

14 May

..... 2020

THE SECRETARY OF STATE FOR DEFENCE

and

CAPGEMINI UK PLC

AGREEMENT

for the delivery of Service Centre Services

TABLE OF CONTENTS

Clause	Headings	Page
	BACKGROUND.....	1
A.	PRELIMINARY	2
1.	DEFINITIONS, INTERPRETATION AND APPLICATION.....	2
2.	TERM	4
3.	DUE DILIGENCE.....	4
4.	DEFENCE AS A PLATFORM	4
5.	WARRANTIES.....	6
B.	SERVICES	8
6.	SERVICES	8
7.	STANDARDS	12
8.	MANAGING SERVICE PERFORMANCE	13
9.	STEP-IN RIGHTS.....	17
10.	SERVICES IMPROVEMENT	19
11.	EQUIPMENT	20
12.	SECURITY REQUIREMENTS	21
13.	ENVIRONMENTAL REQUIREMENTS	23
14.	AUTHORITY PREMISES AND SITES.....	23
15.	AUTHORITY DEPENDENCIES	23
16.	AUTHORITY INITIATED SERVICE SUSPENSION.....	27
C.	IMPLEMENTATION	28
17.	IMPLEMENTATION PLAN	28
18.	TESTING	29
19.	DELAYS	30
D.	PERSONNEL AND SUPPLY CHAIN	33
20.	CONTRACTOR PERSONNEL.....	33
21.	EMPLOYMENT INDEMNITIES	36
22.	SUPPLY CHAIN RIGHTS	37
23.	DEALING WITH THIRD PARTIES.....	39
24.	SITE VISITS	42
25.	HEALTH AND SAFETY.....	43
E.	FINANCIAL	43
26.	CHARGING AND INVOICING.....	43
27.	TAX.....	45
28.	RECOVERY OF SUMS DUE	45
29.	FINANCIAL MODEL	45
30.	VALUE FOR MONEY	45
31.	FINANCIAL DISTRESS.....	45

F.	GOVERNANCE	46
32.	REPRESENTATIVES.....	46
33.	GOVERNANCE.....	46
34.	MANAGEMENT INFORMATION	46
35.	AUDITS, NOTIFICATIONS AND RECORD KEEPING	47
36.	INTELLECTUAL PROPERTY RIGHTS.....	52
37.	INTELLECTUAL PROPERTY INDEMNITY	56
38.	AUTHORITY DATA	57
39.	CONFIDENTIALITY AND PUBLICITY	58
40.	FREEDOM OF INFORMATION	61
41.	PROTECTION OF PERSONAL DATA.....	62
42.	CHANGE	65
43.	CHANGE IN LAW	67
44.	DISPUTES.....	68
G.	TERMINATION AND EXIT	68
45.	TERMINATION RIGHTS	68
46.	PAYMENTS MADE ON TERMINATION	72
47.	EXIT MANAGEMENT	73
48.	STAFF TRANSFER.....	73
49.	SURVIVAL.....	73
H.	BUSINESS CONTINUITY	74
50.	BUSINESS CONTINUITY AND DISASTER RECOVERY	74
51.	FORCE MAJEURE.....	74
52.	MEASURES IN A CRISIS	75
I.	LIABILITY	75
53.	LIMITATIONS ON LIABILITY	75
54.	INSURANCE	79
55.	[NOT USED].....	79
56.	CONDUCT OF INDEMNITY CLAIMS	79
57.	SENSITIVE CLAIMS	80
58.	WAIVER AND CUMULATIVE REMEDIES	80
J.	GENERAL	81
59.	ASSIGNMENT AND NOVATION	81
60.	CORRUPT GIFTS	81
61.	ENTIRE AGREEMENT	82
62.	FURTHER ASSURANCES	82
63.	RELATIONSHIP OF THE PARTIES AND INDIRECT CUSTOMERS	82
64.	SEVERANCE	83
65.	THIRD PARTY RIGHTS.....	83
66.	NOTICES.....	83

67.	GOVERNING LAW	85
68.	COUNTERPARTS.....	85
	EXECUTION	86

Schedules

A. Definitions

1. Definitions

B. Services

2. Service Requirements
3. Service Performance
4. Standards
5. Security Requirements
6. Equipment
7. [Not used]
8. Authority Dependencies
9. Operating Level Agreement

C. Implementation and Testing

10. Implementation
11. Testing Procedures

D. Personnel and Supply Chain

12. Representatives and Key Personnel
13. Approved Sub-contractors
14. Managed Contractors
15. Terms of Third Party Contracts
16. Indirect Customers

E. Financial

17. Charges and Invoicing
18. Financial Model
19. Value for Money
20. Financial Distress
21. Payments on Termination

F. Governance

22. Governance
23. Performance Monitoring and Reporting
24. Intellectual Property Rights
25. Contract Change Procedure
26. Records Provisions
27. Commercially Sensitive Information
28. Dispute Resolution Procedure

G. Exit and Staff Transfer

29. Exit Management

30. Staff Transfer

H. Business Continuity

31. Business Continuity and Disaster Recovery

32. Measures in a Crisis

I. Liability

33. Insurance Requirements

Annex A: Form of Collaboration Agreement

THIS AGREEMENT is made on

2020

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE ("Authority")**; and
- (2) **CAPGEMINI UK PLC**, a company incorporated in England with registered number 00943935 whose registered office is at 1 Forge End, Woking, Surrey, GU21 6DB ("**Contractor**").

BACKGROUND

- (A) The Authority carried out an exempt procurement pursuant to Article 346(1)(a) of the Treaty on the Functioning of the European Union, in which it invited a number of bidders to negotiate for the provision of future operational service management services to the Authority. The outcome of the procurement resulted in the Contractor being selected as the successful bidder.
- (B) The Contractor has agreed to supply the Services to the Authority on the terms of this Agreement.
- (C) The Services provided by the Contractor under this Agreement are intended to form part of a wider programme of transformation of the Authority's Enterprise IT capability known as Defence as a Platform (as defined in Clause 4.1.1 (*Defence as a Platform*) below), which will involve a number of contractors working together collaboratively to supply a range of technology-related services to the Authority.
- (D) Defence as a Platform is based on a set of key principles that represent the Authority's vision and objectives for achieving a long-term transformation of its procurement and operation of technology. These key principles include:
 - (i) collaboration among participants in Defence as a Platform;
 - (ii) enabling the Authority to benefit from advances and innovation in technology;
 - (iii) ensuring that Services are transferable, readily re-procurable and supported by effective Exit procedures; and
 - (iv) ensuring service delivery and change are designed to be agile, flexible and to maximise the efficiency and utility of such services being provided to End Users.
- (E) The Contractor acknowledges that the Authority requires a scalable and flexible solution capable of delivering fully functioning Services in an operational environment in which crises and emergency situations are routine.
- (F) The Contractor represents that it:
 - (i) has experience and expertise in the supply of services similar to the Services; and
 - (ii) has considered the Service Requirements and believes that it is able to provide the Services in accordance with the provisions of this Agreement,and on that basis, the Authority has decided to appoint the Contractor to deliver the Services on the terms of this Agreement.
- (G) The Contractor is aware that this Agreement contains special obligations in relation to DEFCON 659a (*Security Measures*) and therefore the Contractor may have access from time to time to information protected under the Official Secrets Acts 1911 to 1989, including information that is to be protected as OFFICIAL, SECRET or MISSION SECRET. The Contractor understands that a breach of security may compromise the safety and security of the Authority's personnel, as well as the people of the United Kingdom and other nations.
- (H) The Contractor recognises that a failure to provide the Services in accordance with this Agreement may:
 - (i) damage the Authority's ability to defend the United Kingdom and its interests, and to strengthen international peace and stability;

- (ii) result in substantial detriment to the reputation and integrity of Her Majesty's Government; and
 - (iii) result in loss of life.
- (l) In addition, the Contractor understands that it is vital that it seeks to remedy any failures within any of the Services expeditiously, regardless of whether the Contractor believes that the cause(s) of such failure is an act or omission of the Contractor, or otherwise.

IT IS AGREED as follows:

A. PRELIMINARY

1. DEFINITIONS, INTERPRETATION AND APPLICATION

- 1.1 In this Agreement, the definitions set out in Schedule 1 (*Definitions*) shall apply unless expressly stated to the contrary in a provision of this Agreement.
- 1.2 The interpretation and construction of this Agreement shall at all times be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
 - 1.2.3 the words "**including**", "**includes**", "**in particular**", "**for example**" or words having a similar effect, shall be construed as illustrative and without limitation to the generality of the related general words;
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted (whether or not having separate legal personality) and their successors and permitted assigns or transferees;
 - 1.2.5 references to a company shall include any company, corporation or any body corporate, wherever incorporated;
 - 1.2.6 references to an Act of Parliament, Law, statutory provision or statutory instrument include a reference to that Act of Parliament, Law, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any subordinate legislation or regulations made under it, whether before or after the date of this Agreement. The impact of any such amendment, extension or re-enactment on this Agreement shall be dealt with in accordance with Clause 43 (*Change in Law*) below;
 - 1.2.7 reference to a Regulatory Body shall include any successor to that Regulatory Body;
 - 1.2.8 references to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm;
 - 1.2.9 references to obligations to be performed for "**three hundred and sixty five (365) days**" in a year shall include the performance of those obligations for three hundred and sixty-six (366) days in a leap year;
 - 1.2.10 unless otherwise specified in this Agreement, if a matter is subject to a Party's consent, the grant of that consent shall be in that Party's sole and absolute discretion;
 - 1.2.11 the Authority shall not be considered to have knowledge of any Government policy, fact, matter or thing unless that Government policy, fact, matter or thing is within the knowledge of the Authority Representative;
 - 1.2.12 the Authority's overseeing of, participation in any discussions or consultations about, comments on, or approval of, any item (including any Correction Plans)

shall not prejudice the Authority's rights and remedies. In addition, nor shall such overseeing of, participation in any discussions or consultations about, comments on or approval of, any such item constitute a waiver, variation or acquiescence (including any acceptance that the Contractor has performed the Services in accordance with this Agreement). The Contractor shall use its own judgment in determining whether any comments made by the Authority are reasonable, taking into account practical, technical and operational considerations, and shall at all times remain responsible for ensuring that the Services are delivered in accordance with this Agreement;

- 1.2.13 references to the "**Parties**" means the Authority and the Contractor and their respective successors and permitted assigns. References to a "**third party**" or "**third parties**" shall not include members of the Contractor's Group;
- 1.2.14 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.15 references to this Agreement shall include any recitals, Schedules and appendices to it;
- 1.2.16 references in this Agreement to any Clause or Schedule or Appendix to a Schedule without further designation shall be construed as a reference to the clause or schedule or appendix to a schedule to this Agreement, so numbered;
- 1.2.17 references in this Agreement to any Paragraph without further designation shall be construed as a reference to the paragraph of the relevant Schedule to this Agreement so numbered;
- 1.2.18 reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;
- 1.2.19 references to a Clause or Paragraph are a reference to the whole of that clause or paragraph unless stated otherwise; and
- 1.2.20 references to any English legal term shall, in respect of any jurisdiction other than England and Wales, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.
- 1.3 Without prejudice to Clauses 6.9.1 (*Delivery and Performance*) and 7.2 (*Standards*) below, if there is any conflict between the Clauses and the Schedules, any appendices to the Schedules or any other documents referred to in this Agreement (as applicable), the following order of precedence shall apply:
 - 1.3.1 the Clauses of this Agreement;
 - 1.3.2 Schedule 1 (*Definitions*);
 - 1.3.3 Part A (*Service Requirements*) of Schedule 2 (*Service Requirements*);
 - 1.3.4 any other Schedules to this Agreement and their appendices (except for Appendix 4 (*Outline Implementation Plan*) to Schedule 10 (*Implementation*) and Part B (*Contractor Solution Description*) of Schedule 2 (*Service Requirements*) which sets out the Contractor Solution Description);
 - 1.3.5 the Standards;
 - 1.3.6 Appendix 4 (*Outline Implementation Plan*) to Schedule 10 (*Implementation*) and Part B (*Contractor Solution Description*) of Schedule 2 (*Service Requirements*) (which sets out the Contractor Solution Description);
 - 1.3.7 the Exit Plans; and
 - 1.3.8 any other document referred to in any of the above.
- 1.4 Prompt and expeditious performance of this Agreement is important to the Authority. In all cases therefore where the Contractor is obliged to take action, provide notice or complete a

task under this Agreement then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in this Agreement. However, unless stated otherwise, time is not of the essence in this Agreement.

2. TERM

- 2.1 This Agreement will begin on the Contract Date (although the Parties acknowledge that the Services will begin on their respective Operational Service Commencement Dates) and, unless terminated at an earlier date by operation of Law or in accordance with Clause 45 (*Termination Rights*), will expire:

- 2.1.1 at the end of the Initial Term; or
- 2.1.2 if the Authority elects to extend the Initial Term in accordance with Clause 2.2 below, at the end of the last Extension Period.

- 2.2 The Authority shall have the right to extend this Agreement twice (the period of each such extension to be an "**Extension Period**").

- 2.3 To extend this Agreement for an Extension Period, the Authority must serve no less than three (3) months' written notice to the Contractor prior to the expiry of:

- 2.3.1 in the case of the first Extension Period, the Initial Term of this Agreement; and
- 2.3.2 in the case of the second Extension Period, the first Extension Period.

- 2.4 Each Extension Period shall be of up to twelve (12) months' duration (the Authority to specify the duration in the notice referred to in Clause 2.3) and shall continue on the same terms and conditions, save that the discounts and subsidies described in Paragraph 5.1 of Part A (*Charges*) of Schedule 17 (*Charges and Invoicing*) shall apply.

3. DUE DILIGENCE

- 3.1 The Contractor acknowledges that it has:

- 3.1.1 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 raised all relevant due diligence questions with the Authority before the Contract Date;
- 3.1.3 carried out due diligence in accordance with Good Industry Practice with the objective of satisfying itself as to all risks, contingencies and circumstances pertaining to the performance of this Agreement; and
- 3.1.4 entered into this Agreement in reliance on its own due diligence.

- 3.2 The Authority gives no warranty, representation or undertaking that any information supplied to the Contractor, whether by or on behalf of the Authority or otherwise (and whether or not such information was provided before or after the Contract Date, including during the tender period for the Services) is complete, relevant, accurate, up-to-date or fit for purpose.

4. DEFENCE AS A PLATFORM

- 4.1 The Contractor acknowledges and agrees that:

- 4.1.1 the Services provided under this Agreement are intended to form part of a wider programme of transformation of the Authority's ICT capability ("**Defence as a Platform**") and that, without limiting the Contractor's other obligations under this Agreement, the Contractor will work with the Authority to achieve the strategic vision and objectives of Defence as a Platform, including by complying with its obligations set out in this Clause 4; and
- 4.1.2 receiving seamless, secure, efficient and cost-effective end-to-end information, communications and technology services is vital to the Authority's ability to fulfil its functions and that any failure of the Contractor to engage with Authority Third

Parties in an open and co-operative manner in accordance with this Agreement may prejudice the Authority's receipt of such seamless, secure, efficient and cost-effective end-to-end information, communications and technology services.

4.2 Collaboration Agreement

- 4.2.1 The Contractor acknowledges that there are or will be a number of other contractors which have entered into agreements with the Authority in relation to Defence as a Platform (the "**DaaP Contractors**").
- 4.2.2 The Contractor further acknowledges that it and other DaaP Contractors are or will be parties to the Collaboration Agreement, which will govern the interactions between them, and the Contractor shall at all times:
 - (A) comply with the provisions of the Collaboration Agreement; and
 - (B) in performing the Services and carrying out its obligations under this Agreement and the Collaboration Agreement, act in accordance with the Principles.
- 4.2.3 Without limiting the Contractor's obligations under this Agreement or the Collaboration Agreement, the Contractor shall, when providing the Services and carrying out its obligations under this Agreement, ensure that where it (and any of its Sub-contractors) interacts with other DaaP Contractors, such interactions are consistent with the provisions of the Collaboration Agreement and designed to minimise disruption to any services being provided to End Users and to maximise the efficiency and utility of such services.

4.3 Transferability, Re-Procurement and Exit

The Contractor acknowledges and agrees that:

- 4.3.1 to the extent possible given the nature of the Services and the Authority's requirements, one of the objectives of Defence as a Platform is to promote transferability of services so as to facilitate re-procurement of and Exit from the Services as part of a regular service procurement and refresh cycle. Without limiting the Contractor's other obligations under this Agreement, the Contractor, in designing, implementing and delivering its solution, shall ensure that the Services are capable of being transferred to the Authority or any other Replacement Provider, using standard market practices and commercially reasonable levels of resourcing, within a period of six (6) months from the date on which an Exit Period begins;
- 4.3.2 consistent with the Defence as a Platform objective to conduct regular re-procurement of the Services (the "**Re-Procurement Objective**"), the Authority's ability to Exit from this Agreement is a fundamental aspect of the Services;
- 4.3.3 without limiting the Contractor's obligations under Clause 47 (*Exit Management*), Schedule 29 (*Exit Management*) or this Agreement generally, the Contractor shall carry out its obligations under this Agreement in a way that demonstrates a commitment to the Re-Procurement Objective and that will facilitate a smooth, efficient and orderly Exit; and
- 4.3.4 a failure to perform its obligations relating to the provision of Exit Management Information, Exit Assistance and Re-Procurement Assistance may prejudice the Authority's ability to conduct a fair and effective competition for Replacement Services and to safeguard the continuity of the Services at a price that represents value for money for the taxpayers of the United Kingdom.

4.4 Agility and scalability

- 4.4.1 The Contractor acknowledges that one of the key user requirements underpinning Defence as a Platform is that services are provided by DaaP

Contractors in a way that maximises agility and scalability and which promotes evergreening.

- 4.4.2 Without prejudice to any other provisions of this Agreement, the Contractor shall use all reasonable endeavours to provide Services that are agile, scalable and evergreen, without major service interruptions and without compromising information assurance, to meet the operational and business needs of the Authority.

5. WARRANTIES

- 5.1 Each Party warrants, represents and undertakes at the Contract Date that:

- 5.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 5.1.2 this Agreement is executed by a duly authorised representative of that Party;
- 5.1.3 it is Solvent and will remain Solvent throughout the Term and any Exit Period;
- 5.1.4 there are no actions, lawsuits 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; and
- 5.1.5 once duly executed this Agreement will constitute its legal, valid and binding obligations.

- 5.2 The Contractor warrants, represents and undertakes for the Term and any Exit Period that:

- 5.2.1 it has and will continue to hold all necessary regulatory approvals (if any) from the Regulatory Bodies that are required in order to perform its obligations under this Agreement;
- 5.2.2 it has, and shall maintain in place, all permits, licences, authorisations and consents necessary to enter into this Agreement, perform the Services and comply with its obligations under this Agreement (including any obligations to assign or grant rights);
- 5.2.3 it has and will continue to have all necessary Intellectual Property Rights in and to all materials made available by any of the Contractor or the Sub-contractors to the Authority in connection with this Agreement;
- 5.2.4 it has, and shall have available, all systems, software (including the Software) and resources appropriate for, and fully fit for, the purpose of providing the Services that meet the Authority's requirements as to scalability and security as specified in Schedule 2 (*Service Requirements*);
- 5.2.5 all components and equipment (including the Equipment) supplied or used in the course of provision of the Services will operate in a manner that will enable the Services to be performed so as to meet the Service Levels and will be used and maintained in accordance with Good Industry Practice;
- 5.2.6 in performing its obligations under this Agreement, all software used by or on behalf of the Contractor shall:
 - (A) be currently supported versions of that software; and
 - (B) perform in all material respects in accordance with its specification;
- 5.2.7 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the:
 - (A) introduction, creation or propagation of any disruptive element, virus, worms or trojans, spyware or other malware (including any Malware); and
 - (B) unauthorised use of any codification or access;

- 5.2.8 it shall take all measures necessary to avoid and prevent any and all data loss and data corruption, including as required by the Security Requirements and the Standards;
 - 5.2.9 all Contractor Personnel are appropriately skilled, qualified, trained, and experienced to provide the Services in accordance with this Agreement;
 - 5.2.10 all statements, information, warranties and representations contained in the Contractor's Response to the ITN and (unless otherwise agreed) any other documents which resulted in the award of this Agreement are to the best of its knowledge, information and belief, true and accurate as at the Contract Date 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, information, warranty or representation to be false or misleading;
 - 5.2.11 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Agreement;
 - 5.2.12 it owns, has obtained or is able to obtain valid licences for all IPR that are necessary for the performance of its obligations under this Agreement and shall maintain the same in full force and effect;
 - 5.2.13 the only Contractor Third Party IPR, Special Contractor IPR and Contractor IPR used in the provision of the Services and the performance of this Agreement shall be that Contractor IPR, Contractor Third Party IPR and Special Contractor IPR listed in Paragraphs 3, 4 and 5 of Schedule 24 (*Intellectual Property Rights*);
 - 5.2.14 any manuals or other explanatory documentation provided by the Contractor to the Authority (or any Indirect Customer) in respect of the use of the Services will contain all necessary information and explanation required for executing an Exit Plan and for suitably experienced and qualified employees of the Authority or of another Replacement Provider to use the Software and receive the Services and to perform the Replacement Services on termination or expiry of this Agreement;
 - 5.2.15 all Re-Procurement Information and Exit Management Information provided under Schedules 23 (*Performance Monitoring and Reporting*) and 29 (*Exit Management*) is complete and accurate in all material respects;
 - 5.2.16 the Services are capable of meeting the Re-Procurement Objective, or they are substitutable such that this objective can be met;
 - 5.2.17 the Contractor Solution and any Assets used in the performance of the Services will be free of all encumbrances except for hire purchase or leasing arrangements in respect of Equipment other than Exclusive Equipment; and
 - 5.2.18 it shall at all times comply with the Law in carrying out its obligations under this Agreement.
- 5.3 The Contractor warrants, represents and undertakes that it shall:
- 5.3.1 obtain (in accordance with Paragraph 7.1 of Schedule 5 (*Security Requirements*)); and
 - 5.3.2 subject to Paragraph 7.1 of Schedule 5 (*Security Requirements*), maintain during the Term and any Exit Period,
- Certification for each Service.
- 5.4 The Contractor recognises that the warranties, representations and undertakings in this Agreement are material and have been designed to induce, and have actually induced, the Authority to enter into this Agreement.
- 5.5 Except as expressly stated in this Agreement, all warranties and conditions implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

- 5.6 The fact that any provision is expressed as a warranty shall not preclude any right of termination or rescission the Authority may have in respect of breach of that provision by the Contractor.

B. SERVICES

6. SERVICES

Appointment

- 6.1 The Contractor is appointed by the Authority under this Agreement as the non-exclusive provider of the Services and nothing in this Agreement shall prevent the Authority from acquiring the Services or services similar to the Services from another supplier or from performing any such services for itself internally.
- 6.2 The Contractor shall provide each of the Services from their relevant Operational Service Commencement Dates, and shall throughout the Term (and during any Exit Period) ensure that all the Services:
- 6.2.1 comply in all respects with the Service Requirements;
 - 6.2.2 are provided in an economic, efficient and effective manner;
 - 6.2.3 without prejudice to the Contractor's obligation to provide the Services in compliance with the Service Requirements, are supplied in accordance with the Contractor Solution Description and the terms of this Agreement; and
 - 6.2.4 do not prejudice the Authority's compliance with, or cause the Authority to breach, any Law.

Actual Solution

- 6.3 The Contractor acknowledges the importance to the Authority of receiving a solution for the Services (the "**Actual Solution**") which seeks to minimise solution-specific elements that would be likely to hinder to a material extent either the Authority's ability to transfer the Services to a Replacement Provider or a Replacement Provider's ability to take over the provision of the Services from the Contractor.
- 6.4 The Contractor shall ensure that, after the Services have been Implemented, the Actual Solution uses standard market products and services to the greatest extent possible, with such standard market products and services being configured, located and delivered in such a way as to minimise the amount of intervention, risk, effort and cost that would be required to be undertaken in order to replace, or transfer the delivery of, such Services to a Replacement Provider.
- 6.5 Without limiting Clauses 6.3 and 6.4, the Contractor shall ensure that the Actual Solution is designed and deployed in such a way that:
- 6.5.1 it uses minimal bespokeing;
 - 6.5.2 there are minimal technological, geographical, commercial or financial constraints with respect to the transfer of Services to a Replacement Provider;
 - 6.5.3 it does not constrain the Authority from being able to maintain operational capability during any transfer of the Services to a Replacement Provider;
 - 6.5.4 the transfer of Exclusive Equipment and the Exit Management Information is capable of being effected reasonably swiftly and simply; and
 - 6.5.5 the potential burden on a Replacement Provider in relation to transfer of the Services (or any Replacement Services) is minimised.

Delivery and performance

- 6.6 The Contractor shall perform its obligations under this Agreement with all due care, skill and attention and in accordance with:
- 6.6.1 the Implementation Plan;

- 6.6.2 the Service Requirements and Contractor Solution Description;
- 6.6.3 the Standards;
- 6.6.4 Good Industry Practice;
- 6.6.5 the Security Policy;
- 6.6.6 the applicable Exit Plan;
- 6.6.7 the Collaboration Agreement; and
- 6.6.8 all applicable Law.
- 6.7 The Services shall be deemed to include:
 - 6.7.1 all activities, functions and services necessary for the proper provision of, ancillary to or customarily included as part of, the Services described in Schedule 2 (*Service Requirements*); and
 - 6.7.2 an obligation on the Contractor to properly supervise the carrying out of the Services and adequately manage the risks to the Authority associated with the provision of the Services.
- 6.8 Any Deliverables, work or material produced by the Contractor as part of the Services shall be:
 - 6.8.1 of satisfactory quality and free from defects; and
 - 6.8.2 supported by adequate documentation, where applicable.
- 6.9 The Contractor shall:
 - 6.9.1 promptly draw to the attention of the Authority any conflict between Clause 6.2 above and Clauses 6.3 to 6.5 (*Actual Solution*) (inclusive) above and shall comply with the Authority's decision on the resolution of that conflict; and
 - 6.9.2 ensure that the Services integrate with the Authority's Enterprise IT capability as required (including as set out in the interface specifications in Appendix A (*Interface Specification*) to Schedule 2 (*Service Requirements*)) in order for the Authority to receive the Services in accordance with this Agreement.
- 6.10 Subject to Paragraph 2.7 of Schedule 5 (*Security Requirements*) and the SAL, the Contractor shall only provide the Services from within the United Kingdom, except to the extent:
 - 6.10.1 necessary to provide Services to Authority Sites outside of the United Kingdom (and in relation to which the Authority has Approved the specific details of such provision); or
 - 6.10.2 otherwise agreed previously in writing with the Authority, such form of writing to refer expressly to this Clause 6.10.

Default

- 6.11 If the Contractor becomes aware of any Default in its performance of the Services or of another obligation under this Agreement, it shall:
 - 6.11.1 promptly notify the Authority of such Default if it is not insignificant; and
 - 6.11.2 where such Default is capable of remedy, at its own expense remedy the same as soon as is reasonably practicable.
- 6.12 If the Contractor fails to provide the Services or to comply with its obligations in accordance with this Agreement:
 - 6.12.1 the Authority may, without prejudice to its other rights or remedies, require the Contractor to re-perform the Services or to comply with its obligations within a reasonable time period; and
 - 6.12.2 if the Contractor fails to re-perform the Services or comply with its obligations within a reasonable time period, the Authority may (without prejudice to its rights

pursuant to Clause 9 (*Step-in Rights*)) instruct a third party to re-perform or comply in lieu of the Contractor, in which case the reasonable costs of such re-performance or compliance shall be borne by the Contractor, subject to the limitations of liability set out in Clause 53 (*Limitations on Liability*).

