

RM6100 TECHNOLOGY SERVICES 3

LOTS 2, 3 AND 5 CALL OFF TERMS

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1. DEFINITIONS

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in these Call Off Terms and in particular Call Off Schedule 1 (Definitions).
- 1.2 If no meaning is given to a capitalised expression in this Contract, it shall, in the first instance, be interpreted in accordance with the Order Form and related documents and otherwise in accordance with common interpretation within the relevant services sector/industry where appropriate.

2. INTERPRETATION

- 2.1 In this Contract, unless the context otherwise requires:
 - 2.1.1 the singular includes the plural and vice versa;
 - 2.1.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 2.1.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 2.1.4 the words **“including”**, **“other”**, **“in particular”**, **“for example”** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **“without limitation”**;
 - 2.1.5 references to **“writing”** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
 - 2.1.6 references to **“Clauses”** and **“Schedules”** are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Schedule or the part of the Schedule in which the references appear;
 - 2.1.7 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract; and
 - 2.1.8 any reference which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (**“EU References”**) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

- 2.2 In the event and to the extent only of a conflict between the Order Form, these Call Off Terms and the provisions of the Framework, the conflict shall be resolved in accordance with the following descending order of precedence:
- 2.2.1 the Framework, except Framework Schedule 18 (Tender);
 - 2.2.2 the Order Form, except Part B (Tender) of Attachment 1 (Service Specification) of the Order Form;
 - 2.2.3 these Call Off Terms;
 - 2.2.4 Part B (Tender) of Attachment 1 (Service Specification) of the Order Form; and
 - 2.2.5 Framework Schedule 18 (Tender).
- 2.3 Where Framework Schedule 18 (Tender) and/or Part B (Tender) of Attachment 1 (Service Specification) of the Order Form contains provisions which are more favourable to the Buyer in relation to this Contract such provisions of the Tender (as applicable) shall prevail. The Buyer shall in its absolute and sole discretion determine whether any provision in the Tender and/or this Contract is more favourable to it in this context.

Collaboration Agreement

- 2.4 The Supplier must enter into the Collaboration Agreement (substantially in the form provided by the Buyer) on or around the Commencement Date in relation to the provision of Core Defra Group Services. The Parties expressly acknowledge that the Collaboration Agreement is not the collaboration agreement that is provided as standard pursuant to RM6100.
- 2.5 Save for Clauses 1 (Definitions), 2 (Interpretation), 5 (Warranties and Representations), 6 (Contract Period), 19 (Limitation of Liability), 25 (Publicity and Branding), 40 (Confidentiality), 41 (Transparency and FOIA), 42 (Waiver), 44 (Severance), 45 (Relationship of the Parties), 50 (Notices), 51 (Entire Agreement), 52 (Third Party Rights), 54 (Disputes) and 55 (Governing Law and Jurisdiction), this Contract is conditional upon the valid execution and delivery to the Buyer of the Collaboration Agreement (the “**Condition Precedent**”). The Buyer may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 2.6 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within twenty (20) Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Buyer in accordance with Clause 2.5:
- 2.6.1 this Contract shall automatically cease and shall not come into effect; and
 - 2.6.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 2.7 The Supplier shall consult with the Buyer in relation to the steps it takes to satisfy the Condition Precedent and shall keep the Buyer fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 2.6.

3. **GUARANTEE**

Where indicated in the Order Form, the Parties shall comply with the provisions of Call Off Schedule 18 (Guarantee).

4. **DUE DILIGENCE**

4.1 The Supplier acknowledges that, subject to the Allowable Assumptions and the Due Diligence List:

4.1.1 the Buyer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;

4.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

4.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Buyer before the Commencement Date) of all relevant details, including but not limited to, details relating to the:

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

4.1.4 it has advised the Buyer in writing of:

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

and such actions, timetable and costs are fully reflected in this Contract, including the Services Specification and/or Buyer Responsibilities, as applicable. Any Changes arising from the issues contained in the Allowable Assumptions or Due Diligence List shall be dealt with in accordance with the Change Control Procedure.

4.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, subject to Clause 4.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

4.2.1 any unsuitable aspects of the Operating Environment;

- 4.2.2 any misinterpretation of the Buyer Requirements; and/or
- 4.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 4.3 The Parties shall comply with the provisions of Call Off Schedule 2 (Charges and Invoicing) in relation to the verification of any Allowable Assumptions and the Due Diligence List.

5. WARRANTIES AND REPRESENTATIONS

5.1 Each Party warrants and represents that:

- 5.1.1 it has full capacity and authority to enter into and to perform this Contract;
- 5.1.2 this Contract is executed by its duly authorised representative;
- 5.1.3 here are no actions, suits or proceedings or regulatory investigation before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
- 5.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

5.2 The Supplier warrants and represents that:

- 5.2.1 it is validly incorporated, organised and subsisting in accordance with the Law of its place of incorporation;
- 5.2.2 it has all necessary consents and regulatory approvals to enter into this Contract;
- 5.2.3 it has notified the Buyer in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 5.2.4 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 5.2.5 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 5.2.6 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the

Supplier has otherwise disclosed to the Buyer in writing prior to the date of this Contract;

- 5.2.7 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
 - 5.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - 5.2.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - 5.2.10 within the previous twelve (12) months, no Financial Distress Events (as defined in Call Off Schedule 8 (Financial Distress)) have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 5.3 Each of the representations and warranties set out in Clauses 5.1 and 5.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 5.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 5.1 and 5.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 5.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Buyer may have in respect of breach of that provision by the Supplier.
- 5.6 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

6. CONTRACT PERIOD

- 6.1 This Contract shall take effect on the Commencement Date specified in the Order Form and shall unless terminated earlier under the terms of this Contract, shall expire:
- 6.1.1 at the end of the Initial Term (as specified in the Order Form); or
 - 6.1.2 if the Buyer elects to extend the Initial Term by giving the Supplier at least thirty (30) days' notice before the end of the Initial Term, at the end of the notified Extension Period.

7. IMPLEMENTATION

Quality Plans

- 7.1 The Supplier shall develop, within twenty (20) Working Days (or such other date as agreed between the Parties) of the Commencement Date, quality plans that ensure

that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

- 7.2 The Supplier shall obtain the Buyer Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Buyer's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 7.3 Following the approval by the Buyer of the Quality Plans:
 - 7.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - 7.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan

- 7.4 Where indicated in the Order Form, the Parties shall comply with the provisions of Call Off Schedule 11 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 7.5 The Supplier shall:
 - 7.5.1 comply with the Implementation Plan (if any);
 - 7.5.2 ensure that each Milestone (if any) is Achieved on or before the Milestone Date.

Delays and Delay Payments

- 7.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
 - 7.6.1 it shall:
 - (a) notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (b) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (c) comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 7.6.2 if the Delay or anticipated Delay relates to a Milestone Clauses 7.7 and 7.8 below shall apply.
- 7.7 If a Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Call Off Schedule 2 (Charges and Invoicing) shall apply in relation to the payment of Delay Payments.

- 7.8 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
- 7.8.1 the Buyer is entitled to or does terminate this Contract pursuant to Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause); or
 - 7.8.2 the Delay exceeds the Delay Deduction Period.

Testing and Achievement of Milestones

- 7.9 Where indicated in the Order Form, the Parties shall comply with the provisions of Call Off Schedule 12 (Testing Procedures) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

8. PROVISION AND RECEIPT OF THE SERVICES

Standards of Services

- 8.1 The Supplier shall ensure the Services:
- 8.1.1 comply in all respects with the Services Specification; and
 - 8.1.2 are supplied in accordance with the provisions of this Contract.
- 8.2 The Supplier shall perform the Services under this Contract in accordance with:
- 8.2.1 all applicable Laws;
 - 8.2.2 Good Industry Practice;
 - 8.2.3 the Standards;
 - 8.2.4 the Security Policy (if so required by the Buyer);
 - 8.2.5 the ICT Policy (if so required by the Buyer);
 - 8.2.6 the Sustainability Policy;
 - 8.2.7 any other policies and procedures referred to in the Services Specification and/or Attachment 11 of the Order Form (in each case, as such policies and procedures may be updated and notified to the Supplier from time to time); and
 - 8.2.8 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.2.1 to 8.2.7.
- 8.3 The Supplier shall take reasonable steps to ensure that in the performance of its obligations under this Contract it does not disrupt the Buyer's operations, employees or other contractor engaged by the Buyer.
- 8.4 The Buyer shall comply with its Buyer Responsibilities set out in the Order Form.

