosting Supplier's Confidential Information:

- 45.7.1 to any Crown Body, Central Government Body, or any other Contracting Authority for any proper purpose of the Authority, or of the relevant Crown Body, Central Government Body or other Contracting Authority. All Crown Bodies, Central Government Body or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies, Central Government Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- 45.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 45.7.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 45.7.4 on a confidential basis to any consultant, professional advisor, contractor, supplier or other person engaged by the Authority, or any of the entities described in clause 45.7.1 or any person conducting an Office of Government Commerce gateway review for any purpose relating to or connected with this Agreement. In relation to suppliers in their role as Other FITS Suppliers such disclosure shall be subject to the provisions of schedule 4.2 (Commercially Sensitive Information);
- 45.7.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the audit rights pursuant to clause 26 (Audits), its step in rights pursuant to clause 62 (Step-In Rights) and exit management rights pursuant to clause 61 (Exit Management) and schedule 8.5;
- 45.7.6 on a confidential basis to a proposed successor body of the Authority in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement;
- 45.7.7 for the purpose of the examination and certification of the Authority's accounts; or
- 45.7.8 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources

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 45.

45.8 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Hosting Supplier's Confidential Information is disclosed pursuant to clause 45.7 is made aware of the Authority's obligations of confidentiality.

- 45.9 Nothing in this clause 45 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 45.10 The Hosting Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the FOIA, the content of this Agreement and the Master Services Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Agreement and the Master Services Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement or the Master Services Agreement, the Hosting Supplier hereby gives its consent for the Authority to publish this Agreement and/or the Master Services Agreement in their 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 this Agreement or Master Services Agreement, to the general public.

## SECTION H - HOSTING SUPPLIER AND AUTHORITY PROTECTIONS

### 46. GENERAL OBLIGATIONS OF THE PARTIES

#### Hosting Supplier's Obligations

- 46.1 The Hosting Supplier shall:
- 46.1.1 at all times allocate sufficient resources to provide the Hosting Services and Cross Tower Services in accordance with the terms of this Agreement and the Master Services Agreement;
  - 46.1.2 subject to clause 49 (Change in Law) obtain, and maintain throughout the duration of this Agreement, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary to enable the provision of the Hosting Services and Cross Tower Services;
  - 46.1.3 provide to the Suppliers and the Exiting Suppliers and actual or potential Other Authority Providers as are notified to the Hosting Supplier periodically, such reasonable co-operation, information (including any Documentation), advice and assistance in connection with the Hosting Services and the Cross Tower Services to enable any such person to create and maintain technical or organisational interfaces with the Hosting Services and the Cross Tower Services and, on the ending of this Agreement for any reason, to enable the timely transition of the Hosting Services (or any of them) and the Cross Tower Services to any Replacement Hosting Supplier; and
  - 46.1.4 provide the Authority and/or the SIAM Supplier with such assistance as the Authority and/or the SIAM Supplier may reasonably require during the Term in respect of the supply of the FITS Services/Cross Tower Services/ End to End Services.

- 46.2 In respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Hosting Supplier ICT Environment, the Hosting Supplier shall have primary management responsibility for incident and problem resolution, including:
- 46.2.1 for ensuring that such requirement does not interfere with the provision of the Hosting Services or Cross Tower Services/ End to End Services in accordance with this Agreement and the Master Services Agreement; and
  - 46.2.2 for taking all necessary steps within its power to ensure that the interface is successfully achieved.

The Authority shall not be responsible or liable for any act or omission of the applicable third party but the Hosting Supplier may have rights and reliefs in accordance with the Master Services Agreement.

- 46.3 Not used.
- 46.4 Any change in the way in which the Hosting Supplier provides the Hosting Services or the Cross Tower Services which would materially increase the Authority's risk or reduce the effect of the governance provisions of this Agreement shall be agreed in accordance with the Change Control Procedure or the Change Management processes under schedule 2.1 (Services Requirements).

#### **Authority's Responsibilities**

- 46.5 The Authority shall comply with the Authority's Responsibilities referred to in schedule 3.1 (Authority Responsibilities). Schedule 3.2 (Other Service Tower Responsibilities) and the documents referred to in it shall form part of this Agreement.

#### **Hosting Supplier and Authority Responsibilities**

- 46.6 The Hosting Supplier shall comply with its obligations pursuant to schedule 7.4 (Financial Distress) and the Authority shall have the rights set out therein.

### **47. WARRANTIES**

- 47.1 Each party warrants and represents that:
- 47.1.1 it has full capacity and authority to enter into and to perform this Agreement and the Master Services Agreement;
  - 47.1.2 this Agreement is executed by a duly authorised representative of that party;
  - 47.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement or the Master Services Agreement; and

47.1.4 once duly executed this Agreement and the Master Services Agreement will constitute its legal, valid and binding obligations.

47.2 The Hosting Supplier warrants and represents for the duration of the Term that:

47.2.1 all personnel used to provide the Hosting Services and/or the Cross Tower Services will be vetted in advance in accordance with Good Industry Practice and the Security Policy;

47.2.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Hosting Supplier's obligations under this Agreement and the Master Services Agreement;

47.2.3 it has and will continue to have all necessary rights in and to the Hosting Supplier Software (if applicable), Embedded Third Party IPRs (if applicable), or the Third Party Software and/or the Hosting Supplier's Background IPRs, or any other materials made available by the Hosting Supplier and/or the Sub-contractors to the Authority and/or necessary to perform the Hosting Supplier's obligations under this Agreement and the Master Services Agreement;

47.2.4 not used;

47.2.5 as at the Effective Date all statements and representations in the Hosting Supplier Solution, Base Case Financial Model, the draft Security Management Plan in Appendix 1 of schedule 2.5 (Security Management Plan), schedules 4.3 (Notified Sub-contractors), 5.1 (Software), 6.2 (Work in Progress Requirements) 6.3 (Asset Transfers) and 9.2 (Key Personnel) are to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;

47.2.6 the Documentation will contain all necessary information and explanation required for the purpose of executing the Exit Plan and for suitably qualified employees of the Authority or of the Replacement Hosting Supplier to be able to use the Software and receive the Hosting Services and to perform the Replacement Hosting Services on termination or expiry;

47.2.7 the Hosting Supplier ICT Environment and Assets and Hardware Assets used in the performance of the Hosting Services and Cross Tower Services:

47.2.7.1 subject to the provisions of clauses 54.9 and 54.10, are sufficient for the provision of the Hosting Services and Cross Tower Services; and

47.2.7.2 excluding the Authority Assets will be free of all encumbrances;

47.2.8 Not Used

47.2.9 Not Used

47.2.10 Not Used

- 47.2.11 it shall at all times comply with Law in carrying out its obligations under this Agreement and the Master Services Agreement;
- 47.2.12 it shall not use Transferring In Assets or the Authority's ICT Environment other than for the provision of the Hosting Services and Cross Tower Services except with the prior consent of the Authority; and
- 47.2.13 as at the Effective Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

47.3 The Hosting Supplier:

- 47.3.1 shall, subject to the provisions of clauses 54.9 and 54.10, be deemed to have satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement and the Master Services Agreement;
- 47.3.2 shall be deemed to have gathered sufficient information to perform its obligations under this Agreement, the Master Services Agreement:
  - 47.3.2.1 information as to the nature, location and condition of the land and structures at any Sites, including the environment where any elements of the Hosting Supplier's ICT Environment will be located (in respect of which the Authority provides no warranty or representation, except for any latent structural defect);
  - 47.3.2.2 information as to the "listing" of any Sites; and
  - 47.3.2.3 the Hosting Supplier's ability to provide the Hosting Services and Cross Tower Services incorporating Authority Software without any dilution or diminution of the Hosting Services or the Cross Tower Services or any exemption, let or waiver against Service Levels and/or any other obligation under this Agreement and/or the Master Services Agreement.