Operating Manual

- 6.13 Within thirty (30) Working Days of the Effective Date (or such other period as specified in the Implementation Plan or otherwise agreed by the Parties in writing, such form of writing to refer expressly to this Clause 6.13), the Contractor shall deliver a draft Operating Manual to the Authority for its Approval, based on the information that is then available to the Contractor.
- 6.14 The draft Operating Manual shall be in English and contain sufficient information as is reasonably necessary for the Authority and a reasonably skilled person to understand how the Services are delivered, including:
 - 6.14.1 a description of the Contractor Solution architecture, including (where applicable) mapping the solution to the applicable HLSD;
 - 6.14.2 details of the Contractor Solution, including architectural design documentation relating to:
 - (A) time synchronisation;
 - (B) integration;
 - (C) data standards;
 - (D) security layers;
 - (E) data separation;
 - (F) component specifics;
 - (G) resilience;
 - (H) business continuity;
 - (I) volume and design limits;
 - (J) network diagrams; and
 - (K) how the Contractor Solution interfaces with other services (including service boundaries and touchpoints);
 - 6.14.3 other such details necessary for the Authority to understand the technology used to provide the Services (including identification of any standard market services used to provide the Services);
 - 6.14.4 details of the procedures and processes used by the Contractor Personnel to provide the Services (escalation levels and working instructions) and how these interface with the ISS Processes;
 - 6.14.5 details of the Authority Dependencies and the measures put in place by the Contractor to minimise and mitigate the impact of any Authority Dependencies;
 - 6.14.6 a record of all Contract Changes and Service Changes;
 - 6.14.7 the Measurement Methodologies;
 - 6.14.8 the measures taken to protect Authority Data generated, Processed or stored as part of the Services;
 - 6.14.9 the mechanisms used by the Contractor to provide Information Assurance;
 - 6.14.10 the resilience, availability and equipment life of the technology used to deliver the Services;
 - 6.14.11 the measures put in place to comply with the Standards;

- 6.14.12 a route map or similar document (in the format specified by the Authority) that provides a high-level overview of how the Services (or part thereof) can be transitioned to one or more Replacement Providers as part of a re-procurement exercise and which will form the basis of the Exit Plan to be developed in accordance with Paragraph 5 of Schedule 29 (*Exit Management*); and
- 6.14.13 the information that is to be set out in the Technical Infrastructure Register referred to in Appendix 3 (*Re-Procurement Information and Exit Management Information*) to Schedule 23 (*Performance Monitoring and Reporting*).
- 6.15 The Authority shall not unreasonably withhold its Approval of a draft Operating Manual. If the Authority does not Approve a draft Operating Manual it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Operating Manual, which shall be resubmitted to the Authority within five (5) Working Days (or such other period as the Authority may permit and notify to the Contractor in writing) of the rejection of the first draft.
- 6.16 The Contractor shall comply with the Operating Manual following its Approval by the Authority.
- 6.17 Approval of the Operating Manual by the Authority shall not relieve the Contractor of any responsibility to deliver the Services in accordance with this Agreement.
- 6.18 The Contractor shall ensure that the Operating Manual is maintained and updated regularly and in particular shall update and deliver to the Authority for its Approval an updated copy of the Operating Manual:
 - 6.18.1 within thirty (30) days of the end of each Contract Year;
 - 6.18.2 within ten (10) days of a Termination Notice being served; and
 - 6.18.3 where a Contract Change or a Service Change results in the introduction of or material amendment to a Service, within thirty (30) days of the Contract Change or Service Change (as the case may be) being agreed,

provided that the Contractor may seek the Authority's consent (such consent to be in writing) not to provide an updated Operating Manual where the Contractor has already provided an updated Approved Operating Manual within the previous fifteen (15) Working Days.
- 6.19 The Contractor shall amend the Operating Manual promptly in accordance with any reasonable recommendations or requirements stipulated by the Authority from time to time, including in order to add further detail to the Operating Manual.
- 6.20 The Contractor shall provide a copy of the most recently Approved Operating Manual to the Authority on request from time to time.

Service Catalogue

- 6.21 The Parties acknowledge that:
 - 6.21.1 one of the objectives of ISS is to enable End Users to use the ISS Service Catalogue to make requests and receive services; and
 - 6.21.2 the ISS Service Catalogue has been established by ISS and is managed and maintained under the ISS Service Catalogue Management Process, as referred to in Paragraph 4 of Schedule 4 (*Standards*).
- 6.22 Without limiting the Contractor's obligations under this Agreement (including the obligation to comply with the Standards) the Contractor shall comply with the provisions of the Service Catalogue Management Process.

Optional Service Elements

- 6.23 The Parties acknowledge that, at the Contract Date, the Contractor shall not be required to deliver the Optional Service Elements unless the Authority notifies the Contractor that it wishes an Optional Service Element to be delivered in accordance with Clause 6.24.
- 6.24 If the Authority wishes the Contractor to commence delivery of an Optional Service Element, the Authority shall provide the Contractor with written notification of such wish and the Contractor shall:
- 6.24.1 as soon as practicable (and in any event within one (1) Working Day), acknowledge the Authority's notification;
 - 6.24.2 deliver within ten (10) Working Days (unless otherwise agreed by the Parties in writing) an Optional Service Element Implementation Plan for implementing the Optional Service Element;
 - 6.24.3 following any amendments to the Optional Service Element Implementation Plan reasonably required by the Authority, carry out the activities set out therein; and
 - 6.24.4 commence providing the Optional Service Element to the Authority as part of the Services on and from the OSCD for that Optional Service Element.
- 6.25 Without limiting the Authority's rights or the Contractor's obligations in Clause 6.24, the Contractor shall comply with the Standards (including the CAP INT Process) when implementing an Optional Service Element (including as the CAP INT Process and other Standards apply to timing, governance and testing).

7. STANDARDS

- 7.1 The Contractor shall comply with the Standards in providing the Services and performing its obligations under this Agreement. The Contractor shall develop the Quality Plans in accordance with the timescale set out in Schedule 10 (*Implementation*) for the Authority's Approval.
- 7.2 The Contractor shall notify to and discuss with the Authority any conflict that the Contractor reasonably believes exists or that may or will occur between:
- 7.2.1 any of the Standards set out in Schedule 4 (*Standards*); or
 - 7.2.2 any of the Standards set out in Schedule 4 (*Standards*) and any other obligation under this Agreement,
- and shall comply with the Authority's decision on the resolution of that conflict.
- 7.3 If the addition of a Standard, or an update or amendment to a Standard, necessitates a material change to the cost of providing those parts of the Services affected by such addition, update or amendment (for the purposes of this Clause 7.3 and Clause 7.4, the "**affected Services**"), the Contractor shall:
- 7.3.1 submit a Contract Change Request in respect of such material change; and
 - 7.3.2 include in such Contract Change Request, sufficient detailed financial information to enable the Authority to understand and confirm the material change.
- 7.4 For the purpose of Clause 7.3, "**material change**" shall be interpreted as any change that results in an increase or decrease:
- 7.4.1 in the Contractor's ongoing costs of providing the affected Services of greater than £25,000 (twenty-five thousand pounds sterling); or
 - 7.4.2 in the case of a Milestone, an increase or decrease in the Contractor's costs to meet the relevant Milestone of greater than £25,000 (twenty-five thousand pounds sterling).
- 7.5 Where required by Schedule 10 (*Implementation*) and in accordance with the Standards, the Contractor shall develop Quality Plans, which it shall submit for the Authority's Approval. The Contractor shall ensure that it adheres to any applicable Approved Quality Plans in providing the Services. Notwithstanding that the Authority may Approve a Quality

Plan, the Contractor acknowledges and agrees that it shall be solely responsible for ensuring the accuracy, suitability and applicability of such Quality Plan.

8. MANAGING SERVICE PERFORMANCE

- 8.1 The Contractor shall ensure that each of the Services meets or exceeds the relevant Service Levels from the relevant Service Level Commencement Date.
- 8.2 The provisions of Schedule 3 (*Service Performance*) and Schedule 23 (*Performance Monitoring and Reporting*) shall apply and the Contractor shall measure its performance of the Services in accordance with the provisions of those Schedules.

Planned Downtime

- 8.3 The Contractor may request from the Authority a period of Planned Downtime in relation to any of the Services, subject to Clause 8.15 below, in accordance with the Standards (including ISSP 153 - Planned Outages ("**ISSP 153**")) and Clauses 8.4 to 8.15.
- 8.4 The Contractor shall not implement any Planned Downtime without Approval.
- 8.5 Without prejudice to Clause 8.1 above, the Contractor may request (without having to submit a Planned Downtime Request for the same) that the Authority Approves a specified time period (for example, during the period between 18:00 hours on a Sunday and 06:00 hours on a Monday morning in the relevant time zone(s)) during which the Contractor may, unless otherwise notified by the Authority, complete routine, low-risk maintenance and upgrades that the Contractor reasonably believes are unlikely to have an adverse impact on the Availability of the Services or the services provided by Authority Third Parties.
- 8.6 If the Contractor wishes to request a period of Planned Downtime, it shall provide to the Authority a written request for such Planned Downtime (the "**Planned Downtime Request**"), and shall ensure that such request gives the Authority the requisite period of notice (subject to Clause 8.15 below) stipulated in ISSP 153.
- 8.7 From time-to-time, the Authority may make the Contractor aware of a period within which it would prefer Planned Downtime to be scheduled, and the Contractor shall use its best endeavours to schedule any Planned Downtime required within this period.
- 8.8 In submitting Planned Downtime Requests, the Contractor shall, wherever possible, propose Planned Downtime outside the working hours of Authority Sites likely to be affected. The Contractor acknowledges that the Authority is only likely to Approve Planned Downtime that would be scheduled to occur during working hours where the Contractor has demonstrated compelling and exceptional justification for the relevant Planned Downtime Request.
- 8.9 Each Planned Downtime Request shall be provided to the Authority in the format and by the means detailed in ISSP 153. In addition, the Contractor shall revise and resubmit each Planned Downtime Request in accordance with the Standards, until it is Approved by the Authority. Once the Planned Downtime Request has been Approved by the Authority, the Contractor shall be responsible for the management and co-ordination of all of the work required to be carried out during the Planned Downtime and all such work shall be carried out at the Contractor's own cost.
- 8.10 Where, in relation to any Service, the Contractor provides the Planned Downtime Request to the Authority without providing the period of notice required in ISSP 153 prior to the proposed commencement date for the Planned Downtime for that Service, such Planned Downtime will (except for activities in relation to which the Contractor is entitled not to provide the period of notice required in ISSP 153 pursuant to Clause 8.15 below) be counted as Service Downtime for the purposes of Availability, unless otherwise agreed in writing with the Authority in advance of such Planned Downtime occurring, such form of writing to refer expressly to this Clause 8.10.
- 8.11 In all circumstances, the Contractor must use all reasonable endeavours to keep the length of any interruption to, or delay in, the provision of the Services to the absolute minimum required to perform the activities to be performed during the Planned Downtime and any associated Testing or Trialling.

- 8.12 The Contractor shall maintain and keep up-to-date a forward schedule of Planned Downtime that sets out all Planned Downtime Requests for the next twelve (12) months, as well as the Authority's response to such requests (the "**Planned Maintenance Forward Schedule**"). The Contractor shall provide the Authority with an updated copy of the Planned Maintenance Forward Schedule at the start of each calendar month during any period during which Services are to be provided. The Contractor shall make the Planned Maintenance Forward Schedule available to all other DaaP Contractors and any other Authority Third Parties specified by the Authority from time to time. Nothing in this Clause 8.12 shall permit the Contractor to vary the length of the period of Planned Downtime specified in the relevant Planned Downtime Request.
- 8.13 If the Contractor receives a forward schedule of planned maintenance from another DaaP Contractor it shall take into account the periods of downtime and planned downtime set out in that (or those) other planned maintenance forward schedule(s) and shall use all reasonable endeavours to plan its own Planned Downtime to minimise the overall downtime experienced by the Authority across the Enterprise IT in any twelve (12) month period.
- 8.14 The Contractor shall, in respect of all Implementation activity, work collaboratively and proactively with the Authority and Authority Third Parties (including, without limitation, the Authority OSM) in refining its Detailed Implementation Plan, so that its Planned Downtime Requests minimise any adverse impacts on the Authority, the Services and other services provided by Authority Third Parties (including by minimising the overall downtime experienced by the Authority across the Enterprise IT).
- 8.15 In respect of any activity required to effect Implementation only, the Contractor may request Planned Downtime without giving the requisite period of notice stipulated in ISSP 153. Nonetheless, the Contractor shall plan Planned Downtime so as to ensure that End Users are given reasonable notice of any actual or potential interruption to the Services or, during Implementation, any Outgoing Services.
- 8.16 The Contractor shall, on request from time to time, provide the Authority (within five (5) Working Days of such request) with an assessment of the potential impact on the Services of any Planned Downtime. Such assessment may be requested by the Authority or an Authority Third Party for any reason. The Contractor shall provide such assessment in the format set out in ISSP 153.
- 8.17 Notwithstanding the completion of the process set out in Clauses 8.3 to 8.16 above, the Authority may, for urgent business or operational reasons cancel any Approved Planned Downtime period.

Service Credits

- 8.18 Where, in any Charging Period, a Service Failure (to the extent that it is not a direct result of an Authority Cause) results in the Contractor accruing Service Credits in accordance with Schedule 3 (*Service Performance*), then the Contractor shall automatically credit the Authority with the accrued Service Credits, and such Service Credits shall be shown as an abatement on the next Monthly Billing Summary for that Charging Period and the relevant Final Invoice. If no further Charges fall due after the Service Credits accrue or no Final Invoice is due to be issued then the Contractor shall issue a credit note to the Authority (as applicable):
- 8.18.1 for a sum equal to any such Service Credits then outstanding; or
- 8.18.2 against the previous Final Invoice,
- and the amount for the Service Credits shall be repayable by the Contractor to the Authority as a debt within the same period as applies to the payment of the Contractor's undisputed invoices under this Agreement and Paragraph 15 of Part B (*Invoicing*) of Schedule 17 (*Charges and Invoicing*).
- 8.19 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Authority within a reasonable time period specified by the Authority, then the Authority

may, on written notice to the Contractor, require that the Service Charges are reduced by a sum which is proportionate to the severity and impact of the Service Failure until such time as the relevant Service Failure is remedied and Service Restoration occurs. If the Contractor disputes the amount of the reduction that has been determined by the Authority and notified to the Contractor in accordance with this Clause 8.19, then the matter shall be resolved in accordance with the Dispute Resolution Procedure.

Warning Notices and Increased Monitoring

8.20 Without prejudice to the other rights or remedies of the Authority, if at any time the Contractor has:

- 8.20.1 committed any material Default;
 - 8.20.2 failed in a Charging Period to perform a Sub-Service or Service Element in accordance with the relevant Service Levels where the relevant Sub-Service or Service Element was subject to a Correction Plan that should have been completed in the immediately preceding charging period;
 - 8.20.3 continues to fail to perform a Sub-Service or Service Element in accordance with the relevant Service Levels in any Charging Periods subsequent to the Charging Period referred to in Clause 8.20.2;
 - 8.20.4 in respect of its performance of the Services, committed a Significant Minimum Service Level Default for the same root cause in two successive Reporting Periods;
 - 8.20.5 accrued three (3) or more consecutive Extended Service Level Defaults in respect of the same Service Level;
 - 8.20.6 accrued three (3) or more concurrent Extended Service Level Defaults,
- then the Authority may, but is not obliged to, give a written notice (a "**Warning Notice**") to the Contractor setting out:
- 8.20.7 the matter or matters giving rise to such notice; and
 - 8.20.8 containing a reminder to the Contractor of the implications of such notice.

Any such notice shall state on its face that it is a Warning Notice.

8.21 Without prejudice to the other rights or remedies of the Authority and, where applicable, taking into account the Principles and High Level Objectives set out in the Collaboration Agreement (including Principle 3 (prevention is better than cure) and Principle 4 (rapid resolution)), if the Contractor receives a Warning Notice in respect of any Services or Service Element(s), the Authority may, by written notice to the Contractor:

- 8.21.1 reasonably increase the level of its monitoring of the Contractor (as notified to the Contractor in accordance with Clause 8.22.1(B) below); or
- 8.21.2 require the Contractor to increase the level of its monitoring of its own performance of its obligations under this Agreement (as notified to the Contractor in accordance with Clause 8.22.1(A),

in respect of the Services or Service Element(s) to which the Warning Notice relates until such time as the Contractor has demonstrated to the reasonable satisfaction of the Authority that the Contractor:

- 8.21.3 shall perform; and
 - 8.21.4 shall remain capable of continuing to perform,
- its obligations in accordance with this Agreement.

8.22 If the Authority does exercise its rights under Clause 8.21 above, the following provisions shall apply:

- 8.22.1 any Warning Notice to the Contractor shall specify in reasonable detail the additional measures to be taken by the Contractor:

- (A) in monitoring and reporting on the performance of the Contractor; or
 - (B) to facilitate additional monitoring by the Authority of the performance of the Contractor;
- 8.22.2 the Contractor shall comply promptly with the measures set out in the relevant Warning Notice; and
- 8.22.3 the Contractor shall bear its own costs and shall reimburse the Authority in respect of any additional costs that are directly incurred by the Authority in respect of any such additional measures.
- 8.23 In Clauses 8.21 and 8.22 above, references to "**monitoring**" shall include the gathering of information, the provision of reports, site visits, management meetings and audits.

8.24 Participation in Strategic Relationship Management

- 8.24.1 From time to time, the Authority engages with strategic suppliers in order to optimise the quality of the working relationship between the Authority and each such supplier. The Parties acknowledge and agree that the Contractor is such a strategic supplier and that the Contractor shall participate in strategic relationship management in accordance with this Clause 8.24.
- 8.24.2 The Parties acknowledge that the objectives of engaging in strategic relationship management include:
- (A) improving Service performance;
 - (B) minimising risks associated with Service delivery;
 - (C) managing Authority and Contractor overheads across the relationship lifecycle; and
 - (D) encouraging transparent, structured and integrated ways of working.
- 8.24.3 Without limiting the rights and obligations of the Parties under this Agreement, each Party agrees to:
- (A) participate in the Authority's strategic relationship management programme at tactical and strategic levels within their respective organisations;
 - (B) proactively identify opportunities for relationship improvement and more effective ways of working;
 - (C) resolve issues and implement changes in ways that deliver value;
 - (D) utilise, where appropriate, ISS collaborative strategic relationship principles to support the management of the relationship between the Parties and the delivery of Services; and
 - (E) provide suitable resources and commitments in relation to the foregoing.
- 8.24.4 The Parties will work together to identify appropriate tools and benefits tracking methodologies and techniques that will support effective strategic relationship management and the achievement of the objectives described in Clause 8.24.2 above.
- 8.24.5 The Contractor shall ensure that it makes available senior Contractor Personnel to attend regular strategic relationship management reviews with the Authority. The Authority shall give the Contractor reasonable notice of such reviews and work with the Contractor to agree a suitable time. Unless agreed otherwise, such reviews will take place at the Authority's premises in Corsham.
- 8.24.6 If the Parties agree on changes to the relationship between the Parties or the delivery of Services that would result in an amendment or variation to this Agreement, the Contract Change Procedure shall apply.

9. STEP-IN RIGHTS

- 9.1 The Authority may take action under this Clause 9 in any of the following circumstances (each a "**Step-in Trigger Event**"):
- 9.1.1 the Authority has issued three or more Warning Notices in any six (6) month period;
 - 9.1.2 the Authority does so to discharge its obligations to defend the United Kingdom and its interests in respect of a matter relating to national security, a state of emergency, or in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster;
 - 9.1.3 the Authority is entitled to terminate in accordance with Clause 45.3 (*Termination for Cause by the Authority*) below;
 - 9.1.4 there is a Default by the Contractor that is materially preventing or materially delaying the performance of any Sub-Service or any material part of the Services;
 - 9.1.5 if, in any three (3) consecutive Charging Periods, the total Service Credits accrued by the Authority equal or exceed, in aggregate, fifty per cent (50%) of the sum of the At Risk Amounts for those Charging Periods;
 - 9.1.6 if the Authority has reasonable grounds to suspect acts of Fraud have been or are being committed in relation to the Services;
 - 9.1.7 where a Regulatory Body has advised the Authority that the exercise by the Authority of its rights under this Clause 9 is necessary;
 - 9.1.8 because a serious risk exists to the health or safety of persons, property or the environment; or
 - 9.1.9 to discharge a statutory duty.

Exercise of the right of Step-in

- 9.2 On the occurrence of a Step-in Trigger Event, the Authority may exercise its right to Step-in under this Clause 9 either by itself or with the assistance of any third party, provided that the Contractor may request that the Authority requires any third party to comply with a confidentiality undertaking equivalent to Clause 39 (*Confidentiality and Publicity*). The Authority may exercise its rights under this Clause 9 in respect of all or part of the Services.
- 9.3 If the Authority takes action pursuant to Clause 9.2, the Authority shall serve written notice ("**Step-in Notice**") on the Contractor. The Step-in Notice shall set out the following:
- 9.3.1 the action the Authority wishes to take and the Services in respect of which it wishes to take such action (or to appoint a third party to take such action);
 - 9.3.2 the reason for and the objective of taking such action and whether the Authority reasonably believes that the primary cause of it electing to take such action is the Contractor's Default;
 - 9.3.3 the date from which it wishes to commence such action;
 - 9.3.4 the time period during which it believes such action will be necessary;
 - 9.3.5 whether the Authority will require access to any of the Contractor Premises or Sites; and
 - 9.3.6 to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period of such action.
- 9.4 Following service of a Step-in Notice, the Authority shall:
- 9.4.1 take the action, or procure that any third party takes the action, set out in the Step-in Notice and any consequential additional action as it reasonably believes necessary (together, the "**Required Action**");
 - 9.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

- 9.4.3 cooperate with the Contractor wherever reasonably practicable in order to enable the Contractor to continue to provide any Services in relation to which the Authority is not taking the Required Action; and
- 9.4.4 take such steps as are reasonably open to it to limit the costs incurred by the Contractor as a result of the exercise of the Authority's rights under this Clause 9 (provided that this does not prejudice achievement of the Authority's objectives in taking the Required Action and related timescales).
- 9.5 For so long as and to the extent that the Required Action is continuing, then the Contractor shall:
 - 9.5.1 cooperate fully with the Authority and any third party appointed by the Authority to facilitate the Required Action and to ameliorate the Step-In Services and facilitate the proper performance of the Services as a whole;
 - 9.5.2 suspend performance of those parts of the Services subject to the Required Action (the "**Step-in Services**") to the extent that the Authority so requests, provided that any such suspension shall not excuse the Contractor from its obligation to provide the Services (excluding the relevant Step-in Services for the period only of the exercise by the Authority of its rights under this Clause 9) in accordance with this Agreement or be deemed to frustrate or waive performance of that obligation;
 - 9.5.3 grant, and procure that any Sub-contractor or relevant third party grants, at no additional cost to the Authority such licences and permissions as are reasonably required for the performance of the Required Action; and
 - 9.5.4 provide (and procure that its Sub-contractors provide as applicable) to the Authority and any third party appointed by the Authority such access to and use of:
 - (A) the Equipment used to provide the Services and any other goods and services used to provide the Services;
 - (B) all documentation relating to the Equipment used by the Contractor or any Sub-contractor to provide the Services and any other goods and services used to provide the Services;
 - (C) the Contractor's and any Sub-contractor's Intellectual Property Rights used in relation to the Services; and
 - (D) premises, equipment, personnel, documents, information or other items as are reasonably required to ameliorate the Step-In Services and facilitate the proper performance of the Services as a whole.
- 9.6 For so long as and to the extent that the Required Action is continuing, then, subject to Clause 9.9 below, the Authority shall pay to the Contractor the Charges after deduction of any applicable Service Credits and the Authority's reasonable and direct costs of taking the Required Action in respect of any of the Services that it is receiving.
- 9.7 Before ceasing to exercise its Step-in rights under this Clause 9 the Authority shall deliver a written notice to the Contractor ("**Step-Out Notice**"), specifying:
 - 9.7.1 the Required Action it has actually taken; and
 - 9.7.2 the date on which the Authority plans to cease the Required Action ("**Step-Out Date**") subject to the Authority being satisfied with the Contractor's ability to resume the proper performance of the Services in accordance with Clause 9.8 below.
- 9.8 The Contractor shall, following receipt of a Step-Out Notice, work with the Authority to ensure that, prior to the Step-Out Date, the Contractor is ready and able to resume the proper performance of the Services. The Authority may request such evidence from the Contractor as it considers necessary to demonstrate the Contractor's readiness and ability to resume the proper performance of the Services.

- 9.9 The Contractor shall bear its own costs in connection with any Step-in by the Authority under this Clause 9 provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-in by the Authority under Clauses 9.1.7, 9.1.8 and 9.1.9 above provided that the primary cause of the Authority serving the Step-in Notice was not a Contractor Default.

10. SERVICES IMPROVEMENT

- 10.1 Subject to Clause 10.5, the Contractor shall be committed to the process of on-going improvement and improved efficiency of the Services.
- 10.2 Throughout the Term, the Contractor shall take the initiative in identifying and evaluating improvements for application to the Services to the Authority and responding to any Authority requests for information in respect of potential improvements to the Services that the Authority has identified, including in accordance with the Standards. As part of this obligation, the Contractor shall identify and report to the Service Operations Board quarterly in the first Contract Year and once every six (6) months for the remainder of the Term on:
- 10.2.1 subject to any obligation of confidentiality to third parties, the emergence of new and evolving relevant technologies which could improve the Services and those technological advances potentially available to the Contractor and the Authority which the Parties may wish to adopt;
 - 10.2.2 potential improvements to the Services, including their quality and responsiveness, and procedures, benchmarking methods, likely performance mechanisms and Authority support services in relation to the Services;
 - 10.2.3 potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - 10.2.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost or at greater benefit to the Authority or both Parties.
- 10.3 The Contractor shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Authority reasonably requests.
- 10.4 The Authority shall determine its own ICT strategy. The Authority may, at any time during the Term (or any Exit Period), notify the Contractor in writing of any changes to the Authority's Enterprise IT strategy and ask the Contractor to consider, review and respond to such changes. If, in the Contractor's reasonable opinion, any notified change to the Authority's Enterprise IT strategy would require a Contract Change to implement, the Contractor shall follow the Contract Change Procedure.
- 10.5 If the Authority wishes to incorporate any improvement identified by the Contractor pursuant to Clause 10.1 above:
- 10.5.1 such improvement shall be initiated in accordance with the Contract Change Procedure set out in Schedule 25 (*Contract Change Procedure*); and
 - 10.5.2 where the improvement includes the proposed use of a new technology or a novel solution, the Authority may require the Contractor to demonstrate such new technology or novel solution in a suitable environment to the satisfaction of the Authority before the Contractor is permitted to deploy such solution or technology and such demonstrations shall be in addition to the normal assurance, testing and trialling activity to be undertaken as required by the ISS Processes relevant to the introduction of new or changed Services under this Agreement.

11. EQUIPMENT

- 11.1 The Contractor shall procure and provide all Equipment and other Assets necessary to enable it to provide the Services in accordance with the Service Levels and other provisions of this Agreement. Without prejudice to the foregoing, the Contractor shall:
- 11.1.1 procure any Exclusive Equipment necessary to enable it to provide the Services in accordance with the Service Levels and other provisions of this Agreement, including any Exclusive Equipment required for Implementation activities and business-as-usual delivery of the Services;
 - 11.1.2 as a minimum (unless otherwise agreed by the Parties in writing), purchase and replace licences for Contractor Third Party Software (including that listed in Paragraph 5 (*Contractor Third Party IPR*) of Schedule 24 (*Intellectual Property Rights*) to be used exclusively in the provision of the Services, in accordance with any reasonable instructions from the Authority; and
 - 11.1.3 offer to sell to the Authority any and all Exclusive Equipment at an agreed price, such sale (if agreed to by the Authority at its sole discretion) to take effect upon termination or expiry of this Agreement.
- 11.2 During the Term (and any Exit Period unless otherwise agreed with the Authority), the Contractor shall be responsible for maintaining all Contractor Equipment (including any Exclusive Equipment).
- 11.3 The Contractor shall comply with its obligations in relation to the provision and management of all matters connected with the lifecycle of all Equipment in accordance with its obligations under this Agreement (including any applicable Standards).
- 11.4 All Exclusive Assets will be used by the Contractor solely for the purposes of providing the Services and will not be used for the Contractor's own purposes or in providing any other services to third parties.
- 11.5 The Contractor shall be solely responsible for:
- 11.5.1 obtaining all permits relating to and for the cost of carriage of Equipment to the Sites and to Authority Premises, including its import and clearance through customs, payment of any duties or imposts, off-loading, removal of all packaging and all other associated costs. If the Authority wishes to follow a particular process the Contractor shall cooperate with the Authority in this; and
 - 11.5.2 on termination or expiry of this Agreement, except where the Authority acquires such Equipment and does not wish it to be removed, the removal of all relevant Equipment from Authority Premises, including the cost of packing, carriage and making good Authority Premises or any objects contained therein following removal.
- 11.6 All the Contractor's property located on Authority Premises, including Contractor Equipment, shall remain at the sole risk and responsibility of the Contractor, except that the Authority shall be liable (subject to Clause 53 (*Limitations on Liability*)) for loss of or damage to any of the Contractor's property located on Authority Premises which is due to a malicious act of the Authority.