Supplier Covenants

- 8.5 The Supplier shall:
- 8.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;

- 8.5.2 save to the extent that obtaining and maintaining the same are Buyer Responsibilities and subject to Clause 49 (Change), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 8.5.3 ensure that:
- (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
 - (b) the release of any new Software or Upgrade to any Software complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Call Off Schedule 13 (Security Requirements)) shall notify the Buyer three (3) months before the release of any new Software or Upgrade;
 - (c) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (d) any products or services recommended or otherwise specified by the Supplier for use by the Buyer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Buyer; and
 - (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Buyer) and will be Euro Compliant;
- 8.5.4 minimise any disruption to the Services, the IT Environment and/or the Buyer's operations when carrying out its obligations under this Contract;
- 8.5.5 ensure that any Documentation and training provided by the Supplier to the Buyer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 8.5.6 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Buyer and/or to any Replacement Supplier;
- 8.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Buyer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Buyer may notify from time to time to the Supplier;

- 8.5.8 unless it is unable to do so, assign to the Buyer on the Buyer's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 8.5.7;
 - 8.5.9 provide the Buyer with such assistance as the Buyer may reasonably require during the Contract Period in respect of the supply of the Services; and
 - 8.5.10 gather, collate and provide such information and co-operation as the Buyer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
 - 8.5.11 ensure that neither it, nor any of its Affiliates, embarrasses the Buyer or otherwise brings the Buyer into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Buyer.
- 8.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 8.7 Without prejudice to Clauses 23.2 and 23.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Buyer howsoever arising the Supplier shall:
- 8.7.1 remedy any breach of its obligations in Clauses 8.5.2 to 8.5.4 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Buyer or within such other time period as may be agreed with the Buyer (taking into account the nature of the breach that has occurred);
 - 8.7.2 remedy any breach of its obligations in Clause 8.5.1 and Clauses 8.5.5 to 8.5.10 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Buyer;
 - 8.7.3 meet all the costs of, and incidental to, the performance of such remedial work.

Specially Written Software

- 8.8 The Supplier warrants to the Buyer that all components of the Specially Written Software shall:
- 8.8.1 be free from material design and programming errors;
 - 8.8.2 perform in all material respects in accordance with the relevant specifications contained in the Order Form and Documentation; and
 - 8.8.3 not infringe any Intellectual Property Rights.

Continuing Obligation to Provide the Services

- 8.9 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
- 8.9.1 any withholding or deduction by the Buyer of any sum due to the Supplier pursuant to the exercise of a right of the Buyer to such withholding or deduction under this Contract;
 - 8.9.2 the existence of an unresolved Dispute; and/or
 - 8.9.3 any failure by the Buyer to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 35.2 (Termination by the Supplier) for failure to pay undisputed Charges.

9. SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

- 9.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 9.2 The Supplier shall at all times provide the Services to meet or exceed the Service Level Performance Measure for each Service Level.
- 9.3 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A (Service Levels and Service Credits) of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring), including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 9.4 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 9.5 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
 - 9.5.1 the Supplier has over the previous (twelve) 12 month period exceeded the Service Credit Cap; and/or
 - 9.5.2 the Service Level Failure:
 - (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel;
 - (c) results in the corruption or loss of any Buyer Data; and/or
 - (d) results in the Buyer being required to make a compensation payment to one (1) or more third parties; and/or
 - 9.5.3 the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause);
- 9.6 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) months' notice, change the weighting of Service Level Performance Measure in respect of one (1) or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
 - 9.6.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Commencement Date;
 - 9.6.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
 - 9.6.3 there is no change to the Service Credit Cap.

10. CRITICAL SERVICE LEVEL FAILURE

10.1 On the occurrence of a Critical Service Level Failure:

- 10.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue for the relevant Service Level(s) that is/are subject to a Critical Service Level Failure; and
- 10.1.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period following the deduction of Service Credits that are incurred for that Service Period in respect of Service Levels not subject to a Critical Service Level Failure ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 10 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

11. SUPPLIER PERSONNEL

Supplier Personnel

11.1 The Supplier shall:

- 11.1.1 provide in advance of any admission to Buyer Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Buyer may reasonably require;
- 11.1.2 ensure that all Supplier Personnel involved in the performance of this Contract:
 - (a) are adequately trained and suitably qualified and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Call Off Schedule 13 (Security Requirements), where used; and
 - (c) comply with any reasonable instructions issued by the Buyer from time to time (including, if so required, the ICT Policy).
- 11.1.3 subject to Call Off Schedule 14 (Staff Transfer) where used, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Buyer;
- 11.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- 11.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 11.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

- 11.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 11.1.8 procure that the Supplier Personnel shall vacate the Buyer Premises immediately upon the termination or expiry of this Contract.
- 11.2 If the Buyer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
 - 11.2.1 refuse admission to the relevant person(s) to the Buyer's Premises; and/or
 - 11.2.2 require that the Supplier replace as soon as reasonably practicable any such relevant person(s) with a suitably qualified alternative and procure that any security pass issued by the Buyer to the relevant person(s) replaced is surrendered.

Key Supplier Personnel

- 11.3 The Supplier shall ensure that the Key Supplier Personnel fulfil the Key Roles at all times during the Contract Period.
- 11.4 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall for the purposes of this Contract be included on the list of Key Supplier Personnel.
- 11.5 The Supplier shall not and shall procure that any Sub-Contractor shall not remove or replace any Key Supplier Personnel (including when carrying out Exit Management, if any) unless:
 - 11.5.1 requested to do so by the Buyer or the Supplier obtains the Buyer's prior written consent to such removal or replacement (such consent not to be unreasonably withheld or delayed);
 - 11.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave; or
 - 11.5.3 the person's employment or contractual arrangement with the Supplier or Sub-Contractor is terminated for material breach of contract by the employee.
- 11.6 The Supplier shall:
 - 11.6.1 notify the Buyer promptly of the absence of any Key Supplier Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 11.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 11.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Supplier Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Supplier Personnel's employment contract, this will mean at least three (3) months' notice;
 - 11.6.4 ensure that all arrangements for planned changes in Key Supplier Personnel provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services and Deliverables; and

- 11.6.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Supplier Personnel whom he or she has replaced.
- 11.7 The Buyer may require the Supplier to remove or procure that any Sub-Contractor shall remove any Key Supplier Personnel that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Supplier Personnel.

Employment Liabilities

- 11.8 The Parties agree that:
 - 11.8.1 the Supplier shall both during and after the Contract Period indemnify the Buyer against all Employment Liabilities that may arise as a result of any claims brought against the Buyer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
 - 11.8.2 the Buyer shall both during and after the Contract Period indemnify the Supplier against all Employment Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

Relevant Convictions

- 11.9 For the purpose of Clauses 11.9 to 11.11 (inclusive), the following definitions shall apply:
 - 11.9.1 **"Conviction"** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006; and
 - 11.9.2 **"Relevant Conviction"** means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Buyer in the Order Form.
- 11.10 The Supplier shall ensure that no person who discloses that they have a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without the approval of the Buyer.
- 11.11 Notwithstanding Clause 11.10, for each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
 - 11.11.1 carry out a check with the records held by the Department for Education (DfE);
 - 11.11.2 conduct thorough questioning regarding any Relevant Convictions; and

11.11.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

12. STAFF TRANSFER

Where indicated in the Order Form, the Parties shall comply with the provisions of Call Off Schedule 14 (Staff Transfer).

13. STANDARDS

The Supplier shall at all times during the Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

14. EQUIPMENT AND MAINTENANCE

Supplier Equipment

14.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Buyer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Buyer Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

14.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer.

14.3 Subject to any express provision of the BCDR Plan (if any) to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Service Levels.

Maintenance

14.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Buyer. Once the Maintenance Schedule has been agreed with the Buyer Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

14.5 The Supplier shall give as much notice as is reasonably practicable to the Buyer Representative prior to carrying out any Emergency Maintenance.

