

RECRUITMENT SERVICES AGREEMENT

DATED

20

(1) SECRETARY OF STATE FOR DEFENCE

and

(2) SERCO LIMITED

AGREEMENT

relating to

**THE ARMED FORCES RECRUITMENT
PROGRAMME**

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OFFICIAL-SENSITIVE COMMERCIAL

THIS AGREEMENT is made on

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BETWEEN:

- (1) **Secretary of State for Defence, for and on behalf of the Armed Forces** (the “Authority”); and
- (2) **SERCO LIMITED** a company registered in England and Wales under company number **242246**) whose registered office is at **Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY** (the “Supplier”),

(each a “Party” and together the “Parties”).

INTRODUCTION

- A On 22 September 2021 the Authority advertised a contract notice via the UK government’s Find a Tender Service (with reference 2021/S 000-023623), as amended by contract notice dated 29 September 2021 (with reference 2021/S 000-024260) inviting prospective suppliers to submit proposals for the delivery and ongoing provision of a single, common, recruiting process for the Armed Forces.
- C The Supplier is a leading provider of outsourced services to Government within the United Kingdom and has experience in the provision of services of the nature provided under this Agreement.
- D On the basis of the Supplier’s response to the advertisement and a subsequent tender process the Authority selected the Supplier as its preferred supplier.
- E Following a process of Competitive Dialogue, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) from time to time;
 - (e) any reference in this Agreement immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018) to (as it has effect from time to time):
 - (i) 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 IP Completion 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
 - (ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred;
 - (f) 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**";
 - (g) 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;
 - (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

- (i) unless otherwise provided and save for references in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts, Appendices and Annexes are, unless otherwise provided, references to the paragraphs, parts, appendices and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (j) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
 - (c) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes); and
 - (d) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any).
- 1.4 The Schedules and their Annexes form part of this Agreement.
- 1.5 In entering into this Agreement, the Authority is acting as part of the Crown.

2 DUE DILIGENCE

- 2.1 The Supplier acknowledges that, subject to the Allowable Assumptions verification process as set out in Paragraph 6 of Part C of Schedule 7.1 (*Charges and Invoicing*):
- (a) the Authority 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 Agreement;
 - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Signature Date) of all relevant details relating to:
 - (i) the Authority Requirements;
 - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Signature Date) future Operating Environment, including any Government Furnished Assets that the Parties have agreed that the Authority will provide, as set out in Schedule 3 (*Authority Responsibilities*);
 - (iii) the operating processes and procedures and the working methods of the Authority;

- (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
 - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Authority in writing of:
 - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed to remedy each such unsuitable aspect; and
 - (iii) 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 Agreement, including the Services Description and/or Authority Responsibilities as applicable.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
 - (a) any unsuitable aspects of the Operating Environment;
 - (b) any misinterpretation of the Authority Requirements; and/or
 - (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

- 3.1 The Authority represents and warrants that:
 - (a) it has full capacity and authority to enter into and to perform this Agreement;
 - (b) this Agreement is executed by its duly authorised representative;
 - (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
 - (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar

Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement 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;
- (g) its obligations under this Agreement 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);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire or ITPD (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the Signature Date;
- (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) 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 Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;

- (k) the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
 - (l) 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 Agreement;
 - (m) 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;
 - (n) within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B - THE SERVICES

4 TERM

4.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 17 (*Confidentiality*), 18 (*Transparency and Freedom of Information*), 20 (*Publicity and Branding*), 21 (*Limitations on Liability*), 33 (*Waiver and Cumulative Remedies*), 34 (*Relationship of the Parties*), 36 (*Severance*), 38 (*Entire Agreement*), 39 (*Third Party Rights*), 40 (*Notices*), 41 (*Disputes*) and 42 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 29 (*Termination Rights*), terminate:
 - (i) at the end of the Initial Term; or
 - (ii) if the Authority elects to extend the Initial Term by giving the Supplier at least twelve (12) months' notice before the end of the Initial Term, at the end of the First Option Period; or
 - (iii) if the Authority elects to extend the First Option Period by giving the Supplier at least twelve (12) months' notice before the end of the First Option Period, at the end of the Second Option Period; or
 - (iv) if the Authority elects to extend the Second Option Period by giving the Supplier at least twelve (12) months' notice before the end of the Second Option Period, at the end of the Third Option Period.

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 17 (*Confidentiality*), 18 (*Transparency and Freedom of Information*), 20 (*Publicity and Branding*), 21 (*Limitations on Liability*), 33 (*Waiver and Cumulative Remedies*), 34 (*Relationship of the Parties*), 36 (*Severance*), 38 (*Entire Agreement*), 39 (*Third Party Rights*), 40 (*Notices*), 41 (*Disputes*) and 42 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 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 Signature Date then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:
 - (a) this Agreement shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

- 4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Authority 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 4.3.

5 SERVICES

Standard of Services

- 5.1 The Supplier shall be responsible for compliance with this Agreement, as well as for the performance of the Services.