Obligations relating to Authority Equipment

- 11.7 The Authority permits the Contractor to use Authority Equipment listed in Schedule 6 (*Equipment*) in the provision of the Services.
- 11.8 All rights, title and interest to or in any Authority Equipment shall remain with the Authority at all times.
- 11.9 Neither the Contractor nor any of its Sub-contractors or any other third party shall be entitled to claim that it has a lien over any Authority Equipment, and the Contractor shall ensure that it informs all Sub-contractors and relevant third parties that the Authority is the owner of such Authority Equipment.

- 11.10 The Contractor shall ensure (and shall ensure that its Sub-contractors ensure) that, to the extent it uses any Authority Equipment (and any other relevant Authority Assets), it does so solely for the purposes of providing the Services and not for the Contractor's own purposes or in providing any other services to third parties (other than to the extent required to provide the Services to any Indirect Customer).
- 11.11 The Authority makes no warranty as to the condition or suitability for the Services of Authority Equipment.
- 11.12 The risk in Authority Equipment shall pass to the Contractor on the date on which the Contractor begins performing (or is due to begin performing) any Service provided using such Authority Equipment (or, if applicable, on such other date identified through the Contract Change Procedure), and the Contractor shall be liable for all loss and damage to Authority Equipment from such date and until the date on which the Contractor has handed responsibility for such Authority Equipment back to the Authority or any other Replacement Provider (such date of handover to be determined by the Authority in its sole discretion or as set out in an Exit Plan that is Approved in accordance with Schedule 29 (*Exit Management*)).
- 11.13 In the event that an Insolvency Event affects the Contractor, no Authority Equipment shall pass to any appointed receiver or any other third party, and the Contractor shall promptly notify the Authority immediately upon becoming aware of the occurrence of such Insolvency Event and shall (at the Authority's option and sole discretion) return all Authority Equipment to the Authority or its nominee.

Public Store Accounts

- 11.14 The Contractor shall open and maintain a public store account ("**PSA**") and shall accurately record the required details of all Authority Assets (including Authority IPR) in the PSA. The PSA shall be kept up to date and made available for inspection and audit on request by the Authority from time to time (and in any event within one (1) Working Day of any such request being made).
- 11.15 Without prejudice to the reporting requirements set out in Schedule 23 (*Performance Monitoring and Reporting*), the Contractor shall supply to the Authority, at the start of each Quarter, reports on the current Authority Assets, including Authority IPR. At least one (1) report in any Financial Year shall be a report that the Contractor has reconciled with all Authority Assets (including Authority IPR) under the control or remit of the Contractor, which in respect of Equipment means such Equipment that is under the Contractor's physical control.
- 11.16 The Contractor shall retain all PSA reports for a period of three (3) years after disposal or return of the last Authority Asset to be disposed of or returned to the Authority or any other Replacement Provider (as the case may be).
- 11.17 The Authority reserves the right to amend the PSA without further consultation where requirements arise from the Authority's proper and reasonable accounting requirements. The Contractor shall implement such amendments at the commencement of the Authority's next Financial Year, provided that the Authority shall use its reasonable endeavours to provide the Contractor with at least six (6) months' prior written notice (or such other period of notice as may be agreed between the Parties from time to time) of any amendment required. Such amendments shall not have retrospective effect.

12. SECURITY REQUIREMENTS

Compliance

- 12.1 The Contractor shall comply, and shall ensure that any Sub-contractors and all individual Contractor Personnel comply, with:
- 12.1.1 the Security Policy;
 - 12.1.2 the IMP(s);
 - 12.1.3 the RMADS;

- 12.1.4 the PCP(s); and
- 12.1.5 without limiting the foregoing, all of the obligations and requirements set out in Schedule 5 (*Security Requirements*) including the Cyber Security Requirements set out therein.
- 12.2 In addition to the provisions of Clause 12.1, the Contractor shall comply with and meet the requirements of, and shall ensure that any Sub-contractors comply with and meet the requirements of, the Security Aspects Letter including, without limitation, by ensuring that the performance of the Services, and any activities or obligations under or in connection with this Agreement and the Collaboration Agreement:
 - 12.2.1 is in accordance with the applicable security classification requirements stated at Annex A to the Security Aspects Letter; and
 - 12.2.2 is carried out by personnel who meet the applicable security clearance requirements stated at Annex B to the Security Aspects Letter.
- 12.3 The Contractor shall:
 - 12.3.1 keep itself fully informed of the latest security and risk mitigation measures relating to the Services (including CESG Good Practice Guides and Information Security Notes, and Good Industry Practice); and
 - 12.3.2 subject to Clauses 7.2 and 7.3 (*Standards*) above, promptly implement such measures as required by the Authority from time to time.

Any changes to the CESG Good Practice Guide and JSP 440 that may occur from time to time (whether material or otherwise) shall be discussed by the Parties at the Security Working Group meetings prior to the Contractor's implementation of measures to reflect such changes.

Certification

- 12.4 The Contractor shall be responsible for obtaining Certification for the Services in accordance with the Standards.
- 12.5 Unless otherwise previously agreed with the Authority in writing (such form of writing to refer expressly to this Clause 12.5), no Service shall be submitted for Certification prior to receiving authorisation for submission from the Security Working Group.
- 12.6 The Contractor shall also, where necessary for compliance with the Security Requirements, procure and implement an appropriate Information Assurance evaluation process, using a NCSC/CESG recognised scheme, for the networks and systems delivering the Services.
- 12.7 The Contractor shall submit proposals to the Security Working Group for Approval (or to any other person or body that the Authority requires) which outline the Contractor's proposed Information Assurance evaluation and Certification processes during the Term and any Exit Period, and the steps it will take to comply with them. The proposals shall be submitted no later than fifteen (15) Working Days prior to the date on which the Authority advises the Contractor that the Security Working Group (or such other person or body the Authority may require) will review such proposals.
- 12.8 The selection of the most appropriate scheme for security evaluation and Certification shall be determined by the Authority in its sole discretion and shall be documented in the RMADS.

Confirmations

- 12.9 On each anniversary of the Effective Date, the Contractor shall provide to the Authority a letter from its managing director or equivalent officer confirming that, having made due and careful inquiry, it:
 - 12.9.1 has in the previous Contract Year carried out all Security Tests and has in place all procedures required in relation to security matters under this Agreement, including Schedule 5 (*Security Requirements*); and

- 12.9.2 is confident that its security and risk mitigation procedures with respect to the Services remain effective.

UK Critical National Infrastructure Provisions

- 12.10 The Contractor shall ensure that all relevant Services which fall within the scope of the UK Critical National Infrastructure as defined by the Centre for the Protection of National Infrastructure are provided in accordance with the requirements of the UK Critical National Infrastructure protection programme.
- 12.11 Where the requirements referred to in Clause 12.10 conflict with or may prevent the Contractor from carrying out its obligations under this Agreement, the Contractor shall notify the Authority and shall comply with any guidance given by the Authority in relation to the same.
- 12.12 Except to the extent specified from time to time by the Authority, the Contractor shall participate, and shall ensure that appropriate Sub-contractors participate, in the UK Critical National Infrastructure protection programme and give all necessary assistance to those organisations responsible for this programme so as to ensure that the provision of the Services to the Authority is protected at all times.

13. ENVIRONMENTAL REQUIREMENTS

The Contractor undertakes to follow a sound environmental management policy so that its activities comply with the Standards and all applicable environmental legislation and regulations, and so that its products or Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.

14. AUTHORITY PREMISES AND SITES

14.1 The Contractor:

- 14.1.1 acknowledges that Authority Sites to which it shall provide the Services from time to time vary in demand, physical size, occupancy and types (including listed buildings, domestic residences and airports) and are situated in differing environments (including those affected by, or which are nearby, tropical conditions, permafrost, seawater, rodents, wind and lightning); and
- 14.1.2 shall ensure, in light of its acknowledgment in Clause 14.1.1 above, that it is aware of any constraints on its delivery of the Services at any of the Authority Sites and that the Actual Solution enables it to deliver the Services in accordance with the Service Levels.

- 14.2 In determining what Equipment (if any) or resources to deploy (including how to deploy such resources) at Authority Sites, the Contractor shall use its best endeavours to optimise its use of physical space including in accordance with the Standards.

- 14.3 The Contractor shall promptly (and in any event within five (5) Working Days of such damage occurring, or such other period as Approved by the Authority) make good any damage to Authority Premises caused by its performance of the Services or any Defaults (including as a result of any installation or removal of any Equipment). In making good any such damage, the Contractor shall provide any materials or workmanship required to carry out repair works that restore Authority Premises to the condition that they were in before the Contractor commenced work at the relevant Authority Premises.

15. AUTHORITY DEPENDENCIES

- 15.1 The Parties acknowledge and agree that the Contractor's performance of the Services may depend on the Authority's performance of Authority Dependencies. Therefore, the Contractor shall not be considered to be in breach of its obligations under this Agreement (including its obligations to ensure that each Milestone and Test is Achieved by the relevant Milestone Date and to ensure that the Services meet or exceed the Service

Levels) to the extent that its failure to perform its obligations is as a direct result of an Authority Cause, provided that:

- 15.1.1 the Contractor notifies the Authority as soon as practicable, and in any event within five (5) Working Days, upon becoming aware that any Authority Dependency has not or will not be performed or that its performance will be delayed (as applicable);
 - 15.1.2 the notification referred to in Clause 15.1.1 above includes details of the relevant Authority Dependency, together with evidence of its adverse effect on the Contractor's ability to perform its obligations and the action the Contractor proposes to take to mitigate its effect, including the non-exhaustive mitigating steps described in Schedule 8 (*Authority Dependencies*); and
 - 15.1.3 the Contractor uses, and continues to use, all reasonable endeavours in accordance with Good Industry Practice (and without limiting the provisions of Clause 19 (*Delays*)) to mitigate the effects of, and make good, the non-performance or delay in the performance of the Authority Dependency and to facilitate the Contractor's continued performance of this Agreement.
- 15.2 Any obligations of the Authority not specified in Schedule 8 (*Authority Dependencies*), but specified elsewhere in this Agreement (including any obligations on the Authority set out in the Standards) shall not be Authority Dependencies. There shall be no obligation on the Authority to provide any advice or assistance to the Contractor save as set out in Schedule 8 (*Authority Dependencies*) and the sole remedy for failing to comply with Authority Dependencies shall be that set out in this Clause 15.
- 15.3 The Contractor shall not be relieved of its obligations and shall not be entitled to recover any additional costs or charges from the Authority relating to any unsuitable aspects of the Operating Environment, except to the extent expressly allowed under this Clause 15.
- 15.4 The Contractor shall not propose any new Authority Dependencies or any amendments to Authority Dependencies, except through the Contract Change Procedure.

Reimbursement of Contractor mitigation costs due to Authority Cause

- 15.5 Subject to Clauses 15.6 to 15.8, 15.14, 15.16 and 53 (*Limitations on Liability*) below, if the Contractor has incurred any direct cost of mitigation that:
- 15.5.1 is incurred in connection with the Implementation Programme and is a direct result of a Delay and that Delay is the direct result of an Authority Cause; or
 - 15.5.2 is incurred in respect of a Sub-Service following the closure of the Implementation Programme and is a direct result of an Authority Cause,
- the Contractor shall be entitled to reimbursement for mitigation activities carried out by the Contractor in relation to that Delay or Authority Cause to the extent that such cost of mitigation in aggregate:
- 15.5.3 exceeds £5,000 (five thousand pounds sterling); and
 - 15.5.4 does not exceed £20,000 (twenty thousand pounds sterling),
- provided always that:
- 15.5.5 the Contractor has notified the Authority in writing of the relevant Authority Cause; and
 - 15.5.6 the Contractor can demonstrate that it is or was unable to mitigate or minimise such cost of mitigation in accordance with Clause 15.1 above.

For the avoidance of doubt:

- 15.5.7 if the de minimis amount in Clause 15.5.3 has been exceeded, the Contractor shall be entitled to reimbursement in accordance with this Clause 15 for the £5,000 (five thousand pounds sterling) plus any excess (subject to the limits set out in this Clause 15); and

- 15.5.8 the Parties, acting through the Authority Commercial Manager and Contractor Commercial Manager and on a case by case basis, may agree (in writing) to increase the threshold set out in Paragraph 15.5.4 in respect of a specific mitigation activity.
- 15.6 The Contractor shall provide the Authority with any information the Authority may reasonably require in order to assess the validity of any claim by the Contractor to reimbursement under Clause 15.5, including full details of the direct cost of mitigation being claimed (the value of which shall be calculated on a Time and Materials Basis, unless otherwise agreed by the Parties) and substantiating the relevant Authority Cause.
- 15.7 The Contractor must serve any claim to reimbursement under Clause 15.5 above on the Authority in writing and as soon as possible after the Contractor incurs the relevant direct cost of mitigation and in any event within fifteen (15) Working Days.
- 15.8 The Contractor shall in no circumstances be entitled to reimbursement of any direct cost of mitigation it has incurred under Clause 15.5 above:
- 15.8.1 to the extent that the amount claimed by the Contractor in respect of a particular Delay or Authority Cause (as the case may be) exceeds the maximum amount specified in Clause 15.5.4;
- 15.8.2 to the extent that, in each and any Contract Year, payment of such amount claimed by the Contractor would have the effect of exceeding £100,000 (one hundred thousand pounds sterling) in respect of all reimbursements paid or payable, unless the Parties, acting through the Authority Commercial Manager and Contractor Commercial Manager and on a case-by-case basis, agree (in writing) to increase this threshold in respect of a particular Contract Year; or
- 15.8.3 where the relevant Authority Cause arose as a result of a Force Majeure Event.

Compensation for Losses incurred due to Authority Cause following Implementation

- 15.9 If, following the issue of an Implementation Programme Closure Certificate, an Authority Cause (for the purposes of this Clauses 15.9, 15.11 and 15.12, the "**relevant Authority Cause**") has prevented the Contractor from performing a material part of a Sub-Service (for the purposes of Clauses 15.9 to 15.12, such material part to be the "**relevant Service**") and:
- 15.9.1 the Contractor has notified the Authority in writing of the relevant Authority Cause;
- 15.9.2 the relevant Authority Cause has persisted for three (3) consecutive months from the date of the written notice provided in accordance with Clause 15.9.1;
- 15.9.3 the Contractor is able to demonstrate through written evidence that it has or will incur unavoidable Losses of greater than £50,000 (fifty thousand pounds sterling) as a direct result of the relevant Authority Cause; and
- 15.9.4 the Contractor has used all reasonable endeavours to mitigate and minimise the effect of the Authority Cause in accordance with Clause 15.1 above,
- then the Contractor shall, subject to Clauses 15.11 and 15.15 below, be entitled to compensation for Losses it incurs in accordance with Clause 15.10 below.
- 15.10 If the circumstances described in Clause 15.9 entitle the Contractor to compensation in accordance with this Clause 15.10, the Contractor shall be entitled to invoice the Authority in accordance with Clause 26 (*Charges and Invoicing*) for the actual Losses it has suffered from the date of the written notice provided in accordance with Clause 15.9.1 up to an amount that is no greater than seventy-five percent (75%) of the Charges that relate to the relevant Service, the value of which shall be calculated by reference to the forecast Charges which, by reference to the Financial Model, are able to be apportioned to the relevant Service for the period that is the subject of the invoice (such period to be no greater than one calendar month per invoice, unless the Parties agree otherwise in writing).
- 15.11 The Contractor shall only be entitled to invoice the Authority for compensation pursuant to Clause 15.10 for any relevant Service up to and until the amount of all such amounts

invoiced as compensation pursuant to Clause 15.10 for all relevant Services in any Contract Year equals fifteen percent (15%) of all forecast Charges for the relevant Contract Year (such forecast to be determined by reference to the applicable Financial Model), after which:

- 15.11.1 the Contractor shall no longer be entitled to invoice the Authority under Clause 15.10 for the remainder of the relevant Contract Year; and
- 15.11.2 to the extent the Contractor continues to incur Losses which would otherwise have been compensable under Clause 15.9, the Authority shall raise a Contract Change Request in accordance with the Contract Change Procedure and the Parties shall work together to agree a long-term solution for working around or otherwise resolving any continuing relevant Authority Cause.
- 15.12 The Contractor shall provide the Authority with any information the Authority may reasonably require in order to assess the validity of any claim by the Contractor to compensation under Clause 15.9, including full details of the Losses being claimed and substantiating the relevant Authority Cause and its impact on the relevant Service.
- 15.13 If the Contractor wishes to claim any compensation pursuant to Clause 15.9, the Contractor must serve any such claim to compensation under Clause 15.9 above on the Authority in writing and as soon as possible after the calendar month in which Contractor becomes entitled to claim such compensation and in any event within fifteen (15) Working Days of the relevant calendar month-end. Either Party may refer any dispute in relation to the Contractor's entitlement to claim such compensation or the amount of such compensation to the Dispute Resolution Procedure.

Exclusions

- 15.14 If the Contractor is entitled to reimbursement in accordance with Clause 15.5 above then such reimbursement may consist of staged payments by the Authority to cover all applicable direct costs and expenses incurred by the Contractor, provided that this reimbursement shall:
 - 15.14.1 cover wasted costs only;
 - 15.14.2 not operate so as to put the Contractor in a better position than it would have been in but for the occurrence of the relevant Authority Cause;
 - 15.14.3 subject to Clause 15.14.1, only cover costs reasonably and properly incurred by the Contractor solely and directly as a result of the Authority Cause;
 - 15.14.4 without prejudice to any other provisions in this Agreement, exclude:
 - (A) any costs or expenses which have already been taken into account in the calculation of the Charges;
 - (B) financing or similar costs;
 - (C) taxation;
 - (D) fines and penalties;
 - (E) any costs or expenses which relate to activities which were already within the scope of the Contractor's activities pursuant to this Agreement notwithstanding such Authority Cause (including activities which were taken into account in an Implementation Plan), irrespective of whether such costs had in fact been incurred by the Contractor prior to such Authority Cause, provided that the Contractor may recover additional amounts incurred by it to avoid or mitigate an Authority Cause, as provided in Clause 15.1.3;
 - (F) any costs or expenses which can reasonably be avoided by the Contractor using its then-current resources covered by the existing Charges, provided that Contractor Personnel are not required to perform work outside of their standard working hours and provided this shall not

- expose the Contractor to Service Credits or other loss under this Agreement;
- (G) any costs or expenses which relate to the Contractor's compliance with its obligations under this Agreement or under the Collaboration Agreement in respect of the co-ordination with and management of dependencies on the Authority, Authority Third Parties or other third parties; and
 - (H) any loss of use, loss of contract, loss of goodwill or any indirect or consequential loss.
- 15.15 If the Contractor is entitled to compensation in accordance with Clause 15.9 above then such compensation may, subject to the provisions of Clause 26 (*Charges and Invoicing*) as they relate to payment of invoices and Disputed Amounts, consist of staged payments by the Authority to cover all applicable direct Losses incurred by the Contractor, provided that this compensation shall:
- 15.15.1 not operate so as to put the Contractor in a better position than it would have been in but for the occurrence of the relevant Authority Cause;
 - 15.15.2 without prejudice to any other provisions in this Agreement but notwithstanding the definition of "Losses" in Schedule 1 (*Definitions*), exclude:
 - (A) financing or similar costs;
 - (B) taxation;
 - (C) fines and penalties;
 - (D) any costs or expenses which relate to the Contractor's compliance with its obligations under this Agreement or under the Collaboration Agreement in respect of the co-ordination with and management of dependencies on the Authority, Authority Third Parties or other third parties;
 - (E) any loss of use, loss of contract, loss of goodwill or any indirect or consequential loss;
 - (F) any costs or expenses falling within the scope of the reimbursement mechanism described in Clauses 15.5 to 15.8; and
 - (G) loss of profits or anticipated profits.
- 15.16 In relation to any reimbursement or compensation to which the Contractor is entitled under Clauses 15.5 and 15.9 respectively, to the extent that:
- 15.16.1 any contributory or related breach of this Agreement (or any other agreement between the Authority and the Contractor) by the Contractor caused or resulted in the Authority Cause; or
 - 15.16.2 the Authority gives any advance notification that an Authority Cause is or is likely to occur and the Contractor fails to comply with Clause 15.1.3 above,
- then the amount reimbursable pursuant to Clause 15.5 above shall be reduced by a fair and equitable amount.
- 15.17 Subject to the Contractor's rights under Clause 37 (*Intellectual Property Indemnity*), the Contractor acknowledges and agrees that its rights to claim reimbursement and compensation from the Authority for any Losses it incurs in accordance with this Clause 15 and Clause 19 (*Delays*) shall be the Contractor's sole and exclusive financial remedy in respect of an Authority Cause.
- 16. AUTHORITY INITIATED SERVICE SUSPENSION**
- 16.1 Without prejudice to any other right that the Authority may have to suspend all or part of the Services pursuant to this Agreement or at Law, the Contractor shall suspend all or part of the Services promptly upon receiving the Authority's written request to do so, provided that

where such request for suspension has not resulted from a Contractor Default, the Authority shall continue to pay for the suspended Services during the period of suspension.

- 16.2 Notwithstanding any of the Authority's other rights and remedies under this Agreement, suspension in accordance with Clause 16.1 above shall not cause the Contractor to be in breach of its obligations under this Agreement in respect of the Services that the Authority has requested the Contractor to suspend and any Services which are reliant on such suspended Services (including its obligations to provide the affected Services in accordance with the Service Levels).

C. IMPLEMENTATION

17. IMPLEMENTATION PLAN

- 17.1 The Contractor shall perform its obligations set out in Schedule 10 (*Implementation*) and provide the Services in accordance with the Implementation Plan, which shall be the Outline Implementation Plan until a Detailed Implementation Plan is Approved, and thereafter the most recently Approved version of the Detailed Implementation Plan. The Contractor shall ensure that each Milestone, Test and Trial is Achieved by the relevant Milestone Date.
- 17.2 The Contractor shall be responsible for the completion of:
- 17.2.1 activities set out in the Implementation Plan; and
 - 17.2.2 the Implementation Programme, including project management of the overall Implementation Programme.
- 17.3 The Contractor shall develop a draft Detailed Implementation Plan based on the Outline Implementation Plan (set out in Appendix 4 (*Outline Implementation Plan*)) to Schedule 10 (*Implementation*)) and shall deliver that draft Detailed Implementation Plan to the Authority within ten (10) Working Days of the Effective Date (or such other period as set out in the Outline Implementation Plan or as otherwise agreed by the Parties in writing).
- 17.4 The Detailed Implementation Plan must contain information at the level of detail necessary to manage the Implementation Programme effectively and this shall include identification of Milestones, Tests and Milestone Dates and the other requirements set out in Schedule 10 (*Implementation*). The revised draft Detailed Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Contractor. However, the Contractor shall not propose any new Authority Dependencies or any amendments to Authority Dependencies, except through the Contract Change Procedure.
- 17.5 Once the revised draft Detailed Implementation Plan is Approved by the Authority (such agreement not to be unreasonably delayed or withheld), the Contractor shall:
- 17.5.1 monitor its performance against the Detailed Implementation Plan (as varied from time to time in accordance with Clause 17.7 below);
 - 17.5.2 report to the Authority on such performance, including performance against any Project Milestones; and
 - 17.5.3 maintain and update the Detailed Implementation Plan as set out in Paragraph 4 of Schedule 10 (*Implementation*).
- 17.6 If the Authority does not Approve the draft Detailed Implementation Plan submitted for Approval, the Contractor shall continue to amend and resubmit such document to the Authority for Approval in accordance with Clause 17.3 above until the Contractor obtains such Approval. The Parties acknowledge that the Contractor's Outline Implementation Plan is unlikely to contain all of the information, or the level of detail required, by the Authority. In particular, it shall be reasonable for the Authority to require such plan to be revised in accordance with this Clause 17 in order to include details of further Project Milestones.

- 17.7 The Detailed Implementation Plan shall only be varied in accordance with the processes set out in Schedule 10 (*Implementation*).
- 17.8 Where the Implementation Programme is taking place in a number of phases, the Authority may request that the process of agreeing Detailed Implementation Plans under this Clause 17 takes place in phases and the Contractor shall comply with such request.

18. TESTING

- 18.1 The Parties shall comply with Schedule 11 (*Testing Procedures*) and the Contractor shall submit Deliverables for Testing and Trialling in accordance with the provisions therein.
- 18.2 The issuing of a Milestone Achievement Certificate or a Test Certificate in accordance with the provisions of Schedules 10 (*Implementation*) and 11 (*Testing Procedures*) shall be without prejudice to any of the Authority's rights under this Agreement and, without limitation, any failure to identify a failure to complete a Milestone or any part of the Detailed Implementation Plan shall not preclude the Authority from requiring the Contractor to complete such Milestone or such part of the Detailed Implementation Plan at a later date or relieve the Contractor from its obligation to provide the Services.
- 18.3 Without prejudice to the provisions of Schedule 11 (*Testing Procedures*) or this Agreement generally, and notwithstanding the issue of any Milestone Achievement Certificate or Test Certificate, the Contractor shall remain solely responsible for ensuring that:
- 18.3.1 the Contractor Solution Description are and will continue to be suitable for the delivery of the Services;
 - 18.3.2 the Services are implemented and provided in accordance with this Agreement; and
 - 18.3.3 each of the Service Levels is achieved from the applicable Service Level Commencement Date.
- 18.4 No estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate or a Test Certificate.
- 18.5 If the Contractor does not successfully Achieve any Milestone, Component Test or Trial by the relevant Milestone Date, the provisions of Clause 19 (*Delays*) shall apply.

Costs associated with Testing and Trialling

- 18.6 Subject to Clauses 18.7 and 18.8 below, each Party shall bear its own costs in respect of Testing and Trialling.
- 18.7 If a Deliverable does not receive a Milestone Achievement Certificate or a Test Certificate in accordance with the Component Testing provisions of Schedule 11 (*Testing Procedures*):
- 18.7.1 the Authority shall be entitled to recover from the Contractor any reasonable additional costs it may incur as a direct result of further review or re-Testing of the relevant Deliverable; and
 - 18.7.2 without prejudice to Clause 19.5 (*Correction Plan*) below, the Contractor shall bear all costs related to amending the Deliverable and re-submitting the Deliverable for Component Testing.
- 18.8 If a Deliverable does not receive a Milestone Achievement Certificate or a Test Certificate in accordance with the Integration Testing provisions of Schedule 11 (*Testing Procedures*) then:
- 18.8.1 in the case of the Contractor resolving Defects or developing Workarounds following an Integration Test Completion Review:
 - (A) the Authority shall be entitled to recover from the Contractor any reasonable additional costs it may incur as a direct result of Defect resolution or Workaround development; and

- (B) without prejudice to Clause 19.5 (*Correction Plan*) below, the Contractor shall bear all costs related to amending such Deliverable and re-submitting the Deliverable (or the submission of any Workaround) for Integration Testing; and

18.8.2 where a Contract Change results, any costs shall be dealt with pursuant to the Contract Change Procedure.