14.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

- 14.7 Where, as part of the Services, the Supplier is to sell goods or equipment (including embedded software) ("**Goods**") to the Buyer:
- 14.7.1 the relevant Goods and their prices shall be as set out in Attachment 2 (Charges and Invoicing) of the Order Form or as otherwise agreed with the Buyer. Such prices shall be inclusive of delivery costs;
 - 14.7.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - 14.7.3 the Supplier shall ensure and warrants that the Goods are free from material defects in design, materials and workmanship and remain so:
 - (a) in the case of PC Refurbished Devices for four (4) years from the deployment of the relevant PC Refurbished Device to the End User but excluding laptop batteries and AC adaptors which are warranted for twelve (12) months from deployment;
 - (b) in the case of PC Remanufactured Devices, for four (4) years from deployment of the relevant PC Remanufactured Device to the End User but excluding laptop batteries and AC adaptors which are warranted for twelve (12) months from deployment;
 - (c) in the case of Mobile Refurbished Devices, for twelve (12) months from deployment of the relevant Mobile Refurbished Device to the End User;
 - (d) in the case of New Dell Devices, for three (3) years from the shipment date by the supplier or original equipment manufacturer to the End User;
 - (e) in the case of New Apple Devices (smart phones, tablets), for twelve (12) months from the shipment date by the Supplier or original equipment manufacturer to the End User; and
 - (f) in the case of all other Goods for twelve (12) months from the shipment by the Supplier or original equipment manufacturer to the End User:

each period of time being (the "**Warranty Period**" in respect of the relevant Goods. In the event any Goods are defective during their Warranty Period, Clause 14.7.13 shall apply. A further warranty period equal to the length of the warranty period for the relevant Goods as set out in Clause 14.7.3 shall apply to any replacement Goods after their delivery or deployment (as applicable);
 - 14.7.4 if following inspection or testing the Buyer considers that the Goods do not conform with the relevant specification or are defective, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance pursuant to Clause 14.7.13. The Goods shall not be considered accepted by the Buyer until the earlier of: (a) the Buyer communicating its acceptance to the Supplier of the Goods or (b) ten (10) Working Days passing since the Buyer has been notified by the Supplier that the Goods are ready for inspection by the Buyer. Acceptance of the Goods by the Buyer is without prejudice to Clause 14.7.3;

- 14.7.5 without prejudice to any other rights or remedies of the Buyer:
- (a) risk in the Goods shall pass to the Buyer at the time of delivery; and
 - (b) ownership of the Goods shall pass to the Buyer at the time of payment. In the event that ownership of the Goods passes to the Buyer prior to delivery, the Supplier shall keep the Goods in safe storage until delivery and not mix the Goods with the goods of other customers;
- 14.7.6 the Supplier shall not be the exclusive supplier of the Goods to the Buyer and the Buyer may purchase the same or similar Goods from third parties;
- 14.7.7 the Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership;
- 14.7.8 the Supplier must Deliver the Goods on the date and to the location specified by the Buyer, during the Buyer's working hours as communicated to the Supplier;
- 14.7.9 the Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged;
- 14.7.10 all deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods;
- 14.7.11 the Supplier must provide all information and instructions the Buyer needs to make use of the Goods;
- 14.7.12 the Buyer can cancel any order or part order of Goods which has not been delivered. If the Buyer gives less than fourteen (14) days' notice prior to the due date of delivery then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable endeavours to minimise these costs;
- 14.7.13 the Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they do not conform with this Clause 14.7 or become defective during their Warranty Period;
- 14.7.14 the Supplier indemnifies the Buyer against the costs of any Recall of the Goods and shall give notice of actual or anticipated action about the Recall of the Goods;
- 14.7.15 the Buyer will not be liable for any actions, claims and/or Losses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by the negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Sub-Contractors or Supplier Personnel; and
- 14.7.16 the Supplier shall be responsible for registering the Goods in accordance with the Services Specification.

Management of Goods and Buyer Provided Goods

- 14.8 Unless otherwise agreed with the Buyer, the Supplier will in accordance with the Buyer Requirements manage the Goods and Buyer Provided Goods.

- 14.9 The costs for maintaining and managing the Goods and Buyer Provided Goods in accordance with the Buyer's Requirements shall be included within the Charges and the Supplier shall not be entitled to any additional charges, costs or expenses in relation to its maintenance and management requirements.
- 14.10 Where applicable, the Supplier shall also be responsible as part of managing the Buyer Provided Goods for:
- 14.10.1 any off-loading from the Buyer;
 - 14.10.2 any removal of packaging; and
 - 14.10.3 any installation requirements.
- 14.11 On termination or expiry of this Contract, the Supplier shall be responsible for the safe return or disposal (at the Buyer's option) of all Goods and/or Buyer Provided Goods in its possession including the cost of packing and carriage, and taking account of any sustainability requirements and safe removal of data and recycling requirements where applicable.
- 14.12 The Supplier shall manage any applicable manufacturer warranties in respect of the Buyer Provided Goods as communicated to it by the Buyer and shall be responsible for registering Buyer Provided Goods with the warranty provider in accordance with the Services Specification.
- 14.13 Where any Goods and/or Buyer Provided Goods are in the possession of the Supplier, they shall remain at the sole risk and responsibility of the Supplier.
- 14.14 The Supplier shall in accordance with the Services Specification support, update and replace Legacy Assets within the Buyer's estate.
- 14.15 Where a Heritage Device is beyond repair, the Supplier shall notify the Buyer and, unless otherwise agreed in writing by the Buyer, shall replace that Heritage Device with an equivalent Heritage Device held in stock by the Supplier (or the Buyer as applicable).
- 14.16 The Supplier shall on an ongoing basis monitor the stock levels of Heritage Devices. The Supplier shall notify the Buyer immediately where it considers that the stock levels and/or general market availability of Heritage Devices is such that it may impact the Supplier's ability to provide a replacement in accordance with Clause 14.15.
- 14.17 The Supplier shall on an ongoing basis as part of its continued service improvement obligations investigate whether any devices and/or solutions available in the market can be deployed to replace the Heritage Devices. Where the Supplier identifies such replacement devices or solutions it shall submit a replacement proposal to the Buyer.
- 14.18 Where during the Contract Period any Buyer Provider Goods or Goods are unable to be upgraded as part of a programme being undertaken by the Supplier, the Supplier shall notify the Buyer that such Buyer Provider Goods or Goods are eligible for designation as Heritage Devices. The Buyer shall confirm in writing to the Supplier whether it accepts that such Buyer Provided Goods and/or Goods may be designated as a Heritage Device. Following confirmation by the Buyer, such Buyer Provided Goods and/or Goods shall be treated as Heritage Devices for the purpose of the Contract and Clauses 14.15 to 14.17 shall apply.

15. CHARGES AND INVOICING

Charges and Invoicing

- 15.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Buyer shall pay the Charges to the Supplier

in accordance with the pricing and payment profile and the invoicing procedure specified in Call Off Schedule 2 (Charges and Invoicing).

- 15.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 7.9 (Testing and Achievement of Milestones), 29 (Reports and Audits), 41 (Transparency and Freedom of Information), 34 (Protection of Personal Data) and, to the extent specified therein, Clause 31 in respect of step-in.
- 15.3 If the Buyer fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 15.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice.
- 15.5 The Supplier shall indemnify the Buyer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Buyer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 15.5 shall be paid in cleared funds by the Supplier to the Buyer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Buyer.

Set-off and Withholding

- 15.6 The Buyer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.
- 15.7 If the Buyer wishes to exercise its right pursuant to Clause 15.6 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Buyer's reasons for withholding or retaining the relevant Charges.

16. INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 16.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 16.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 (including IR35) and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 16.1.2 indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services and/or Deliverables by the Supplier or any Supplier Personnel.
- 16.2 In the event that any one of the Supplier Personnel is a Worker who receives consideration relating to the Services and/or Deliverables, then, in addition to its

obligations under Clause 16.1 the Supplier shall ensure that its contract with the Worker contains the following requirements:

- 16.2.1 that the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 16.1, or why those requirements do not apply to it. In such case, the Buyer may specify the information which the Worker must provide and the period within which that information must be provided;
- 16.2.2 that the Worker's contract may be terminated at the Buyer's request if:
 - (a) the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer; or
 - (b) the Worker provides information which the Buyer considers is inadequate to demonstrate how the Worker complies with Clause 16.1 or confirms that the Worker is not complying with those requirements;
- 16.2.3 that the Buyer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

17. BENCHMARKING AND CONTINUOUS IMPROVEMENT

- 17.1 Where indicated in the Order Form, the Parties shall comply with the provisions of Call Off Schedule 15 (Benchmarking) in relation to the benchmarking of any or all of the Services.
- 17.2 Where indicated in the Order Form, the Parties shall comply with the provisions of Call Off Schedule 17 (Continuous Improvement) in relation to the continuous improvement of the Services.

18. FINANCIAL DISTRESS

The Parties shall comply with the provisions of Call Off Schedule 8 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

19. LIMITATION OF LIABILITY

Unlimited Liability

- 19.1 Neither Party limits its liability for:
 - 19.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - 19.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 19.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 19.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 19.2 The Supplier's liability in respect of the indemnities in Clause 15.5 (VAT), Clause 11.8.1 (Employment Indemnity), Clause 16.1.2 (Income Tax and National Insurance Contributions), Clause 23 (IPRs Indemnity) and where used, Call Off

Schedule 14 (Staff Transfer) and the Annexes to Call Off Schedule 14 (Staff Transfer) be unlimited.

- 19.3 The Buyer's liability in respect of the indemnities in Clause 11.8.2 (Employment Indemnity) and where used, Call Off Schedule 14 (Staff Transfer) and the Annexes to Call Off Schedule 14 (Staff Transfer) shall be unlimited.