- 5.2 The Supplier shall ensure that:

- (a) the Services:

- (i) comply in all respects with the Services Description; and
- (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and

- (b) where:

- (i) the Services to be provided from any commencement date are similar to services that the Authority was receiving immediately prior to that commencement date (such similar services being “**Preceding Services**”); and
- (ii) the standard and level of service received by the Authority in respect of any of the Preceding Services in the twelve (12) month period immediately prior to that commencement date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being “**Relevant Preceding Services**”),

the Services to be provided from the relevant commencement date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant commencement date.

- 5.3 The Supplier acknowledges and agrees that the Services will be provided on an end-to-end basis and as a full-programme solution in accordance with this Agreement.

- 5.4 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;

- (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;
 - (vi) the Authority IT Strategy; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.4(a)(i) to 5.4(a)(vi);
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and
 - (c) comply with the provisions of Schedule 12 (*Conflict of Interest Mitigation Plan*) in delivering the Services.
- 5.5 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.4(a)(i) to 5.4(a)(vi), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Required Behaviours

- 5.6 The Supplier acknowledges that the successful delivery of the Services will need the Supplier to exhibit the Required Behaviours and adhere to the Collaboration Requirements, to work with the Authority and other third parties collaboratively and to proactively manage and provide the Services without routinely resorting to the Dispute Resolution Procedure. Compliance with such principles shall be reviewed in accordance with the provisions of Schedule 8.1 (*Governance*).
- 5.7 The Required Behaviours shall include:
- (a) Fix first, settle later. To the extent it is able to do so with its existing resources, to avoid or minimise undue disruption to the Authority and the Services, the Supplier shall adopt a "fix first, settle later" approach, subject to always checking in advance with the Authority prior to commencing work on the fix itself and the Authority having confirmed in writing that the proposed work should commence.
 - (b) Collaborative intention. The Supplier shall collaborate with the Authority and any Other Suppliers to the Authority as the Authority may reasonably request.
 - (c) Flexibility. The Supplier shall aim to work in a way that allows it to deliver the Services in a flexible manner. The Supplier acknowledges that this may require working in a flexible manner to meet the maturing and changing needs of the Authority, including the re-allocation of resources between tasks by agreement with the Authority.
 - (d) Self-accountability. The Supplier shall take responsibility for its circumstances, choices, actions and inactions, including intended and unforeseen consequences of those.

- (e) Delivery transparency. The Supplier shall be honest in its dealings with the Authority and shall be transparent and honest about delays, risks and issues in relation to delivery of the Services to ensure the Authority's expectations and needs are managed and appropriate actions implemented.
- (f) Value. The Supplier shall endeavour to deliver the Services in a manner that promotes and facilitates the delivery of value to the Authority.
- (g) Efficiency. The Supplier shall ensure that the best resources for a job are utilised, and that any unnecessary duplication of effort is eradicated and adopt a pro-active approach to ensuring the successful delivery of the Services.

Supplier covenants

5.8 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, 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;
- (c) ensure that:
 - (i) 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 Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and Schedule 5 (*Intellectual Property Rights*) and that it complies with the release notification requirements set out in Schedule 5 (*Intellectual Property Rights*);
 - (iii) 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;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and

- (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Supplier 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 Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.8(g);
- (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (k) notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place;
- (l) notify the Authority in writing within ten (10) Working Days of their occurrence of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority; and
- (n) manage closure or termination of Services and end of life of Goods in

accordance with Schedule 8.5 (*Exit Management*) and to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

- 5.9 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.
- 5.10 Without prejudice to Paragraph 8 of Schedule 5 (*Intellectual Property Rights*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 5.8(b) to 5.8(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - (b) remedy any breach of its obligations in Clause 5.8(a) and Clauses 5.8(e) to 5.8(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - (c) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 5.10(a) or Clause 5.10(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

- 5.11 Without prejudice to Clauses 5.8 (*Supplier Covenants*) and 5.10 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall and New IPRs shall:
- (a) be free from material design and programming errors;
 - (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation, or contained or referred to in other parts of this Agreement; and
 - (c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

- 5.12 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- (a) any withholding of the Service Charges by the Authority pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
 - (b) the existence of an unresolved Dispute; and/or
 - (c) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 29.4(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Exclusivity

The Parties agree that the Supplier shall be the non-exclusive provider of the Services and that nothing in this Agreement shall prevent the Authority from procuring similar and/or related services from other third parties.

Power of attorney

- 5.13 By way of security for the performance of its obligations under Clauses 5.8(g) and 5.8(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

- 5.14 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).
- 5.15 The Authority shall supply certain Government Furnished Assets to support the Supplier in the execution of the Services under this Agreement, as set out in Schedule 3 (*Authority Responsibilities*).
- 5.16 All Government Furnished Assets shall remain the property of the Authority. It shall be used in the provision of the Services and for no other purpose without the prior written approval of the Authority.
- 5.17 Neither the Supplier, nor any Sub-contractor, nor any other person, shall have a lien on any Government Furnished Assets for any sum due to the Supplier, Sub-contractor or other person, and the Supplier shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-contractors and other persons dealing with any Government Furnished Assets.