47.4 Except as expressly stated in this Agreement or the Master Services Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

47.5 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Hosting Supplier.



48. **NOT USED**

49. **CHANGE IN LAW**

49.1 The Hosting Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement and the Master Services Agreement nor be entitled to an increase in the Charges as the result of:

49.1.1 a General Change in Law; or

49.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Hosting Services is known at the Effective Date.

49.2 Not used.

49.3 Not used.

49.4 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 49.1.2 or which the Hosting Supplier would be obliged to comply with under any other provision of this Agreement or the Master Services Agreement), the Hosting Supplier shall notify the Authority of the likely effects of that change, including:

49.4.1 whether any Change is required to the FITS Services, the Charges or this Agreement; and

49.4.2 whether any relief from compliance with the Hosting Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Levels at any time.

49.5 As soon as practicable after any notification in accordance with clause 49.4, the parties shall discuss and agree the matters referred to in that clause and any ways in which the Hosting Supplier can mitigate the effect of the Specific Change of Law and the Hosting Supplier shall:

49.5.1 provide evidence that the Hosting Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

49.5.2 demonstrate that a foreseeable Specific Change in Law had been taken into account by the Hosting Supplier before it occurred;

49.5.3 give evidence as to how the Specific Change in Law has affected the cost of providing the Hosting Services; and

49.5.4 demonstrate that any expenditure that has been avoided, for example which would have been required under the provisions of clause 16 (Services Improvement), has been taken into account in amending the Charges.

49.6 The Hosting Supplier shall not be entitled to any increase in Charges in the circumstances described in clause 49.4 to the extent that all or part of the same Changes are also required in (and/or to the extent that there would an equivalent net increase in Costs as a result of)

the circumstances described in clause 49.1 or any other provision of this Agreement or the Master Services Agreement and any increase in Charges shall also take account of any savings or non-incurrence of Costs as a result of the Change.

- 49.7 Any increase in the Charges or relief from the Hosting Supplier's obligations agreed by the parties pursuant to clause 49.5 shall be implemented in accordance with the Change Control Procedure.

## SECTION I - RISK PROTECTION

### 50. SECURITY REQUIREMENTS

- 50.1 The Hosting Supplier shall comply, and shall procure the compliance of the Hosting Supplier Personnel, with schedule 2.5 (Security Management Plan), the Security Policy and the Security Management Plan and the Hosting Supplier shall ensure that the Security Management Plan produced by the Hosting Supplier fully complies with the Security Policy and schedule 2.5 (Security Management Plan).
- 50.2 The Authority shall notify the Hosting Supplier of any changes or proposed changes to the Security Policy.
- 50.3 If the Hosting Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable effect on Costs it may submit a Change Request Part A: Initial Request. In doing so, the Hosting 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, but for the avoidance of doubt the Hosting Supplier shall not be entitled to increase its Charges to the extent that the change in question would also be required under any other provision of this Agreement and any increase in Charges shall also take account of any savings or non-incurrence of Costs as a result of the change.
- 50.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to clause 50.3 the Hosting Supplier shall continue to perform the Hosting Services and Cross Tower Services in accordance with its existing obligations.

#### Malicious Software

- 50.5 Not used.
- 50.6 Not used.
- 50.7 Not used

### 51. BUSINESS CONTINUITY

- 51.1 The parties shall comply with the provisions of schedule 8.6 (Business Continuity) and applicable provisions of schedules 2.1 (Service Requirements) and 4.1 (Hosting Supplier Solution).

- 51.2 The Hosting Supplier shall ensure that it is able to implement the ITSCM Plan(s) in accordance with schedule 2.1 (Service Requirements) and schedule 8.6 (Business Continuity) and associated plan(s) at any time in accordance with their terms.
- 51.3 The Hosting Supplier shall undertake regular risk assessments in relation to the provision of the FITS Services not less than once every six (6) months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Authority promptly in writing following each review.
- 51.4 The Hosting Supplier shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the FITS Services, how such threats and risks may be mitigated and how the provision of the FITS Services may be maintained in the event of any such identified threats or risks materialising.

## 52. **FORCE MAJEURE**

- 52.1 Subject to the remaining provisions of this clause 52 and subject to the provisions of clause 27.13 to 27.15 of the Master Services Agreement, either party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event. In particular, the Hosting Supplier shall (subject to the provisions of clause 27.13 to 27.15 of the Master Services Agreement) be relieved from its Delay Payment obligation to the extent that the Achievement of any Milestone is affected by the Force Majeure Event, its Service Credits obligation to the extent that the Hosting Services are affected by the Force Majeure Event and the Charges and other sums payable shall be reduced to the extent that the Authority does not receive the Hosting Services as a result of the Force Majeure Event.
- 52.2 A party cannot claim relief under clause 52.1 to the extent that the relevant Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 52.3 The Hosting Supplier cannot claim relief under clause 52.1 to the extent that it is required to comply with the Business Continuity and Disaster Recovery Plan and related provisions of schedules 2.1 (Services Requirements), 4.1 (Hosting Supplier Solution) or 8.6 (Business Continuity) but has failed to do so. In addition, the Hosting Supplier acknowledges (and shall take into account) the particular environment involved in servicing prison premises and the requirement to plan for extreme circumstances involving lock-downs, restricted access and riots as part of the Business Continuity and Disaster Recovery Plan.
- 52.4 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 52.5 The Affected Party shall immediately give the other party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

- 52.6 As soon as practicable following after the Affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement and the Master Services Agreement. Where the Hosting 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.
- 52.7 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and the Master Services Agreement. Following such notification, this Agreement and the Master Services Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

**SECTION J - INDEMNITIES, LIABILITY AND INSURANCE**

**53. IPR INDEMNITY**

- 53.1 The Hosting Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and keep the Authority indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority arising from an IPR Claim.
- 53.2 The Authority agrees that:
- 53.2.1 it shall notify the Hosting Supplier in writing of any IPR Claim;
  - 53.2.2 it shall allow the Hosting Supplier to conduct all negotiations and proceedings and will provide the Hosting Supplier with such reasonable assistance required by the Hosting Supplier, each at the Hosting Supplier's cost, regarding the IPR Claim; and
  - 53.2.3 it shall not, without first consulting with the Hosting Supplier, make an admission relating to the IPR Claim.
- 53.3 The Hosting Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute.
- 53.4 The Hosting Supplier shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 53.5 If an IPR Claim is made, or the Hosting Supplier anticipates that an IPR Claim might be made, the Hosting Supplier shall, at its own expense and sole option, either:
- 53.5.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or

- 53.5.2 replace or modify the relevant item with non-infringing substitutes provided that:
- 53.5.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - 53.5.2.2 the replaced or modified item does not have an adverse effect on any FITS Services or the End to End ICT Environment;
  - 53.5.2.3 there is no additional cost to the Authority; and
  - 53.5.2.4 the terms of this Agreement and the Master Services Agreement shall apply to the replaced or modified Hosting Services, Cross Tower Services and/or items.

53.6 If the Hosting Supplier elects to modify or replace an item pursuant to clause 53.5.2 or to procure a licence in accordance with clause 53.5.1, but this has not avoided or resolved the IPR Claim, then the Authority may terminate this Agreement by written notice with immediate effect and, without prejudice to the indemnity set out in clause 53.1, the Hosting 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.

#### 54. LIMITATIONS ON LIABILITY

54.1 Neither party limits its liability for:

- 54.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- 54.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 54.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 54.1.4 any breach by that party of clause 45 (Confidentiality); or
- 54.1.5 any liability to the extent it cannot be limited or excluded by Law.