Financial and other limits

- 19.4 Subject to Clauses 19.1 and 19.2 and Clauses 19.7:

19.4.1 the Supplier's aggregate liability in respect of loss of or damage to the Buyer Premises or other property or assets of the Buyer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Buyer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed ten million pounds (£10,000,000);

19.4.2 the Supplier's aggregate liability in respect of loss of or damage to Buyer Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed ten million pounds (£10,000,000);

19.4.3 the Supplier's aggregate liability in respect of all:

- (a) Service Credits; and
- (b) Compensation for Critical Service Level Failure;

incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap; and

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

- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
- (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Contract Period, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Contract Period,

provided that where any Losses referred to this Clause 19.4.4 have been incurred by the Buyer as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200%.

- 19.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 19.4.4.

- 19.6 Subject to Clauses 19.1 and 19.3 and Clause 19.7 and without prejudice to the Buyer's obligation to pay the Charges as and when they fall due for payment:
- 19.6.1 the Buyer's total aggregate liability as a result of early termination of this Contract by the Buyer pursuant to Clause 35.1.9 (Termination Without Cause) shall comprise the fee calculated in accordance with the provisions of Clause 36.2 and Attachment 2 (Charges) of the Order Form;
 - 19.6.2 the Buyer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Buyer shall in no event exceed:
 - (a) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
 - (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
 - (c) in relation to Defaults occurring after the end of the Contract Period, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Contract Period.

Consequential Losses

- 19.7 Subject to Clauses 19.1, 19.2 and 19.3 and Clause 19.8, neither Party shall be liable to the other Party for:
- 19.7.1 any indirect, special or consequential Loss; or
 - 19.7.2 any loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 19.8 Notwithstanding Clause 19.7 but subject to Clause 19.4, the Supplier acknowledges that the Buyer may, amongst other things, recover from the Supplier the following Losses incurred by the Buyer to the extent that they arise as a result of a Default by the Supplier:
- 19.8.1 any additional operational and/or administrative costs and expenses incurred by the Buyer, including costs relating to time spent by or on behalf of the Buyer in dealing with the consequences of the Default;
 - 19.8.2 any wasted expenditure or charges;
 - 19.8.3 the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
 - 19.8.4 any compensation or interest paid to a third party by the Buyer; and
 - 19.8.5 any fine or penalty incurred by the Buyer pursuant to Law and any costs incurred by the Buyer in defending any proceedings which result in such fine or penalty.

Mitigation

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

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Except as expressly set out in this Contract:

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

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

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

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

20.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Buyer.

- 20.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 20.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

- 20.4 Unless the Buyer otherwise agrees in advance in writing:

20.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software; and

20.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Buyer.

- 20.5 Where the Buyer agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Buyer's ability to publish other Open Source software under Clause 24.

- 20.6 The Supplier waives (and shall procure that each of the Supplier Personnel shall waive) any moral rights which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, to the extent such rights arise.

21. TRANSFERS AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

- 21.1 Subject to Clause 21.17 the Supplier hereby agrees to transfer to the Buyer, or shall procure the transfer to the Buyer of, all rights (subject to Clause 20.1.1 in the Specially Written Software and the Project Specific IPRs including (without limitation):

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

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

but not including any Know-How, trade secrets or Confidential Information.

- 21.2 The Supplier:

21.2.1 shall:

- (a) inform the Buyer of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
- (b) deliver to the Buyer the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer; and
- (c) without prejudice to Clause 21.11, provide full details to the Buyer of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

21.2.2 acknowledges and agrees that the ownership of the media referred to in Clause 21.2.1(b) shall vest in the Buyer upon their receipt by the Buyer; and

21.2.3 shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Buyer.

Supplier Software and Supplier Background IPRs

- 21.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in the Order Form, or where it has been, sent to the Technical Design Authority for review and approval granted by the Buyer and subsequently approved by the Buyer in writing.

- 21.4 The Supplier hereby grants to the Buyer:
- 21.4.1 subject to the provisions of Clause 21.17, perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
 - (a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Buyer for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
 - (b) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function;
 - 21.4.2 a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Buyer and Supplier COTS Background IPRs on the licence terms identified in a letter or substantially in the form set out in Part A of Call Off Schedule 9 (Software) and signed by or on behalf of the Parties on or before the Commencement Date provided always that the Buyer shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 21.7 and 21.8 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
 - 21.4.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 21.5 At any time during the Contract Period or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under 21.4.1(a) or in respect of the Supplier Non-COTS Background IPRs under Clause 21.4.1(b) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Buyer or any person to whom the Buyer grants a sub-licence pursuant to Clause 21.7 (Buyer's right to sub-license) commits any material breach of the terms of Clause 21.4.1(a) or 21.4.1(b) or 21.7.1 (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.
- 21.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 21.5, the Buyer shall:
- 21.6.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
 - 21.6.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Buyer may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
 - 21.6.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in

electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Buyer's right to sub-license

21.7 Subject to Clause 21.17, the Buyer may sub-license:

- 21.7.1 the rights granted under Clause 21.4 to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (a) the sub-license is on terms no broader than those granted to the Buyer;
 - (b) the sub-license authorises the third party to use the rights licensed in Clause 21.4 only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
 - (c) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Part B to Call Off Schedule 9 (Software); and
- 21.7.2 the rights granted under Clause 21.4 to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (a) the sub-license is on terms no broader than those granted to the Buyer; and
 - (b) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Part B to Call Off Schedule 9 (Software) duly executed by the Approved Sub-Licensee.

Buyer's right to assign/novate licences

- 21.8 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 21.4 to:
 - 21.8.1 a Central Government Body; or
 - 21.8.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.
- 21.9 Any change in the legal status of the Buyer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 21.4. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licence granted in Clause 21.4.
- 21.10 If a licence granted in Clause 21.4 is novated under Clause 21.8 or there is a change of the Buyer's status pursuant to Clause 21.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Buyer.

Third Party Software and Third Party IPRs

- 21.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party

Non-COTS Software or Third Party Non-COTS IPRs unless detailed in the Order Form, or where it has been approved by the Buyer following a review by the Technical Design Authority and has in each case either:

- 21.11.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Buyer on a royalty-free basis to the Buyer and on terms no less favourable to the Buyer than those set out in Clauses 21.4.1 and 21.5 and Clause 21.8; or
 - 21.11.2 complied with the provisions of Clause 21.12.
- 21.12 If the Supplier cannot obtain for the Buyer a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 21.11.1, the Supplier shall:
- 21.12.1 notify the Buyer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - 21.12.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Buyer has first approved in writing the terms of the licence from the relevant third party.
- 21.13 The Supplier shall:
- 21.13.1 notify the Buyer in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - 21.13.2 unless instructed otherwise in writing by the Buyer in any case within twenty (20) Working Days of notification pursuant to 21.12.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Buyer on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 21.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Buyer does not have a suitable licence, then the Supplier must notify the Buyer within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

- 21.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 21.
- 21.16 The Supplier shall, if requested by the Buyer and at the Supplier's cost:
- 21.16.1 grant (or procure the grant) to any Replacement Supplier of:
 - (a) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Buyer in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 21 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or

substantially in the form set out in Part B to Call Off Schedule 9 (Software) duly executed by the Replacement Supplier;

- (b) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or

21.16.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

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

22. LICENCES GRANTED BY THE BUYER

22.1 The Buyer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Buyer Software, the Buyer Background IPRs, the Specially Written Software, the Project Specific IPRs and the Buyer Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

22.1.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 39; and

22.1.2 the Supplier shall not, without the Buyer's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.

22.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 22.1 and any sub-licence granted by the Supplier in accordance with Clause 22.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

22.2.1 immediately cease all use of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be);

22.2.2 at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data, provided that if the Buyer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be); and

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

containing such Buyer Software, Buyer Background IPRs and/or Buyer Data.

23. IPR INDEMNITY

- 23.1 The Supplier shall at all times, during and after the Contract Period, on written demand indemnify the Buyer and each other Indemnified Person, and keep the Buyer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 23.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 23.2.1 procure for the Buyer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - 23.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (c) there is no additional cost to the Buyer or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 23.3 If the Supplier elects to procure a licence in accordance with Clause 23.2.1 or to modify or replace an item pursuant to Clause 23.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 23.3.1 the Buyer may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and
 - 23.3.2 without prejudice to the indemnity set out in Clause 23.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

24. OPEN SOURCE PUBLICATION

- 24.1 The Supplier agrees that the Buyer may at its sole discretion publish as Open Source all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Commencement Date.
- 24.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- 24.2.1 are suitable for release as Open Source and that any release will not allow a third party to use the Open Source to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Buyer System;
 - 24.2.2 shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;

- 24.2.3 do not contain any material which would bring the Buyer into disrepute upon publication as Open Source;
 - 24.2.4 do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
 - 24.2.5 will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Commencement Date.
- 24.3 The Supplier shall ensure that the Open Source Publication Material provided to the Buyer does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Buyer and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Buyer when publishing as Open Source.
- 24.4 The Supplier hereby indemnifies the Buyer against all claims in which the Buyer is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Clause 24.