6 TRANSITION

- 6.1 The Supplier shall be responsible for ensuring that any transition managed under the terms of a Transition Plan is smooth, effective and orderly, aligning to the terms of Schedule 6.1 (*Transition Phase and Transition Plan*). With respect to the Transition Phase, this shall mean that the Supplier shall meet all relevant requirements and

implementation timelines contained in Schedule 2.1 (*Services Description*) and shall ensure that:

- (a) the Digital Solution and operating model is able to deliver Full Operating Capability at SCD1;
- (b) the Supplier is fully responsible for, and able to process all new Army Officer (“AO”) applications by SCD1, all new Army Other Ranks (“OR”) applications from SCD2 and the full end-to-end recruiting operation for RN and RAF candidates from SCD3;
- (c) the Supplier is fully responsible for, and able to process all inflight Army OF candidates by 28 February 2027 and Army OR candidates by 28 March 2027 respectively;
- (d) a robust testing and acceptance programme has been provided, capable of giving the Authority assurances that the Supplier Solution is fit for purpose prior to the relevant Service Commencement Date, and in line with the requirements of Schedule 6.2 (*Transition Phase and Testing Procedures*);
- (e) the Supplier’s activity during the Transition Phase is designed to ensure that it does not impede operations throughout the Transition Phase to ensure that there is no detrimental impact to inflow against demand;
- (f) inflight candidates are not disadvantaged as a result of transition activity;
- (g) relevant knowledge, skills and experience are successfully transferred from the Legacy Recruiting Environment to the Supplier Personnel (including for the avoidance of doubt each Authority Employee, Previous Supplier Employee and Continuing Employee) and the Authority Transition Personnel;
- (h) all required Authority Data is migrated (including archiving such data once migrated and when directed to do so by the Authority in its sole discretion) from the Legacy Recruiting Environment and that such actions are fully documented;
- (i) such migrated Authority Data as described at Clause 6.1(h) shall be fully compliant with the requirements of Clause 16 (*Intellectual Property Rights, Authority Data and Security Requirements*) and Clause 19 (*Protection of Personal Data*); and
- (j) such other activity relevant to the Transition Phase which the Authority, acting reasonably, shall direct aligning to the requirements of transition as set out in Schedule 2.1 (*Services Description*).

Quality Plans

- 6.2 The Supplier shall develop, within 3 months of the Effective Date, quality plans that meet the definition of Deliverable Quality Plan in NATO Standard AQAP 2105, ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (“**Quality Plans**”).
- 6.3 The Supplier shall obtain the Authority Representative’s written approval of the Quality Plans before implementing them, which approval shall not be unreasonably

withheld or delayed. Upon such approval, the Quality Plans shall be incorporated into this Agreement. The Supplier acknowledges and accepts that the Authority'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 Agreement. The Authority will have no responsibility for, and the Supplier shall be solely responsible for, the accuracy, suitability and applicability of the Quality Plans.

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

- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
- (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Transition Plan and Delays

6.5 The Parties shall comply with the provisions of Schedule 6.1 (*Transition Phase and Transition Plan*) in relation to this agreement and maintenance of the Detailed Transition Plan.

6.6 The Supplier shall:

- (a) comply with the Transition Plan; and
- (b) ensure that each Milestone is Achieved on or before its Milestone Date.

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

- (a) it shall:
 - (i) notify the Authority in accordance with Clause 23.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone, the provisions of Clause 24 (*Delay Deductions*) shall apply.

Testing and Achievement of Milestones

6.8 The Parties shall comply with the provisions of Schedule 6.2 (*Transition Phase and Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 PERFORMANCE INDICATORS

7.1 The Supplier shall:

- (a) provide the Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for SCD(3); and
- (b) comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

7.2 If in any Measurement Period:

- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 6 of Part A and Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*);
- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));
- (c) a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- (d) a Material PI Failure occurs:
 - (i) the Supplier shall comply with the Rectification Plan Process; and
 - (ii) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:

- (a) the Supplier has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap;
- (b) the KPI Failure:
 - (i) breaches the relevant KPI Service Threshold;
 - (ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - (iii) results in:
 - (A) the corruption or loss of any Authority Data (in which case the

remedies under Clause 16 (*Intellectual Property Rights, Authority Data and Security Requirements*) shall also be available); and/or

- (B) the Authority being required pursuant to Law to make a compensation payment to one or more third parties;
- (c) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- (d) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 29.1(b) (*Termination by the Authority*).

Unacceptable KPI Failure

- 7.4 If, in any Measurement Period, an Unacceptable KPI Failure occurs the Authority shall (subject to the Service Credit Cap set out in Clause 21.3 (*Financial and other limits*) and to the operation of Clause 27.1(c)(iv)(C) (*Authority Cause*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a proportion of the Service Charges which would otherwise have been due to the Supplier in respect of that entire Measurement Period, such withheld proportion being an amount reflective of the reduced level of service as determined by the Authority acting reasonably (such sum being “**Compensation for Unacceptable KPI Failure**”) provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

- (a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- (b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

- 7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 29.1 or 29.2 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

- 7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) months’ notice:
- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
 - (b) convert one or more:
 - (i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or

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

7.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.7, or increase the Service Charges as a result of such changes provided that:

- (a) the total number of Key Performance Indicators does not exceed ten (10);
- (b) the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and
- (c) there is no change to the Service Credit Cap or to the total number of Service Points.