Testing Quality Audits

- 18.9 In addition to its rights pursuant to Clause 35 (*Audits, Notifications and Record Keeping*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**").
- 18.10 The focus of the Testing Quality Audits shall be on:
- 18.10.1 the Contractor's establishment and maintenance of suitable test environments;
 - 18.10.2 the Contractor's adherence to the Component Test Strategy;
 - 18.10.3 the Contractor's adherence to the Testing processes and the Test Scope and Plan; and
 - 18.10.4 review of status and Defects.
- 18.11 The Contractor shall allow sufficient time in the Final Test Scope and Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 18.12 The Authority will give the Contractor advance written notice of the Authority's intention to undertake a Testing Quality Audit.
- 18.13 A Testing Quality Audit may involve document reviews, interviews with the Contractor Personnel involved in or monitoring the activities being undertaken pursuant to Clauses 18.9 to 18.15, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority.
- 18.14 If the Testing Quality Audit gives the Authority concern in respect of the Testing procedures or any Test, the Authority will discuss the outcome of the Testing Quality Audit with the Contractor, giving the Contractor the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Contractor detailing the same to which the Contractor shall, within a reasonable timeframe specified by the Authority, respond in writing, such response to include a remediation plan for the Authority's review and approval.
- 18.15 In the event of an inadequate response to the written report from the Contractor, the Authority (acting reasonably) may withhold issuing a Test Certificate or a Milestone Achievement Certificate (as applicable) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

19. DELAYS

- 19.1 If, at any time, for any reason and regardless of whose fault the Contractor considers the Delay to be, the Contractor becomes aware that it will not (or is unlikely to) Achieve any Milestone or Test by the Milestone Date it shall promptly (and in any event within one (1) Working Day of becoming aware that it will not (or is unlikely to) Achieve any such Milestone or Test) notify the Authority in writing of the fact and likely length of such Delay and provide an initial high-level assessment of the likely reasons for it.
- 19.2 Within two (2) Working Days after it has notified the Authority of a Delay under Clause 19.1, the Contractor shall:
- 19.2.1 advise the Authority of the consequences or likely consequences of such Delay;
 - 19.2.2 take all reasonable remedial action to avoid or reduce so far as possible such Delay and the effects of such Delay on Achieving other Milestones, Tests and Trials, including providing all additional resources, to identify, mitigate and resolve

such failure and to ensure the relevant Milestone(s), Test(s) and Trial(s) are Achieved as soon as reasonably practical;

19.2.3 mitigate the impact(s) on the Authority of such Delay; and

19.2.4 if the Contractor claims that the Delay is due to an Authority Cause, provide detailed reasons for that claim to the Authority in writing.

19.3 If the Contractor notifies the Authority under Clause 19.1 in connection with activities being undertaken as part of the Implementation Programme, the Contractor and the Authority shall ensure that such notification and any follow-up activities (including those described in Clause 19.2) take into account (and, where applicable, are raised in accordance with the terms of reference of) the Implementation Programme governance processes provided for in Schedule 10 (*Implementation*) and Schedule 22 (*Governance*).

19.4 Whether or not a Delay is due to an Authority Cause or if there is a Dispute about a Delay, the Contractor shall nevertheless comply with Clause 19.1 above.

Correction Plan

19.5 If the Authority becomes aware of a Delay, the Authority may require the Contractor to submit a draft Correction Plan for the Authority's Approval.

19.6 The draft Correction Plan shall:

19.6.1 identify the issues arising out of the Delay, including the consequential impact that the Delay may have on any other Milestones;

19.6.2 where Testing or Trialling has taken place, categorise any Defects as described in Schedule 11 (*Testing Procedures*);

19.6.3 where no Testing or Trialling has taken place, set out in detail the non-conformities of the relevant Deliverable, Sub-Service or Service Element;

19.6.4 include any other reasons for the relevant Milestone not being Achieved; and

19.6.5 set out the actions that the Contractor will take to rectify the Delay, including the timescales associated therewith.

19.7 The draft Correction Plan shall be submitted to the Authority for its Approval as soon as possible after the Authority has requested the Contractor submit such a plan and in any event not later than five (5) Working Days of such request (or such other period as the Authority may permit and notify to the Contractor in writing), such Approval not to be unreasonably withheld by the Authority.

19.8 If the Authority does not Approve the draft Correction Plan, it shall inform the Contractor of its reasons and the Contractor shall prepare a further draft Correction Plan, which shall be resubmitted to the Authority within two (2) Working Days (or such other period as the Authority may permit and notify to the Contractor in writing) of the rejection of the first draft.

19.9 The Contractor shall comply with the Correction Plan following its Approval by the Authority.

19.10 Approval or implementation of any Correction Plan by the Authority shall not relieve the Contractor of any responsibility to Achieve Milestones or Tests by their agreed Milestone Dates, or to remedy any failure to do so, and no estoppel or waiver shall arise from any such Approval or implementation.

Consequences of Delay

19.11 Notwithstanding Clause 19.5 above, if the Contractor has failed to Achieve a Milestone by its Milestone Date:

19.11.1 the Contractor may only invoice the Authority for Milestone Payments if, and to the extent, it is entitled to do so in accordance with Schedule 17 (*Charges and Invoicing*);

- 19.11.2 the Contractor shall apply automatically any Milestone Payment Reductions that the Authority is entitled to receive in accordance with Schedule 17 (*Charges and Invoicing*); and
- 19.11.3 the Authority may, in its sole discretion, issue a Conditional Milestone Achievement Certificate, in which case the Authority shall notify the Contractor of a revised Milestone Date for the failed Milestone (each such revised date being a **"Revised Milestone Date"**) and the Contractor shall be obliged to Achieve such Milestone unconditionally by the Revised Milestone Date. The Contractor acknowledges that the Authority's discussion, notification or agreement of, any Revised Milestone Date shall not act as a waiver of the Authority's rights and remedies (however arising) in relation to, or acquiescence in, the Contractor's failure to meet the original Milestone Date for that Milestone.
- 19.12 Where an event which has caused a Delay has also given rise to other cause(s) of action for the Authority or to other rights exercisable by the Authority under this Agreement, including its right under Clause 8.20 (*Warning Notices and Increased Monitoring*) to issue a Warning Notice, Clause 19.11 above shall not affect such other cause(s) of action or other rights.

Part payment of Milestone Payment for Delay due to Authority Cause

- 19.13 If an Authority Cause has occurred during the Implementation Programme and:
 - 19.13.1 the Contractor has notified the Authority of a Delay in accordance with Clause 19.1 and the Delay is due to an Authority Cause;
 - 19.13.2 the Contractor has used all reasonable endeavours to mitigate and minimise the Delay (and any other effect of the Authority Cause) in accordance with Clause 15.1 above;
 - 19.13.3 the Authority Cause has persisted for three (3) consecutive months; and
 - 19.13.4 as a result of the Authority Cause, the Contractor is or will be unable to Achieve a Key Milestone to which a Milestone Payment relates (the **"Affected Milestone"**) by the Affected Milestone's Milestone Date (the **"Affected Milestone Payment"**),
 the Contractor shall be entitled to part payment of the Affected Milestone Payment in accordance with Clause 19.14.
- 19.14 If the circumstances described in Clause 19.13 entitle the Contractor to part payment of the Affected Milestone Payment in accordance with this Clause 19.14, the Contractor shall be entitled to invoice the Authority for up to seventy-five percent (75%) of the Affected Milestone Payment, the specific amount to be determined in accordance with the following:
 - 19.14.1 the Contractor shall only be entitled to invoice the Authority for such proportion of the Affected Milestone Payment that the Contractor had completed in accordance with the applicable Milestone Achievement Criteria up to the date on which the Authority Cause took effect;
 - 19.14.2 the Contractor shall not be entitled to invoice the Authority for the remaining amount of the Affected Milestone Payment unless and until the Affected Milestone has been Achieved; and
 - 19.14.3 the Contractor shall continue to carry out all other activities in fulfilment of the Affected Milestone's Milestone Achievement Criteria (and otherwise in accordance with the Detailed Implementation Plan) that are unaffected by the Authority Cause.
- 19.15 The Contractor shall provide the Authority with any information the Authority may reasonably require in order to assess the validity of any claim by the Contractor to part payment of an Affected Milestone Payment under Clause 19.13, including full details of the amounts being claimed in respect of the Affected Milestone Payment and substantiating both the Delay and the relevant Authority Cause.

- 19.16 The Contractor must serve any claim to part payment of an Affected Milestone Payment under Clause 19.13 above on the Authority in writing and as soon as possible after the calendar month in which the Contractor becomes entitled to claim such part payment and in any event within fifteen (15) Working Days of the relevant calendar month-end.
- 19.17 Part payment of an Affected Milestone Payment validly claimed by the Contractor under Clause 19.13 may consist of staged payments by the Authority up to the amount validly claimed.
- 19.18 Nothing in this Clause 19 shall operate as to put the Contractor in a better position than it would have been in but for the occurrence of the relevant Authority Cause.

D. PERSONNEL AND SUPPLY CHAIN

20. CONTRACTOR PERSONNEL

- 20.1 The Authority may refuse admission of any Contractor Personnel to Authority Premises and may direct the Contractor to remove any Contractor Personnel from involvement in the provision of the Services if the Authority believes such Contractor Personnel:

- 20.1.1 represent a security risk;
- 20.1.2 have breached the Security Policy or the Security Requirements;
- 20.1.3 do not have the required levels of training and expertise; or
- 20.1.4 for one or more other reasons, which alone or together make it unsuitable for such Contractor Personnel to remain involved in the provision of the Services.

The decision of the Authority in relation to any such refusal or direction shall be final and the Authority shall not be obliged to cite its reasons or provide any supporting evidence.

- 20.2 Following receipt by the Contractor of a direction by the Authority referred to in Clause 20.1 above, the Contractor shall remove the relevant Contractor Personnel from the provision of the Services immediately and, where required, shall direct the relevant Contractor Personnel to leave the Authority Premises immediately.
- 20.3 The Contractor shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover of its staff engaged in the provision or management of the Services is no greater than the prevailing industry norm for similar services, locations and environments.
- 20.4 If any member of the Contractor Personnel is replaced for any reason, the Contractor shall ensure that any Replacement Provider personnel is sufficiently skilled, qualified, experienced and competent to perform the tasks and responsibilities assigned to the Contractor Personnel whom he or she is replacing.

Relevant Convictions

- 20.5 The Contractor shall, and shall procure that any Sub-contractor shall, ensure that no person who discloses that he or she has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Disclosure & Barring Service procedures or otherwise), is employed or engaged in the provision of any part of the Services without the Authority's Approval.
- 20.6 For each of the Contractor Personnel who, in providing the Services, has, will have or is likely to have access to members of the public to whom the Authority has notified the Contractor that it owes a special duty of care, the Contractor shall (and shall procure that any Sub-contractor shall):
 - 20.6.1 carry out a policy check with the records held by DfE;
 - 20.6.2 conduct thorough questioning regarding any Relevant Convictions;
 - 20.6.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure & Barring Service; and

- 20.6.4 not engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

Key Personnel

- 20.7 The Parties have agreed to the appointment of the Key Personnel as set out in Schedule 12 (*Representatives and Key Personnel*).
- 20.8 Without prejudice to Clause 20.10 or 20.11 below, the Contractor shall:
- 20.8.1 maintain and keep updated a list of Key Personnel throughout the Term (and during any Exit Period);
 - 20.8.2 ensure that such list records whether the Key Personnel carry out work on the Services on a full-time or part-time basis, as well as their areas of responsibilities; and
 - 20.8.3 make such list available to the Authority from time to time upon request (and in any event, within ten (10) Working Days of receiving any such request).
- 20.9 The Contractor shall (and shall procure that the employer of any member of the Key Personnel not employed by the Contractor shall):
- 20.9.1 endeavour to retain in employment each member of the Key Personnel for a Key Role Minimum Period as set out in Schedule 12 (*Representatives and Key Personnel*) from the date on which the member of the Key Personnel assumes a Key Role;
 - 20.9.2 in accordance with Good Industry Practice, ensure that each member of the Key Personnel shall devote a sufficient amount of his or her time and appropriate effort to supplying the Services with the requisite level of skill, qualification, competence and experience for the proper performance of the Services; and
 - 20.9.3 ensure that each member of the Key Personnel shall continue to be offered terms and conditions of employment which are competitive with those offered elsewhere in comparable roles.
- 20.10 Subject to Clause 20.11, the Contractor shall (and shall procure that any Sub-contractor shall):
- 20.10.1 obtain the Approval of the Authority before taking steps to remove or replace any member of the Key Personnel from their role in the provision of the Services during the Key Role Minimum Period (and, if the member of the Key Personnel is still employed by the Contractor or any Sub-contractor at the date of commencement of the Re-Procurement Period or the Exit Period, then during any Re-Procurement Period or Exit Period); and
 - 20.10.2 where possible, ensure that at least three (3) months' prior written notice is provided to the Authority of any proposal to remove any member of the Key Personnel from their role in the provision of the Services,

provided that where there is good reason for a Key Personnel leaving their role in the provision of the Services, the Contractor or Sub-contractor does not need the Authority's Approval, but shall give as much notice as possible and shall still comply with Clause 20.12 below.

For the purposes of this Clause 20.10, "**good reason**" means:

- A. the individual concerned resigns, retires or dies, takes maternity, paternity, adoption or shared parental leave, is required for long term jury service, suffers a long term sickness or disability, or is awarded another role in the Contractor's organisation (provided that no such award shall be made unless the individual concerned will, on the anticipated start date of such role, have been in post as a member of the Key Personnel for at least twelve (12) months from the date on which the member of the Key Personnel assumed the Key Role); or

- B. the individual is suspended pending investigation of a complaint of misconduct or, after having followed all due process, their employment or engagement with the Contractor or Sub-contractor is terminated for gross misconduct or material breach of contract.
- 20.11 The Contractor shall:
- 20.11.1 obtain the Authority's Approval for the appointment (including identity) of any proposed replacement of any member of Key Personnel by the Contractor or Sub-contractor, such Approval not to be unreasonably withheld or delayed; and
 - 20.11.2 provide to the Authority the curriculum vitae of each proposed candidate for Key Roles and shall allow the Authority to interview the candidates for Key Roles (and to refuse their appointment) before the Contractor appoints a candidate.
- 20.12 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Contractor shall ensure that:
- 20.12.1 there is appropriate cover for short term absences, such as vacations and sickness;
 - 20.12.2 no Key Role is vacant for longer than ten (10) consecutive Working Days (or longer with the Authority's Approval, not to be unreasonably withheld or delayed);
 - 20.12.3 any staff covering any such short-term absence shall be sufficiently skilled, qualified, experienced and competent to carry out such Key Role; and
 - 20.12.4 where possible, the member of staff providing cover has been given all relevant paperwork and other information required in order to achieve a smooth and efficient transfer of responsibilities to him or her.
- 20.13 Without limiting Clause 20.9 above, the Contractor shall ensure that each of the Key Personnel shall work for such period of time in the performance of the Services as is commensurate with, and sufficient to, perform the obligations of that person's Key Role. To the extent that it can do so without disregarding its statutory obligations, the Contractor shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 20.14 If required by the Authority, the Contractor shall remove and replace promptly any member of the Key Personnel that the Authority reasonably considers in any respect unsatisfactory.
- 20.15 The Authority shall not be liable for the cost of removing or replacing any member appointed to a Key Role and the Contractor shall indemnify the Authority against any and all Employee Liabilities that may arise in these respects.

Staffing Security

- 20.16 The Contractor shall, and shall procure that any Sub-contractor shall, comply with the Staff Vetting Procedures and the Standards in respect of all Contractor Personnel employed or engaged in the provision of the Services from time to time. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor or any Sub-contractor at the Contract Date were vetted and recruited by reference to criteria no less strict than the Staff Vetting Procedures and in any event were vetted and recruited in accordance with the Standards.
- 20.17 The Contractor shall, and shall procure that any Sub-contractor shall, ensure that all Contractor Personnel employed or engaged in the provision of the Services:
- 20.17.1 receive annual security training to ensure that they are able to maintain compliance with the Security Policy Framework (and related supporting documentation); and
 - 20.17.2 comply with local security instructions relating to Contractor Personnel conduct at Authority Sites and locations, as notified to the Contractor by the Authority from time to time.

- 20.18 Where the procedures set out in Clauses 20.5 (*Relevant Convictions*), 20.6 (*Relevant Convictions*) and 20.16 above cannot be applied to Contractor Personnel employed or engaged overseas, the Contractor shall notify the Authority of this fact and shall comply with the Authority's determination in relation to any alternative vetting and recruitment procedures to be applied prior to such personnel being allowed to carry out the Services (or any part of them).

Non-Discrimination and Anti-Modern Slavery

- 20.19 The Contractor shall, and shall procure that any Sub-contractor shall:
- 20.19.1 not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in relation to age, race, gender, gender reassignment, pregnancy and maternity, marriage and civil partnership, religion, disability, sexual orientation or otherwise); and
 - 20.19.2 take all reasonable steps to secure the observance of this Clause 20.19 by the Contractor Personnel.
- 20.20 The Contractor shall:
- 20.20.1 notify the Authority of the commencement of any legal proceedings or any claims made under the Equality Act 2010 (including the receipt of any Employment Tribunal claim or any early conciliation) in respect of any Contractor Personnel in relation to the matters set out in Clause 20.19; and
 - 20.20.2 provide the Authority with such other information as may be reasonably required by the Authority to fulfil its obligations as a public authority under:
 - (A) Section 149 of the Equality Act 2010; and
 - (B) the Equality Act 2010 (Specific Duties) Regulations 2011.
- 20.21 The Contractor undertakes, warrants and represents that neither the Contractor nor any of its officers, employees, agents or sub-contractors:
- 20.21.1 has committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or
 - 20.21.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - 20.21.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

Pension matters

- 20.22 Where the provision of the Services results in the employment of any Former Authority Employee being transferred to the Contractor pursuant to the Transfer Regulations, the Parties agree that the provisions of Part 3 (*Pension Matters*) to Schedule 30 (*Staff Transfer*) will apply and the Contractor shall enter into an Admission Agreement (as defined in Part 3 (*Pension Matters*) of Schedule 30 (*Staff Transfer*)).
- 20.23 All Sub-contracts which may result in the employment of any Former Authority Employee being transferred to a Sub-contractor pursuant to the Transfer Regulations shall include those provisions required under paragraph 2.2 of Part 3 (*Pension Matters*) to Schedule 30 (*Staff Transfer*) in respect of such Sub-contracts.
- 20.24 Failure by the Contractor to enter into an Admission Agreement in accordance with Clause 20.22 or to comply with Clause 20.23 shall be deemed to be a material Default.

21. **EMPLOYMENT INDEMNITIES**

- 21.1 Without limiting, and subject to, any indemnities given pursuant to Schedule 30 (*Staff Transfer*), the Contractor shall indemnify the Authority against any and all Employee Liabilities that may arise as a result of any claim or claims, or any part of any claim, brought against the Authority by any or all of:
- 21.1.1 the individuals employed or engaged, or formerly employed or engaged, by the Authority; and
 - 21.1.2 the Contractor Personnel,
- where such claim arises from any act or omission of the Contractor, any Sub-contractor or any Contractor Personnel.
- 21.2 Without prejudice to Clause 21.1, the Contractor shall indemnify the Authority against any and all Losses arising from or in connection with any breach by the Contractor of Clauses 20.19 to 20.21 (*Non-discrimination and Anti-Modern Slavery*).

22. **SUPPLY CHAIN RIGHTS**

Sub-contracting

- 22.1 Subject to Clause 22.2 below, the Contractor shall not sub-contract any of its obligations under this Agreement without the Authority's Approval.
- 22.2 Schedule 13 (*Approved Sub-contractors*) contains a list of Sub-contractors who have been approved by the Authority for the purpose of Clause 22.1 above ("**Approved Sub-contractors**"), including those Sub-contractors which are Key Sub-contractors. If the Contractor wishes to add to or remove from the list of the Approved Sub-contractors (including Key Sub-contractors), it must obtain the prior written approval of the Authority.
- 22.3 The Authority may in its sole discretion withhold or delay its Approval to the Contractor sub-contracting any of its obligations under this Agreement. The Authority may choose for reasons related to circumstances associated with an Approved Sub-contractor, to withdraw its Approval of such Approved Sub-contractor, in which case such Sub-contractor shall be deemed to be removed from the list of Approved Sub-contractors, and on notification by the Authority to the Contractor, the Contractor shall take all steps necessary to ensure that no Services continue to be provided by such Sub-contractor.
- 22.4 Subject to Clause 22.5 below, in making a request for Approval of a Sub-contractor pursuant to Clause 22.1 above, the Contractor shall provide the Authority with the following information about the proposed Sub-contractor:
- 22.4.1 its name, registered office and company registration number;
 - 22.4.2 a copy of the proposed Sub-contract, including details of the value of the proposed Sub-contract;
 - 22.4.3 details of the method by which the proposed Sub-contract will be procured;
 - 22.4.4 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;
 - 22.4.5 if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant Service Levels;
 - 22.4.6 where the proposed Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arms-length" terms; and
 - 22.4.7 any further information reasonably requested by the Authority (including the proposed sub-contractors long term credit ratings).
- 22.5 If the provision of information required pursuant to Clause 22.4 above would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall be obliged to

provide the Authority with the relevant information only to the extent and at the first opportunity permitted by those rules and regulations and shall then provide the fullest information permitted.

- 22.6 The Contractor shall ensure, except where and to the extent the Authority has expressly stated otherwise when a Sub-contractor is Approved in accordance with Clause 22.2 above, that:
- 22.6.1 each Key Sub-contract includes the provisions set out in Paragraph 2.1 of Schedule 15 (*Terms of Third Party Contracts*); and
 - 22.6.2 each Sub-contract, including any Key Sub-contract, includes the provisions set out in Paragraph 2.2 of Schedule 15 (*Terms of Third Party Contracts*).
- 22.7 Without prejudice to Clause 22.6 above, the Contractor shall (unless otherwise agreed by the Authority in writing) procure that all Key Sub-contracts and other agreements with third parties which are necessary to enable the Authority or any other Replacement Provider(s) to perform the Services (in accordance with this Agreement) or the Replacement Services, shall be assignable, or capable of novation, without restriction (including any need to obtain any approval or any need for the Authority or any other Replacement Provider (as applicable) to make any payment) at the request of the Authority to the Authority (or its nominee), any other Replacement Provider(s) or the Authority and one or more other Replacement Providers (as applicable) upon the Contractor ceasing to provide the Services (or any part of them).
- 22.8 Where the Contractor, having used all reasonable endeavours, is unable to comply with Clauses 22.6 or 22.7 above in relation to any Sub-contractors or Key Sub-contractors (as applicable), it shall promptly notify the Authority in writing together with a description of the reason(s) for such inability to comply. The Contractor shall act in good faith and without undue delay to try to find a resolution which is acceptable to the Authority within ten (10) Working Days (or such other period as the Parties agree in writing). If the Parties are unable to find a resolution which is acceptable to the Authority, the Contractor shall act as directed by the Authority in relation to such requirements (which may include the Contractor seeking an alternative Sub-contractor), to be agreed in writing with the Authority.
- 22.9 The Contractor shall not make use of a pre-existing contract with any Sub-contractor without the prior Approval of the Authority. The Authority may (in its sole discretion) consent on the basis that all or part of the requirements of Clause 22.6 or 22.7 above may be waived, such consent and waiver to be in writing and to refer expressly to this Clause 22.9.
- 22.10 Upon written request by the Authority from time to time, the Contractor shall promptly provide the Authority with a copy of any Sub-contract, including the value of the relevant Sub-contract, with any Key Sub-contractor or Approved Sub-contractor.

Termination of Sub-contracts

- 22.11 The Contractor shall not terminate or materially amend the terms of any Sub-contract without the prior Approval of the Authority.
- 22.12 The Authority may require the Contractor to cease to use a Sub-contractor in connection with the Services where the acts or omissions of the relevant Sub-contractor have given rise to the Authority's right of termination pursuant to Clause 45.3 (*Termination for Cause by the Authority*). If it does so require and, subject to Clause 22.2 above, the Contractor fails to cease to use the Sub-contractor within twenty (20) Working Days (or such other period as the Parties agree in writing) of such notice, then this shall constitute an irremediable material Default for the purposes of Clause 45.8.2 (*Termination for Cause by the Authority*) below.
- 22.13 The Authority may require the Contractor to cease to use the relevant Sub-contractor in connection with the Services if there is a change of control of a Sub-contractor on the same terms as those set out in Clause 45.11 (*Termination for Change of Ownership*). If it does so require and, subject to Clause 22.2 above, the Contractor fails to cease to use the Sub-

contractor within twenty (20) Working Days (or such other period as the Parties agree in writing) of such notice, then this shall constitute an irremediable material Default for the purposes of Clause 45.8.2 (*Termination for Cause by the Authority*) below.

Retention of Legal Obligations

- 22.14 Despite the Contractor's right to sub-contract pursuant to this Clause 22, the Contractor 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.
- 22.15 An obligation under or in connection with this Agreement on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that it, its Sub-contractors and Affiliates, and its and their employees, officers, and agents also do, or refrain from doing, such act or thing.

23. DEALING WITH THIRD PARTIES

Third Parties and Defence as a Platform

- 23.1 The Contractor acknowledges that one of the Authority's desired outcomes is for contractors (including the Contractor) within the Enterprise IT to work together (among themselves and with the Authority) effectively, in part to enable the Authority to realise the objectives set out in Clause 4 (*Defence as a Platform*).
- 23.2 The Parties acknowledge and agree that, under this Agreement, third parties are identified as follows:
 - 23.2.1 **Authority Third Parties:** Authority Third Parties are all third parties (which may also be described variously as (among other things) DaaP Contractors, MSPs, Managed Contractors and Outgoing Service Providers) and which may include contractors, consultants, partners and other advisers to the Authority with which the Authority contracts, or to which the Authority delegates (or tasks to act in pursuance of) any of its rights or obligations, and which are further described in Clauses 23.3 and 23.4;
 - 23.2.2 **DaaP Contractors:** DaaP Contractors (as defined in Clause 4.2.1 (*Collaboration Agreement*)) are party to the Collaboration Agreement;
 - 23.2.3 **Managed Service Providers or MSPs:** MSPs are those Contractors to the Authority which provide managed services or similar to or for the Authority and which carry out roles and have responsibilities allocated to them under the ISS Processes. MSPs include the Contractor and other Authority Third Parties (including DaaP Contractors) that are identified as an MSP in accordance with the ISS Processes and their arrangements with the Authority; and
 - 23.2.4 **Managed Contractors:** Managed Contractors are third parties that the Contractor is required to manage on behalf of the Authority in accordance with Clauses 23.5 to 23.11.

Third Party Co-operation

- 23.3 The Contractor shall communicate openly, co-operate with and provide reasonable assistance to Authority Third Parties. This communication, cooperation and assistance shall include:
 - 23.3.1 providing such information about the manner in which the Services are provided as is reasonably necessary for Authority Third Parties to provide their services to the Authority or carry out such activities as have been delegated to them by the Authority;
 - 23.3.2 making available to, or accepting information from, Authority Third Parties;
 - 23.3.3 developing interfaces between the Contractor Solution and systems used by Authority Third Parties to enable the Contractor Solution and systems used by Authority Third Parties to communicate automatically, save that to the extent such interfaces are:

- (A) not otherwise required under this Agreement; and
- (B) would require the Contractor to incur significant additional costs to develop and implement,

the details of such interfaces shall be agreed using the Contract Change Procedure;

23.3.4 within six (6) months from the Effective Date or as otherwise required as part of the Detailed Implementation Plan (including a specific Milestone), agreeing and documenting:

- (A) in the case of each Outgoing Service Provider:
 - (1) a non-binding Operating Level Agreement; or
 - (2) only if the Contractor is unable to put in place a non-binding Operating Level Agreement with such Outgoing Service Provider, a form of operating level agreement previously accepted under the Authority's contracts with its relevant suppliers and which the Contractor has used its best endeavours to amend to cover the matters set out in Schedule 9 (*Operating Level Agreement*);
- (B) in the case of each DaaP Contractor:
 - (1) such ways of working or other collaborative working arrangements that may be agreed under the Collaboration Agreement as part of the onboarding assistance set out therein;
 - (2) a non-binding Operating Level Agreement and/or (as appropriate and in accordance with any Authority direction) a Service Management Protocol;
- (C) in the case of each other Authority Third Party with whom the Contractor will interact when implementing or providing the Services (or as otherwise required by the Authority):
 - (1) a non-binding Operating Level Agreement or only if the Contractor is unable to put in place a non-binding Operating Level Agreement with the Authority Third Party, a form of operating level agreement previously accepted under the Authority's contracts with its relevant suppliers and which the Contractor has used its best endeavours to amend to cover the matters set out in Schedule 9 (*Operating Level Agreement*); and
 - (2) where required by a Milestone or in order to support the delivery of the Service Desk Sub-Service (or such other Sub-Services as the Contractor Solution requires), a Service Management Protocol;

23.3.5 from time to time during the Term or any Exit Period (and during both periods including at the Authority's request), the Contractor agreeing and documenting non-binding Operating Level Agreements or Service Management Protocols with other Authority Third Parties;

23.3.6 within twenty (20) Working Days of entering into an Operating Level Agreement (or an alternative operating level agreement) or a Service Management Protocol:

- (A) providing the Authority with a copy of such agreement or Service Management Protocol; and
- (B) notifying the Authority promptly of any changes to such agreements or Service Management Protocols as they occur from time to time by providing an amended copy of such amended Operating Level Agreements (and alternative operating level agreements) and Service Management Protocols to the Authority within twenty (20) Working Days of such change being made;

- 23.3.7 without limiting its obligations under the Collaboration Agreement, using its reasonable endeavours to prevent, resolve and limit the impact on the Authority of any disputes or disagreements between it and any Authority Third Parties;
- 23.3.8 without limiting its obligations under the Collaboration Agreement, meeting with the Authority and Authority Third Parties from time to time to discuss the Services and the services provided by third parties; and
- 23.3.9 without limiting its obligations under Schedule 11 (*Testing Procedures*) and the Collaboration Agreement, working collaboratively with Authority Third Parties to:
 - (A) support the development of the Integrated Test Environment; and
 - (B) support the successful completion of Integration Testing.
- 23.4 Without limiting the Contractor's obligations under Clause 23.3 or the Collaboration Agreement, the Contractor shall inform the Authority of any disputes or disagreements between it and any of Authority Third Parties that arise when fulfilling its obligations under this Clause 23.