25. **PUBLICITY AND BRANDING**

- 25.1 The Supplier shall not, and shall take all reasonable steps to ensure the Supplier Personnel do not, make any press announcements or publicise this Contract or any part of it in any way nor use the Buyer's name or brand in any promotion or marketing or announcement of orders, without the Buyer's prior written approval (the decision of the Buyer to approve or not shall not be unreasonably withheld or delayed).
- 25.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services and Deliverables) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

26. **BUYER DATA AND SECURITY REQUIREMENTS**

Security Requirements

- 26.1 Where indicated in the Order Form, the Parties shall comply with either Part A or Part B of Call Off Schedule 13 (Security Requirements).
- 26.2 Where a Buyer has notified the Supplier that the award of this Contract by the Buyer shall be conditional upon the Supplier having an accredited security facility and a number of UK national security cleared personnel, the Supplier shall have:
- 26.2.1 (or be willing obtain within such period as agreed between the Parties) an accredited secure facility environment in accordance with HMG Security Policy Framework May 2018 and/or any future variations to the policy, (commonly referred to as List X). Further information on List X accreditation can be found at: <https://www.gov.uk/government/publications/security-policy-framework>; and
 - 26.2.2 a number of UK national security cleared personnel prior to the Commencement Date.

- 26.3 If the Supplier fails to comply with Clause 26.2 above, then without prejudice to the Buyer's other rights and remedies (if any), the Buyer shall be entitled to terminate this Contract for material Default in accordance with Clause 35.1.1.

Protection of Buyer Data

- 26.4 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer Data.
- 26.5 The Supplier shall not store, copy, disclose, or use the Buyer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Buyer.
- 26.6 To the extent that the Buyer Data is held and/or Processed by the Supplier, the Supplier shall supply that Buyer Data to the Buyer as requested by the Buyer and in the format (if any) specified in this Contract and in any event as specified by the Buyer from time to time in writing.
- 26.7 The Supplier shall preserve the integrity of Buyer Data and prevent the corruption or loss of Buyer Data at all times that the relevant Buyer Data is under its control or the control of any Sub-Contractor.
- 26.8 The Supplier shall perform secure back-ups of all Buyer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Buyer (or to such other person as the Buyer may direct) at all times upon request and are delivered to the Buyer at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 26.9 The Supplier shall ensure that any system on which the Supplier holds any Buyer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 26.10 If the Buyer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Buyer may:
- 26.10.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Buyer Data to the extent and in accordance with the requirements specified in Call Off Schedule 16 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Buyer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Buyer's notice; and/or
- 26.10.2 itself restore or procure the restoration of Buyer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 16 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Buyer.

27. MALICIOUS SOFTWARE

- 27.1 The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 27.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:

27.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Buyer Data (whilst the Buyer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and

27.3.2 by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

28. GOVERNANCE

28.1 The Parties shall comply with the provisions of Call Off Schedule 7 (Governance) in relation to the management and governance of this Contract.

Representatives

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

28.3 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 11 (Supplier Personnel).

28.4 The initial Buyer Representative shall be the person named as such in the Order Form. The Buyer may, by written notice to the Supplier, revoke or amend the authority of the Buyer Representative or appoint a new Buyer Representative.

29. RECORDS AND AUDIT

29.1 The Supplier shall keep and maintain for seven (7) years after termination or expiry of this Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Buyer.

29.2 The Supplier shall:

29.2.1 keep the records and accounts referred to in Clause 29.1 in accordance with Good Industry Practice and Law; and

29.2.2 afford any Auditor access to the records and accounts referred to in Clause 29.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 29.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including for the following purposes to:

(a) verify the accuracy of the Charges and any other amounts payable by the Buyer under this Contract (and any proposed or actual variations to them in accordance with this Contract);

(b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

- (c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (d) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened Breach of Security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor (if applicable) and/or any Sub-Contractors or their ability to perform the Services;
- (f) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (h) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
- (i) enable the National Audit Office 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 Buyer has used its resources;
- (j) review any Performance Monitoring Reports provided under Part B (Performance Monitoring) of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (k) verify the accuracy and completeness of any information delivered or required by this Contract;
- (l) inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (m) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (n) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (o) review the Supplier's compliance with the Standards;
- (p) inspect the Buyer Assets, including the Buyer's IPRs, equipment and facilities, for the purposes of ensuring that the Buyer Assets are secure and that any register of assets is up to date; and/or
- (q) review the integrity, confidentiality and security of the Buyer Data.

29.3 The Buyer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save

insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Buyer.

29.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

29.4.1 all reasonable information requested by the Buyer within the scope of the audit;

29.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and

29.4.3 access to the Supplier Personnel.

29.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 29.1, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Buyer for the Buyer's reasonable costs incurred in relation to the audit.

30. **INSURANCE**

30.1 Without limitation to the generality of Clause 30.2, the Supplier shall ensure that it maintains the policy or policies of insurance referred to in the Order Form.

30.2 Notwithstanding the benefit to the Buyer of the policy or policies of insurance referred to in Framework Schedule 14 (Insurance Requirements), the Supplier shall effect and maintain any such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured by under the Framework in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.

31. **BUYER REMEDIES FOR DEFAULT**

Remedies

31.1 Without prejudice to any other right or remedy of the Buyer howsoever arising (including under Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 9.5 and 7.8, if the Supplier commits any Default of this Contract then the Buyer may (whether or not any part of the Services have been delivered) do any of the following:

31.1.1 at the Buyer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Buyer's instructions;

31.1.2 carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;

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

(a) instruct the Supplier to comply with the Rectification Plan Process;

(b) suspend this Contract (whereupon the relevant provisions of Clause 35.3 (Partial Termination, Suspension and Partial Suspension) shall

apply) and step- in to itself supply or procure a third party to supply (in whole or in part) the Services;

- (c) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 35.3 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;

- 31.2 Where the Buyer exercises any of its step-in rights under Clauses 31.1.3(b) or 31.1.3(c), the Buyer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Buyer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Buyer or a third party and provided that the Buyer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

Rectification Plan Process

- 31.3 Where the Buyer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 31.1.3(c) the Supplier shall submit a draft Rectification Plan to the Buyer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Buyer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Buyer's request for a draft Rectification Plan.
- 31.4 The draft Rectification Plan shall set out:
 - 31.4.1 full details of the Default that has occurred, including a root cause analysis;
 - 31.4.2 the actual or anticipated effect of the Default; and
 - 31.4.3 the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 31.5 The Supplier shall promptly provide to the Buyer any further documentation that the Buyer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an Expert in accordance with Paragraph 6 of Call Off Schedule 4 (Dispute Resolution Procedure).
- 31.6 The Buyer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
 - 31.6.1 is insufficiently detailed to be capable of proper evaluation;
 - 31.6.2 will take too long to complete;
 - 31.6.3 will not prevent recurrence of the Default; and/or
 - 31.6.4 will rectify the Default but in a manner which is unacceptable to the Buyer.
- 31.7 The Buyer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Buyer rejects the draft Rectification Plan, the Buyer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Buyer for review within five (5) Working

Days (or such other period as agreed between the Parties) of the Buyer's notice rejecting the first draft.

31.8 If the Buyer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

32. SUPPLIER RELIEF DUE TO BUYER CAUSE

32.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

- 32.1.1 Achieve a Milestone by its Milestone Date;
- 32.1.2 provide the Services in accordance with the Service Levels; and/or
- 32.1.3 comply with its obligations under this Contract,

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

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Buyer Cause, then (subject to the Supplier fulfilling its obligations in this Clause 32):

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Buyer Cause;
- (b) the Buyer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Buyer Cause;
 - (ii) if the Buyer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Buyer Cause;
 - (iii) the Supplier shall have no liability to pay any Delay Payments associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Buyer Cause; and
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Buyer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 10; and
 - (iii) the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Buyer Cause,

in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Buyer Cause.