8 SERVICES IMPROVEMENT

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8 and Schedule 2.6 (*Continuous Improvement*). As part of this obligation the Supplier shall identify and report to the appropriate governance forum once every twelve (12) months on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) the result in cost savings or revenue increases to the Authority should new or evolving technologies be adopted in the provision of the Services and an appropriate business case for implementing them;
- (c) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- (d) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
- (e) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (f) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be

implemented. The Supplier shall provide any further information that the Authority requests.

- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good (in accordance with the provisions of Schedule 13 (*Infrastructure Matters*)) the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements in respect of Supplier Equipment. For the avoidance of doubt, the Supplier shall not be responsible for structural disrepairs to the Sites and/or Authority Premises on termination or expiry of this Agreement where such disrepairs have not arisen from the Supplier's use or occupation of the Sites and/or Authority Premises.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the Supplier System, including the update and release plan relating to certain technical elements of the Supplier Solution where the Supplier has been notified of any relevant third party plan for updates and releases (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the Supplier System or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times

so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment (“**Goods**”) to the Authority:
- (a) the relevant Goods and their prices shall be as set out in Schedule 4.1 (*Supplier Solution*) as applicable, or otherwise agreed between the Parties from time to time;
 - (b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
 - (d) if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier, and the Supplier shall immediately take such remedial action as is necessary to ensure compliance at no additional cost to the Authority; and
 - (e) without prejudice to any other rights or remedies of the Authority:
 - (i) risk in the Goods shall pass to the Authority at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Authority at the time of payment.

SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**10 FINANCIAL AND TAXATION MATTERS****Charges and Invoicing**

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.8 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 18 (*Transparency and Freedom of Information*), 18.8(*Protection of Personal Data*) and, to the extent specified therein, 25 (*Remedial Adviser*) and 26 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, 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

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to:
- (a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.6; or
 - (b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

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

Benchmarking

- 10.8 The Parties shall comply with the provisions of Schedule 7.3 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

Financial Distress

- 10.9 The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

- 10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

Statement of Good Standing

- 10.11 The Supplier, on behalf of itself and its Key Sub-contractors, shall provide to the Authority on the Effective Date, and thereafter on an annual basis, a Statement of Good Standing.
- 10.12 If on completion of a Statement of Good Standing, the Supplier's responses reveal any potential issues (for example, acts of bribery or fraud, or financial issues such as potential tax evasion or bankruptcy) and/or raise (or if acting reasonably, that should have raised) any concerns in relation to the Supplier's current and/or future standing, then a discussion shall take place between the Supplier and the Authority at the following Defence Personnel Leadership Team meeting to determine how best to proceed in accordance with the relevant provisions of this Agreement.

SECTION D - CONTRACT GOVERNANCE**11 GOVERNANCE**

- 11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

Representatives

- 11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 12.1 The Supplier shall comply with the provisions of:
- (a) Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
 - (b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- (a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
 - (b) Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 CHANGE**Change Control Procedure**

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

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or

- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at Final Bid.
- 13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:
 - (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
 - (b) provide the Authority with evidence:
 - (i) 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;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law shall be implemented as a Contract Change in accordance with the Change Control Procedure.

SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN**14 SUPPLIER PERSONNEL****14.1 The Supplier shall:**

- (a) provide as soon as possible in advance of any admission to Authority Premises (and in any event no less than ten (10) Working Days, unless agreed otherwise by the Authority) a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*); and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);
- (c) subject to Schedule 9.1 (*Staff Transfers*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, workers, agents or contractors of the Authority;
- (d) 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 Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

subject to the extent that a replacement of the relevant Supplier Personnel is required:

- (f) 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;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or

- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s),

and the Authority shall, where reasonably possible and subject always to relevant security restrictions, provide its reasons for such reasonable belief.

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel on a long term or permanent basis (including when carrying out Exit Management) unless:
 - (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave, adoption leave or long-term sick leave (namely sick leave, which is expected to be, or turns out to be, of fifteen (15) days or more);
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
 - (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness (namely sick leave which is expected to be or turns out to be of fourteen (14) days or less) or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - (c) give the Authority as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice to the Authority;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.7 The Parties agree that without prejudice to the provisions of Schedule 9.1 (*Staff Transfers*):

- (a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier, any Sub-contractor, or any Supplier Personnel; and
- (b) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any current or Previous Supplier Personnel where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors (other than the Supplier and its Sub-contractors).

Income Tax and National Insurance Contributions

14.8 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 Agreement, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim relating to the same arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer and Embedded Service Personnel

14.9 The Parties agree to comply with Schedule 9.1 (*Staff Transfers*) and Schedule 9.3 (*Embedded Service Personnel (Regular and Reserve)*).

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

- (a) subject to Clause 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £100,000 that arise during the Term;
- (b) 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;
- (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Clause 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Signature Date.