Managed Contractors

- 23.5 Where as part of the Services, the Contractor is required to manage a third party with whom the Authority has a contract (a "**Managed Contractor**"), the Contractor shall manage such Managed Contractor on behalf of the Authority in accordance with the terms and conditions of the agreement between the Managed Contractor and the Authority. In complying with its obligation under this Clause 23, the Contractor shall:
 - 23.5.1 monitor and report to the Authority on the performance of the Managed Contractor in a timely manner with appropriate frequency;
 - 23.5.2 use all reasonable endeavours to ensure that each Managed Contractor performs its obligations to the Authority in accordance with the terms and conditions of its agreement with the Authority;
 - 23.5.3 advise the Authority and each Managed Contractor of the steps to be taken to avoid or mitigate:
 - (A) any event of which the Contractor is aware which may materially adversely affect the performance by that Managed Contractor of its obligations to the Authority; and
 - (B) any defect in the service provided by that Managed Contractor or failure by that Managed Contractor to perform its obligations to the Authority; and
 - 23.5.4 provide to the Authority any other information that the Authority may from time to time reasonably request in relation to the performance of the Managed Contractor.
- 23.6 The Authority shall use all reasonable endeavours to ensure that each Managed Contractor provides all necessary co-operation to the Contractor in relation to the Contractor's obligations set out in Clause 23.5 above.
- 23.7 Subject to Clause 23.8 below, the Contractor shall to the maximum extent legally possible discharge all of the Authority's obligations and liabilities created by or arising under each agreement entered into between the Authority and the Managed Contractors and, to the extent that it is not possible, direct the Authority to discharge those obligations.
- 23.8 The Contractor's obligations to discharge the Authority's obligations and liabilities in Clause 23.7 above shall not include any obligation to make payment on behalf of the Authority unless and until the Authority provides written notice, not less than sixty (60) days prior to the date such payments are due, requiring the Contractor to make such payments, provided that any such payments (and any associated financial controls) have been:
 - 23.8.1 expressly contemplated by the Parties at the point at which the Contractor is required to begin managing the Managed Contractor; or

- 23.8.2 subsequently agreed in writing between the Parties, such agreement to include (if applicable) the frequency of any recurring payments.
- 23.9 Any payments made by the Contractor pursuant to Clause 23.8 above shall be charged by the Contractor to the Authority, and shall not include any margin, mark-up or any other mechanism that would result in such charges being higher than the sums paid by the Contractor pursuant to Clause 23.8 above.
- 23.10 Each Managed Contractor as at the date hereof, and the agreements relating to them, is identified in Schedule 14 (*Managed Contractors*). The addition of any new Managed Contractors shall be subject to the Contract Change Procedure.
- 23.11 The Parties agree that:
 - 23.11.1 each Managed Contractor is an independent third party and that the obligations and liabilities of the Contractor in relation to each Managed Contractor shall be only as set out in these Clauses 23.5 to 23.11;
 - 23.11.2 the Contractor shall not be liable for the performance, or failure to provide services or comply with obligations, of any Managed Contractor unless such performance, failure or non-compliance is the result of the Contractor's failure to fulfil its obligations in these Clauses 23.5 to 23.11; and
 - 23.11.3 nothing in this Agreement shall or is intended to alter the existing contract between the Authority and the Managed Contractor.

24. SITE VISITS

Forward Work Schedule

- 24.1 If the Contractor wishes to carry out any works at an Authority Premises, the Contractor shall submit a Forward Work Schedule (or update an existing Forward Work Schedule) for such Authority Premises (subject to Clause 24.2 below) no later than thirty (30) days prior to the date on which Contractor Personnel are to first attend the relevant Authority Premises in order to commence such works. Such Forward Work Schedule (or updated Forward Work Schedule, as the case may be) shall include as a minimum:
 - 24.1.1 the nature of the work to be carried out by the Contractor;
 - 24.1.2 the relevant dates on which the work will be carried out;
 - 24.1.3 the contact numbers and names of Contractor Personnel due to attend Authority Premises for specific works, along with Security Confirmations relating to such Contractor Personnel;
 - 24.1.4 the parts of Authority Premises the Contractor Personnel need to access in order to carry out the works (including an indication of whether the Contractor requires access to any existing ducting and wiring); and
 - 24.1.5 where applicable, any request that the Authority makes available standard Institution of Engineering and Technology certification for power installation testing for Authority Premises that is needed,

and shall be submitted for the Authority's Approval (such Approval not to be unreasonably withheld or delayed). The Contractor shall not carry out works at any Authority Premises prior to such works being included in an Approved version of the Forward Work Schedule for that Authority Premises.
- 24.2 The thirty (30) day notice period required pursuant to Clause 24.1 above shall not apply in respect of Emergency Forward Work Schedule Amendments or any works that the Authority agrees may be carried out without a Forward Work Schedule being submitted.
- 24.3 No later than fifteen (15) Working Days prior to the date on which the Contractor is to first attend Authority Premises in order to commence work on Authority Premises, the Contractor shall confirm to the Authority the Security Confirmations, numbers and names of the Contractor Personnel required to be granted regular access to the relevant Authority Premises for routine tasks. The Contractor shall not request regular access for Contractor

Personnel who are likely to attend the Authority Premises in question less than once each month.

Ad Hoc Access Requests

- 24.4 Where access to one or more specific areas of an Authority Premises is required for the purpose of installation, maintenance and repair of the Services outside of the planned installation, maintenance and repair activities set out in the relevant Forward Work Schedule, the Contractor shall from time to time write to the point of contact for those Authority Premises to request such access (each such request being an "**Ad Hoc Access Request**"). The Contractor shall ensure that each Ad Hoc Access Request describes:
- 24.4.1 the nature of the work to be carried out by the Contractor;
 - 24.4.2 the relevant dates on which the work will be carried out;
 - 24.4.3 the numbers and identities of Contractor Personnel who will carry out the work, along with any Security Confirmations for such Named Personnel;
 - 24.4.4 the parts of Authority Premises the Contractor Personnel will need to access in order to carry out the work; and
 - 24.4.5 where applicable any request that the Authority make available standard Institution of Engineering and Technology certification for power installation testing for that Authority Premises that is needed.

Health and Safety Requests

- 24.5 No later than fifteen (15) Working Days prior to the date on which the Contractor is to first attend an Authority Premises in order to commence work, the Contractor shall request in writing that the Authority provides the Contractor, within five (5) Working Days of receiving such request, with the relevant health and safety information in respect of the specific work to be undertaken at that Authority Premises.
- 24.6 The Contractor shall ensure that all Contractor Personnel planning to attend an Authority Premises shall report to the relevant health and safety representative on the first day on which the relevant Contractor Person attends such Authority Premises in order to commence work.

25. HEALTH AND SAFETY

- 25.1 The Contractor acknowledges that it has been supplied with a copy of the Authority's rules regarding health and safety. The Contractor shall, and shall procure that any Sub-contractor and the individuals employed or engaged by the Contractor or any Sub-contractor in connection with the performance of the Services from time to time shall, comply with these rules and any additional rules made known to the Contractor from time to time by the Authority together with all applicable statutory rules and regulations regarding these matters. The Authority shall procure that its employees and agents also comply with these rules and regulations.
- 25.2 Each Party shall notify the other in writing as soon as practicable of any health and safety hazards at Authority Premises of which it becomes aware. The Contractor shall, and shall procure that any Sub-contractor shall, draw these hazards to the attention of the Contractor Personnel and will instruct those persons in connection with any necessary associated safety measures.

E. FINANCIAL

26. CHARGING AND INVOICING

- 26.1 In consideration of the Contractor carrying out its obligations in accordance with this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Contractor in accordance with and subject to Schedule 17 (*Charges and Invoicing*).
- 26.2 The Contractor shall ensure that a term is included in any Sub-contract permitted under this Agreement which requires the Contractor 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 Contractor receives the Sub-contractor's invoice in accordance with the terms of the relevant Sub-contract. The Contractor shall comply with such terms.

- 26.3 If the Authority reasonably disputes its obligation to pay part or all of an amount specified in the Monthly Billing Summary submitted by the Contractor or a Final Invoice submitted by the Contractor in the CP&F Tool, then, notwithstanding anything to the contrary in this Agreement:
- 26.3.1 the Authority's failure to pay the amount specified in the Monthly Billing Summary or Final Invoice (as applicable) which it disputes (the "**Disputed Amount**") shall not be a breach of this Agreement unless this is established to be the case through the application of the Dispute Resolution Procedure under Clause 23.6;
 - 26.3.2 the Authority shall pay the undisputed balance of the Final Invoice to the Contractor in accordance with this Agreement;
 - 26.3.3 the Parties must as soon as reasonably practicable discuss and use their respective reasonable endeavours to agree how much of the Disputed Amount is payable to the Contractor;
 - 26.3.4 if the Contractor disputes the grounds on which the Authority disputes the Disputed Amount, the Contractor shall, in accordance with Paragraph 13 of Part B (*Invoicing*) of Schedule 17 (*Charges and Invoicing*), provide the Authority with such information as is reasonably required by the Authority to substantiate the Contractor's position;
 - 26.3.5 if the Parties agree that all or parts of the Disputed Amount are payable by the Authority, such amount shall be included in the next Monthly Billing Summary issued after such agreement has been reached and shall be clearly identified in that Monthly Billing Summary as an amount that was previously disputed; and
 - 26.3.6 if the Parties are unable to reach agreement pursuant to Clause 26.3.3 above within ten (10) Working Days of the commencement of discussions pursuant to Clause 26.3.3, then either Party may refer the matter to the Dispute Resolution Procedure.
- 26.4 If, in any Charging Period, any Disputed Amount which the Parties agree is not payable has already been paid by the Authority, the Contractor shall apply a credit equal to the Disputed Amount to the amount specified in the following month's Monthly Billing Summary and the relevant Final Invoice. If no further Charges fall due after such credit accrues or no Final Invoice is due to be issued then the Contractor shall issue a credit note to the Authority (as applicable):
- 26.4.1 for a sum equal to any such Disputed Amount which the Parties have agreed is not payable but has already been paid by the Authority; or
 - 26.4.2 against the previous Final Invoice,
- and the amount of the credit shall be repayable by the Contractor to the Authority as a debt within the same period as applies to the payment of the Contractor's undisputed invoices under this Agreement and Paragraph 15 of Part B (*Invoicing*) of Schedule 17 (*Charges and Invoicing*).
- 26.5 Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with Paragraph 14 of Part B (*Invoicing*) of Schedule 17 (*Charges and Invoicing*) at the rate of eight per cent (8%) per annum above the Bank of England base rate from time to time.
- 26.6 Except as otherwise provided in this Agreement, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement. In particular, the Parties agree that the Authority is not liable to pay any amount under or in connection with this Agreement or the Services, except as expressly stated in this Agreement.

- 26.7 The Contractor may at any time reduce the prices set out in the Price Book and shall implement such reductions by notice to the Authority in accordance with Clause 42.2 (*Contract Change*) below.
- 26.8 The Contractor shall notify the Authority promptly (and in any event within five (5) Working Days) if it believes (acting reasonably) that the Authority has overpaid any Charges, giving reasons. The Contractor shall pay to the Authority the amount overpaid within thirty (30) Working Days of determining the existence of such overpayment. Without prejudice to any other rights of the Authority under this Agreement, the Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment in accordance with this Clause 26.8.
27. **TAX**
- 27.1 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. The Charges are inclusive of all other Taxes.
- 27.2 The Contractor 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 Contractor's failure to account for or to pay any VAT or other Taxes relating to payments made to the Contractor under this Agreement. Any amounts due under this Clause 27.2 shall be paid in cleared funds by the Contractor 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.
28. **RECOVERY OF SUMS DUE**
- 28.1 The Authority may retain or set off any amount owed to it by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Agreement) against any amount due to the Contractor under this Agreement or under any amount payable by the Authority under any other agreement between the Contractor and the Authority.
- 28.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 28.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has Approval or a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- 28.4 Any requirement of Law to account for the Services in euros (or to prepare for such accounting) instead of or in addition to pounds sterling, shall be implemented by the Contractor free-of-charge to the Authority.
29. **FINANCIAL MODEL**
- The provisions of Schedule 18 (*Financial Model*) shall apply in relation to the Financial Model and the Contractor shall comply with its obligations in Schedule 18 (*Financial Model*).
30. **VALUE FOR MONEY**
- The Contractor shall comply with its obligations set out in Schedule 19 (*Value for Money*).
31. **FINANCIAL DISTRESS**
- The Parties shall comply with the provisions of Schedule 20 (*Financial Distress*) in relation to the assessment of the Contractor's and any Key Sub-contractor's financial standing and the consequences of a change to that financial standing.

F. GOVERNANCE

32. REPRESENTATIVES

- 32.1 The Contractor appoints the person named as such in Schedule 12 (*Representatives and Key Personnel*) as the Contractor Representative. The Authority shall notify the Contractor from time to time of the identity of the Authority Representative.
- 32.2 The Authority Representative and the Contractor Representative shall be sufficiently senior within the organisation of the appointing Party, and be granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Agreement.
- 32.3 In addition to and without limiting Clause 32.2, the Contractor Representative shall have the authority to act on behalf of the Contractor on the matters set out in, or in connection with, this Agreement, except in relation to a Contract Change which is governed by the Contract Change Procedure. The Contractor may, by further written notice to the Authority, revoke the authority of the then-current Contractor Representative and appoint a new Contractor Representative.
- 32.4 Notwithstanding the right of the Contractor to revoke the authority of the Contractor Representative under Clause 32.3, the Contractor Representative shall be a member of the Key Personnel.

33. GOVERNANCE

- 33.1 The Parties agree to manage this Agreement through the governance structure detailed in Schedule 22 (*Governance*).
- 33.2 Without limiting Schedule 22 (*Governance*), the Parties shall also participate in such other ad-hoc contract management arrangements as they may agree from time to time.

34. MANAGEMENT INFORMATION

- 34.1 Without prejudice to the monitoring rights which the Authority has under this Agreement (including pursuant to Schedule 23 (*Performance Monitoring and Reporting*)), the Contractor shall submit Management Information to the Authority throughout the Term (and any Exit Period, as applicable) in accordance with Schedule 2 (*Service Requirements*), Schedule 23 (*Performance Monitoring and Reporting*) and as otherwise required under this Agreement. The Authority may audit the Management Information in accordance with Clauses 35.1.7 and 35.5 (*Audits, Notifications and Record Keeping*) below. Management Information shall be submitted in such form as the Authority requests, which may include a management information exchange or similar portal.
- 34.2 The Contractor shall operate and maintain systems, processes and records which are consistent with Good Industry Practice to ensure that it can, at all times, deliver accurate Management Information to the Authority in accordance with this Agreement (including as required in Paragraph 1.3 of Schedule 23 (*Performance Monitoring and Reporting*)). If, as a result of an audit conducted in accordance with this Agreement or a finding by the Authority that it has received inaccurate Management Information, the Authority establishes that the Contractor does not have such systems, processes and records in place, then:
- 34.2.1 the Contractor's performance of the Services shall be deemed to have failed all Service Levels against which the Contractor's performance cannot be measured fully for the relevant Measurement Period; and
- 34.2.2 if the Contractor fails to put such processes in place within twenty (20) Working Days of a written notice from the Authority requiring it to do so, such failure shall be a Termination for Cause Event and the Authority shall be entitled to serve a Termination Notice in accordance with Clause 45.3.
- 34.3 If the Authority identifies, or has reason to believe, that any Management Information contains any information which is incorrect, is inconsistent with other Management

Information, is incomplete, or does not comply with any agreed Report definition or Report template, the Authority may (in its sole discretion) require the Contractor to promptly:

- 34.3.1 address the inadequacies and re-submit the Management Information to the Authority; or
- 34.3.2 include an erratum note which addresses the inadequacies in the subsequent item of Management Information of the same series.
- 34.4 The Contractor acknowledges that the Management Information is the Confidential Information of the Authority.

35. AUDITS, NOTIFICATIONS AND RECORD KEEPING

Audits

- 35.1 Where a Regulatory Body wishes to carry out, or requires the Authority to carry out an audit, the Authority may comply with such request without affecting its other rights under this Clause 35. In addition, subject to Clause 35.18, the Authority may carry out from time to time, a maximum of one (1) Financial Audit in any Contract Year, a maximum of two (2) Operational Audit(s) in any Contract Year and any number of Security Audit(s) as it deems appropriate (acting reasonably and using reasonable endeavours to conduct no more than four (4) Security Audits per year) in connection with any of the Services for any or all of the following purposes:
 - 35.1.1 to verify any or all of:
 - (A) the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement);
 - (B) any cost reduction and income generation initiatives carried out pursuant to Clause 10 (*Services Improvement*); and
 - (C) the costs of all Key Sub-contractors,
 a "**Financial Audit**";
 - 35.1.2 to review the confidentiality, availability and integrity of the Authority's Confidential Information and MOD Identifiable Information;
 - 35.1.3 to review the Contractor's compliance with its obligations under this Agreement;
 - 35.1.4 to review any records created during the design and development of the Contractor Solution and pre-operational environment such as information relating to Testing;
 - 35.1.5 to carry out the audit and certification of the Authority's accounts;
 - 35.1.6 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;
 - 35.1.7 to verify the accuracy and completeness of any Management Information, reporting, Re-Procurement Information and Exit Management Information delivered or required by this Agreement;
 - 35.1.8 to inspect the Contractor's ICT environment, the Assets and Authority Assets, equipment, facilities and maintenance;
 - 35.1.9 to ensure that the Contractor is complying with the Standards and to assess how the Standards and ISS Processes have been followed in the provision of the Services;
 - 35.1.10 to carry out an audit (at the Authority's sole discretion, in conjunction with the Contractor Personnel responsible for Fraud detection) to investigate and identify Fraud in connection with the delivery of the Services or any other element of this Agreement; and

35.1.11 to carry out and audit the Contractor's compliance with the Security Requirements and the appropriate security Standards (any such security aspects audit being a "**Security Audit**"),

(and an audit for any of the purposes referred to in Clauses 35.1.2 to 35.1.10 (inclusive) above is an "**Operational Audit**"). For each of the audits described in this Clause 35.1, the Authority may then carry out a follow-up assessment limited in scope to confirming that actions from the Audit have been carried out.

35.2 The Authority shall use its reasonable endeavours to ensure that:

35.2.1 the conduct of each audit does not unreasonably disrupt the Contractor, delay the provision of the Services, or cause the Contractor to breach any confidentiality obligations it has in relation to other customers and suppliers; and

35.2.2 any external auditor used by it to conduct an audit is bound by confidentiality provisions preventing unlawful disclosure of the Contractor's Confidential Information to direct competitors of the Contractor or its Sub-contractors.

Security Audits

35.3 In addition to the Operational Audits and Financial Audits, the Authority may carry out a Security Audit of the Services in accordance with the following:

35.3.1 the Security Audit shall take place at such time as may be specified by the Authority (acting reasonably and, if practicable given the purpose of the audit, in consultation with the Contractor);

35.3.2 the Security Audit may include the Assets used and the Contractor Solution or any component of it, in which case the Contractor shall facilitate such audit;

35.3.3 at the Authority's discretion, the Security Audit may include security testing (and, if the Parties agree, penetration testing) of any Asset (whether software or Equipment) used in the provision of the Services, whether or not it is an Exclusive Asset, and the Contractor shall procure that the Authority may have such access. Where possible, the Authority shall endeavour to scope and agree such security testing in order to minimise any risks to operational Assets.

If, following a Security Audit, the Authority determines, acting reasonably and by reference to the Agreed Risk Envelope and associated RMADS, that the Services or any element of the Contractor Solution or any Asset, Software or Equipment has the potential to prejudice security or Information Assurance, the Authority may:

35.3.4 require the Contractor to do any or all of the following, within such time period as required by the Authority:

(A) amend the manner in which it provides the Services;

(B) cease using all such Assets as part of the Services immediately if no other time period is required by the Authority (for the purposes of this sub-paragraph (B), "**immediately**" shall mean as soon as possible and in any event within one hour of the Authority issuing a requirement to cease);

(C) suspend provision of the Services (or any part thereof);

(D) replace all such Assets with new Assets which are of equivalent capability in terms of their ability to provide the Services; and

(E) submit the replacement Assets for a Security Audit; and

35.3.5 if any of the actions in Clause 35.3.4 above have not been done by the Contractor within the time period required by the Authority pursuant to Clause 35.3.4 above:

(A) if the Authority directs (such direction to be confirmed in writing if given orally) that it requires the Contractor to do such action due for urgent operational reasons, the Authority may terminate this Agreement for

irremediable material Default pursuant to Clause 45.8.2 (*Termination for Cause by the Authority*) below; or

- (B) in all other cases, failure to do such action will constitute a material Default for the purposes of Clause 45.8.1.

- 35.4 The Contractor shall procure that the Authority may carry out a Security Audit of the services provided by any Sub-contractor, and by any DCP Sub-contractor as defined in Part C (*Cyber Security Requirements*) of Schedule 5 (*Security Requirements*), under equivalent terms to those set out in Clause 35.3 above.

Information Audits

- 35.5 In addition to the Operational Audits, Financial Audits and the Security Audits, the Authority shall, for whatever reason, have the right to audit any:

35.5.1 Management Information, reports, registers, Re-Procurement Information, Exit Management Information or other information provided to the Authority in accordance with Schedules 23 (*Performance Monitoring and Reporting*) and 29 (*Exit Management*) to assess the accuracy, availability and completeness of such information, at any time during the Term, any Exit Period, and for a period of up to twenty four (24) months following expiry or termination of this Agreement (an "**Exit Information Audit**"), provided that an Exit Information Audit taking place following expiry or termination of this Agreement shall not require the Contractor to make operational delivery teams available to the Authority on a continuous basis in order to fulfil requests for an Exit Information Audit; and

35.5.2 MOD Identifiable Information at any time during the Term, any Exit Period and for a period of up to six (6) years following expiry or termination of this Agreement.

- 35.6 If, following any Exit Information Audit, the Authority identifies, and notifies the Contractor of, any actual or potential failings, inaccuracies or shortcomings in the information provided, the Contractor shall at its own cost:

35.6.1 remedy any actual failings, inaccuracies or shortcomings (as applicable) and provide accurate Management Information, reports, registers, Re-Procurement Information, Exit Management Information or other information (as applicable) within twenty (20) Working Days of being notified of the relevant failings, inaccuracies or shortcomings; and

35.6.2 remedy the cause of the error within ten (10) Working Days of receiving the notice from the Authority,

and if the Contractor fails to remedy the identified failings, inaccuracies and shortcomings within the relevant timeframe:

35.6.3 such failure shall be deemed to be a material Default of this Agreement; and

35.6.4 the Authority may, without prejudice to its other rights or remedies, instruct a third party to so remedy the identified failings, inaccuracies and shortcomings, and the reasonable costs of such re-performance or compliance shall be borne by the Contractor.

Other provisions relating to Audits

- 35.7 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and, where applicable, its agents or representatives) with all reasonable cooperation and assistance in relation to each audit, including:

35.7.1 all information requested by the Authority (including documents showing how the Standards (including the ISS Processes) have been followed in the provision of the Services) within the permitted scope of the audit;

35.7.2 reasonable access to any Sites controlled by the Contractor and to any Assets and Equipment used (whether exclusively or non-exclusively) in the provision of the Services;

- 35.7.3 access to the Contractor Solution; and
- 35.7.4 access to Contractor Personnel within a reasonable period of a request.
- 35.8 Except for a Security Audit, the Authority shall endeavour (but is not obliged) to provide at least ten (10) Working Days' notice of its intention to conduct any audit.
- 35.9 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 35, unless the audit reveals a material Default by the Contractor or, in the case of an Exit Information Audit, a material error, or a number of errors, in the information provided, in which case the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority in the course of the audit.
- 35.10 If an audit or follow up assessment identifies that:
 - 35.10.1 the Contractor has failed to perform its obligations under this Agreement in any material manner, the Contractor shall, at the Authority's option, agree with the Authority and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 35.10.2 the Authority has overpaid any Charges, the Contractor shall pay to the Authority the amount overpaid within twenty (20) Working Days of such audit or assessment. Without prejudice to any other rights of the Authority under this Agreement, the Authority may deduct the relevant amount from any subsequently-payable Charges if the Contractor fails to make this payment; and
 - 35.10.3 the Authority has underpaid any Charges, the Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Contractor in relation to invoicing within twenty (20) Working Days of receipt of an invoice from the Contractor for such underpaid Charges.
- 35.11 The provisions set out in this Clause 35 are in addition and without prejudice to the Authority's right to conduct Testing Quality Audits under Clause 18 (*Testing*).

Correspondence with Regulatory Bodies

- 35.12 If the Contractor receives any correspondence or requests from any Regulatory Body that relate to the Services (including requests to access or copy Authority Data), it shall provide a copy of that correspondence or request to the Authority unless it is prevented from doing so by Law or a Regulatory Body. The Contractor shall consult with the Authority over such correspondence or request and shall only respond to the Regulatory Body if:
 - 35.12.1 the terms and nature of the response have been Approved by the Authority (such Approval not to be unreasonably withheld or delayed);
 - 35.12.2 the Contractor is required by Law to respond to the Regulatory Body without the Authority's consent; or
 - 35.12.3 the Authority has failed to respond to the Contractor by the date which is one (1) Working Day before the date on which the Regulatory Body requires a response and the Contractor has used all reasonable endeavours to escalate the matter to the Authority's Deputy Head of Commercial and Head of Commercial, in which case the Contractor's response to the Regulatory Body shall be limited to informing the Regulatory Body that the Authority has failed to give its consent to the release of the relevant information or data in accordance with this Agreement.