- 32.2 In order to claim any of the rights and/or relief referred to in Clause 32.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Buyer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Buyer notice (a "**Relief Notice**") setting out details of:
- 32.2.1 the Supplier Non-Performance;
 - 32.2.2 the Buyer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract;
 - 32.2.3 any steps which the Buyer can take to eliminate or mitigate the consequences and impact of such Buyer Cause; and
 - 32.2.4 the relief claimed by the Supplier.
- 32.3 Following the receipt of a Relief Notice, the Buyer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Buyer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Buyer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 32.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Buyer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 32.5 Without prejudice to Clause 8.9 (Continuing Obligation to Provide the Services), if a Dispute arises as to:
- 32.5.1 whether a Supplier Non-Performance would not have occurred but for a Buyer Cause; and/or
 - 32.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 32.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 32.1 shall be implemented in accordance with the Change Control Procedure.

33. **FORCE MAJEURE**

- 33.1 Subject to the remaining provisions of this Clause 33 (and, in relation to the Supplier, subject to its compliance with its obligations in Call Off Schedule 16 (Business Continuity Plan and Disaster Recovery where used)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 33.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

- 33.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:
- 33.3.1 are capable of being mitigated, but the Supplier has failed to do so;
 - 33.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
 - 33.3.3 are the result of the Supplier's failure to comply with its BCDR Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the BCDR Plan).
- 33.4 Subject to Clause 33.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 33.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 33.6 Where, as a result of a Force Majeure Event:
- 33.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days and the other Party may terminate this Contract in whole or in part after such continuous period by issuing a Termination Notice to the other Party; and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
 - 33.6.2 the Supplier fails to perform its obligations in accordance with this Contract:
 - (a) the Buyer shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 31.1.2 and 31.1.3 (Buyer Remedies for Default) as a result of such failure;
 - (ii) to receive Delay Payments pursuant to Clause 7.8 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits or withhold and retain any of the Service Charges as Compensation for Critical Service Level Failure pursuant to Clause 10.1 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and

- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 33.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 33.7.
- 33.9 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract under Clause 33.6.1(a) for a continuing Force Majeure Event.

34. PROTECTION OF PERSONAL DATA

Status of the Controller

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

and the Parties shall set out in the Schedule of Processing, Personal Data and Data Subjects which scenario or scenarios are intended to apply under this Contract.

Where One Party is Controller and the other Party its Processor

- 34.2 Where a Party is a Processor, the only processing that the Supplier is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Controller.
- 34.3 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 34.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - 34.4.1 a systematic description of the envisaged processing operations and the purpose of the Processing;
 - 34.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;

- 34.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 34.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 34.5 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 34.5.1 Process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
 - 34.5.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 26 (Buyer Data and Security Requirements) which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 34.5.3 ensure that:
 - (a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular the Schedule of Processing, Personal Data and Data Subjects);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any of the Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Supplier's duties under this Clause, Clauses 39 (Confidentiality) and in the case of the Supplier, 26 (Buyer Data and Security Requirements);
 - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Buyer or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 34.5.4 not transfer Personal Data to a Restricted Country unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37 as relevant) as determined by the Buyer;

- (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
 - (e) in respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with this Clause 34.5.4, the Processor shall, when requested by the Controller, promptly enter into an agreement with the Controller including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Controller might require which terms shall, in the event of any conflict, take precedence over those in this Clause 34, and the Processor shall comply with any reasonable instructions notified to it in advance by the Controller with respect to the transfer of the Personal Data; and
- 34.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.
- 34.6 Subject to Clause 34.7, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
- 34.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 34.6.2 receives a request to rectify, block or erase any Personal Data;
 - 34.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation; or
 - 34.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 34.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 34.6.6 becomes aware of a Data Loss Event.
- 34.7 The Processor's obligation to notify under Clause 34.6 shall include the provision of further information to the Controller in phases, as details become available.
- 34.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 34.6 (and insofar as possible within the timescales reasonably required by the Buyer) including by promptly providing:
- 34.8.1 the Controller with full details and copies of the complaint, communication or request;
 - 34.8.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- 34.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 34.8.4 assistance as requested by the Controller following any Data Loss Event; and
 - 34.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 34.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 34. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
 - 34.9.1 the Controller determines that the processing is not occasional;
 - 34.9.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 34.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 34.10 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor or representative.
- 34.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 34.12 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Processor must:
 - 34.12.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 34.12.2 obtain the written consent of the Controller;
 - 34.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 34 such that they apply to the Sub-processor; and
 - 34.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 34.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 34.14 The Buyer may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 34.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance, codes of practice, codes of conduct, regulatory guidance, standard clauses or any other related laws arising from the GDPR.

Where the Parties are Joint Controllers of Personal Data

- 34.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in the alternative Joint Controller clauses as indicated in Section C, Part C (Alternative Clauses) of the Order Form.

Where the Parties are Independent Controllers of Personal Data

- 34.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 34.18 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 34.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 34.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 34.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 34.21 The Parties shall only provide Personal Data to each other:
- 34.21.1 to the extent necessary to perform the respective obligations under this Contract;
 - 34.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - 34.21.3 where it has recorded it in the Schedule of Processing, Personal Data and Data Subjects.
- 34.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 34.23 A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 34.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("the **Request Recipient**"):
- 34.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

- 34.24.2 where the request or correspondence is directed to the other party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:
- (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 34.25 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- 34.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 34.25.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 34.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 34.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 34.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in the Schedule of Processing, Personal Data and Data Subjects.
- 34.27 Personal Data shall not be retained or Processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in the Schedule of Processing, Personal Data and Data Subjects.
- 34.28 Notwithstanding the general application of Clauses 34.2 to 34.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 34.16 to 34.27.

35. TERMINATION AND EXPIRY

35.1 Buyer Termination Rights

Termination on Material Default

- 35.1.1 The Buyer may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- (a) the Supplier commits a Critical Service Level Failure;
 - (b) as a result of any Defaults, the Buyer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clause 19.4.1, 19.4.2, 19.4.3 and 19.4.4;

- (c) the Buyer expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following: Clause 23 (IPRs Indemnity), Clause 46.5.2 (Prevention of Fraud and Bribery), Clause 56 (Sustainability and Supplier Code of Conduct) and Paragraph 5 of Call Off Schedule 8 (Financial Distress);
- (d) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Buyer, capable of remedy;
- (e) the Supplier commits a Default, including a material Default, which in the opinion of the Buyer is remediable but has not remedied such Default to the satisfaction of the Buyer in accordance with the Rectification Plan Process; and/or
- (f) the Buyer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- (g) the representation and warranty given by the Supplier pursuant to Clause 5.2.6 being materially untrue or misleading;
- (h) any failure by the Supplier to enter into or to comply with an Admission Agreement under Part D of Call Off Schedule 14 (Staff Transfer);
- (i) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;
- (j) in relation to Call Off Schedule 13 (Security Requirements);
 - (i) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements set out in Paragraphs 9.4 to 9.6 of Call Off Schedule 13 (Security Requirements);
 - (ii) the Supplier or its Sub-Contractor fails to comply with the agreed incident management process as defined by the ISMS which results in a material adverse effect on the Buyer business or operation.
- (k) the Supplier is in Material Default of any Joint Controller agreement relating to the Contract;
- (l) a Default that occurs and continues to occur on one or more occasions within six (6) months following the Buyer serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract;
- (m) Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;

35.1.2 For the purpose of Clause 35.1.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

Termination in Relation to Financial Standing

35.1.3 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Buyer there is a material

detrimental change in the financial standing and/or the credit rating of the Supplier which:

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

Termination on Insolvency

- 35.1.4 The Buyer may terminate this Contract with immediate effect by issuing a written notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

Termination on Change of Control

- 35.1.5 The Supplier shall notify the Buyer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 35.1.6 The Supplier shall ensure that any notification made pursuant to Clause 35.1.5 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 35.1.7 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier within six (6) months of:
- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
 - (b) where no notification has been made, the date that the Buyer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where written consent of the Buyer was granted prior to the Change of Control.

Termination for breach of Regulations

- 35.1.8 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c) of the Regulations.

Termination Without Cause

- 35.1.9 The Buyer shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least the number of days stipulated in the Order Form.

Termination in Relation to the Framework

- 35.1.10 The Buyer may terminate this Contract by giving by issuing a Termination Notice to the Supplier if the Framework is terminated for any reason whatsoever.

Termination in Relation to Benchmarking

- 35.1.11 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraph 3 Call Off Schedule 15 (Benchmarking) where used.

35.2 Supplier Termination Right

- 35.2.1 Supplier may issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate this Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within thirty (30) days of the date of the Reminder Notice.
- 35.2.2 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services for failure of the Buyer to pay undisputed sums of money (whether in whole or in part).

35.3 Partial Termination, Suspension and Partial Suspension

- 35.3.1 Where the Buyer has the right to terminate this Contract, the Buyer shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Buyer elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Buyer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
- 35.3.2 Any suspension of this Contract under Clause 35.3.1 shall be for such period as the Buyer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Buyer.
- 35.3.3 The Parties shall seek to agree the effect of any Change necessitated by a partial termination, suspension or partial suspension in accordance with the Change Control Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:
- (a) an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Buyer's termination rights under Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause); and
 - (b) reject the Change.