15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

15.5 Upon request, the Authority shall give the Supplier access to the CCS Marketing Framework subject to:

- (a) the Supplier being listed as an agent of the Authority for the purposes of procuring media buying and marketing services, in the relevant contract between the Crown Commercial Service and the media agency the Supplier is requesting to use; and
- (b) the Supplier acknowledging that with the exception of those circumstances listed in Clause 21.1, the Authority will bear no liability in respect of the Supplier's use of the CCS Marketing Framework.

Appointment of Sub-contractors

15.6 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:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Agreement in the delivery of the Services; and

- (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

15.7 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-contractor; and
- (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

15.8 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.7, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Authority.

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

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.23;

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

15.10 If:

- (a) the Authority 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:
 - (i) the Supplier's notice issued pursuant to Clause 15.7; and
 - (ii) any further information requested by the Authority pursuant to Clause 15.8; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.11

(Appointment of Key Sub-contractors)),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (*Third Party Contracts*).

Appointment of Key Sub-contractors

- 15.11 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
 - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-contractor employs unfit persons; and/or
 - (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.27 (*Exclusion of Sub-contracts*).
- 15.12 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*).
- 15.13 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
 - (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
 - (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier in respect of any rights of the Supplier that confer a direct benefit on the Authority;
 - (d) 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 Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 16 (*Authority Data and Security Requirements*) and 18.8 (*Protection of Personal Data*) and Schedule 11 (*Data Protection and Governance*);

- (ii) FOIA requirements set out in Clause 18 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.8(m) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
- (f) 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 Authority under Clauses 29.1(a) (*Termination by the Authority*) and 30.5 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 25 (*Remedial Adviser*);
- (i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 26 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
- (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) 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
 - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the

Services, contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3(b)(ii) of Schedule 7.4 (*Financial Distress*).

- 15.14 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

- 15.15 The Supplier shall ensure that all Sub-contracts (which in this sub-clause means any contract in the Supplier's supply chain entered into after the Signature Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- (a) 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;
 - (b) 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;
 - (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-clause (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-clause (d) after a reasonable time has passed;
 - (d) 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;
 - (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.15 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

15.16 The Supplier shall take reasonable endeavours to ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into before the Signature Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- (a) 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;
- (b) 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;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.15(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.15(d) after a reasonable time has passed;
- (d) 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;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.15 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.17 The Supplier shall:

- (a) 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;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.17(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.18 Without prejudice to Clause 15.17(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and

- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.18(a), such data to be certified every six (6) months by a director of the Supplier as being accurate and not misleading.
- 15.19 If any Balanced Scorecard Report shows that in either of the last two six (6) month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within fifteen (15) Working Days of submission of the latest Balanced Scorecard Report an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:
 - (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - (b) actions to address each of the causes set out in sub-paragraph clause (a); and
 - (c) mechanism for and commitment to regular reporting on progress to the Supplier’s Board.
- 15.20 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier’s website within ten (10) Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
 - (a) Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.21 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier’s Solution (to the extent it is not already included)
- 15.22 Notwithstanding any provision of Clauses 17 (*Confidentiality*) and 20 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor’s undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

15.23 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 29.1(b) (*Termination by the Authority*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.27; and
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor (other than as a result of a bona fide reconstruction/solvent amalgamation, reorganisation or reconstruction of the Key Sub-Contractor's Group), unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

Competitive Terms

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

Retention of Legal Obligations

- 15.26 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, 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. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation

on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

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

Reporting SME/VCSE Sub-contracts

- 15.28 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in Annex 4 of Schedule 8.4 (*Reports and Records Provisions*) and in accordance with any guidance issued by the Authority from time to time.
- 15.29 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

General

- 15.30 The Supplier shall ask each Sub-contractor to provide any inputs necessary to the Authority's cyber risk assessment.
- 15.31 The Supplier shall procure that, to the extent applicable, each Sub-contractor shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

SECTION F - INTELLECTUAL PROPERTY RIGHTS, DATA AND CONFIDENTIALITY**16 INTELLECTUAL PROPERTY RIGHTS, AUTHORITY DATA AND SECURITY REQUIREMENTS**

- 16.1 The parties agree that the terms set out in Schedule 5 (*Intellectual Property Rights*) shall apply to this Agreement.
- 16.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 16.3 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 16.4 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).
- 16.5 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 16.6 The Supplier shall perform secure encrypted back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties) via a secure encrypted method.
- 16.7 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 16.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) 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 Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).
- 16.9 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall, subject also to the requirements of Paragraph 17 of Schedule

2.4 (*Security Management*), notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