Notifications to the Authority

- 35.13 Without prejudice to the Authority's other rights or remedies or to the Contractor's other reporting obligations set out in this Agreement, the Contractor shall notify the Authority in writing, as soon as reasonably practicable after it comes to the Contractor's attention, of any event or circumstance which may adversely affect the performance of the Contractor's obligations under this Agreement, in whole or in part (including its performance against the

Service Levels), or which is reasonably likely to result in any material Delay in the Implementation or delivery of any of the Services, including any actual or potential:

- 35.13.1 change in the role or status of any Key Personnel;
 - 35.13.2 Service Failure, Delay, failure or interruption of performance (including in respect of any delay, failure or interruption under, or termination of any Sub-contract);
 - 35.13.3 threat of, or planned, industrial action affecting the Contractor or any Sub-contractor, including any strikes or lock-outs;
 - 35.13.4 failure of any Equipment used in the provision of the Services;
 - 35.13.5 loss or corruption of any Authority Data or any unauthorised access of any Authority Data;
 - 35.13.6 breach of Law or enforcement notice or other regulatory investigation;
 - 35.13.7 breach of confidentiality or failure to comply with any of the Security Requirements;
 - 35.13.8 Force Majeure Event;
 - 35.13.9 failure by the Authority to comply with its obligations under this Agreement; and
 - 35.13.10 failure by the Authority to provide adequate resource or information as is reasonably necessary to enable the Contractor to perform its obligations under this Agreement.
- 35.14 Upon notifying the Authority of any relevant event or circumstance in accordance with Clause 35.13 above, the Contractor shall (in addition to any other obligations) provide the Authority with a written proposal regarding the steps it considers the Parties should take to avert, remedy or mitigate the effect of that event or circumstance.
- 35.15 Following receipt by the Authority of any such proposal pursuant to Clause 35.14 above, if requested by the Authority, the Contractor shall, within five (5) Working Days (or such other period as the Parties agree in writing) of the Authority's request, meet with the Authority to discuss the Contractor's proposal and agree any appropriate steps which the Parties should take to avert, remedy or mitigate any adverse impact on the performance of the Contractor's obligations. If the Parties fail to agree upon those steps, either Party may, at its option and without prejudice to its other rights and remedies, refer the matter for resolution in accordance with the Dispute Resolution Procedure.

Record Keeping

- 35.16 The Contractor shall comply with the provisions set out in Schedule 26 (*Records Provisions*).

Updated Consolidated Version of this Agreement

- 35.17 The Contractor shall prepare and provide to the Authority an updated version of this Agreement at least every six (6) months, which shall incorporate any Contract Changes or other variations (where permitted by this Agreement) made to this Agreement since the last version.

Additional audits

- 35.18 The Authority may conduct additional audits in the event that the Authority has a demonstrable concern regarding the provision of the Services or any security or data processing matters in relation thereto.
- 35.19 If the Authority wishes to conduct additional audits without a demonstrable concern regarding the provision of the Services or any security or data processing matters in relation thereto and this Agreement does not otherwise permit the Authority to conduct such audit without charge, the Contractor may charge the Authority for conducting any such additional audit as an ISS Service Catalogue item in accordance with Schedule 17 (*Charges and Invoicing*).

36. INTELLECTUAL PROPERTY RIGHTS

36.1 IPR Register

- 36.1.1 The Contractor shall develop and maintain a register of all material Intellectual Property Rights used in or for the delivery of the Services by the Contractor or the receipt of the Services by the Authority (the "**IPR Register**"), which shall be divided into the following sections:
- (A) Part 1: material Contractor IPR;
 - (B) Part 2: material Authority IPR;
 - (C) Part 3: material Authority Third Party IPR; and
 - (D) Part 4: Contractor Third Party IPR.
- 36.1.2 Each entry in the IPR Register shall:
- (A) set out the name of the owner or licensor of the relevant material Intellectual Property Rights; and
 - (B) in respect of those entries in Part 4 (Contractor Third Party IPR) only:
 - (1) include details of who should be contacted to request a copy of any licence of any material Contractor Third Party IPR; and
 - (2) identify any licence of material Contractor Third Party IPR that is not fully paid up or freely transferable to any Replacement Provider on expiry or termination of this Agreement (in whole or part) or in the event of Step-in.
- 36.1.3 The Authority shall cooperate with the Contractor in developing and maintaining the IPR Register.

36.2 Ownership

- 36.2.1 Subject to Clause 36.2.3 below, neither the Authority nor any Indirect Customer shall transfer ownership of any Intellectual Property Rights (including, in relation to the Authority, any Authority IPR) to the Contractor or to any Sub-contractor under this Agreement. All Intellectual Property Rights (including, in relation to the Authority, any Authority IPR) in any materials:
- (A) provided to the Contractor for use in the provision of the Services; or
 - (B) transmitted, processed or stored whilst the Services are being utilised,
- and, in each case, which are owned or licensed by the Authority or any Indirect Customer, shall be retained by or vest in the Authority or Indirect Customer (as applicable). If the Contractor or any Sub-contractor or Contractor Personnel acquires any interest in such Intellectual Property Rights which is inconsistent with this Clause 36.2.1 it shall (or shall procure that the relevant third party shall) assign all such right, title and interest, to the Authority or such person as the Authority may nominate, free of all encumbrances and third party rights.
- 36.2.2 The Contractor shall not obtain any right, title or interest in or to Authority IPR save as set out in Clause 36.3.1 (*Licence*) below.
- 36.2.3 Subject to Clause 36.2.1 above and Clause 36.2.4 below, the Contractor does not transfer ownership of any Contractor IPR to the Authority or to any Indirect Customer under this Agreement and all Contractor IPR subsisting in or relating to any materials provided by the Contractor for use in the provision of the Services shall be retained by the Contractor. If the Authority or any Indirect Customer acquires any interest in such Contractor IPR which is inconsistent with this Clause 36.2.3, the Authority shall (or shall procure that the relevant Indirect Customer shall) assign all such right, title and interest to the Contractor or such person as the Contractor may nominate, free of all encumbrances and third party rights.

- 36.2.4 The Intellectual Property Rights created pursuant to this Agreement:
- (A) described in Paragraph 1 in Part B (*Intellectual Property Rights*) of Schedule 24 (*Intellectual Property Rights*); and
 - (B) in software which have been agreed through the Contract Change Procedure as being intended to be owned by the Authority,
- shall be "**Designated IPR**".
- 36.2.5 Notwithstanding Clause 36.2.4, the Contractor shall use reasonable endeavours to ensure that no Designated IPR is created in addition to that described in Paragraph 1 in Part B (*Intellectual Property Rights*) of Schedule 24 (*Intellectual Property Rights*).
- 36.2.6 The Contractor shall mark any copyright work comprising Designated IPR with the legend "**©Crown owned copyright**" and the year of generation of the work.
- 36.2.7 All Designated IPR shall vest absolutely in and remain the property of the Authority and the Contractor shall not acquire any rights in the Designated IPR except as set out in Clause 36.3.1 (*Licence*) below.
- 36.2.8 To the extent any Designated IPR and any Intellectual Property Rights subsisting in or relating to Authority Data do not initially vest in the Authority, the Contractor hereby irrevocably assigns, transfers and conveys and shall procure that all Sub-contractors, Affiliates of Sub-contractors and Contractor Personnel assign, transfer and convey to the Authority or such person as it may nominate for no additional payment, with full title guarantee, all right, title and interest to or in the Designated IPR and the Intellectual Property Rights subsisting in or relating to Authority Data and shall undertake all additional necessary acts promptly upon creation of such rights, at its cost, to give effect to the assignment or transfer of such rights to the Authority.
- 36.2.9 The assignment under Clause 36.2.8 above shall either take effect on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.
- 36.2.10 To the extent that any Moral Rights in or to the Designated IPR and Authority Data vest in any individual and to the extent permitted by Law, the Contractor shall procure that such individual shall unconditionally and irrevocably waive all Moral Rights which he/she may have in the Designated IPR and Authority Data.
- 36.2.11 The Contractor shall use all reasonable endeavours to take such steps as the Authority may require in order to enforce the Authority's rights in Authority IPR against third parties, provided that the Authority shall:
- (A) reimburse the Contractor in respect of any costs reasonably incurred by the Contractor in taking such steps; and
 - (B) indemnify the Contractor against any consequent liability (including for costs) incurred by the Contractor to such third parties.
- 36.2.12 Schedule 24 (*Intellectual Property Rights*) sets out a non-exhaustive list of the Intellectual Property Rights that the Parties agree falls within each of the categories listed below:
- (A) Authority Data;
 - (B) Designated IPR;
 - (C) all other Authority IPR;
 - (D) Contractor IPR;
 - (E) Special Contractor IPR; and
 - (F) Contractor Third Party IPR.

36.3 Licence

- 36.3.1 Subject to Clause 38 (*Authority Data*), the Authority hereby grants, including by way of a present licence of future rights, a limited, revocable, non-exclusive, non-sublicensable (except to the Sub-contractors), non-transferable and royalty-free licence for the Contractor to use:
- (A) the Designated IPR, including those which have been assigned to the Authority pursuant to Clause 36.2.8 (*Ownership*) above;
 - (B) Authority Data; and
 - (C) any other Authority IPR which is necessary for the Contractor to provide the Services as at the Contract Date; and
 - (D) any additional Authority IPR in respect of which the Authority has expressly confirmed using the Contract Change Procedure, at the time of making such Authority IPR available, can be used by the Contractor (and, where required, its Sub-contractors) pursuant to this Clause 36.3.1,
- for the duration of the Term (and any Exit Period), in each case, solely as may be necessary to provide the Services, subject to and in accordance with the terms of this Agreement, and for no other purposes whatsoever. This licence may be revoked by the Authority at any time, provided that the Authority will endeavour (to the extent reasonably practicable) to provide prior notice of any such revocation to the Contractor.
- 36.3.2 The Authority hereby grants to the Contractor and its Sub-contractors, or shall use its reasonable endeavours to procure the grant by the relevant third party of, a limited, revocable, non-exclusive, non-sublicensable, non-transferable and royalty free licence to use such Authority Third Party IPR as is expressly identified in Schedule 8 (*Authority Dependencies*) (and no other Authority IPR) for the duration of the Term (and any Exit Period) solely as may be necessary to provide the Services (including, for the avoidance of doubt, any licences necessary to enable Contractor Personnel's use of Standard EUDs and Standard User Accounts), subject to and in accordance with the terms of this Agreement and the terms of any relevant third party licences to the extent that such terms have been notified to the Contractor in writing. Authority Third Party IPR shall remain with or vest in the Authority's licensors.
- 36.3.3 In the event of the termination (however arising) or expiry of this Agreement, the licences granted under Clause 36.3.1 and Clause 36.3.2 above (and any permitted sub-licences) shall terminate automatically and the Contractor shall, and shall procure that all relevant Sub-contractors shall, at the Authority's option on a case-by-case basis, deliver to the Authority (or such person as the Authority may nominate, including any relevant third party licensor), or destroy permanently, securely and in accordance with the Standards (but not before being expressly requested to do so by the Authority) all Authority IPR and Authority Third Party IPR, including all materials in which Authority IPR and Authority Third Party IPR subsist, which are in the Contractor's or the relevant Sub-contractor's possession or control. The Contractor shall supply a certificate signed by a director of the Contractor to confirm its compliance with the requirements of this Clause 36.3.3 as soon as practicable following any such request by the Authority.
- 36.3.4 The Contractor hereby grants, including by way of a present licence of future rights, or shall procure that any relevant third party shall grant a non-exclusive, non-transferable (save in connection with the permitted assignment under Clause 59 (*Assignment and Novation*)) and royalty free licence for the Authority to use:
- (A) the Special Contractor IPR, such licence being a perpetual licence; and
 - (B) all other Contractor IPR and Contractor Third Party IPR, for the duration of the Term (and any Exit Period),

for the purpose of the Authority receiving the benefit of this Agreement (including the benefit of any Services (including the Termination Services) and any Exit Assistance), to enable the transfer of the Services to the relevant Replacement Services and for any other internal purposes of the Authority in relation thereto.

- 36.3.5 Subject to Clause 39 (*Confidentiality and Publicity*), the licence granted under Clause 36.3.4 above shall include the right to make such Contractor IPR and Contractor Third Party IPR available to Indirect Customers, End Users, Authority Third Parties, Replacement Providers (and, during a Re-Procurement Period, a potential Replacement Provider) and any Replacement Body and to sub-license to Indirect Customers, End Users, Authority Third Parties, Replacement Providers (and, during a Re-Procurement Period, a potential Replacement Provider) and any Replacement Body the use of the Contractor IPR and Contractor Third Party IPR.

36.4 **Incorporated Contractor Third Party IPR and Contractor IPR**

- 36.4.1 Subject to Clauses 36.4.2 and 36.4.3 below, the Contractor shall not incorporate any Contractor Third Party IPR or Contractor IPR into the Transferring Assets, the Deliverables, Authority Data or any other items, features, services, software, software tools, systems, documents, databases, reports, specifications or materials (including any of the foregoing in which Authority IPR subsists) that are provided by or on behalf of the Contractor to the Authority (the "**Delivered Items**") without first receiving prior written permission from the Authority to do so, such permission to be obtained by the Contractor using the Contract Change Procedure. As part of the permission process, the Contractor shall give full details of the implications for the Authority of incorporating or using such Intellectual Property Rights referred to above, including details of whether the Contractor considers the materials to be commercially sensitive or potentially subject to restrictions or other commercial barriers imposed by the relevant third party with respect to any on-going licence of Contractor Third Party IPR sought by the Authority following the expiry or termination of this Agreement.
- 36.4.2 In the event that the Authority gives the Contractor permission to incorporate any Contractor Third Party IPR or Contractor IPR into the Delivered Items in accordance with Clause 36.4.1 above, the Contractor shall grant, or shall procure that any relevant third party shall grant, to the Authority a royalty-free, perpetual licence to use, copy and amend the Delivered Items.
- 36.4.3 In relation to Contractor Third Party IPR, the Contractor shall:
- (A) where requested by the Authority, use reasonable endeavours to obtain the right for the Authority and any other Replacement Provider to purchase ongoing support and maintenance for Contractor Third Party IPR on commercially reasonable terms for the purpose of receiving or providing Replacement Services; and
 - (B) to the extent that the Contractor is unable to obtain such rights, the Contractor shall not introduce such Contractor Third Party IPR for use in providing the Services without the Authority's Approval.
- 36.4.4 The Contractor shall be responsible for obtaining all necessary third party licences required to use the Equipment, including any licences required to use, amend or modify the Intellectual Property Rights in software, code, data or other materials stored or embedded on the Equipment (including any Authority Equipment).

36.5 **IPR Indemnities**

Each Party shall indemnify the other Party against IPR Claims in accordance with Clause 37 (*Intellectual Property Indemnity*).

36.6 **Source Code Delivery**

The Contractor shall from time to time, at the Authority's request, deliver up to the Authority (or such other entity as the Authority may direct) all Source Code embodying Designated IPR and other materials embodying Designated IPR and any adaptations and modifications to such Source Code.

36.7 **Authorisation by the Authority for use of third party Intellectual Property Rights**

Notwithstanding any other provisions of this Agreement and for the avoidance of doubt, award of the Agreement by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

37. **INTELLECTUAL PROPERTY INDEMNITY**

37.1 Without prejudice to the other Party's rights or remedies under this Agreement or at Law, each Party (the "**Indemnifying Party**") shall at all times, during and after the Term, indemnify the other Party (the "**Indemnified Party**") and keep the Indemnified Party indemnified against all Losses incurred by, awarded against or agreed to be paid by the Indemnified Party arising from any or all of an IPR Claim.

37.2 The Indemnified Party will:

37.2.1 notify the Indemnifying Party in writing of any IPR Claim of which it is aware;

37.2.2 allow (subject to Clause 37.3 below) the Indemnifying Party to conduct all negotiations and proceedings and will provide the Indemnifying Party with such reasonable assistance required by the Indemnifying Party, each at the Indemnifying Party's cost, regarding the relevant IPR Claim; and

37.2.3 not, without first consulting with the Indemnifying Party, make an admission relating to the relevant IPR Claim.

37.3 The Indemnifying Party shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Indemnified Party into disrepute.

37.4 The Indemnifying Party shall not settle or compromise any IPR Claim without the Indemnified Party's Approval (not to be unreasonably withheld or delayed).

37.5 If an IPR Claim is made, or the Indemnifying Party anticipates that an IPR Claim might be made, the Indemnifying Party shall promptly, at its own expense and sole option, either:

37.5.1 procure for the Indemnified Party the right to continue using the relevant item which is subject to the IPR Claim; or, if it is not possible to do so at commercially reasonable cost, shall:

37.5.2 replace or modify the relevant item with non-infringing substitutes (and the terms of this Agreement shall apply to the replacement or modified item) provided that if the Indemnified Party is the Authority:

- (A) the performance and functionality of the replacement or modified item is at least equivalent to the performance and functionality of the original item;
- (B) the replacement or modified item does not have an adverse effect on any other Services or the Authority's Enterprise IT; and
- (C) there is no additional cost to the Authority or non-trivial alteration to the End User experience.

37.6 If the Indemnifying Party is the Contractor:

- 37.6.1 the Contractor's attempts to modify or replace an item pursuant to Clause 37.5.2 above or to procure a licence in accordance with Clause 37.5.1 above, are not successful and do not fully avoid or resolve the IPR Claim; or
- 37.6.2 any or all of the Authority, Indirect Customers, or End Users become subject to a binding court order arising in connection with the IPR Claim to cease using all or any part of the Services, the Enterprise IT or the Contractor's ICT environment, and the Contractor does not obtain the discharge of such order within ten (10) Working Days,

then this shall be an irremediable material Default for the purposes of Clause 45.8.2 (*Termination for Cause by the Authority*) below and, without prejudice to the indemnity set out in Clause 37.1 above or the Authority's other rights and remedies, the Contractor shall be liable during the remainder of the Term and any Exit Period for all reasonable and unavoidable costs of the relevant substitute items and services including the additional costs of procuring, implementing and maintaining the substitute items and services.

- 37.7 Clause 37.1 above shall not apply in respect of any IPR Claim caused by the use by the Authority of the Software:

- 37.7.1 in combination with any item not supplied pursuant to this Agreement;

- 37.7.2 in a manner not reasonably to be inferred from the Contractor Solution Description or the other provisions of this Agreement; or

- 37.7.3 otherwise than in accordance with Clause 36.3.4 (*Licence*) above.

38. **AUTHORITY DATA**

- 38.1 All Authority Data shall remain owned by the Authority at all times.
- 38.2 The Contractor shall not, and shall procure that its Sub-contractors do not, delete or remove any proprietary notices contained within or relating to Authority Data.
- 38.3 The Contractor shall not, and shall procure that its Sub-contractors do not, store, copy, disclose or use Authority Data except as necessary for the performance by (as applicable) the Contractor or Sub-contractor of its obligations under this Agreement or as otherwise expressly authorised in advance in writing by the Authority.
- 38.4 To the extent that Authority Data is held or Processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the formats specified in Schedule 29 (*Exit Management*) and Schedule 23 (*Performance Monitoring and Reporting*) (or as otherwise specified by the Authority).
- 38.5 To the extent that Authority Data is held, accessed or Processed by the Contractor, the Contractor shall, and shall procure that its Sub-contractors, preserve the integrity, confidentiality and (where applicable) availability of Authority Data and prevent the corruption or loss of Authority Data (including of any copy of such Authority Data).
- 38.6 The Contractor shall perform secure back-ups of all Authority Data contained on or within the Contractor System and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request within five (5) Working Days.
- 38.7 The Contractor shall, and shall procure that its Sub-contractors, ensure that any system on which the Contractor or Sub-contractor holds, accesses or Processes any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 38.8 Without prejudice to Schedule 4 (*Standards*), the Contractor shall, and shall procure that its Sub-contractors shall, ensure that any system on which it or they hold(s), access(es) or Process(es) any Authority Data shall be certified and accredited using HMG IA Standard No. 1 and 2 (*Information Risk Management*, version 4.0 (April 2012), including supplement "Technical Risk Assessment and Risk Treatment"). The Contractor shall review such certification and accreditation status from time to time as directed by the Authority and additionally at least once in each Contract Year to assess whether material changes have

occurred, or are likely to occur, to any such system which could alter the original accreditation decision. If any such changes have occurred, or are likely to occur, to any such system then the Contractor shall resubmit such system for accreditation and certification. The Contractor shall also comply with Industry Security Notice (ISN) Number 2017/01.

- 38.9 If Authority Data is corrupted, lost or degraded as a result of the Contractor's Default so as to be unusable, the Authority may do any or all of the following:
- 38.9.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Standards, in which case the Contractor shall do so as soon as possible; and
 - 38.9.2 itself restore or procure the restoration of Authority Data, in which case the Authority shall be repaid by the Contractor any reasonable expenses incurred in restoring Authority Data to the extent and in accordance with the requirements specified in Schedule 31 (*Business Continuity and Disaster Recovery*).
- 38.10 If at any time the Contractor suspects or has reason to believe that Authority Data or any copy thereof has, or may, become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority in writing immediately and inform the Authority of the remedial action the Contractor proposes to take. The Authority may rely upon such report in relation to any action it then takes under this Agreement.

39. **CONFIDENTIALITY AND PUBLICITY**

- 39.1 Except to the extent set out in this Clause 39 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 39.1.1 treat the other Party's Confidential Information as confidential and safeguard it from loss or disclosure accordingly;
 - 39.1.2 not use or exploit the other Party's Confidential Information in any way except for the purposes anticipated under this Agreement, or if not anticipated by this Agreement, not disclose the other Party's Confidential Information to any other person without the owner's prior written consent; and
 - 39.1.3 immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party's Confidential Information.
- 39.2 The Authority IPR is the Authority's (and not the Contractor's) Confidential Information.
- 39.3 Clause 39.1 above shall not apply to the extent that:
- 39.3.1 such disclosure is a requirement of Law placed upon the Authority provided that Clause 40 (*Freedom of Information*) shall apply for disclosure under the FOIA or the Environmental Information Regulations;
 - 39.3.2 the need for such disclosure arises out of or in connection with:
 - (A) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (B) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (C) the conduct of a Regulatory Body review in respect of this Agreement;
 - 39.3.3 a Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;

- 39.3.4 such information was in the possession of the Party making the disclosure without restriction as to its disclosure before its disclosure by the information owner;
 - 39.3.5 such information was obtained from a third party who acquired it lawfully and who was and is under no obligation restricting its disclosure;
 - 39.3.6 such information was already in the public domain at the time of disclosure otherwise than by a Default; or
 - 39.3.7 such information is developed independently, without access to the other Party's Confidential Information.
- 39.4 If a Party is required by Law to make a disclosure of Confidential Information, that Party shall as soon as reasonably practicable and to the extent permitted by Law notify the other party of the full circumstances of the required disclosure including the relevant Law and Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 39.5 The Contractor may disclose the Authority's Confidential Information on a confidential basis only to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and comply with these obligations as to confidentiality. Where the Contractor discloses the Authority's Confidential Information pursuant to this Clause 39.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 39.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Authority's Confidential Information other than for the purposes of this Agreement.
- 39.7 Nothing in this Agreement shall permit the Contractor to, and therefore the Contractor shall not, monitor the Services (or any part of them) or intercept or disclose any data relating to the Services (or any part of them), other than as expressly required (rather than permitted) by the Service Requirements or by a mandatory provision of the Laws of England and Wales. The Contractor acknowledges that the nature of the Authority's operations means that disclosures of such data required by Laws other than the Laws of the England and Wales must not be complied with and the Contractor shall not comply with such Laws and requirements, except with Approval (such Approval to refer expressly to this Clause 39.7) so as not to jeopardise the security of the United Kingdom and its citizens.
- 39.8 In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Agreement, the Contractor 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 Contractor Personnel, the Contractor shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Contractor is taking appropriate steps to comply with this Clause 39.8, including copies of any written communications to and from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 39.9 In order to ensure that no unauthorised person gains access to any of the Authority's Confidential Information or any data obtained in performance of this Agreement, the Contractor undertakes to maintain adequate security arrangements that meet the Security Requirements, and undertakes to act in accordance with the Security Policy, the Security Requirements and as otherwise specified in this Agreement.
- 39.10 The Contractor will immediately notify the Authority of any Breach of Security in relation to the Authority's Confidential Information obtained in the performance of this Agreement and will keep a record of such Breaches of Security. The Contractor will use its best

endeavours to recover such the Authority's Confidential Information however it may be recorded.

- 39.11 In addition to the Contractor's obligations under Clauses 39.1 to 39.8 above, the Contractor shall take all reasonable steps required by the Authority to remedy and prevent any Breach of Security in relation to the Authority's Confidential Information including co-operating with the Authority in any investigation that the Authority considers necessary to undertake as a result of any Breach of Security in relation to any of the Authority's Confidential Information.
- 39.12 The Contractor shall, at its own expense, alter any security systems used in connection with the performance of this Agreement at any time during the Term (or any Exit Period) at the Authority's request if the Authority believes (acting reasonably) the Contractor has failed to comply with Clauses 39.9 or 39.11 above.
- 39.13 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 39.13.1 subject to Clause 39.14 below, to a Replacement Provider, or potential Replacement Provider, in relation to the re-tendering or transfer of the Services who is subject to confidentiality obligations with the Authority broadly equivalent to those set out in this Clause 39;
 - 39.13.2 for the purpose of fulfilling the Authority's obligations to support contingent operations overseas and military operations in the United Kingdom (including the provision of military aid to the civil authorities) as required by the Authority's publication, British Defence Doctrine (JDP 0-01 Fifth Edition), as set out in the Standards;
 - 39.13.3 where such disclosure is made pursuant to the Transparency Agenda;
 - 39.13.4 to a tax authority in connection with the tax affairs of the Authority;
 - 39.13.5 to a Regulatory Body at the request of such Regulatory Body;
 - 39.13.6 subject to Clause 39.14 below, to any third party appointed by the Authority to perform its Step-in rights and to work with the Contractor in performing all or part of the Services, in accordance with Clause 9.5 (*Exercise of the right of Step-in*) above;
 - 39.13.7 subject to Clause 39.14 below, to any Authority Third Party (including any consultant, contractor or other person engaged by the Authority) and that person is subject to confidentiality obligations with the Authority broadly equivalent to those set out in this Clause 39;
 - 39.13.8 to any Replacement Body or potential Replacement Body;
 - 39.13.9 for the purposes of the examination and certification of the Authority's accounts or those of any Indirect Customer;
 - 39.13.10 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
 - 39.13.11 for the purpose of responding to any Parliamentary questions that the Authority may be required to respond to from time to time or if required by any Parliamentary reporting requirement.
- 39.14 The Authority shall use its reasonable endeavours to ensure that any person to whom the Contractor's Confidential Information is disclosed pursuant to Clause 39.13 above is made aware of the Authority's obligations of confidentiality.
- 39.15 Nothing in this Clause 39 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.