36. CONSEQUENCES OF TERMINATION AND EXPIRY

- 36.1 Consequences of termination under Paragraph 1.2 Call Off Schedule 18 (Guarantee) where used, 35.1.1 (Termination on Material Default), 35.1.3 (Termination in Relation to Financial Standing), 35.1.10 (Termination in Relation to Framework Agreement) and 35.1.11 (Termination in Relation to Benchmarking)
- 36.1.1 Where the Buyer:
- (a) terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 36.1; and
 - (b) then makes other arrangements for the supply of the Services,

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

36.2 Consequences of termination under Clauses 35.1.9 (Termination without Cause)

36.2.1 Where the Buyer terminates (in whole or in part) this Contract under Clause 35.1.9 (Termination without Cause) and Attachment 2 (Charges) of the Order Form expressly states:

- (a) the Supplier is entitled to be paid an early termination fee pursuant to this Clause 36.2.1 where the Buyer terminates this Contract pursuant to Clause 35.1.9 (Termination without Cause); and
- (b) in detail how any such early termination fee is to be calculated in the event of termination for convenience (including where relevant details of any formula for such calculation),

the Buyer shall pay to the Supplier the early termination fee (calculated in accordance with the formula set out in Attachment 2 (Charges) of the Order Form and due solely as a result of the Buyer terminating this Contract for convenience pursuant to Clause 35.1.9 (Termination without Cause)).

36.2.2 The Buyer shall not be liable under Clause 36.2.1 to pay any early termination fee(s):

- (a) which are claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) which when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated; or
- (c) where no such calculation details are expressly set out in Attachment 2 (Charges) of the Order Form.

36.3 Consequences of Termination for Any Reason or Expiry

36.3.1 Save as otherwise expressly provided in this Contract:

- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Buyer or the Supplier under Clauses 8.8 (Specially Written Software), 15.4 and 15.5 (VAT), 15.6 and 15.7 (Set-off and Withholding), 29 (Records and Audits), 11.8 (Employment Liabilities), 16 (Income Tax and National Insurance Contributions), 20 (IPRs), 21 (Transfers and Licenses Granted by the Supplier), 23 (IPRs Indemnity), 40 (Confidentiality), 41 (Transparency and FOIA), 34 (Protection of Personal Data), 19 (Limitation of Liability), 36 (Consequences of Termination or Expiry),

44 (Severance), 51 (Entire Agreement), 52 (Third Party Rights), 54 (Disputes), 55 (Governing Law and Jurisdiction), Call Off Schedule 1 (Definitions), Call Off Schedule 4 (Dispute Resolution Procedure), Call Off Schedule 10 (Exit Management), Call Off Schedule 14 (Staff Transfer), Clauses 2.4 to 2.7 inclusive (Collaboration Agreement) and without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive termination or expiry of this Contract.

- 36.3.2 The Parties shall comply with the provision of Call Off Schedule 10 (Exit Management) any current Exit Plan in relation to the orderly transition of the Services to the Buyer or a Replacement Supplier.

37. APPOINTMENT OF SUB-CONTRACTORS

- 37.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 37.1.1 manage any Sub-contractors in accordance with Good Industry Practice; and
 - 37.1.2 comply with its obligations under this Contract in the delivery of the Services.
- 37.2 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Buyer in writing of:
- 37.2.1 the proposed Sub-Contractor's name, registered office and company registration number;
 - 37.2.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 37.2.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 37.3 If requested by the Buyer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 37.2, the Supplier shall also provide:
- 37.3.1 a copy of the proposed Sub-Contract; and
 - 37.3.2 any further information reasonably requested by the Buyer.
- 37.4 The Buyer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 37.2 (or, if later, receipt of any further information requested pursuant to Clause 37.3), object to the appointment of the relevant Sub-Contractor if it considers that:
- 37.4.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Buyer;
 - 37.4.2 the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 37.4.3 the proposed Sub-Contractor employs unfit persons;
- in which case, the Supplier shall not proceed with the proposed appointment.

- 37.5 If:
- 37.5.1 the Buyer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (a) the Supplier's notice issued pursuant to Clause 37.2; and
 - (b) any further information requested by the Buyer pursuant to Clause 37.3; and
 - 37.5.2 the proposed Sub-Contract is not a Key Sub-Contract (which shall require the written consent of CCS and the Buyer in accordance with Clause 38 (Appointment of Key Sub-Contractors),
- the Supplier may proceed with the proposed appointment.
- 37.6 The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

38. APPOINTMENT OF KEY SUB-CONTRACTORS

- 38.1 The Supplier shall only be entitled to sub-contract its obligations to the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors) where such Key Sub-Contractors are set out in the Order Form.
- 38.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of CCS and the Buyer (such consent not to be unreasonably withheld or delayed). CCS and/or the Buyer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
- 38.2.1 the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
 - 38.2.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 38.2.3 the proposed Key Sub-Contractor employs unfit persons.
- 38.3 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
- 38.3.1 provisions which will enable the Supplier to discharge its obligations under this Contract;
 - 38.3.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
 - 38.3.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
 - 38.3.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
 - 38.3.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
 - (a) the data protection requirements set out in Clause 31 (Data Protection);

- (b) the FOIA requirements set out in Clause 41 (Transparency and FOIA);
 - (c) the keeping of records in respect of the services being provided under the Key Sub-Contract; and
 - (d) the conduct of audits set out in Clause 27 (Records and Audit);
- 38.3.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 35 and 36 of this Contract;
- 38.3.7 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer;
- 38.3.8 a provision requiring the Key Sub-Contractor to participate in, and if required by the Buyer in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-Contractors in, the Multi-Party Dispute Resolution Procedure;
- 38.3.9 a provision requiring the Key Sub-Contractor to:
- (a) promptly notify the Supplier and the Buyer in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor; or
 - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor,
- and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-Contractor first becomes aware of such); and
- (b) co-operate with the Supplier and the Buyer in order to give full effect to the provisions of Call Off Schedule 8 (Financial Distress), including meeting with the Supplier and the Buyer to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 3.3.2(b) of Call Off Schedule 8 (Financial Distress).

39. **SUPPLY CHAIN PROTECTION**

Advertising Sub-Contract Opportunities

39.1 The Supplier shall:

- 39.1.1 subject to Clauses 39.3 and 39.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of twenty-five thousand pounds (£25,000) that arise during the Contract Period;
- 39.1.2 within ninety (90) days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;

- 39.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 39.1.4 provide reports on the information at Clause 39.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer; and
 - 39.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 39.2 Each advert referred to in Clause 39.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 39.3 The obligation at Clause 39.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.
- 39.4 Notwithstanding Clause 39.1 the Buyer may, by giving its prior written approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

Supply Chain Protection

- 39.5 The Supplier shall ensure that all Sub-Contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:
- 39.5.1 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
 - 39.5.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 39.5.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-Clause 39.5.2, the invoice shall be regarded as valid and undisputed for the purpose of sub-Clause 39.5.4 after a reasonable time has passed;
 - 39.5.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 39.5.5 giving the Buyer a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 39.5.6 requiring the Sub-Contractor to include a clause to the same effect as this Clause 39 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 39.6 The Supplier shall:
- 39.6.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
 - 39.6.2 include within the Performance Monitoring Reports required under Part B of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with Clause 39.6.1, such data to

be certified each quarter by a director of the Supplier as being accurate and not misleading.

39.7 Notwithstanding any provision of Clauses 40 (Confidentiality) and 25 (Publicity and Branding) if the Supplier notifies the Buyer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

39.8 The Buyer may require the Supplier to terminate:

39.8.1 a Sub-Contract where:

- (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Buyer's right of termination pursuant to any of the termination events in Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause); and/or
- (b) the relevant Sub-Contractor or its Affiliates embarrassed the Buyer or otherwise brought the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Buyer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise;

39.8.2 a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:

- (a) the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (b) the Buyer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Buyer was given notice of the Change of Control; and/or

39.8.3 a Key Sub-Contract where the relevant Key Sub-Contractor is subject to a Financial Distress Event.