- 16.10 The Parties acknowledge the importance of good data governance with respect to the use, storage and processing of Authority Data pursuant to the Services. As such, the Supplier shall fully support and participate in the Data Working Group as described in Annex 3 of Schedule 11 (*Data Protection and Governance*) and in particular shall:
- (a) ensure that meetings of the Data Working Group are attended by Supplier Personnel of a suitable level of expertise and authority such that they can meaningfully contribute to such meetings and the decisions made;
 - (b) perform agreed actions allocated by the Data Working Group to the Supplier in a timely fashion, and shall confirm when such actions have been completed;
 - (c) proactively provide the Data Working Group with any assurances as to the Supplier's compliance with its obligations relating to Authority Data including under this Clause 16 (*Intellectual Property Rights, Authority Data and Security Requirements*), Clause 19 (*Protection of Personal Data*), Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*), Schedule 6.1 (*Transition Phase and Transition Plan*) and Schedule 11 (*Data Protection and Governance*);
 - (d) immediately, upon becoming aware of a risk, issue or vulnerability ("Data Risk") impacting on Authority Data, escalate such Data Risk to the Data Working Group providing full details of the Data Risk as are known to the Supplier at that time (and providing further details as they become available) and participate fully in such further escalation of the Data Risk, as may be required and as described at Paragraph 3 of Annex 3 to Schedule 11 (*Data Protection and Governance*); and
 - (e) shall be proactive in the development of data policies and requirements, discussing and advising on the need for, or implementation of, any changes to Authority data policy standards and requirements, including setting out any impacts on the Services and whether or not they would give rise to a Contract Change.
- 16.11 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*) and shall fully support and participate in meetings of the Security Working Group including the performance of agreed Supplier actions arising from such meetings.
- 16.12 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 16.13 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services, it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

- 16.14 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 13 (*Change*) the Supplier shall continue to perform the Services in accordance with its existing obligations.

17 CONFIDENTIALITY

- 17.1 For the purposes of this Clause 17, 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.

- 17.2 Except to the extent set out in this Clause 17 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- (a) 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);
- (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner’s prior written consent;
- (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) 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.

- 17.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, or in order to comply with a parliamentary obligation provided that Clause 18 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority’s accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) 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.

provided the relationship to any other Confidential Information is not revealed that would otherwise not be disclosable.

- 17.4 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.
- 17.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 17.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

- 17.6 The Authority may disclose the Confidential Information of the Supplier:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 17.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 26 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 25 (*Remedial Adviser*) and Exit Management rights; or
 - (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 17.

- 17.7 Where the Authority intends to disclose Confidential Information which is not to Central Government Body in accordance with Clauses 17.6(c) or 17.6(d), the Authority will endeavour to provide the Supplier with 3 Working Days' notice in advance of such disclosure. In relation to a disclosure of Confidential Information made under Clause 17.6(c), if reasonably requested by the Supplier within 2 Working Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Confidential Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Agreement.
- 17.8 Nothing in this Clause 17 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

18 TRANSPARENCY AND FREEDOM OF INFORMATION

- 18.1 The Parties acknowledge that
- (a) the Transparency Reports; and
 - (b) the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information;
 - (c) the Publishable Performance Information,
- (together the "**Transparency Information**") are not Confidential Information.
- 18.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with 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.
- 18.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).
- 18.4 If the Authority believes that publication of any element of the Transparency

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

- 18.5 The Authority shall publish and maintain an up-to-date version of the Transparency Information in a format that is readily accessible and assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 18.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 17.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 18.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 18.8 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority. The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs. Where Information is required to be disclosed,

the Authority will take reasonable steps to protect Commercially Sensitive Information relating to the Supplier from being disclosed to the Supplier's competitors, such as redacting Commercially Sensitive Information from documents.

19 PROTECTION OF PERSONAL DATA

- 19.1 The Parties shall at all times comply with the obligations of this Clause 19 and Schedule 11 (*Data Protection and Governance*) and each Party undertakes to comply with its obligations under the Data Protection Legislation. The Supplier shall also comply with the commitments made with respect to its compliance with the Data Protection Legislation at Final Bid, as incorporated within Appendix D to Schedule 2.4 (*Security Management*) and Schedule 4.1 (*Supplier Solution*).

Status of the Controller

- 19.2 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 Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:

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

and the Parties shall set out in Schedule 11 (*Data Protection and Governance*) which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

- 19.3 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 11 (*Data Protection and Governance*) by the Controller.
- 19.4 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation. The Authority agrees that the Supplier shall not be required to provide legal advice to the Authority and that no such notification (or absence of notification) by the Supplier will be construed as legal advice or a representation by the Supplier.
- 19.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

19.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 11 (*Data Protection and Governance*), unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 16 (*Intellectual Property Rights, Authority Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (*Data Protection and Governance*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause, Clauses 17 (*Confidentiality*) and Clause 16 (*Intellectual Property Rights, Authority Data and Security Requirements*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

- (d) where the Personal Data is subject to UK GDPR, not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or
 - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 section 75) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office as well as any additional measures determined by the Controller
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (v) 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) where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the EU GDPR; or
 - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the Controller;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (v) 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

- (f) in accordance with the Controller's instructions for disposal of Personal Data set out in Schedule 11 (*Data Protection and Governance*), or otherwise at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Agreement unless the Processor is required by Law to retain the Personal Data.