#### **Financial Limits**

54.2 Subject to clause 54.1 and clauses 54.5 and 54.6, the Hosting Supplier's aggregate liability:

- 54.2.1 in respect of the indemnities in clauses 19.2 (Tax), 31 (Employment Indemnity), 53 (IPR Indemnity) and 66.9 (Prevention of Corruption) and schedule 9.1 (Staff Transfers) shall be REDACTED;
- 54.2.2 for all loss of or damage to the Authority Premises, 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 the Hosting Supplier's Default shall in no event exceed REDACTED;

- 54.2.3 to the Authority for Service Credits and Delay Payments shall in no event exceed any caps set out in schedule 7.1 (Charges and Invoicing). Deductions from Charges shall not be taken into consideration when calculating the Hosting Supplier's liability under this clause 54.2.3;
- 54.2.A in relation to all Losses arising from a breach of clause 43 (Protection of Personal Data) and the indemnities in clauses 43.5 and 43.16, these shall in no event exceed an amount equal to REDACTED;
- 54.2.4 in respect of all other loss or damage incurred by the Authority under or in connection with this Agreement as a result of Hosting Supplier's Defaults shall in no event exceed:
  - 54.2.4.1 in relation to Defaults occurring in the first Contract Year, and amount equal to REDACTED;
  - 54.2.4.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to REDACTED; and
  - 54.2.4.3 in relation to Defaults occurring after the end of the Term, an amount equal to REDACTED,

provided that where any losses or damage referred to in this clause 54.2.4 have been incurred by the Authority as a result of the Hosting Supplier's abandonment of this Agreement or the Hosting Supplier's wilful Default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such clause to REDACTED shall be deemed to be references to REDACTED.

- 54.3 Subject to clause 54.1, the Authority's liability in respect of the indemnities in clause 31 (Employment Indemnity) and schedule 9.1 (Staff Transfers) shall be unlimited.
- 54.4 Subject to clauses 54.1 and 54.3 and clause 54.5, the Authority's total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment:
  - 54.4.1 for all Defaults by the Authority resulting in loss of or damage to the property or assets (including technical infrastructure, assets or equipment) of the Hosting Supplier shall in no event exceed any unrecovered capital (as set out in schedule 7.5 (Financial Model)) of the Assets of the Hosting Supplier which are used in the provision of the FITS Services (to the extent that such capital is shown in schedule 7.5 (Financial Model) as being recoverable through the Charges during the Term of this Agreement); or
  - 54.4.2 in respect of all other Defaults by the Authority shall in no event exceed an amount equivalent to the total Charges paid or properly invoiced and due to be paid under this Agreement in the twelve (12) month period immediately preceding the event giving rise to the liability (or in the case of Defaults in the first twelve (12) months of the Term, the Charges paid and payable in that period or in the case of Defaults occurring after the end of the Term, an amount equal to the

Charges paid and/or due to be paid to the Hosting Supplier in the 12 month period immediately prior to the last day of the Term).

54.5 Subject to clauses 54.1, 54.2.1, 54.3 and 54.6, neither party will be liable to the other party for:

54.5.1 any indirect, special or consequential loss or damage; or

54.5.2 any loss of profits, turnover, business opportunities, anticipated savings or damage to goodwill (whether direct or indirect).

54.6 Notwithstanding clause 54.5 but subject to clause 54.2, the Hosting Supplier acknowledges that the Authority may, amongst other things, recover as a direct loss the following (although this clause 54.6 shall not remove any common law principles in relation to mitigation which may apply to them):

54.6.1 any additional operational and/or administrative costs and expenses arising from the Hosting Supplier's Default;

54.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Hosting Supplier's Default;

54.6.3 the additional cost of procuring Replacement Hosting Services for the remainder of the Term, any additional costs of such Replacement Hosting Services for the remainder of the Term and the additional costs of procuring and paying for any interim services or remedial work;

54.6.4 any liability incurred to a third party by the Authority and/or any loss, cost or expenses incurred in relation to any complaint, action, claim or demand by a third party as a result of the Hosting Supplier's Default (including without limitation loss, costs or expenses under clause 27.8 or clause 27.9.3 of the Master Services Agreement); and

54.6.5 any fine or penalty incurred by the Authority pursuant to Law directly as a result of a Hosting Supplier Default.

54.7 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 54 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 54.

54.8 Nothing in this clause 54 shall act to reduce or affect a party's general duty to mitigate its loss.

54.9A For the avoidance of doubt:

54.9A.1 where a claim could be brought by the Authority under either this Agreement or the Master Services Agreement, the Authority may choose at its entire discretion which to bring it under and shall be governed by the limitation of liability provisions in the applicable agreement provided that the Authority shall

not seek to recover additional monies or damages relating to the same claim under the second agreement (either this Agreement or the Master Services Agreement as applicable) once a claim (the “first claim”) or related claim that arises from the same event as the first claim has been brought under either this Agreement or the Master Services Agreement; and

54.9A.2 nothing in this Agreement or the Master Services Agreement shall entitle either party to recover the same loss more than once.

54.9 REDACTED.

54.9B REDACTED.

54.10 REDACTED.

54.11 REDACTED.

54.12 If the Authority has a right to pursue a claim for breach of confidentiality under clause 45 (Confidentiality) and for breach of clause 43 (Protection of Personal Data) and/or the indemnity in clause 43.16, for the same breach, then to the extent that the Losses suffered by the Authority are Losses which arise from a breach of clause 43 or clause 43.16, the REDACTED cap on the Hosting Supplier’s liability under clause 54.2.A will apply. To the extent that the Authority suffers Losses as a result of a confidentiality breach which do not constitute a breach of the clause 43 or clause 43.16, then the Authority shall have the right to pursue the Hosting Supplier for such Losses REDACTED, in accordance with clause 54.1.4.

**55. INSURANCE**

55.1 The Hosting Supplier shall take out and maintain or procure the maintenance of the Insurances in accordance with the provisions of schedule 2.6 (Insurance Requirements).

**SECTION K – TERM, TERMINATION AND EXIT MANAGEMENT**

**56. TERM**

56.1 This Agreement will begin on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with clause 57, will terminate at:

56.1.1 the end of the Initial Term; or

56.1.2 if the Authority elects to extend the Initial Term, at the end of the Extension Period.

56.2 At the end of the Initial Term, the Authority shall have the option to extend the Term of this Agreement on the same terms for a further period of twelve (12) months, (such limitation for the avoidance of doubt not preventing the extended service provision arrangements under schedule 8.5 (Exit Management)). If the Authority intends to exercise



this option it shall give the Hosting Supplier written notice of this not less than three (3) months prior to the date on which this Agreement would otherwise expire.

**57. TERMINATION RIGHTS**

**57.1 Termination for Cause by the Authority**

57.1.1 The Authority may terminate this Agreement by giving written notice of termination to the Hosting Supplier if one or more of the circumstances set out in clause 57.1.3 exist. Any such rights of termination are subject to any limitations in relation thereto set out in the Master Services Agreement from time to time

57.1.2 Where the Authority is terminating this Agreement for a material Default of this Agreement or the Master Services Agreement or one of the specific provisions in clause 57.1.3.5 it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.