- 39.16 The Contractor shall comply with, and shall ensure that the Contractor Personnel comply with:
- 39.16.1 the Official Secrets Acts 1911 to 1989; and
 - 39.16.2 Section 182 of the Finance Act 1989.
- 39.17 The Contractor shall not and shall procure that its Sub-contractors and the Contractor Personnel shall not:
- 39.17.1 do anything which may damage the reputation of the Authority (or any Indirect Customer) or bring the Authority (or any Indirect Customer) into disrepute; or
 - 39.17.2 make any press announcements or publicise this Agreement in any way without the Authority's Approval. Where the Contractor or a Holding Company is required to make a public announcement by the applicable rules of any regulated securities exchange, it may do so, but shall notify the Authority in writing and in advance of the announcement it intends to release and shall make any reasonable changes requested by the Authority.
- 39.18 The Authority may publicise this Agreement in accordance with any legal obligation upon the Authority (or any Indirect Customer), including any examination of this Agreement by an auditor or otherwise.
- 39.19 The Contractor acknowledges to the Authority that nothing in this Agreement either expressly or by implication constitutes an endorsement of any goods or services of the Contractor (including the Services) and the Contractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 39.20 The Parties acknowledge that the content of this Agreement is Confidential Information.
- 39.21 Subject to Clause 39.22 below, and notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement in its entirety, including from time to time agreed changes to this Agreement, to the general public.
- 39.22 The Authority may consult with the Contractor to inform its decision regarding any exemptions under the provisions of the FOIA but the Authority shall have the final decision in its absolute discretion as to whether any information is exempt from disclosure. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.
- 40. FREEDOM OF INFORMATION**
- 40.1 The Contractor 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 it to comply with its information disclosure obligations.
- 40.2 The Contractor shall and shall procure that the Sub-contractors and Contractor Personnel shall:
- 40.2.1 transfer to the Authority all Requests for Information that it or they receive as soon as practicable and in any event within two (2) Working Days of receipt;
 - 40.2.2 provide the Authority with a copy of all required Information in its or their possession or power in the form that the Authority requests within five (5) Working Days (or such other period as the Authority may specify in writing) of the Authority's request; and
 - 40.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 40.3 The Authority may determine in its absolute discretion (and notwithstanding any other provision in this Agreement or any other agreement) whether the Commercially Sensitive

Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 40.4 The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so in writing by the Authority.
- 40.5 The Contractor acknowledges that (notwithstanding this Clause 40) the Authority may, acting in accordance with the Access Code or otherwise as required by Law, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 40.5.1 in certain circumstances without consulting the Contractor; or
 - 40.5.2 following consultation with the Contractor and having taken its views into account, provided always that, where Clause 40.5.1 above applies, the Authority shall, in accordance with any recommendations of the Access Code, take reasonable steps where appropriate to give the Contractor advanced notice or, failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
41. **PROTECTION OF PERSONAL DATA**
- 41.1 With respect to Personal Data for which the Authority is the Data Controller and which are Processed by the Contractor or any Sub-contractor pursuant to or in connection with this Agreement (the "**Authority Personal Data**"), the Parties agree that the Contractor is acting as a Data Processor.
- 41.2 The Contractor recognises the value and importance of Authority Personal Data and the material prejudice to Data Subjects and the Authority that may arise from it being mishandled. The Contractor shall, and shall ensure that any Sub-contractor shall:
- 41.2.1 Process Authority Personal Data only in accordance with documented instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Contractor during the Term or during any Exit Period). To the extent the Contractor is required by Law to Process Authority Personal Data otherwise than in accordance with the Authority's instructions, the Contractor must inform the Authority prior to such Processing unless notification of the same is prohibited by Law on public interest grounds;
 - 41.2.2 subject to Clause 39.7 (*Confidentiality and Publicity*), Process Authority Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 41.2.3 without prejudice to Clauses 38.7 and 38.8 (*Authority Data*), implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk and to ensure and to be able to demonstrate that Processing is performed in accordance with the Data Protection Legislation. These measures shall be appropriate to the likelihood and severity of risk to the rights and freedoms of natural persons and have regard to the current state of technology and best practice, the costs of implementation and the nature, scope, context and purposes of Processing;
 - 41.2.4 when implementing such technical and organisational measures:
 - (A) have regard to the sensitive nature of the Personal Data contained within Authority Personal Data and the substantial harm which would result from unauthorised or unlawful Processing or accidental loss or destruction of or damage to such Personal Data or copies thereof; and
 - (B) have regard to the risks that are presented from Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed; and

- (C) without limiting the Security Requirements or the provisions of Schedule 31 (*Business Continuity and Disaster Recovery*), implement as appropriate:
 - (1) the pseudonymisation and encryption of Personal Data;
 - (2) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
 - (3) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
 - (4) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing;
- 41.2.5 always use the most secure commercially reasonable method of Processing Authority Personal Data (for example, by using dummy data rather than live Authority Personal Data where possible, and not downloading Authority Personal Data onto portable media or devices or removing it from secure premises where it would be possible to carry out the activity required under this Agreement without doing so);
- 41.2.6 take reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to Authority Personal Data;
- 41.2.7 not disclose or transfer any Authority Personal Data to any Sub-contractor, Affiliate or third party without Approval from the Authority:
 - (A) other than when specifically authorised under this Agreement or directed to do so in writing by the Authority; and
 - (B) unless there is a written contract in place with the Sub-contractor or third party which requires such Sub-contractor or third party to:
 - (1) carry out processing of such Authority Personal Data only as may be necessary from time to time for the purposes of such Sub-contractor or third party's engagement by the Contractor in connection with this Agreement; and
 - (2) comply with obligations equivalent to those imposed on the Contractor in this Clause 41 (or anywhere else in this Agreement to the extent such obligations relate to Authority Personal Data);
- 41.2.8 ensure that all Contractor Personnel required to access Authority Personal Data:
 - (A) are informed of the confidential nature of Authority Personal Data and comply with the obligations set out in this Clause 41 and Clause 35 (*Audits, Notifications and Record Keeping*);
 - (B) have undergone all adequate training in the care, protection and handling of Authority Personal Data; and
 - (C) perform their duties in relation to this Agreement strictly in compliance with the Data Protection Legislation;
- 41.2.9 ensure that none of the Contractor Personnel publish, disclose or divulge any of Authority Personal Data to any third party unless specifically authorised under this Agreement or directed in writing to do so by the Authority;
- 41.2.10 notify the Authority (in writing within five (5) Working Days or such other period as required by the Authority) if it receives:
 - (A) a request from a Data Subject to have access to that person's Personal Data;

- (B) a request from a Data Subject to rectify, block or erase any Authority Personal Data;
 - (C) any other complaint or request relating to the Authority's obligations under the Data Protection Legislation;
 - (D) any communication from the Information Commissioner, the European Data Protection Board or any other regulatory authority in connection with Authority Personal Data; or
 - (E) a request from any third party for disclosure of Authority Personal Data where compliance with such request is required or purported to be required by law;
- 41.2.11 notify the Authority immediately of any actual or suspected Authority Personal Data Breach and provide the Authority with all relevant details reasonably available;
- 41.2.12 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request referred to in Clause 41.2.10 above, or any Authority Personal Data Breach referred to in Clause 41.2.11 above, including by:
- (A) providing the Authority with full details of the complaint, communication, request or Authority Personal Data Breach;
 - (B) providing such assistance as is reasonably requested by the Authority to enable the Authority to comply with its obligations under the Data Protection Legislation with respect to such complaint, communication, or request, or Authority Personal Data Breach;
 - (C) providing the Authority, on request by the Authority, with any Authority Personal Data it holds in relation to a Data Subject; and
 - (D) providing the Authority with any other information reasonably requested by the Authority;
- 41.2.13 where requested to do so by the Authority, and where Processing operations of Personal Data present specific risks to privacy, assist the Authority in the preparation of a Privacy Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner or European Data Protection Board or statutory requirements;
- 41.2.14 permit the Authority or Authority Representative (subject to reasonable confidentiality undertakings) to inspect and audit, in accordance with Clause 35 (*Audits, Notifications and Record Keeping*), the Contractor's data Processing activities (and those of its agents, Affiliates and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify or, if relevant, procure that the Contractor is in full compliance with its obligations under this Agreement;
- 41.2.15 where applicable, appoint a designated data protection officer within the Contractor's organisation in accordance with the requirements of the Data Protection Legislation;
- 41.2.16 provide the Authority, upon request, with a written description of the technical and organisational measures employed by the Contractor for Processing Authority Personal Data (within the timescales required by the Authority); and
- 41.2.17 not transfer Authority Personal Data outside the United Kingdom without the Approval of the Authority and, where the Authority Approves a transfer, comply with all reasonable instructions of the Authority in relation to such transfer, including any instructions to enable compliance with Data Protection Legislation.

- 41.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 41.4 The Contractor shall not carry out any research, analysis or profiling activity which involves the use of any element of Authority Personal Data (including in aggregate form) or any information derived from the Processing of such Authority Personal Data.
- 41.5 The Contractor acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Authority Personal Data that the Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the Authority may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

42. CHANGE

Framework for identifying and managing types of change

- 42.1 The Parties acknowledge and agree that:
- 42.1.1 subject to Clause 42.1.2, this Agreement recognises and categorises changes to the terms of this Agreement or the scope and delivery of the Services thereunder in accordance with the following:
- (A) Service Change: a Service Change is any operational addition, modification or removal of anything that could have an effect on a Service, including all changes to designs, architectures, processes, tools, metrics and documentation, other configuration items, and including any of the changes set out in Schedule 2 (*Service Requirements*) but excluding any Contract Change;
 - (B) Contract Change: only as expressly required by the terms of this Agreement, a Contract Change is any change which will result in an amendment or variation to the terms and conditions of this Agreement (including, for the avoidance of doubt, any change to the requirements set out in Schedule 2 (*Service Requirements*) which do not expressly provide for change by way of Service Change);
 - (C) a change to a Standard, in which case Clause 7 (*Standards*) shall apply, except to the extent that that change necessitates a material change to the cost of providing the Services, as provided for in Clauses 7.3 and 7.4 (*Standards*) shall apply; or
 - (D) in relation to the Detailed Implementation Plan, amendments or updates notified in accordance with Paragraph 4.8 of Schedule 10 (*Implementation*);
- 42.1.2 the following events shall not be considered a type of change for the purposes of this Clause 42:
- (A) subject to Paragraph 6.3 (*Updates to the Financial Model*) of Schedule 18 (*Financial Model*) updates to the Financial Model pursuant to Paragraph 6 of Schedule 18 (*Financial Model*);
 - (B) any updates to Schedule 24 (*Intellectual Property Rights*) in accordance with Clause 42.4.2;
 - (C) a change to a Measurement Methodology, in accordance with Paragraph 5.2 (*Reviews and changes to Measurement Methodologies*) of Schedule 3 (*Service Performance*);
 - (D) additions, modifications or deletions to Service Levels in accordance with Paragraph 9.2 (*Additions, Deletions and Modifications to Service Levels*) of Schedule 3 (*Service Performance*); and

- (E) updates to the BCDR Plan pursuant to Paragraph 6 of Part B (*Development and Approval of BCDR Plan*) of Schedule 31 (*Business Continuity and Disaster Recovery*); and

42.1.3 a Change in Law shall be subject to Clause 43 (*Change in Law*).

Contract Change

- 42.2 Any requirement for a Contract Change shall be subject to the Contract Change Procedure for dealing with Contract Changes which is set out in Schedule 25 (*Contract Change Procedure*).
- 42.3 Where a Contract Change is requested, then the Contractor shall prepare and provide either or both a cost estimate and firm quote for the cost of implementing the Contract Change in accordance with Paragraph 5.1.8 of Part B (*Contract Change*) of Schedule 25 (*Contract Change Procedure*).
- 42.4 If the Contract Change is accepted by the Authority in accordance with Schedule 25 (*Contract Change Procedure*) then the Contractor shall update, where applicable:
- 42.4.1 the Charges and the Financial Model in accordance with Schedule 18 (*Financial Model*);
 - 42.4.2 Schedule 24 (*Intellectual Property Rights*) to reflect any additional IPR to be used to perform the Services following such Contract Change, including any Authority Data, Designated IPR, other than Authority IPR, Contractor IPR and Contractor Third Party IPR (including Special Contractor IPR);
 - 42.4.3 the Operating Manual;
 - 42.4.4 the Exit Management Information;
 - 42.4.5 the Re-Procurement Information; and
 - 42.4.6 where requested by the Authority, the ISS Service Catalogue,
- within ten (10) Working Days of the relevant Contract Change being accepted.

Service Change

- 42.5 A Service Change shall be subject to the ISS Change Management Process and/or CAP INT Process (as applicable) and shall not be considered a Contract Change except as provided for in Clause 42.6.
- 42.6 A Service Change may be re-categorised as a Contract Change (and the Contract Change Procedure shall therefore apply):
- 42.6.1 in accordance with the provisions of the ISS Change Management Process and/or the CAP INT Process (as applicable); or
 - 42.6.2 if, at any time during a Service Change process, the Authority determines that the nature or effect of the Service Change is such that it may:
 - (A) alter the performance or delivery of the Services such that the Authority considers there to be a material change in the Service requirements or specification; or
 - (B) affect either Party's rights or obligations under this Agreement,
- and accordingly the Authority requires that the Service Change be treated as a Contract Change.

General obligations in relation to change

- 42.7 The Contractor shall not propose any change which would be in breach of any Laws or cause the Authority to be in breach of any Laws.
- 42.8 The Contractor acknowledges and agrees that only the Authority Commercial Manager(s) are authorised to make any change on behalf of the Authority which would vary the commercial or contractual rights, remedies, pricing or obligations of the Authority or the Contractor under this Agreement. Without prejudice to any other provision in this Clause 42

(*Change*), the Contractor shall ensure that, if it seeks such commercial or contractual changes, those decisions are referred promptly to the relevant Authority Commercial Manager(s).

43. **CHANGE IN LAW**

- 43.1 Subject to Clause 39.7 (*Confidentiality and Publicity*) above, the Contractor shall comply with all Laws at all times when performing the Services, insofar as such Laws apply to the Services.
- 43.2 Subject to Clause 39.7 (*Confidentiality and Publicity*) above, the Contractor shall ensure the Services are performed so that any use, or receipt, by the Authority of any of the Services does not cause it to be in breach of any Laws, to the extent its compliance with such Laws is dependent on the proper performance of the Services.
- 43.3 Each of the Parties shall advise the other immediately if it becomes aware of any non-compliance or potential non-compliance by the Contractor with the provisions of Clause 43.1 or 43.2 above in connection with the performance of the Services. If such an event occurs, the Contractor shall promptly make available to the Authority any information that the Authority reasonably requires for the purposes of any further investigation of such non-compliance or suspected non-compliance.
- 43.4 The Contractor shall not: (a) be relieved of its obligations to supply the Services in accordance with this Agreement; (b) be entitled to charge the Authority for the cost of implementing changes that arise; or (c) be entitled to an increase in the Charges, as the result of:
- 43.4.1 a General Change in Law; or
 - 43.4.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Contract Date. The effect of a Specific Change in Law shall be "**known**" where the Contractor was aware or should reasonably have been aware of it as at the Contract Date.
- 43.5 If a Specific Change in Law occurs during the Term or any Exit Period (other than those referred to in Clause 43.4.2 above), the Contractor shall notify the Authority in writing of the likely effects of that change, including whether any Contract Change is required.
- 43.6 As soon as practicable after any notification in accordance with Clause 43.5 above, the Parties shall discuss and seek to agree through the Contract Change Procedure the matters referred to in the relevant notice and any ways in which the Contractor can mitigate the effect of the Specific Change in Law, including:
- 43.6.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - 43.6.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred; and
 - 43.6.3 giving evidence as to how the Specific Change in Law has affected the overall cost of providing the Services (including by taking into account any expenditure that has been avoided).
- 43.7 Any change (if any) to the Charges resulting from any Specific Change in Law shall be made in accordance with, and subject to the provisions of, Schedule 17 (*Charges and Invoicing*) and the Contract Change Procedure.
- 43.8 If there is any disagreement between the Parties under this Clause 43 regarding any Specific Change in Law or potential Specific Change in Law, the Parties shall refer the matter to the Dispute Resolution Procedure in order to determine:
- 43.8.1 whether a Specific Change in Law has occurred; and
 - 43.8.2 if it has, how the Contractor should comply with that Specific Change in Law.

44. **DISPUTES**

- 44.1 Subject to Clause 60.6 (*Corrupt Gifts*) below, the Parties shall seek to resolve all Disputes in accordance with the Dispute Resolution Procedure set out in Schedule 28 (*Dispute Resolution Procedure*).
- 44.2 The Contractor shall have no right to suspend or terminate the Services (or any part thereof) in connection with a Dispute.
- 44.3 The Parties acknowledge and agree that the Dispute Resolution Procedure set out in Schedule 28 (*Dispute Resolution Procedure*) shall also apply to any disputes arising under or in connection with the Collaboration Agreement and that, in the event such a dispute arises, the Parties shall participate in the resolution of the dispute under the Collaboration Agreement and otherwise in accordance with the provisions of Schedule 28 (*Dispute Resolution Procedure*), provided that, if and to the extent there is an inconsistency between the provisions of the Collaboration Agreement and this Agreement as they relate to any dispute between the Parties, the provisions of this Agreement shall prevail.

G. **TERMINATION AND EXIT**

45. **TERMINATION RIGHTS**

- 45.1 The rights of the Authority (to terminate or otherwise) under this Clause 45 are in addition (and without prejudice) to any other right or remedy which the Authority may have, including to claim the amount of Losses suffered by the Authority on account of the acts or omissions of the Contractor (subject to the limitations of liability set out in Clause 53 (*Limitations on Liability*)).
- 45.2 Unless stated otherwise, any reference in this Clause 45 to the termination of this Agreement "**in part**" or "**partially**" shall be interpreted to include the termination of one or more Sub-Services or Service Elements.

Termination for Cause by the Authority

- 45.3 The Authority may terminate this Agreement in whole or in part by issuing a Termination Notice to the Contractor if one or more of the circumstances set out in Clause 45.8 below exist (such circumstances to be a "**Termination for Cause Event**" and the termination to be a "**Termination for Cause**").
- 45.4 A Termination for Cause shall be deemed to be termination for breach of contract, and the Authority shall, (without prejudice to the Authority's rights to claim for any Losses in other circumstances), subject to Clause 53 (*Limitations on Liability*), be entitled to claim for the Losses that have been suffered, flowing from such breach of contract.
- 45.5 The Authority may exercise its right to issue a Termination Notice for a Termination for Cause Event under Clause 45.3 above without first instigating the Dispute Resolution Procedure or without awaiting its final outcome. Where the Authority does not do so, the Parties' obligations under Clause 44 (*Disputes*) shall continue to apply.
- 45.6 Where the Authority is terminating this Agreement (or a part of it) for a material Default of this Agreement or one of the specific provisions in Clause 45.8 below, it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.
- 45.7 Circumstances where a Default shall be deemed not capable of remedy include where the Contractor has already failed to resolve the relevant Default in accordance with a Correction Plan pursuant to Clause 19 (*Delays*) or Paragraphs 6.7 to 6.12 (*Correction Plans*) of Schedule 3 (*Service Performance*).
- 45.8 The Termination for Cause Events are any of the following:
- 45.8.1 the Contractor is in material Default which it has failed to remedy within twenty (20) Working Days of written notice to do so (a material Default will include the Contractor failing to comply, in whole or in part, with Clause 12.12 (*UK Critical National Infrastructure Provisions*) above);

- 45.8.2 the Contractor commits a material Default of this Agreement which is irremediable;
- 45.8.3 the circumstances set out in Clause 34.2 (*Management Information*) above apply;
- 45.8.4 if a Correction Plan is required under Clause 19.5 (*Correction Plan*) above due to a failure by the Contractor to Achieve a Milestone, the occurrence of any of the following:
 - (A) the Contractor does not submit or resubmit any required draft Correction Plan for Approval within the timescales required or at all;
 - (B) if a draft Correction Plan has not been Approved by the Authority pursuant to Clause 19.7 (*Delays*) and, on the second occasion of seeking Approval for that draft Correction Plan (as amended in accordance with this Agreement), the Authority does not Approve that draft Correction Plan; or
 - (C) the Contractor fails to comply with a material element of an Approved Correction Plan;
- 45.8.5 the Contractor's failure to Achieve a Key Milestone within twenty five (25) Working Days after its Milestone Date or, if the Milestone Date has been revised in accordance with Clause 19.11.3 (*Delays*), its Revised Milestone Date unless Clause 15.1 applies and the relevant Authority Cause was directly and mainly responsible for such failure;
- 45.8.6 if the Contractor is in material Default (whether or not subsequently remedied) of:
 - (A) Clause 41 (*Protection of Personal Data*);
 - (B) Clause 39 (*Confidentiality and Publicity*);
 - (C) the Security Requirements;
 - (D) the obligation to implement the BCDR Plan under Part A (*Invocation of BCDR Plan*) of Schedule 31 (*Business Continuity and Disaster Recovery*); or
 - (E) Clause 60 (*Corrupt Gifts*);
- 45.8.7 if the Contractor breaches Clause 39.7 (*Confidentiality and Publicity*) above;
- 45.8.8 if the Authority has issued six (6) or more Warning Notices in any rolling twelve (12) month period;
- 45.8.9 if, in any three (3) consecutive Measurement Periods, the total Service Credits accrued by the Authority equal or exceed, in aggregate, seventy five per cent (75%) of the sum of the At Risk Amounts for those Measurement Periods;
- 45.8.10 an Insolvency Event affecting the Contractor or any Holding Company of either of them, occurs;
- 45.8.11 in respect of a Financial Distress Event affecting any Relevant Entity;
- 45.8.12 in accordance with Paragraph 3 of Schedule 20 (*Financial Distress*);
- 45.8.13 in accordance with Clause 45.14 (*Termination for Financial Standing*);
- 45.8.14 if, as a result of the Contractor's Default, the Authority suffers Losses that exceed seventy five per cent (75%) of the aggregate value of any of the liability caps set out in Clause 53.4.2 (*Limitations on Liability*). If the Contractor wishes to put forward proposals to increase its liability caps set out in Clause 53.4.2 (*Limitations on Liability*) so as to avoid this Agreement being terminated in accordance with this Clause 45.8.14, it shall notify the Authority in writing and put forward such increased liability caps within two (2) Working Days of receipt of the Authority's notice. The decision as to whether to accept the proposed increased liability caps shall be determined solely by the Authority and its decision shall be final and conclusive;

- 45.8.15 where the Contractor commits a Default (other than as a consequence of a Default by the Authority) which results in the criminal investigation, prosecution and conviction of the Contractor or any Sub-contractor under the Health and Safety Regime where it would be reasonable and proportionate to do so in light of the gravity and other circumstances of any offence; and
- 45.8.16 if the Contractor makes any public announcement, or a director of the board of directors of the Contractor advises an officer of the Authority, that the Contractor is no longer going to (or is unsure whether it is going to) continue to develop or to offer the provision of services similar to the Services and there is evidence that such announcement will materially adversely impact the ability of the Contractor to provide the Services. Where possible, the Contractor shall give the Authority at least twenty (20) Working Days' prior written notice of any such planned announcement or advice.

Termination for Convenience by the Authority

- 45.9 The Authority may at any time terminate this Agreement for convenience in whole or in part by serving a Termination Notice on the Contractor (such termination to be a "**Termination for Convenience**"). The timing of the Termination for Convenience affects the Termination Payment that the Authority is obliged to make as a consequence of termination, as set out in Clause 46.3 (*Payments Made on Termination*), and the provisions of Paragraphs 2 to 7 of Schedule 21 (*Payments on Termination*) shall apply.
- 45.10 The Authority's right to exercise a Termination for Convenience 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 the Authority may have in relation to this Agreement.

Termination for Change of Ownership

- 45.11 The Contractor shall notify the Authority in writing as soon as practicable of any intended, planned or actual Change of Ownership of the Contractor (each such notice a "**Change of Ownership Notice**"), provided that the Contractor shall not be required to submit any notice to the extent that and for so long as it would be unlawful for the Contractor to do so or the Contractor would be in breach of any regulations governing the conduct of the Contractor where the Contractor may be subject to legal sanctions for issuing such a notice.
- 45.12 On receipt of a Change of Ownership Notice, the Authority may either Approve the Change of Ownership or terminate this Agreement in accordance with Clause 45.13 (such right of termination to be exercised within six (6) months of the Authority being notified of the Change of Ownership in accordance with Clause 45.11).
- 45.13 Except where the Authority has given its Approval to the particular Change of Ownership, which subsequently takes place as proposed, and subject to Clause 45.11, the Authority may terminate this Agreement in whole or in part by serving a Termination Notice on the Contractor if there is a Change of Ownership in relation to the Contractor to which the Authority objects (acting reasonably, for example due to security implications).

Termination for Financial Standing

- 45.14 Without prejudice to Clause 45.8.11 (*Termination for Cause by the Authority*) or the provisions of Schedule 20 (*Financial Distress*), the Authority may terminate this Agreement in whole or in part by serving a Termination Notice on the Contractor where (in the reasonable opinion of the Authority), there is a material detrimental change in the financial standing of the Contractor which adversely impacts on the Contractor's ability to supply the Services under this Agreement, or could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Services under this Agreement.

Partial Termination

- 45.15 Where the Authority exercises a right of termination under this Clause 45 (*Termination Rights*) in part, the Parties' rights and obligations in respect of the remaining Services shall remain unaffected.
- 45.16 Where the Authority terminates a particular Sub-Service or Service Element, then no further Charges for such Sub-Service or Service Element will apply from the date on which the Contractor ceases to provide that Sub-Service or Service Element.
- 45.17 Termination in accordance with Clause 45.15 above shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

Date of Termination

- 45.18 Subject to any obligation to provide Services in accordance with any Exit Plan and Schedule 29 (*Exit Management*), in the event that the Authority issues a Termination Notice in accordance with any of Clause 45.8 (*Termination for Cause by the Authority*), Clause 45.9 (*Termination for Convenience by the Authority*), Clause 45.11 (*Termination for Change of Ownership*) and Clause 45.14 (*Termination for Financial Standing*) above, this Agreement will terminate on the date specified in the Termination Notice, provided that:
- 45.18.1 the Authority may not specify a date beyond the end of the Term in any Termination Notice; and
- 45.18.2 if the Authority fails to specify a date for termination of this Agreement, the Authority shall not have waived its termination right but shall be required to re-submit a Termination Notice including a date for termination.

Termination by the Contractor

- 45.19 The Contractor may only terminate this Agreement in whole (and not in part) if, and only if:
- 45.19.1 the Contractor sends a written Notice to the Authority when two (2) valid Final Invoices, both of which are undisputed and were properly issued in accordance with Schedule 17 (*Charges and Invoicing*), are overdue, such Notice to advise the Authority that the Final Invoices are both overdue;
- 45.19.2 there are any overdue charges (as defined below);
- 45.19.3 the Contractor sends a written notice to the Authority stating that it intends to serve a Termination Notice in respect of those overdue charges; and
- 45.19.4 the Authority has not paid the overdue charges within six (6) months of receipt of the notice referred to in Clause 45.19.3.

In this Clause 45.19 "**overdue charges**" means Charges that:

- A. relate to three (3) consecutive, valid Final Invoices that were properly issued in accordance with Schedule 17 (*Charges and Invoicing*);
- B. remain unpaid thirty (30) days after the last due date for payment of the most recent of the three Final Invoices; and
- C. are not disputed by the Authority.

The Contractor's right of termination under this Clause 45.19 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 28 (*Recovery of Sums Due*).

- 45.20 The Contractor shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

Termination for Continuing Force Majeure Event

- 45.21 Without prejudice to its other rights and remedies under this Agreement, the Authority may, by written notice to the Contractor, terminate this Agreement with immediate effect (or the Authority may require termination in part), if a Force Majeure Event occurs which affects:
- 45.21.1 all or a substantial part of the Services (or any single Sub-Service) for a continuous period of more than four (4) weeks; or
- 45.21.2 a part (but not a substantial part) of the Services (or any single Sub-Service) for a continuous period of more than six (6) weeks.

46. PAYMENTS MADE ON TERMINATION

- 46.1 If the cost of any Contractor Equipment has not been fully paid for through Milestone Payments or otherwise amortised at the time of expiry or termination of this Agreement, then on any termination or expiry taking effect during the Initial Term, the Authority shall pay the Contractor the lower of the Net Book Value and the end of use price as specified in the Price Book (if specified, or, if not specified then the Net Book Value shall apply) of any Contractor Equipment that the Authority elects to have transferred to it in accordance with Schedule 29 (*Exit Management*).
- 46.2 Save for any payments in respect of any Assets made in accordance with Clause 46.1 above and Schedule 29 (*Exit Management*), the Authority shall not make a payment to the Contractor:
- 46.2.1 by reason of the expiry of the Term;
- 46.2.2 by reason of Termination for Cause; or
- 46.2.3 by reason of termination for Change of Ownership in accordance with Clause 45.13 (*Termination for Change of Ownership*) above.
- 46.3 Without prejudice to its other rights and remedies under this Agreement, the Authority shall pay the Contractor the Termination Payment in respect of the Services only if this Agreement is terminated for convenience by the Authority pursuant to Clause 45.9 (*Termination for Convenience by the Authority*) above or by the Contractor pursuant to Clause 45.19 (*Termination by the Contractor*) above.
- 46.4 Subject to Clause 46.3 above and without prejudice to the Authority's other rights and remedies under this Agreement or at Law, the costs of termination incurred by the Parties shall lie where they fall if the Authority terminates, or partially terminates, this Agreement pursuant to Clause 45.21 (*Termination for Continuing Force Majeure Event*) above.

Payments made by the Contractor

- 46.5 The Contractor shall pay to the Authority on demand the aggregate sum of all Milestone Payments paid to the Contractor in respect of Milestone Achievement Certificates issued in relation to Key Milestones if this Agreement is terminated by the Authority pursuant to a Termination for Cause before the Contractor Achieves all of the Milestones linked to Key Milestones (other than Key Milestone 9 (Implementation Programme Closure Report)) in the Implementation Plan less a fair and equitable amount that reflects the value (if any) to the Authority of Deliverables provided by the Contractor with reference to the relevant Milestone where those Deliverables are able to be used by either the Authority or another Replacement Provider in respect of any Replacement Services.
- 46.6 In the event of termination (however arising) or expiry, the Contractor shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of such expiry or termination (save to the extent that such Services are provided after such date pursuant to Schedule 29 (*Exit Management*)).