40. **CONFIDENTIALITY**

40.1 For the purposes of this Clause 40, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

40.2 Except to the extent set out in this Clause 40 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

40.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and

40.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;

40.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and

- 40.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 40.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
 - 40.3.1 the Recipient is required to disclose the Confidential Information by Law;
 - 40.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Buyer arising out of or in connection with this Contract;
 - (b) the purpose of the examination and certification of the Buyer'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 Buyer is making use of any Services provided under this Contract; or
 - (c) the conduct of a Central Government Body review in respect of this Contract;
 - 40.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 40.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 40.5 Subject to Clauses 40.2 and 40.3, the Supplier may only disclose the Buyer's Confidential Information on a confidential basis to:
 - 40.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Contract; and
 - 40.5.2 its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 40.6 Where the Supplier discloses Confidential Information of the Buyer pursuant to this Clause 40, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 40.7 The Buyer may disclose the Confidential Information of the Supplier:
 - 40.7.1 on a confidential basis to any Central Government Body for any proper purpose of the Buyer or of the relevant Central Government Body;
 - 40.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 40.7.3 to the extent that the Buyer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- 40.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Buyer for any purpose relating to or connected with this Contract;
- 40.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- 40.7.6 to a proposed transferee, assignee or novatee of, or successor in title to the Buyer,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Buyer under this Clause 40.

- 40.8 In the event of a breach by the Supplier of any of the applicable provisions of this Clause 40, the Buyer reserves the right to terminate this Contract for material Default.

41. **TRANSPARENCY AND FOIA**

- 41.1 The Parties acknowledge that:

- 41.1.1 the Transparency Reports; and
- 41.1.2 the content of this Contract, including any changes to this Contract agreed from time to time, except for:
 - (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and
 - (b) Commercially Sensitive Information;

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

- 41.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Buyer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Buyer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 41.3 The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Call Off Schedule 6 (Transparency Reports).
- 41.4 The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
 - 41.4.1 provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;
 - 41.4.2 transfer to the Buyer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 41.4.3 provide the Buyer with a copy of all Information held on behalf of the Buyer which is requested in a Request For Information and which is in its possession or control in the form that the Buyer requires within five (5) Working Days (or such other period as the Buyer may reasonably specify) of the Buyer's request for such Information; and

41.4.4 not respond directly to a Request For Information addressed to the Buyer unless authorised in writing to do so by the Buyer.

41.5 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Buyer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Buyer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

42. WAIVER

42.1 A partial or full waiver or relaxation of the terms of this Contract is only valid if it is stated to be a waiver in writing to the other Party.

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

43. FURTHER ASSURANCES

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

44. SEVERANCE

44.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.

44.2 In the event that any deemed deletion under Clause 44.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

44.3 If the Parties are unable to agree on the revisions to this Contract within five (5) Working Days of the date of the notice given pursuant to Clause 44.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Call Off Schedule 4 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 44.3.

45. RELATIONSHIP OF THE PARTIES

45.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between

the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

46. PREVENTING FRAUD BRIBERY AND CORRUPTION

- 46.1 The Supplier must not during the Contract Period:
 - 46.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); nor
 - 46.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Sub-Contractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 46.2 The Supplier must during the Contract Period:
 - 46.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Sub-Contractors to do the same;
 - 46.2.2 keep full records to show it has complied with its obligations under this Clause 46 and give copies to the Buyer on request; and
 - 46.2.3 if required by the Buyer, within twenty (20) Working Days of the Commencement Date, and then annually, certify in writing to the Buyer, that it has complied with this Clause 46, including compliance of Supplier Personnel, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 46.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 46.1 and 46.2 or has any reason to think that it, or any of the Supplier Personnel, has either:
 - 46.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 46.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 46.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Framework or any contract entered into under the Framework; or
 - 46.3.4 suspected that any person or Party directly or indirectly related to the Framework or any contract entered into under the Framework has committed or attempted to commit a Prohibited Act.
- 46.4 If the Supplier notifies the Buyer as required by Clause 46.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation.
- 46.5 If the Supplier breaches Clause 46.2 , the Buyer may by notice:
 - 46.5.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 46.5.2 immediately terminate this Contract for material Default.

- 46.6 In any notice the Supplier gives under Clause 46.3 it must specify the:
- 46.6.1 Prohibited Act;
 - 46.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
 - 46.6.3 action it has decided to take.

47. **EQUALITY, DIVERSITY AND HUMAN RIGHTS**

- 47.1 The Supplier must follow all applicable equality Law when it performs its obligations under this Contract, including:
- 47.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - 47.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 47.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

48. **ASSIGNMENT AND NOVATION**

- 48.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.
- 48.2 The Buyer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
- 48.2.1 any Central Government Body; or
 - 48.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer,
- and the Supplier shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer shall reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 48.2.
- 48.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not, subject to Clause 48.4, affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.
- 48.4 If the Buyer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Buyer (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Buyer under Clause 35.1.4 as if references in that Clause to the Supplier and to Supplier or Guarantor (if applicable) in the definition of Insolvency Event were references to the Successor Body).

49. **CHANGE**

Change Control Procedure

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

Change in Law

49.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

49.2.1 a General Change in Law; or

49.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

49.3 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 49.2.2), the Supplier shall:

49.3.1 notify the Buyer as soon as reasonably practicable of the likely effects of that change, including:

(a) whether any Change is required to the Services, the Charges or this Contract; and

(b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and

49.3.2 provide the Buyer with evidence:

(a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

(b) as to how the Specific Change in Law has affected the cost of providing the Services; and

(c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Call Off Schedule 17 (Continuous Improvement) where used, has been taken into account in amending the Charges.

49.3.3 Any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 49.2.2) shall be implemented in accordance with the Change Control Procedure.

50. NOTICES

50.1 Any notices sent under this Contract must be in writing.

50.2 Subject to Clause 50.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail

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

50.3 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 recorded delivery in the manner set out in the table in Clause 50.2:

50.3.1 notices issued by the Supplier pursuant to Clause 35.2 (Termination by the Supplier);

50.3.2 Termination Notices; and

50.3.3 Dispute Notices.

50.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 50.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 50.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

50.5 This Clause 50 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Call Off Schedule 4 (Dispute Resolution Procedure)).

50.6 For the purposes of this Clause 50, the address and email address of each Party shall be the address and email address set out in the Order Form.

51. ENTIRE AGREEMENT

51.1 This Contract constitutes the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

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

- 51.3 Nothing in this Clause 51 shall exclude any liability in respect of misrepresentations made fraudulently.

52. **THIRD PARTY RIGHTS**

- 52.1 The provisions of Clause 23 (IPRs Indemnity), Paragraphs 2.1, 2.3 and 3.1 of Part A, Paragraphs 2.1, 2.4, 3.1 and 3.3 of Part B, Paragraphs 1.2, 1.3 and 1.7 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.5 of Part E of Call Off Schedule 14 (Staff Transfer) where used and the provisions of Paragraph 8.9 of Call Off Schedule 10 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 52.2 Subject to Clause 52.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 52.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 52.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 52.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

53. **CONFLICTS OF INTEREST**

- 53.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier's staff are placed in the position of an actual or potential Conflict of Interest.
- 53.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest happens or is expected to happen.
- 53.3 The Buyer can terminate this Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

54. **DISPUTES**

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

55. **GOVERNING LAW AND JURISDICTION**

- 55.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 55.2 Subject to Clause 54 (Disputes) and Call Off Schedule 4 (Dispute Resolution Procedure) (including the Buyer's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

56. SUSTAINABILITY AND SUPPLIER CODE OF CONDUCT

- 56.1 The Buyer will, and the Supplier must, comply with, and act in the spirit of, the Supplier Code of Conduct (https://assets.publishing.service.gov.uk/media/648c3ab5b32b9e000ca968c3/Supplier_Code_of_Conduct_v3.pdf) which sets out standards and behaviours expected of suppliers who work with HM Government.
- 56.2 The Supplier acknowledges that during this Contract Period the Buyer may require changes to sustainability requirements and agrees to work with the Buyer in good faith to implement such changes, using the Change Control Procedure, where it is fair and proportionate to do so.
- 56.3 The Supplier will demonstrate compliance with the Buyer Requirements relating to sustainability upon reasonable request, and shall deliver to the Buyer such sustainability reports as are more particularly described in Attachment 10 (Transparency Reports) of the Order Form, in the format and frequency set out in that Attachment 10.
- 56.4 If the Buyer, acting reasonably, is concerned either as to the sustainability or health and safety conduct of the Supplier, Sub-Contractors and/or supply chain in the performance of the Contract then the Buyer may:
- 56.4.1 require that the Supplier provide to the Buyer (for its approval) within four (4) weeks of the date when the Buyer notified the Supplier to do so, a plan setting out how the Supplier will improve its sustainability conduct or performance and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand; and
- 56.4.2 if the Supplier fails within four (4) weeks of the date when the Buyer notified the Supplier to provide a plan, or fails to agree any changes which are requested by the Buyer, or materially fails to implement or provide updates on progress with the plan, the Buyer reserves the right to terminate the Contract immediately (or on such date as the Buyer notifies) for material Default in substantially failing to comply with its obligations.