57.1.3 The circumstances giving rise to the Authority's right to terminate are:

57.1.3.1 the Hosting Supplier is in material Default which it has failed to remedy within thirty (30) days of the breach occurring;

57.1.3.2 the Hosting Supplier commits a material breach of this Agreement and/or the Master Services Agreement which is irremediable;

57.1.3.3 the Hosting Supplier's failure to:

(a) not used; and

(b) comply with a Correction Plan because:

(i) the Hosting Supplier does not submit or resubmit a Correction Plan for Approval within the timescales required or at all; or

(ii) the Authority acting reasonably does not Approve the proposed Correction Plan on the second occasion of seeking Approval; or

(iii) the Hosting Supplier does not implement the Correction Plan correctly following its Approval by the Authority,

provided that the rights of termination set out in this clause 57.1.3.3(b) shall be Partial Termination rights relating to that part of the Hosting Services which is the subject matter of the Correction Plan in question;

57.1.3.4 pursuant to:

(a) clause 53.6 (where a modification or replacement of an item pursuant to clause 53.5.2 or where procuring a licence in

accordance with clause 53.5.1 has not avoided or resolved an IPR Claim); or

(b) clause 66 (Prevention of Corruption);

57.1.3.5 the Hosting Supplier is in material Default of:

(a) clause 43 (Protection of Personal Data);

(b) clause 44 (Freedom of Information);

(c) clause 45 (Confidentiality); or

(d) the security requirements set out in schedule 2.1 (Service Requirements), schedule 2.5 (Security Management Plan) or the Security Policy;

57.1.3.6 the Hosting Supplier has breached the Termination Thresholds;

57.1.3.7 an Insolvency Event affecting the Hosting Supplier occurs;

57.1.3.8 in respect of a Financial Distress Event in accordance with the provisions of paragraph 6 of schedule 7.4 (Financial Distress);

57.1.3.9 as a result of the Hosting Supplier's Default the Authority suffers damages that (on their own or in aggregate with other Defaults subject to the applicable liability cap) exceed sixty percent (60%) of any liability cap as set out in clause 54 (Limitations on Liability) and/or the Authority and/or Other Suppliers suffer damages that (on their own or in aggregate with other Defaults subject to the applicable liability cap) exceed sixty percent (60%) of any liability cap set out in the Master Services Agreement;

57.1.3.10 not used

57.1.3.11 the occurrence of:

(a) any breach; or

(b) any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would constitute an event of breach,

which is continuing, unremedied and unwaived, under or in connection with any document or arrangement relating to any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) of the Hosting Supplier in respect of money that has been borrowed exclusively for the purposes of financing the provision of the Hosting Services and/or the Cross Tower services by the Hosting Supplier;

- 57.1.3.12 the Hosting Supplier committing a Default (other than as a consequence of a Default by the Authority) which results in the criminal investigation, prosecution and conviction of the Hosting Supplier or any Sub-contractor under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this clause 57.1.3.12 the Authority shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
  - (b) give all due consideration, where appropriate, to action other than termination of this Agreement;
- 57.1.3.13 subject to clauses 54.9 and 54.10, there has been a Disaster and the Hosting Supplier has not acted in accordance with its obligations under the Business Continuity and Disaster Recovery Plan and other applicable provisions of this Agreement and such failure to act is in itself a material Default or the result of such failure to act has a material adverse impact on the Authority;
- 57.1.3.14 the Hosting Supplier makes any public announcement or a director of the board of directors of the Hosting Supplier advises an officer of the Authority that the Hosting Supplier is no longer going to continue to develop or to offer the provision of services similar to the Hosting Services and there is evidence that the changes described in such announcement will materially adversely impact the ability of the Hosting Supplier to provide the Hosting Services;
- 57.1.3.15 the warranty given by the Hosting Supplier pursuant to clause 47.2.13 is materially untrue;
- 57.1.3.16 the Hosting Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by clause 19.3; or
- 57.1.3.17 the Hosting Supplier fails to provide details of proposed mitigating factors in relation to any Occasion of Tax Non-Compliance as required by clause 19.3 which in the reasonable opinion of the Authority are acceptable.

57.2 The rights of the Authority (to terminate or otherwise) under this clause 57 are in addition (and without prejudice) to any other right or remedy which the Authority may have to claim the amount of loss or damage suffered by the Authority on account of the acts or omissions of the Hosting Supplier (or to take any action other than termination of this Agreement).

### 57.3 Partial Termination

57.3.1 The Authority may, by one month's prior written notice, require the Partial Termination of any part of the Hosting Services.

57.3.2 The parties shall agree (i) any payment to be made in accordance with schedule 7.2 (Payments on Termination) in respect of the Partial Termination (provided always that no such payment shall apply in any situation where this Agreement allows for partial termination by the Authority without compensation or other payment), and (ii) the effect of any Change made necessary to this Agreement by the Partial Termination of any part of the Hosting Services, including the effect the Partial Termination may have on any other Hosting Services, Cross Tower Services and the Charges, in accordance with the Change Control Procedure, provided that:

57.3.2.1 the Hosting Supplier shall not be entitled to an increase in the Charges or any payment under schedule 7.2 (Payments on Termination) if the Partial Termination arises as a result of a Hosting Supplier Default;

57.3.2.2 any increase to the Charges (if any) shall not be unreasonable and in any event shall be calculated in accordance with the Hosting Supplier's financial model and schedule 7.1 (Charging and Invoicing);

57.3.2.3 the Hosting Supplier shall not be entitled to reject the Change; and

57.3.2.4 no such Changes shall apply where this Agreement allows the Authority to partially terminate this Agreement without impact on other Charges or arrangements.

57.3.3 Termination in accordance with this clause 57.3 shall be without prejudice to any right of action or remedy of either party which has accrued or which subsequently accrues.

### 57.4 Termination for Convenience by the Authority

57.4.1 The Authority may terminate this Agreement for convenience at any time on giving at least three (3) months' written notice to the Hosting Supplier.

57.4.2 Subject to any obligation to provide the Hosting Services in accordance with the Exit Plan, the Hosting Supplier's obligation to provide the Hosting Services shall end on the date set out in the Authority's notice.

57.4.3 Without prejudice to clause 57.4.2 and unless otherwise stipulated by the Authority in its notice of termination, any Hosting Services that have not commenced at the date of the Authority's notice shall be cancelled automatically.

57.4.4 This right of termination is in addition to any other rights of the Authority under this Agreement and its exercise shall be without prejudice to any claim, remedy or right of action that either party may have in relation to this Agreement.

#### **57.5 Termination for Change of Control**

57.5.1 The Authority may terminate this Agreement by written notice without penalty if there is a Change of Control to which the Authority objects except where the Authority:

57.5.1.1 has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

57.5.1.2 has not served its notice 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.

57.5.2 The Hosting Supplier shall notify the Authority in writing within one month of any Change of Control taking place.

#### **57.6 Termination by the Hosting Supplier**

57.6.1 The Hosting Supplier may terminate this Agreement if the Authority is in material breach of its obligation to pay undisputed Charges, the Hosting Supplier has given ninety (90) days written notice specifying the breach and requiring its remedy and the Authority has not complied with such notice within the ninety (90) days. The Hosting Supplier's right of termination under this clause 57.6 shall not apply to non-payment of the Charges by the Authority where such non-payment is due to the Authority exercising its rights under clause 20 (Recovery of Sums Due) or other right of non-payment or withholding in this Agreement.

57.6.1.1 The Hosting Supplier shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement.

#### **57.7 Termination for Continuing Force Majeure Event**

57.7.1 The Authority may, by written notice to the Hosting Supplier:

57.7.1.1 require the Hosting Supplier to suspend the provision of any affected part of the Hosting Services where a Force Majeure Event occurs which affects any such part of the Hosting Services for a continuous period of more than five (5) days;

57.7.1.2 terminate this Agreement or any affected part of the Hosting Services where a Force Majeure Event occurs which affects all or a substantial part of the Hosting Services for a continuous period of more than ninety (90) days; or

57.7.1.3 terminate any affected part of the Hosting Services where a Force Majeure Event occurs which affects a part (but not a substantial part)

of the Hosting Services for a continuous period of more than one hundred and twenty (120) days.