19.7 Subject to Clause 19.8, the Processor shall notify the Controller without undue delay (and in any event within 3 days) if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

and shall notify the Controller immediately (and in any event within 24 hours of becoming aware) if it:

- (e) 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
- (f) becomes aware of a Data Loss Event, and with respect to such Data Loss Event shall comply with:
 - (i) any requirements and timeframes imposed by the Authority's warning and reporting point (WARP) and/or the Data Protection Support Team; and
 - (ii) the requirements of Paragraph 17 of Schedule 2.4 (*Security Management*).

19.8 The Processor's obligation to notify under Clause 19.7 shall include the provision of further information to the Controller in phases, as details become available.

19.9 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 19.7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

- (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 19.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 19.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 19.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 19.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 19 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require,
- and for the purposes of Clause 19.13(b) the Authority has consented to the use of the Key Sub-contractors and PA Consulting Services Limited and MPCT Limited as Sub-processors of Personal Data as at the Signature Date, and the Supplier agrees that Clause 19.13(c) has been satisfied with respect to those Sub-processors. For the avoidance of doubt, any changes to the Key Sub-contractors and PA Consulting Services Limited and MPCT Limited shall be subject to Authority consent as per the requirements of this Clause 19.13, such consent not to be unreasonably withheld or delayed.
- 19.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

- 19.15 The Parties may 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 Agreement), or where such change is required to take account of any guidance issued by the Information Commissioner's Office, such change being agreed by the Parties pursuant to the Change Control Procedure.

Where the Parties are Joint Controllers of Personal Data

- 19.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 of Schedule 11 (*Data Protection and Governance*).

Where the Parties are Independent Controllers of Personal Data

- 19.17 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.
- 19.18 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.
- 19.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 19.17, 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.
- 19.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
- 19.21 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Agreement;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
 - (c) where the Personal Data is subject to UK GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 section 73; or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 section 75) as determined by the non-transferring Party which

could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office, as well as any additional measures determined by the non-transferring Party;

- (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data;
- (d) where the Personal Data is subject to EU GDPR, and where the provision of Personal Data from one Party to another involves transfer of such data to outside the EU, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- (i) the transfer is in accordance with Article 45 of the EU GDPR; or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
- (iii) the Data Subject has enforceable rights and effective legal remedies;
- (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- (e) where it has recorded it in Schedule 11 (*Data Protection Governance*).

19.22 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 UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

- 19.23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 19.24 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 Agreement (the “**Request Recipient**”):
- (a) 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
 - (b) 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:
 - (i) 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
 - (ii) 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.
- 19.25 Each party shall 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 Agreement and shall comply with any requirements and timeframes imposed by the Authority’s warning and reporting point (“**WARP**”) and/or the Data Protection Support Team in making such notification (and in any case shall do so promptly) and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner’s Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) 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.
- 19.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (*Data Protection and Governance*).

- 19.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (*Data Protection and Governance*).
- 19.28 Notwithstanding the general application of Clauses 19.3 to 19.15 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 19.16 to 19.27.

Standard Contractual Clauses

- 19.29 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "**UK Adequacy Decision**"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Agreement is not covered by the UK Adequacy Decision or at any time during the term of this Agreement the UK Adequacy Decision is:

- (a) withdrawn, invalidated, overruled or otherwise ceases to have effect, or
- (b) amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Agreement,

Clauses 19.30 to 19.31 below shall apply.

- 19.30 The Parties agree:

- (a) that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU in respect of data transfers by the Supplier outside of the EU to the UK;
- (b) that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- (c) to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
- (d) that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

- 19.31 In the event that (i) the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

- (a) that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU

GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;

- (b) to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- (c) that if there is any conflict between this Agreement and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

20 PUBLICITY AND BRANDING

20.1 The Supplier shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

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

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

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE**21 LIMITATIONS ON LIABILITY****Unlimited liability**

21.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) 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
- (d) any liability to the extent it cannot be limited or excluded by Law.

21.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Paragraph 8 of Schedule 5 (*Intellectual Property Rights*), Schedule 9.1 (*Staff Transfers*) and the Annexes to Schedule 9.1 (*Staff Transfers*) shall be unlimited. The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfers*) and the Annexes to Schedule 9.1 (*Staff Transfers*) shall be unlimited.

Financial and other limits

21.3 Subject to Clauses 21.1 and 21.2 (*Unlimited Liability*) and Clauses 21.6 (*Consequential losses*):

- c.1 the Supplier's liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed, in aggregate in each Contract Year, **REDACTED**;
- c.2 the Supplier's liability in respect of any and all breaches of the data protection requirements set out in Clauses 16 (*Authority Data and Security Requirements*) and 19 (*Protection of Personal Data*) together with Schedule 11 (*Data Protection and Governance*), including any loss of or damage to Authority Data or breach of Data Protection Legislation that is caused by Defaults of the Supplier, occurring in each and any Contract Year shall in no event exceed, aggregate in each Contract Year, an amount equal to **REDACTED**% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default. For the avoidance of doubt, the Supplier shall have no liability under this Agreement in the event that Personal Data held in the Legacy Recruiting Environment breaches Data Protection Legislation but only to the extent that such liability does not arise as a result of a breach, by the Supplier, of its obligations as Processor under Data Protection Legislation and/or as contained within