47. EXIT MANAGEMENT

- 47.1 The Authority and the Contractor shall comply with the Exit Management requirements set out in Schedule 29 (*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 47 and Schedule 29 (*Exit Management*).
- 47.2 The Contractor shall not, without the Authority's Approval, encumber any Assets in any way which would require the consent of a third party to the exercise by the Authority of its rights under Schedule 29 (*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 47.2 "**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 (except for a floating charge attaching generally to the assets and any undertaking of the Contractor which has not crystallised) or which otherwise restricts the Contractor's ability to use and deal with the relevant Asset.
- 47.3 Unless the Authority otherwise requires, during the time between service of a Termination Notice and such termination taking effect, the Contractor shall take all steps which are necessary and consistent with its continuing obligations, to mitigate any Losses which the Contractor may incur as a result of the termination, including to:
- 47.3.1 cancel all capital and recurring cost commitments in connection with the Implementation Plan and the provision of Services on the most cost-effective terms;
 - 47.3.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of 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 instead to be transferred to the Authority or any other Replacement Provider, in which case such contracts shall not be terminated but shall instead be transferred in accordance with Schedule 29 (*Exit Management*);
 - 47.3.3 reduce labour costs by the redeployment or release of Contractor Personnel other than Key Personnel to the extent possible in the circumstances; and
 - 47.3.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in Clauses 47.3.1 to 47.3.3 (inclusive) above if and to the extent the Contractor has made a successful insurance claim in respect of the same.
- 47.4 If the Contractor does not fulfil its obligations in accordance with Clause 47.3 above, the Authority shall not pay any sums in excess of those which the Authority would have paid had such action been taken.

48. STAFF TRANSFER

The Parties acknowledge that the commencement of the Contractor's provision of the Services (or any part of them) and the termination of the Contractor's provision of the Services (or any part of them) pursuant to this Agreement may constitute a relevant transfer for the purposes of the Employment Regulations, and agree that the provisions of Part 1 (*Employee Transfer Arrangements on Entry*) and Part 2 (*Staff Transfer Arrangements on Exit*) Schedule 30 (*Staff Transfer*) will apply in relation to such commencement or termination.

49. SURVIVAL

The provisions of Clauses 12 (*Security Requirements*) 35 (*Audits, Notifications and Record Keeping*), 36 (*Intellectual Property Rights*), 37 (*Intellectual Property Indemnity*), 38 (*Authority Data*), 39 (*Confidentiality and Publicity*), 40 (*Freedom of Information*), 41 (*Protection of Personal Data*), 46 (*Payments Made on Termination*), 47 (*Exit Management*), 48 (*Staff Transfer*), 49 (*Survival*), 53 (*Limitations on Liability*),

54 (*Insurance*), 56 (*Conduct of Indemnity Claims*), 57 (*Sensitive Claims*), 60 (*Corrupt Gifts*), 61 (*Entire Agreement*), 63 (*Relationship of the Parties and Indirect Customers*), 64 (*Severance*), 65 (*Third Party Rights*) and 67 (*Governing Law*) and the provisions of Schedules 1 (*Definitions*), 5 (*Security Requirements*), 26 (*Records Provision*), 28 (*Dispute Resolution*), 29 (*Exit Management*) and 30 (*Staff Transfer*), 33 (*Insurance Requirements*) shall survive, together with any other provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after, the termination or expiry of this Agreement.

H. BUSINESS CONTINUITY

50. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 50.1 The Contractor shall comply with the BCDR Plan and Schedule 31 (*Business Continuity and Disaster Recovery*).
- 50.2 The Contractor shall ensure that it is able to implement the BCDR Plan in full at any time in accordance with its terms.
- 50.3 Subject to Clause 50.4 below, where a Disaster or Business Continuity Event affects the Authority, the Contractor shall comply with instructions from the Authority as to the order of priority in which the Services should be taken down, fixed and restored.
- 50.4 Where a Disaster or Business Continuity Event affects the Authority and the Indirect Customers, the Contractor shall comply with instructions from the Authority as to the order of priority in which Services should be restored.
- 50.5 The Contractor shall undertake regular risk assessments in relation to the provision of the Services, not less than once every six (6) months (or such other period as the Parties agree in writing) (commencing from the first Operational Service Commencement Date) and shall provide the results of, and any recommendations in relation to, those risk assessments to the Authority promptly in writing following each review.
- 50.6 The Contractor shall establish, maintain and review its own internal processes and procedures regularly with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

51. FORCE MAJEURE

- 51.1 Subject to the remaining provisions of this Clause 51, each Party shall be relieved from liability under this Agreement (including for late performance or non-performance of any obligations under this Agreement and Authority Dependencies) to the extent that, due to the occurrence of a Force Majeure Event, the Affected Party is unable to perform its obligations (or in the case of the Authority, Authority Dependencies) under this Agreement, provided that:
 - 51.1.1 the Affected Party shall as soon as reasonably practicable give the other Party written notice of the Force Majeure Event. Such 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; and
 - 51.1.2 where the Contractor is the Affected Party, the Contractor has used all reasonable endeavours and acted in accordance with Good Industry Practice to:
 - (A) resume full performance of its obligations under this Agreement; and
 - (B) overcome or mitigate the consequences of the Force Majeure Event on the performance of the obligations under this Agreement.
- 51.2 As soon as practicable after the Affected Party's notification has been received by the other Party and in any event within one (1) Working Day, the Parties shall consult with each

other 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.

- 51.3 Where the provision of the Services or part thereof is prevented or affected by a Force Majeure Event, then the Authority's obligation to pay the Charges shall, to the extent that those Charges relate to the part of the Services whose provision is prevented or affected by the Force Majeure Event, be reduced by an equitable amount (which in the case of total suspension would be an amount equal to the total Charges for the period of suspension), until the Contractor resumes full performance of the Services (or the relevant part of them) in accordance with the terms of this Agreement.
- 51.4 Notwithstanding the generality of this Clause 51:
- 51.4.1 a Party shall not be able to rely on this Clause 51 to claim relief from liability:
- (A) if the relevant Force Majeure Event is caused by its Default, wilful act or omission, neglect or failure to take reasonable precautions against the relevant Force Majeure Event;
 - (B) because a sub-contractor has failed to perform, or is delayed in performing, its obligations under a contract with the Party (unless that sub-contractor is itself prevented from, or delayed in, complying with its obligations as a result of a Force Majeure Event); or
 - (C) where the Contractor is the Affected Party, to the extent the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; and
- 51.4.2 the Contractor shall not be able to rely on this Clause 51 to claim relief from liability to the extent that the failure to comply with its obligations as set out under this Agreement results from a failure to implement the BCDR Plan (except to the extent that the Force Majeure Event prevented the Contractor from implementing the BCDR Plan).
- 51.5 The Affected Party shall notify the other Party promptly after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 51.6 The relief from liability under this Clause 51 shall only last for the time during which the Affected Party is unable to comply with its obligations under this Agreement due to the Force Majeure Event and shall not be dependent on the serving of notice under Clause 51.5.
- 51.7 Where the Contractor is affected by a Force Majeure Event, it shall provide regular update reports to the Authority in relation to its status (and the status of affected Services) for the duration of the Force Majeure Event.

52. MEASURES IN A CRISIS

The provisions of Schedule 32 (*Measures in a Crisis*) shall apply to this Agreement in the event of a crisis (as further described in Paragraph 2 of Schedule 32 (*Measures in a Crisis*)).

I. LIABILITY

53. LIMITATIONS ON LIABILITY

Unlimited liability

- 53.1 Neither Party limits its liability:
- 53.1.1 for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 53.1.2 for fraud or fraudulent misrepresentation by it or its employees;

- 53.1.3 for 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;
- 53.1.4 for any liability to the extent it cannot be limited or excluded by law; or
- 53.1.5 in relation to the indemnity in Clause 37 (*Intellectual Property Indemnity*).
- 53.2 The Contractor's liability shall be unlimited in relation to the following:
 - 53.2.1 the indemnities in:
 - (A) Clause 20.15 (*Key Personnel*);
 - (B) Clause 20.22 (*Employment Indemnities*);
 - (C) Clause 27.2 (*Tax*);
 - (D) [Not used];
 - (E) Paragraph 14.9 (*Transferring Assets and Contracts*) of Schedule 29 (*Exit Management*);
 - (F) Schedule 30 (*Staff Transfer*) and the Appendices to Schedule 30 (*Staff Transfer*); and
 - (G) Clause 60.4 (*Corrupt Gifts*);
 - 53.2.2 breach by the Contractor of Clause 38 (*Authority Data*) to the extent such breach relates to the provision of the Security Information and Event Management Sub-Service (further described at Paragraph 15 of Schedule 2 (*Service Requirements*)) or the Future OSM GOSCC Liaison Sub-Service (further described at Paragraph 17 of Schedule 2 (*Service Requirements*)), other than where such breach relates to Personal Data, in which case Clauses 53.3A.2 and 53.3A.3;
 - 53.2.3 breach by the Contractor of Clause 39 (*Confidentiality and Publicity*) or Clause 40 (*Freedom of Information*);
 - 53.2.4 breach by the Contractor of Clause 60 (*Corrupt Gifts*);
 - 53.2.5 its Gross Negligence or Wilful Default or wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement;
 - 53.2.6 breach by the Contractor of its obligations to comply with the Enhanced Liability Standards;
 - 53.2.7 breach by the Contractor of its obligation to ensure that the level of security that it employs in the provision of each of the Services is appropriate to maintain the Agreed Risk Envelope for that Service, as set out in Paragraph 2.3 of Schedule 5 (*Security Requirements*); and
 - 53.2.8 breach by the Contractor of its obligations in Part A (*Invocation of BCDR Plan*) of Schedule 31 (*Business Continuity and Disaster Recovery*).
- 53.3 The Authority's liability shall be unlimited in relation to its obligation to pay the Charges that have become due in accordance with Schedule 17 (*Charges and Invoicing*).

Financial limits

- 53.3A The Contractor's total liability (in aggregate) in respect of any and all claims in relation to breach by the Contractor of its obligations relating to:
 - 53.3A.1 Clause 12 (*Security Requirements*);
 - 53.3A.2 Clause 38 (*Authority Data*) (other than as provided for in Clause 53.2.2);
 - 53.3A.3 Clause 41 (*Protection of Personal Data*); and
 - 53.3A.4 Schedule 5 (*Security Requirements*) (other than as provided for in Clause 53.2.7),
 shall be £65,000,000 (sixty-five million pounds sterling) per Contract Year.

- 53.4 Subject to Clauses 53.1 and 53.2 (*Unlimited liability*) and Clause 53.3A (*Financial limits*) and to the maximum extent permitted by law:
- 53.4.1 throughout the Term and any Exit Period, the Contractor's total liability (in aggregate) in respect of loss of or physical damage to Authority Premises or other tangible property or assets of the Authority (including technical infrastructure, assets or equipment) that is caused by Defaults of the Contractor occurring shall in no event exceed £20,000,000 (twenty million pounds sterling) per Contract Year; and
- 53.4.2 without limiting Clause 53.4.1 above, the Contractor's total liability (in aggregate) in respect of all other liabilities (excluding any Service Credits paid or payable in accordance with Schedule 3 (*Service Performance*) but excluding such amounts for which the Contractor is liable pursuant to Paragraph 9 of Schedule 17 (*Charges and Invoicing*) in respect of any Re-Procurement Assistance and Exit Assistance, which shall not be subject to any limitation), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Agreement shall be £45,000,000 (forty-five million pounds sterling) per Contract Year.
- 53.5 Subject to Clauses 53.1 and 53.3 (*Unlimited liability*) and to the maximum extent permitted by law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or connection with this Agreement shall in respect of all liabilities (taken together) (excluding any amounts for which the Authority is liable pursuant to Clause 46.3 (*Payments Made on Termination*) in respect of a Termination Payment, which shall be subject to the limitation specified in Paragraph 2.2 of Schedule 21 (*Payments on Termination*)) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 53.6 Clause 53.5 (*Financial limits*) above shall not exclude or limit the Contractor's right under the Agreement to claim for the Charges.
- Consequential loss**
- 53.7 Subject to Clauses 53.1, 53.2 and 53.3 (*Unlimited liability*) and Clause 53.8 below (*Consequential loss*), neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
- 53.7.1 any indirect, special or consequential loss; or
- 53.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 53.8 Subject to Clause 53.4, the provisions of Clause 53.7 (*Consequential losses*) above shall not restrict the Authority's ability to recover any of the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 53.8.1 any additional costs and expenses (including any additional administrative and operational costs and expenses) arising from the Contractor's Default, including any costs paid or payable by the Authority (i) to Authority Third Parties and (ii) for putting in place workarounds for the Services and other services that are reliant on the Services, in each case including any other costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 53.8.2 any or all Losses incurred by the Authority, arising from the Contractor's Default (including wasted management time);
- 53.8.3 the additional cost of procuring and maintaining in place transitional assistance and Replacement Services for the remainder of the Term and any Exit Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any reasonable increase in the charges for the Replacement Services over and above the Charges that would

have been payable for the relevant Services (such increased amount to cover a period no longer than the lesser of (i) three (3) years and (ii) the duration of the remaining Term and any Exit Period));

- 53.8.4 any Losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority Data or Authority software, including, to the extent the Authority Data or Authority software can be recovered or reconstituted, the costs, expenses and charges of reconstituting such Authority Data or Authority software;
- 53.8.5 damage to the Authority's property and tangible assets, including damage to Authority Premises;
- 53.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third party intellectual property rights or breach of any obligations of confidence; or
- 53.8.7 [Not used]
- 53.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Invalidity

- 53.9 If any limitation or provision contained or expressly referred to in this Clause 53 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 53.

Third Party claims or Losses

- 53.10 Without prejudice to any other rights or remedies the Authority may have under this Agreement (including any indemnity claim under Clause 37 (*Intellectual Property Indemnity*)) or at law, the Authority shall be entitled to make a claim under this Agreement against the Contractor in respect of any Losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - 53.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Services or failure to perform any obligations under the Agreement; and
 - 53.10.2 is a type of claim or Loss that would have been recoverable under the Agreement if the third party were a party to the Agreement (whether as the Authority or the Contractor).

Other Contractor Remedies

- 53.11 If and to the extent that the Contractor has an express remedy under this Agreement in respect of any breach, act or omission (including as provided for under Clause 15.17 (*Authority Dependencies*)), that remedy shall be exhaustive of its rights in respect of that breach, act or omission (or Authority Cause as the case may be).

No double recovery

- 53.12 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same Losses.

Repayment in the event of recovery

- 53.13 If either Party pays to the other an amount in respect of Losses and the other Party subsequently recovers (whether by payment, discount, credit, insurance, saving, relief or other benefit or otherwise howsoever and whether such recovery occurs under a term of the Agreement or otherwise) a sum which is referable to the fact, matter, event or circumstances giving rise to those Losses, the relevant Party shall as soon as practicable repay to the other Party the lesser of:

53.13.1 an amount equal to the sum recovered (or the value of the savings or benefit obtained) less any costs and expenses incurred by the relevant Party in recovering the same; and

53.13.2 the amount paid by the relevant Party to the other in respect of the Losses.

Mitigation of loss or damage

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

54. INSURANCE

54.1 The Contractor shall comply with the provisions of Schedule 33 (*Insurance Requirements*).

54.2 The provisions of Schedule 33 (*Insurance Requirements*) are without prejudice to Clause 53 (*Limitations on Liability*).

55. [NOT USED]

56. CONDUCT OF INDEMNITY CLAIMS

56.1 This Clause 56 shall apply to the conduct of an indemnifying Party (the "**Indemnifying Party**") in relation to claims made by a third party against the other Party (the "**Indemnified Party**").

56.2 If the Indemnified Party receives any notice of any claim (a "**First Claim Notice**") for which it appears that the Indemnified Party is, or may become, entitled to indemnification under this Agreement (an "**Indemnified Claim**"), the Indemnified Party shall give notice in writing to the Indemnifying Party (a "**Second Claim Notice**") as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of a First Claim Notice.

56.3 Subject to Clause 57 (*Sensitive Claims*), where an Indemnified Party serves a Second Claim Notice and the Indemnified Party is entitled to indemnification from the Indemnifying Party in respect of all liability connected with the Indemnified Claim, the Indemnifying Party shall be entitled to have conduct of any defence, dispute, compromise, appeal or incidental negotiations relating to the Indemnified Claim and shall be entitled to do so in the Indemnified Party's name.

56.4 If an Indemnifying Party wishes to have conduct of an Indemnified Claim under Clause 56.3, the Indemnifying Party shall give written notice to the Indemnified Party of its intention to do so as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the Second Claim Notice.

56.5 With respect to any Indemnified Claim conducted by the Indemnifying Party pursuant to Clause 56.3 above the Indemnifying Party shall:

56.5.1 have responsibility for all costs and expenses it incurs;

56.5.2 [Not used];

56.5.3 keep the Indemnified Party fully informed and consult with it about material elements of the conduct of the Indemnified Claim;

56.5.4 not bring the name of the Indemnified Party into disrepute;

56.5.5 not pay or settle such Indemnified Claim without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed; and

56.5.6 conduct the Indemnified Claim with all due diligence.

56.6 Subject to Clause 57.3 (*Sensitive Claims*), the Indemnified Party shall not make any admission which could be prejudicial to the defence or settlement of the Indemnified Claim without the prior written consent of the Indemnifying Party.

56.7 The Indemnified Party shall be entitled to have conduct of the Indemnified Claim and shall be free to pay or settle any Indemnified Claim on such terms as it thinks fit, and without prejudice to its rights and remedies under this Agreement, if:

56.7.1 the Indemnifying Party is not entitled to have conduct of the Indemnified Claim in accordance with Clause 56.3;

56.7.2 the Indemnifying Party fails to notify the Indemnified Party as required under Clause 56.4 or if the Indemnifying Party notifies the Indemnified Party in writing that it does not intend to take conduct of the Indemnified Claim; or

56.7.3 the Indemnifying Party fails to comply in any material respect with the provisions of Clause 56.5.

57. SENSITIVE CLAIMS

57.1 With respect to any Indemnified Claim which the Indemnified Party, acting reasonably, considers is likely to have an adverse impact on the reputation of the Indemnified Party (a "**Sensitive Claim**"), the Indemnifying Party shall be entitled to take conduct of any defence, dispute, compromise, appeal or incidental negotiations relating to the Sensitive Claim only with the Indemnified Party's prior written consent.

57.2 If the Indemnified Party withholds consent under Clause 57.1 and elects to conduct the defence, dispute, compromise, appeal or incidental negotiations relating to the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifying Party shall only be liable to indemnify the Indemnified Party in respect of that amount which would have been recoverable by the Indemnified Party had it conducted the Sensitive Claim with all due diligence.

57.3 The Indemnified Party shall be free at any time to give written notice to the Indemnifying Party that it is retaining or taking over (as the case may be) the conduct of any Indemnified Claim with immediate effect, to which Clause 56.3 applies if, in the reasonable opinion of the Indemnified Party, the Indemnified Claim is, or has become, a Sensitive Claim.

58. WAIVER AND CUMULATIVE REMEDIES

58.1 The rights and remedies provided by this Agreement may be waived only in writing by the Contractor Representative and, in the case of the Authority, the Authority Commercial Manager 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.

58.2 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies provided at law or in equity or otherwise under this Agreement. 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. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

58.3 A waiver by either Party of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

58.4 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

J. GENERAL

59. ASSIGNMENT AND NOVATION

- 59.1 Subject to Clause 22.2 (*Sub-contracting*) above, the Contractor 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 without the Approval of the Authority.
- 59.2 The Authority may at its discretion but subject to Clause 59.4 assign, novate or otherwise dispose of any of its rights, obligations and liabilities under this Agreement and any associated licences (including any third party licences) to any Replacement Body or Replacement Provider, and the Contractor shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 59.2.
- 59.3 A change in the legal status of the Authority shall not (subject to Clause 59.4 below) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 59.4 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 a "**transferee**" in the rest of this Clause 59.4):
- 59.4.1 the Contractor shall be entitled to exercise a right of termination if:
- (A) the transferee suffers an Insolvency Event; or
 - (B) the transferee commits:
 - (1) a material Default which Default is not remedied within forty (40) Working Days after notice of Default from the Contractor to the transferee requiring its remedy; or
 - (2) a material Default which is irremediable; and
- 59.4.2 the transferee may assign, novate or otherwise dispose of its rights and obligations under this Agreement (or any part) only with the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed).

60. CORRUPT GIFTS

- 60.1 In this Clause 60, the expression "**Prohibited Act**" shall mean any offer or agreement to give any person working for or engaged by the Authority or any other Crown Body any commission, gift or other consideration of any kind, which could act as an inducement or a reward for any act or failure to act connected to this Agreement or any other agreement between the Contractor and the Authority or any other Crown Body including:
- 60.1.1 the award of this Agreement to the Contractor or any other agreement to the Contractor or a Sub-contractor; and
- 60.1.2 any award of the rights and obligations contained within this Agreement or another agreement with a Crown Body or the showing of any favour or disfavour to any person in relation to this Agreement or any other agreement with a Crown Body.
- 60.2 The Contractor warrants, represents and undertakes on a continuing basis throughout the Term or any Exit Period that it has not entered into this Agreement knowing (or in circumstances in which it ought reasonably to have known) that a Prohibited Act has been committed in connection with this Agreement.
- 60.3 The Contractor shall not (and shall procure that the Sub-contractors shall not) enter into any agreement knowing (or in circumstances in which it ought reasonably to have known) that in connection with that agreement any Prohibited Act has been committed.
- 60.4 Any:
- 60.4.1 commission by the Contractor or its Sub-contractors of a Prohibited Act or any other breach of this Clause 60; or

60.4.2 commission of an offence by the Contractor or its Sub-contractors under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 in relation to this Agreement or any other agreement with the Authority or any other Crown Body,

shall, without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Authority, entitle the Authority to terminate this Agreement by written notice with immediate effect. The Contractor shall indemnify the Authority from and against any other loss sustained by it in consequence of any breach of this Clause 60, whether or not this Agreement has been terminated.

60.5 For the purposes of Clause 60.4 above, the Contractor shall be taken to have 'commissioned' a Prohibited Act or offence where it has done such act and also where it has attempted to do a Prohibited Act or offence or has aided, abetted, counselled, procured or conspired with any person to do a Prohibited Act or offence.

60.6 Notwithstanding anything to the contrary in Clause 44 (*Disputes*), any dispute relating to:

60.6.1 the interpretation of Clauses 60.1 to 60.5 (inclusive) above; or

60.6.2 the amount or value of any gift, consideration or commission,

shall be determined by the Authority and the decision shall be final and conclusive.

61. ENTIRE AGREEMENT

61.1 This Agreement (and, where specifically referred to, the Collaboration Agreement) constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it, and supersedes, any previous agreement between the Parties in relation to such matters, whether written or oral.

61.2 Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to herein, 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. The only remedy available to either Party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

61.3 Nothing in this Clause 61 shall operate to exclude any liability for Fraud.

62. FURTHER ASSURANCES

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

63. RELATIONSHIP OF THE PARTIES AND INDIRECT CUSTOMERS

63.1 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, save as expressly agreed in writing, 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.

63.2 The Authority may appoint any third party or third parties to act on its behalf in carrying out its obligations and exercising its rights under this Agreement. The Authority shall give the Contractor written notice of such appointment(s), and relevant contact details, and the Contractor shall cooperate in good faith with each such third party.

63.3 The Contractor shall provide the Services for the benefit of: (i) the Authority; (ii) those third parties that are designated as Indirect Customers; and (iii) any Replacement Body.

63.4 No Indirect Customer, Replacement Body or other third party may authorise any Contract Change.

63.5 Save where an Indirect Customer or a Replacement Body has the rights set out in Clause 63.6 below, the Contractor shall be liable only to the Authority and shall deal only with the Authority. If any breach arises out of any act or omission of an Indirect Customer or a

Replacement Body, any claim by the Contractor shall be brought only against the Authority and not against the Indirect Customer or Replacement Body.

- 63.6 Where indicated in Schedule 16 (*Indirect Customers*) or following written notice from the Authority, an Indirect Customer or a Replacement Body may, under the Contracts (Rights of Third Parties) Act 1999, enforce the benefit of this Agreement to the extent that the Services are being provided to that Indirect Customer or Replacement Body (as applicable). However, this right shall be limited to a right to recover financial losses through a claim for damages and shall not include the right to terminate this Agreement. Subject to Clause 63.2 above, only the Authority may exercise rights of termination, Step-in or other non-financial remedies under this Agreement. In any event, any Service Credits or Milestone Payment Reductions shall be applied only for the benefit of the Authority. The limits to and exclusions of liability set out in Clause 53 (*Limitations on Liability*) shall also apply in the aggregate in respect of any claims made under this Agreement by the Authority and any and all Indirect Customers or Replacement Bodies.
- 63.7 The Authority may recover all Losses suffered by any Indirect Customer or Replacement Body as though it had suffered such loss itself, provided that in no event may the Authority, an Indirect Customer or Replacement Body recover twice in respect of the same loss (so that loss recovered by an Indirect Customer or Replacement Body may not be recovered by the Authority and vice versa).
- 63.8 The rights of an Indirect Customers or a Replacement Body under Clause 63.6, and the Authority's rights under Clause 63.7, shall not increase the limitations on liability in Clause 53 (*Limitations on Liability*) above.

64. SEVERANCE

If any provision of this Agreement (other than Clause 39.7 (*Confidentiality and Publicity*) above) 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 hereof, which shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. 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 Parties shall immediately commence good faith negotiations to remedy that invalidity.

65. THIRD PARTY RIGHTS

- 65.1 Subject to Clause 39.13 (*Confidentiality and Publicity*) above, Clause 63 (*Relationship of the Parties and Indirect Customers*) and the provisions of Schedule 30 (*Staff Transfer*), 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.
- 65.2 Any rights created under Clause 39.13 (*Confidentiality and Publicity*) above, Clause 63 (*Relationship of the Parties and Indirect Customers*) and the provisions of Schedule 30 (*Staff Transfer*) referred to in Clause 65.1 above may be altered or extinguished by the Parties without notice to or the consent of the third party beneficiaries.

66. NOTICES

- 66.1 Except as otherwise expressly provided within this Agreement, any notices sent under this Agreement must be in writing (which shall include email).
- 66.2 Subject to Clause 66.3, the following table sets out the ways in which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of service	Deemed time of delivery	Proof of service
Email (subject to	9.00am on the first Working	Dispatched as a pdf attachment to an email to the

Manner of service	Deemed time of delivery	Proof of service
Clauses 66.3 and 66.4).	Day after sending.	correct email address without any error message and with an acknowledgment of receipt by the recipient.
Personal delivery.	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if delivered after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

66.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid service in the manner set out in the table in Clause 66.2:

66.3.1 any Termination Notice (Clause 45 (*Termination Rights*));

66.3.2 any notice in respect of:

- (A) partial termination, suspension or partial suspension (Clauses 45 (*Termination Rights*) and 16 (*Authority Initiated Service Suspension*)) or any other notice purporting to terminate or suspend any part of this Agreement;
- (B) Step-in (Clause 9 (*Step-in Rights*));
- (C) waiver (Clause 56 (*Waiver and Cumulative Remedies*));
- (D) Default or an Authority Dependency; and
- (E) a Party's change of address or email address for notification purposes; and
- (F) any Notice of Dispute.

The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 66.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

66.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 66.3 shall invalidate the service of the related email transmission.

66.5 This Clause 66 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Notice of Dispute under the Dispute Resolution Procedure).

66.6 For the purposes of this Clause 66, the address and email address of each Party shall be the address and email address set out below, as may be amended from time to time by providing notice to the other Party in accordance with this Clause 66.

67. **GOVERNING LAW**

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

68. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

EXECUTION

THIS AGREEMENT has been duly executed by the Parties (or their duly authorised representatives) on the date specified at the beginning of this Agreement.

SIGNED for and on behalf of

THE SECRETARY OF STATE FOR DEFENCE by:

[REDACTED]

SIGNED for and on behalf of

CAPGEMINI UK PLC by:

[REDACTED]