#### 57.8 Termination on Regulation 73 Grounds

- 57.8.1 The Authority may terminate this Agreement with immediate effect by the service of written notice if any of the provisions of Regulation 73(1)(a) – (b) of the Public Contracts Regulations 2015 apply.
- 57.8.2 Where this Agreement is terminated pursuant to clause 57.8.1 on Regulation 73(1)(a) grounds, such termination shall be treated as a termination for convenience by the Authority pursuant to clause 57.4 and a Termination Payment shall be payable in accordance with Schedule 7.2 (Payments on Termination).
- 57.8.3 Where this Agreement is terminated pursuant to clause 57.8.1 on Regulation 73(1)(b) grounds, such termination shall be treated as a termination for cause by the Authority pursuant to clause 57.1 and no Termination Payment shall be payable by the Authority.

#### 58. REMEDIAL PLAN PROCESS

- 58.1 Subject to clause 57.1.3.1 or clause 57.3.1, if the Hosting Supplier commits a material Default and the Default is capable of remedy, the Authority may choose first to operate the Remedial Plan Process. The Authority may specify that a Recovery Plan under clause 12.3 in relation to the same Default shall count as a Remedial Plan for the purposes of this clause 58, in which case the Remedial Plan shall also be governed by the process in that paragraph.
- 58.2 The Remedial Plan Process is as follows:
- 58.2.1 The Authority notifies the Hosting Supplier that it considers that the Hosting Supplier is in material Default and that it requires a Remedial Plan. The notice may specify the matters complained of in outline but must contain sufficient detail so that it is reasonably clear what the Hosting Supplier has to remedy.
- 58.2.2 The Hosting Supplier shall serve a draft Remedial Plan within twenty (20) Working Days (or any other period agreed by the parties) even if the Hosting Supplier disputes that it is responsible for the matters complained of.
- 58.2.3 If the Authority considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Escalation Process.
- 58.2.4 If despite the measures taken under clause 58.2.3 a Remedial Plan cannot be agreed within ten (10) Working Days of the date of its submission then the Authority may elect to end the Remedial Plan Process at the end of the escalation period set out in the Dispute Resolution Procedure and serve a Termination Notice which will take effect unless the Hosting Supplier remedies the Default within a

period specified in the Termination Notice which shall not be less than thirty (30) days from the date on which the Termination Notice is sent to the Hosting Supplier.

58.2.5 If a Remedial Plan is agreed between the parties but the Hosting Supplier fails to implement the Remedial Plan the Authority may either give the Hosting Supplier a further opportunity to resume full implementation of the Remedial Plan or escalate any issues arising out of the failure to implement the Remedial Plan using the Escalation Process.

58.2.6 If the reasons for the Hosting Supplier's failure to implement the Remedial Plan have not been resolved despite the use of the Escalation Process in accordance with clauses 58.2.3 or 58.2.5, and the Hosting Supplier has not otherwise remedied the Default, then the Authority may serve a Termination Notice and this Agreement shall terminate on the last day of the period specified by the Authority in its notice, which shall not be less than thirty (30) days from the date on which the Termination Notice is sent to the Hosting Supplier.

## 59. CONSEQUENCES OF EXPIRY OR TERMINATION

59.1 Following the service of a Termination Notice for any reason the Hosting Supplier shall continue to be under an obligation to provide the Hosting Services and the Cross Tower Services to the required Service Levels and to ensure that there is no degradation in the standards of the Hosting Services or the Cross Tower Services until the date of the termination.

59.2 In the event of termination or expiry, the Hosting Supplier shall:

59.2.1 repay to the Authority all Charges it has been paid in advance in respect of FITS Services not provided by the Hosting Supplier as at the date of expiry or termination;

59.2.2 comply with its obligations contained in the Exit Plan; and

59.2.3 subject to the content of the Exit Plan, cease to use the Authority Data and, at the direction of the Authority provide the Authority and/or the Replacement Hosting Supplier with a complete and uncorrupted version of the Authority Data in electronic form in the formats and on media agreed with the Authority and/or the Replacement Hosting Supplier or as specified in the Information Assets Register; and

59.2.4 on the earlier of the receipt of the Authority's written instructions or twelve (12) months after the date of expiry or termination, destroy all copies of the Authority Data, excepting a copy of any such Authority Data which is also a record as set out in schedule 8.4 (Records Provisions) and promptly provide written confirmation to the Authority that the data has been destroyed; and

59.2.5 provide reasonable access during normal working hours to the Authority and/or the Replacement Hosting Supplier for up to twelve (12) months after expiry or termination to:

59.2.5.1 such information relating to the FITS Services as remains in the possession or control of the Hosting Supplier; and

59.2.5.2 such members of the Hosting Supplier Personnel as have been involved in the design, development and provision of the FITS Services and who are still employed by the Hosting Supplier, provided that the Authority and/or the Replacement Hosting Supplier shall pay the reasonable costs of the Hosting Supplier actually incurred in responding to requests for access under this clause 59.2.5,

provided that the Authority shall give reasonable written notice and shall use its reasonable endeavours to ensure that such access does not unreasonably disrupt the Hosting Supplier.

59.3 The provisions of this Agreement that expressly or by implication are intended to come into or continue in force on or after termination or expiry of this Agreement including, but not limited to, clauses 26 (Audits), 35 (Non-Solicitation), 36 (Intellectual Property Rights), 37 (Licences Granted by the Hosting Supplier), 43 (Protection of Personal Data), 44 (Freedom of Information), 45 (Confidentiality), 53 (Indemnities), 54 (Limitations on Liability), 59 (Consequences of Termination), 59 (Payments made on Termination), 70 (Severance), 72 (Entire Agreement), 73 (Third Party Rights) and 75 (Governing Law and Jurisdiction), and the provisions of schedules 1 (Definitions), 7.1 (Charging and Invoicing), 8.6 (Business Continuity), 9.1 (Staff Transfers) and 8.5 (Exit Management) shall survive the termination or expiry of this Agreement.

**60. PAYMENTS MADE ON TERMINATION**

60.1 Save for any payments in respect of any assets made in accordance with schedule 8.5 (Exit Management), the Authority shall not make a payment to the Hosting Supplier:

60.1.1 on the expiry of the Term;

60.1.2 for Termination for Cause by the Authority in accordance with clause 57.1 or for Partial Termination (other than for convenience) in accordance with clause 57.3.1; or

60.1.3 for termination for Change of Control in accordance with clause 57.5.1.

60.2 The costs of termination incurred by the parties shall lie where they fall if either party terminates or partially terminates this Agreement pursuant to clause 57.7 (Termination for Continuing Force Majeure Event).



61. **EXIT MANAGEMENT**

- 61.1 The Authority and the Hosting Supplier shall comply with the Exit Management requirements set out in schedule 8.5 (Exit Management) and any current Exit Plan. Notwithstanding any other provision of this Agreement the Authority shall have the rights set out in this clause 61:
- 61.1.1 if an Insolvency Event occurs, the Authority’s rights under clause 61.2 shall be exercisable by the Authority at any time before the winding up of the Hosting Supplier or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;
  - 61.1.2 in the event of termination of this Agreement for any reason; and/or
  - 61.1.3 upon the expiry of this Agreement.
- 61.2 The Hosting Supplier shall not, without the Authority’s consent, encumber any Hosting Supplier Equipment in any way which would require the consent of a third party to the exercise by the Authority of its rights under schedule 8.5 (Exit Management) or which would in some other way restrict the exercise by the Authority of its rights under that schedule. For the purposes of this clause 61.2 “encumber” does not include any leasing agreement but shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement or which otherwise restricts the Hosting Supplier’s ability to use and deal with the relevant item of Hosting Supplier Equipment.
- 61.3 Unless the Authority otherwise requires, during the time between service of a notice of termination of this Agreement, or for Partial Termination in accordance with clause 57.3, and such termination or exercise taking effect, the Hosting Supplier shall take all steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Hosting Supplier may incur as a result of the termination, including to:
- 61.3.1 cancel all capital and recurring cost commitments in connection with the Implementation Plan and/or the provision of FITS Services on the most cost-effective terms;
  - 61.3.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of the Hosting Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Authority whether such contracts are required to be transferred to the Authority or Replacement Hosting Supplier instead;
  - 61.3.3 reduce labour costs by the redeployment or release of Hosting Supplier Personnel other than Key Personnel to the extent possible in the circumstances; and
  - 61.3.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in clauses 61.3.1 to 61.3.3 (inclusive).

- 61.4 If the cost of any Hosting Supplier Equipment has not been fully paid for through Milestone payments or otherwise amortised at the time of expiry or termination of this Agreement, the Authority shall pay the Hosting Supplier for any Hosting Supplier Equipment that the Authority elects to have transferred to it to the extent specified in (and in accordance with) schedule 8.5 (Exit Management).
- 61.5 If the Hosting Supplier does not fulfil its obligations in accordance with clause 61.3, the Authority shall not pay any sums in excess of those which the Authority would have paid had such action been taken.

## 62. STEP-IN RIGHTS

- 62.1 The Authority may take action under this clause in the following circumstances:
- 62.1.1 there is a Default entitling the Authority to terminate in accordance with clause 57.1 (Termination for Cause by the Authority);
  - 62.1.2 there is a Default by the Hosting Supplier that is materially preventing or materially delaying the performance of the Hosting Services or any part of the FITS Services;
  - 62.1.3 there is a Delay that has resulted or the Authority reasonably anticipates will result in the Hosting Supplier's failure to Achieve a Milestone in respect of Authority to Proceed or CPP by its Milestone Date;
  - 62.1.4 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Hosting Services or any part of the FITS Services;
  - 62.1.5 the Hosting Supplier has breached the Termination Thresholds;
  - 62.1.6 the Hosting Supplier has accrued Delay Payments in excess of REDACTED;
  - 62.1.7 where the Hosting Supplier is not in breach of its obligations under this Agreement but the Authority considers that the circumstances constitute an emergency;
  - 62.1.8 where a Regulatory Body has advised the Authority that the exercise by the Authority of its rights under this clause is necessary;
  - 62.1.9 because a serious risk exists to the health or safety of persons, property or the environment;
  - 62.1.10 because a serious risk exists to the security of any prison;
  - 62.1.11 to discharge a statutory duty; and/or
  - 62.1.12 on the occurrence of an Insolvency Event in respect of the Hosting Supplier.

### **Action To Be Taken Prior To Exercise Of The Right Of Step-in**

- 62.2 Before the Authority exercises its right of step-in under this clause 62 (except in relation to clauses 62.1.9, 62.1.10, or 62.1.11 where step-in shall be at the Authority's complete

discretion), it shall permit the Hosting Supplier the opportunity to demonstrate to the Authority's reasonable satisfaction within ten (10) Working Days that the Hosting Supplier is still able to provide the Hosting Services and the Cross Tower Services in accordance with the terms of this Agreement and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.

62.3 If the Authority is not satisfied with the Hosting Supplier's demonstration pursuant to clause 62.2, the Authority may:

62.3.1 where the Authority considers it expedient to do so, require the Hosting Supplier by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rise to the Authority's right to step-in;

62.3.2 appoint any person to work with the Hosting Supplier in performing all or a part of the Hosting Services or the Cross Tower Services (including those provided by any Sub-contractor); or

62.3.3 take the steps that the Authority considers appropriate to ensure the performance of all or part of the FITS Services (including those provided by any Sub-contractor).

62.4 The Hosting Supplier shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of clause 62.3.2, and shall adopt any reasonable methodology in providing the Hosting Services or Cross Tower Services recommended by the Authority or that person.

#### **Exercise of the Right of Step-in**

62.5 If the Hosting Supplier:

62.5.1 fails to confirm within ten (10) Working Days of a notice served pursuant to clause 62.3.1 that it is willing to comply with that notice; or

62.5.2 fails to work with a person appointed in accordance with clause 62.3.2; or

62.5.3 fails to take the steps notified to it by the Authority pursuant to clause 62.3.3,

then the Authority may take action under this clause either through itself or with the assistance of third party contractors, provided that the Hosting Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 45 (Confidentiality).

62.6 If the Authority takes action pursuant to clause 62.5, the Authority shall serve notice ("**Step-in Notice**") on the Hosting Supplier. The Step-in Notice shall set out the following:

62.6.1 the action the Authority wishes to take and in particular the Hosting Services and/or Cross Tower Services it wishes to control;

62.6.2 the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Hosting Supplier's Default;

- 62.6.3 the date it wishes to commence the action;
- 62.6.4 the time period which it believes will be necessary for the action;
- 62.6.5 whether the Authority will require access to the Hosting Supplier's premises and/or the Sites;
- 62.6.6 to the extent practicable, the effect on the Hosting Supplier and its obligations to provide the Hosting Services and Cross Tower Services during the period the action is being taken.

62.7 Following service of a Step-in Notice, the Authority shall:

- 62.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "**Required Action**");
- 62.7.2 keep records of the Required Action taken and provide information about the Required Action to the Hosting Supplier;
- 62.7.3 co-operate wherever reasonable with the Hosting Supplier in order to enable the Hosting Supplier to continue to provide any Hosting Services or Cross Tower Services in relation to which the Authority is not assuming control; and
- 62.7.4 act reasonably in mitigating the cost that the Hosting Supplier will incur as a result of the exercise of the Authority's rights under this clause.

62.8 For so long as and to the extent that the Required Action is continuing, then:

- 62.8.1 the Hosting Supplier shall not be obliged to provide the Hosting Services or Cross Tower Services to the extent that they are the subject of the Required Action;
- 62.8.2 subject to clause 62.9, the Authority shall pay to the Hosting Supplier the Charges after the deduction of any applicable Service Credits, Delay Payments and the Authority's costs of taking the Required Action.

62.9 If the Required Action results in:

- 62.9.1 the degradation of any Hosting Services or Cross Tower Services not subject to the Required Action; or
- 62.9.2 the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Hosting Supplier shall be entitled to an agreed adjustment of the Charges, provided that the Hosting Supplier can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-Achievement.

62.10 Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Hosting Supplier ("**Step-Out Notice**"), specifying:

- 62.10.1 the Required Action it has actually taken; and

- 62.10.2 the date on which the Authority plans to end the Required Action (“**Step-Out Date**”) subject to the Authority being satisfied with the Hosting Supplier’s ability to resume the provision of the Hosting Services and the Cross Tower Services and the Hosting Supplier’s plan developed in accordance with clause 62.11.
- 62.11 The Hosting 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 (“**Step-Out Plan**”) relating to the resumption by the Hosting Supplier of the Hosting Services and Cross Tower Services, including any action the Hosting Supplier proposes to take to ensure that the affected Hosting Services and Cross Tower Services satisfy the requirements of this Agreement.
- 62.12 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Hosting Supplier of its reasons for not approving it. The Hosting 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.
- 62.13 The Hosting Supplier shall bear its own costs in connection with any step-in by the Authority under this clause 62.

## SECTION L – MISCELLANEOUS AND GOVERNING LAW

### 63. ASSIGNMENT AND NOVATION

- 63.1 The Hosting Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement or the Master Services Agreement without the prior written consent of the Authority.
- 63.2 Notwithstanding clause 63.1, the Hosting Supplier may assign to a third party (“**the Assignee**”) the right to receive payment of the Charges or any part thereof due to the Hosting Supplier under this Agreement or the Master Services Agreement. Any assignment under this clause 63.2 shall be subject to:
- 63.2.1 deduction of any sums in respect of which the Authority exercises its right of recovery under clause 20 (Recovery of Sums Due); and
- 63.2.2 all related rights of the Authority under this Agreement or Master Services Agreement in relation to the recovery of sums due but unpaid.
- 63.3 The Authority may:
- 63.3.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement, the Master Services Agreement and any associated third party licences to any other Contracting Authority or to any FITS Supplier or Replacement Hosting Supplier; or
- 63.3.2 novate this Agreement, the Master Services Agreement and any associated third party licences to any other body which substantially performs any of the functions

that previously had been performed by the Authority. If this transfer increases the burden of the Hosting Supplier's obligations under this Agreement the Hosting Supplier shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Change Control Procedure.

63.4 A change in the legal status of the Authority shall not (subject to clause 63.5) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

63.5 If this Agreement is novated to a body which is not a Contracting Authority, or a body which is not a Contracting Authority succeeds the Authority, (both "**transferee**" in the rest of this clause):

63.5.1 the Hosting Supplier shall be entitled to exercise a right of termination if:

63.5.1.1 the transferee suffers an Insolvency Event; or

63.5.1.2 the transferee commits:

(a) a material Default which Default, subject to the exercise of a process equivalent to the Remedial Plan Process, is not remedied within thirty (30) days after notice of Default from the Hosting Supplier to the transferee requiring its remedy; or

(b) a material Default which is irremediable;

63.5.2 the transferee may only assign, novate or otherwise dispose of its rights and obligations under this Agreement or the Master Services Agreement (or any part) with the prior written consent of the Hosting Supplier (which consent shall not be unreasonably withheld or delayed); and

63.5.3 the following clauses shall be varied from the date of the novation or the date of the Authority's change of status (as appropriate) as if this Agreement had been amended by the parties in accordance with the Change Control Procedure:

63.5.3.1 in clauses 20 (Recovery of Sums Due) the words "or any other Crown Body" shall be deleted; and

63.5.3.2 the definition of "Crown Body" in schedule 1 (Definitions) shall be deleted; and

63.5.3.3 clause 45.7.1 (Confidentiality) shall be deleted.

#### 64. **WAIVER AND CUMULATIVE REMEDIES**

64.1 The rights and remedies provided by this Agreement may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

64.2 Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's other rights and

remedies. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

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

## 65. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

## 66. PREVENTION OF CORRUPTION

- 66.1 The Hosting Supplier shall, and shall use all reasonable endeavours to ensure that all persons performing services on its behalf in relation to this Agreement or the Master Services Agreement shall, comply with any applicable Law in force from time to time regarding bribery, fraudulent acts and/or any other corrupt practice including:

66.1.1 the Bribery Act 2010;

66.1.2 the Anti-Terrorism, Crime and Security Act 2001;

66.1.3 the US Foreign Corrupt Practices Act of 1977; and

66.1.4 any equivalent Laws in the territory in which the Contractor or its associates perform services for the Authority,

together (“**Anti-Bribery Law**”).

- 66.2 The Hosting Supplier undertakes that it has procedures, methodologies and structures in place to prevent persons performing services on its behalf in relation to this Agreement or the Master Services Agreement from undertaking conduct that might amount to a breach of Anti-Bribery Law, which at least meet or exceed the procedures, methodologies and structures recommended by prevailing government issued guidance and at least meet or exceed the procedures, methodologies and structures implemented in accordance with good industry practice for the Hosting Supplier’s business sector (“**Hosting Supplier Anti Bribery Policies**”).

- 66.3 Without limiting clauses 66.1, 66.2 and 66.4, the Hosting Supplier and anyone employed by the Hosting Supplier shall, and the Hosting Supplier shall use all reasonable endeavours to ensure that all persons performing services in relation to this Agreement or the Master Services Agreement on its behalf shall:

66.3.1 adhere to and comply with the relevant Hosting Supplier Anti-Bribery Policies; and

- 66.3.2 provide any information reasonably requested by the Authority from time to time (such requests be no more frequent than once in any 12 month period during the Term of this Agreement for routine requests but shall be unrestricted if the Authority has grounds to suspect any non-compliance) in relation to ensuring compliance by the Authority with any law or Anti-Bribery Law.
- 66.4 Without limiting clause 66.1, the Hosting Supplier undertakes that it and anyone employed by the Hosting Supplier and all persons performing services on its behalf have not offered, promised or agreed to (and will not offer, promise or agree to) give any financial or other advantage (including, but not limited to, any money or gift of any value), to:
- 66.4.1 any official, agent or employee of the Authority or any government, governmental or regulatory agency or other public body (or any person acting in an official capacity for or on behalf of any government, governmental or regulatory agency or other public body) in return for such person assisting (by acting or refraining from acting in their official capacity), either directly or indirectly, in obtaining or retaining business from the Authority or for showing favour or disfavour to any person in relation to this Agreement, the Master Services Agreement or any other contract with the Authority;
- 66.4.2 any person in the form of a commission from the Hosting Supplier or on its behalf, or to its knowledge, unless before this Agreement is made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority; or
- 66.4.3 any other person as an inducement or reward for the improper performance of any function or activity in relation to obtaining or retaining business for the Authority. In this context “improper performance” means performance which does not comply with any reasonable expectations of impartiality or good faith or otherwise, that are expected of the Hosting Supplier or anyone employed by the Hosting Supplier and all persons performing services on its behalf.
- 66.5 The Hosting Supplier shall not enter into this Agreement and the Master Services Agreement if it has knowledge that, in connection with it, the Hosting Supplier or anyone employed by the Hosting Supplier or any persons performing services on its behalf, have acted contrary to any obligation set out in this clause 66, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before execution of this Agreement.
- 66.6 If the Hosting Supplier, anyone employed by the Hosting Supplier or (where acting with the Hosting Supplier’s knowledge or where the Hosting Supplier ought reasonably to have such knowledge) any persons performing services on its behalf in relation to this Agreement or the Master Services Agreement breaches any of clauses 66.1 to 66.5 inclusive, the Authority may terminate this Agreement by written notice with immediate effect.
- 66.7 If any person performing services in relation to this Agreement or the Master Services Agreement on the Hosting Supplier’s behalf fails to comply with any Anti-Bribery Law and/or the Hosting Supplier Anti-Bribery Policies applicable to them then the Authority



may, by written notice, require they be removed and replaced from the performance of the Hosting Services and Cross Tower Services provided that the Authority takes into account the severity of the breach and the impact on the FITS Services of removing or replacing the person(s) in question.

66.8 Notwithstanding clause 29, any dispute relating to:

66.8.1 the interpretation of this clause 66; or

66.8.2 the amount or value of any financial or other advantage,

shall be determined by the Authority (acting reasonably) and the decision shall be final and conclusive.

66.9 The Hosting Supplier hereby indemnifies the Authority against any direct and/or indirect loss (including loss of profit and revenue), cost, expense, (including professional expenses), fines and the monetary effect of any other form of sanction suffered or incurred by the Authority howsoever arising as a result of any breach of clause 66.1, 66.2, 66.3, 66.4, 66.5, 66.6 and/or 66.7 by the Hosting Supplier or by anyone employed by the Hosting Supplier or anyone acting on its behalf (whether with or without the knowledge of the Hosting Supplier) or the commission of any offence under Anti-Bribery Law by the Hosting Supplier or by anyone employed by the Hosting Supplier or anyone acting on its behalf in relation to this Agreement or any other contract with the Authority.

66.10 Any termination under clause 66.6 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Authority.

**67. PUBLICITY AND BRANDING**

67.1 The Hosting Supplier shall not:

67.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

67.1.2 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.

67.2 Each party acknowledges to the other that nothing in this Agreement or the Master Services Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Hosting Services, the Cross Tower Services, the Hosting Supplier ICT Environment and the Authority's ICT Environment) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

**68. COMMERCIAL EXPLOITATION**

The Hosting Supplier or any Affiliate of the Hosting Supplier shall not, without the prior written consent of the Authority, use any element of the Authority's ICT Environment, the Hosting Services or the Cross Tower Services to provide services to any third party. If the Hosting Supplier wishes to use any such item for such purpose it shall notify the Authority setting out a commercial proposal for such use. The Authority shall consider such proposal and, after taking into consideration the risks and benefits relating to the proposal, the Authority shall notify the Hosting Supplier whether or not it consents to such usage.

**69. AUTHORITY ACCOMMODATION**

- 69.1 The Authority and the Hosting Supplier shall enter into the Licence to Occupy on the first Service Commencement Date or, where appropriate, such date(s) as may be shown in schedule 6.1 (Project Management).
- 69.2 There will be no payments due by the Hosting Supplier under the Licence to Occupy.
- 69.3 The Licence to Occupy will terminate upon the termination or expiration of this Agreement or in accordance with the provisions of the Licence to Occupy.
- 69.4 If during the Term the Hosting Supplier requires access to any of the Sites to perform the Hosting Services or Cross Tower Services such access shall be as an invitee of the Authority and on terms notified by the Authority to the Hosting Supplier.
- 69.5 The Authority shall be responsible for maintaining the security of the Sites in accordance with its standard security requirements. The Hosting Supplier shall comply with all reasonable security requirements of the Authority while on the Sites, and shall procure that all of its employees agents and Sub-contractors shall likewise comply with such requirements. The Authority shall provide the Hosting Supplier upon request with copies of its written security procedures and shall afford the Hosting Supplier upon request with an opportunity to inspect its physical security arrangements.
- 69.6 The parties acknowledge the unique status of HM Prisons with regard to the Prisons Act and the Offender Management Act.
- 69.7 If the Hosting Supplier needs to install any element of the End to End ICT Environment on the Sites it shall give reasonable prior notice thereof to the Authority providing details of any special requirements for such items in accordance with the procedures specified by the Authority. The Authority shall grant the Hosting Supplier appropriate rights of access to the relevant Sites for such installation. The Hosting Supplier shall after the installation of such items make good any damage caused to any of the relevant Sites to the reasonable satisfaction of the Authority.
- 69.8 The Hosting Supplier shall be responsible for the removal from the Sites of all rubbish, waste, and packaging materials generated in, and all tools, maintenance and test used in, the provision of the Hosting Services at the Sites.
- 69.9 The Hosting Supplier recognises that any Sites made available by the Authority are in accordance with the Authority's national accommodation and security policy and the

Authority's local policy in force at the time of the requirement. The Hosting Supplier recognises that the Authority's accommodation policy as at the date of this Agreement does not allow for long term storage facilities at the Sites and there are no storage facilities at Headquarters.

- 69.10 If during the Term the Hosting Supplier requires rights to occupy any of the Sites to perform the Hosting Services or Cross Tower Services under this Agreement or the Master Services Agreement which it did not as at the Effective Date need to, the following provisions shall apply:
- 69.10.1 the Hosting Supplier shall undertake a survey of the relevant Sites in order to create a detailed project plan for implementation at particular Sites by the Hosting Supplier ("Site Survey");
  - 69.10.2 the Hosting Supplier shall produce a report in respect of each of the relevant Sites that have been surveyed ("Site Survey Report"). The Site Survey Report will be approved by the Authority and will include details of accommodation requirements of the Hosting Supplier at the relevant Sites in accordance with schedule 3.1 (Authority Responsibilities);
  - 69.10.3 the occupation of the Hosting Supplier at the relevant Sites that have been surveyed will be formalised in accordance with the Site Survey Report; and
  - 69.10.4 if the Authority is unable to provide the accommodation identified by the Site Survey Report then the Hosting Supplier shall provide additional accommodation.
- 69.11 The Hosting Supplier shall be responsible for meeting the cost and expense of all additional accommodation which is necessary to perform the Services.
- 69.12 Upon termination or expiry of the Licence to Occupy, the Hosting Supplier shall provide replacement accommodation for the accommodation under the Licence to Occupy at its own cost and within such timescales as are required to enable the Hosting Supplier to continue to meet its obligations under this Agreement and the Master Services Agreement.
- 69.13 The Hosting Supplier shall be entitled to use (free of charge) such services as may exist at the Sites (including but not limited to telephones, faxes, and power) solely for the purpose of providing the Hosting Services and the Cross Tower Services. If the Hosting Supplier uses the services at the Sites for any purpose other than the provision of the Hosting Services or the Cross Tower Services, the Authority shall be entitled to charge for the use of the services at the Sites.

## 70. SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Hosting Supplier and the Authority shall immediately commence good faith negotiations to remedy that invalidity.

**71. FURTHER ASSURANCES**

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

**72. ENTIRE AGREEMENT**

72.1 This Agreement, together with the documents referred to in it (including, without limitation, the Master Services Agreement), constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

72.2 Each of the parties acknowledges and agrees that in entering into this Agreement, the Master Services Agreement and the documents referred to in it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement and the Master Services Agreement. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement or the Master Services Agreement (as applicable).

72.3 Nothing in this clause 72 shall operate to exclude any liability for fraud.

**73. THIRD PARTY RIGHTS**

73.1 Subject to clause 45.7 (Confidentiality), and schedule 9.1 (Staff Transfers), a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

73.2 Any rights created under clause 73.1 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

**74. NOTICES**

74.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or by email to the address and for the attention of the relevant party notified for such purpose or to such other address as that party may have stipulated in accordance with this clause 74.

74.2 A notice shall be deemed to have been received:

74.2.1 if delivered personally, at the time of delivery;

- 74.2.2 in the case of pre-paid first class post, three Working Days from the date of posting;
  - 74.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
  - 74.2.4 in the case of email, at the time that the email enters the ICT Environment of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within twenty four hours (24) of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery or registered post to the intended recipient.
- 74.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address previously notified for the receipt of notices (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that party).

**75. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and subject to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**76. MODERN SLAVERY**

- 76.1 The Hosting Supplier shall, and procure that each of its Sub-Contractors shall, comply with:
- 76.1.1 the Modern Slavery Act 2015 (“Slavery Act”); and
  - 76.1.2 the Hosting Supplier’s anti-slavery policy (“Anti-slavery Policy”) which will be provided to the Authority upon request.
- 76.2 The Hosting Supplier shall:
- 76.2.1 implement appropriate due diligence procedures for its Sub-Contractors and other participants in its supply chains;
  - 76.2.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;

- 76.2.3 deliver to the Authority each financial year, a copy of its annual slavery and human trafficking statement prepared in accordance with section 54(1) of the Slavery Act;
  - 76.2.4 provide appropriate training to its employees to ensure compliance with the Slavery Act; and
  - 76.2.5 complete the Modern Slavery Assessment Tool at least once a year.
- 76.3 The Hosting Supplier shall ensure that:
- 76.3.1 it conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act;
  - 76.3.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
  - 76.3.3 as at the Effective Date neither the Hosting Supplier nor any of its Sub-Contractors:
    - 76.3.3.1 has been convicted of any offence involving slavery and trafficking; or
    - 76.3.3.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.
- 76.4 The Hosting Supplier shall notify the Authority as soon as it becomes aware of:
- 76.4.1 any breach, or potential breach, of the Anti-Slavery Policy; or
  - 76.4.2 any actual or suspected slavery or trafficking in a supply chain which relates to this Agreement.
- 76.5 If the Hosting Supplier notifies the Authority pursuant to clause 76.4, 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 this Agreement.
- 76.6 If the Hosting Supplier is in Default under clauses 76.2 or 76.3 the Authority may by notice require the Hosting Supplier to remove from performance of this Agreement any Sub-Contractor or Hosting Supplier Personnel whose acts or omissions have caused the Default.

**IN WITNESS** of which this Agreement has been duly executed by the parties.

**SIGNED** for and on behalf of the Secretary of State for Justice

REDACTED

**SIGNED** for and on behalf of **Hosting Supplier**

REDACTED