Clause 19 (*Protection of Personal Data*) and Schedule 11 (*Data Protection and Governance*) of this Agreement with respect to such Personal Data;

(a) the Supplier's aggregate liability in each Contract Year in respect of all:

(i) Service Credits; and

(ii) Compensation for Unacceptable KPI Failure;

incurred in each such Contract Year shall be subject to the Service Credit Cap; and

(b) the Supplier's liability in respect of all other Losses incurred by the Authority under, or in connection with, this Agreement as a result of Defaults by the Supplier shall in no event exceed in aggregate in each Contract Year, as applicable:

(a) in relation to Defaults occurring in the first Contract Year, an amount equal to **REDACTED**% of the Estimated Year 1 Charges;

(b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to **REDACTED** % of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and

(c) in relation to Defaults occurring after the end of the Term, an amount equal to **REDACTED** % 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 Term,

c.3 provided that where any Losses referred to in Clause c.2 or this Clause 21.3(b) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clauses to **REDACTED** % shall be deemed to be references to 200%. Further, in this Clause 21.3 and in Clause 21.5, 'paid and/or due to be paid' means all the Charges that have been invoiced, accrued, paid or that would be invoiceable or payable assuming proper performance by the Supplier of its obligations so that all amounts under this Agreement are and would be payable to it, without deduction.

21.4 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause c.2.

21.5 Subject to Clauses 21.1 and 21.2 (*Unlimited Liability*) and Clause 21.6 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

(a) the Authority's total aggregate liability in respect of any and all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 29.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 29.4(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:

(i) in relation to the Unrecovered Payment, the amount set out in

Paragraph 4 of Schedule 7.2 (*Payments on Termination*);

(ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and

(iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (*Payments on Termination*); and

(b) the Authority's total aggregate liability in respect of any and all Losses incurred by the Supplier under, or in connection with, this Agreement as a result of Defaults of the Authority shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;

(ii) 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 Agreement in the Contract Year immediately preceding the occurrence of the Default; and

(iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

Consequential Losses

21.6 Subject to Clauses 21.1 and 21.2 (*Unlimited Liability*) and Clause 21.7, neither Party shall be liable to the other Party for:

(a) any indirect, special or consequential Loss; and/or

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

21.7 Notwithstanding Clause 21.6 but subject to Clause 21.3, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

(a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

(b) any wasted expenditure or charges;

(c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;

(d) any compensation or interest paid to a third party by the Authority pursuant to Law; and

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

Conduct of indemnity claims

- 21.8 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

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

22 INSURANCE

The Supplier shall comply with the provisions of Schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H - REMEDIES AND RELIEF

23 RECTIFICATION PLAN PROCESS

23.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; and/or
- (b) in any Measurement Period there has been:
 - (i) a Material KPI Failure; and/or
 - (ii) a Material PI Failure; and/or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

Notification

23.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 23.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

23.3 The “**Rectification Plan Process**” shall be as set out in Clauses 23.4 (*Submission of the draft Rectification Plan*) to 23.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

23.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 23.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

23.5 The draft Rectification Plan shall set out:

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

23.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably 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 Schedule 8.3 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

23.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

23.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

23.9 If the Authority consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default,

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

24 DELAY DEDUCTIONS

- 24.1 If a Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the deduction of Delay Deductions.

25 REMEDIAL ADVISER

25.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

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

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 25.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 25.1 prior to or instead of exercising its right to terminate this Agreement.

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

- (c) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Authority; or
 - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- (d) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- (e) any right of the Authority to terminate this Agreement pursuant to Clause 29.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the “**Intervention Period**”).

- 25.2 The Remedial Adviser’s overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this

objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

25.3 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

25.4 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 25.

25.5 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

- (ii) is in Default of any of its obligations under Clause 25.3; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Agreement pursuant to Clause 29.1(b) (*Termination by the Authority*).

26 STEP-IN RIGHTS

26.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 26 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 17 (*Confidentiality*)). The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier’s Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Supplier’s premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier’s obligations to provide the Services during the period that the Required Action is being taken.

26.2 Following service of a Step-In Notice, the Authority shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority’s rights under this Clause 26.

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

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

- (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 26.4 shall apply to Deductions from Charges in respect of other Services; and
 - (c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 26.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
 - (a) the degradation of any Services not subject to the Required Action; or
 - (b) the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 26.5 Before ceasing to exercise its step in rights under this Clause 26 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
 - (a) the Required Action it has actually taken; and
 - (b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 26.6.
- 26.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 26.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 26.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 26, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
 - (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (b) limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

27 AUTHORITY CAUSE

27.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Services in accordance with the Target Performance Levels; and/or
- (c) comply with its obligations under this Agreement,

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

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 27):

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

- (A) to terminate this Agreement pursuant to Clause 29.1(b) (*Termination by the Authority*); or
- (B) to take action pursuant Clauses 25 (*Remedial Adviser*) or 26 (*Step-In*);

(iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

- (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
- (B) if the Authority, acting reasonably, considers it appropriate, the Transition Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
- (C) the Supplier shall have no liability for any Delay Deductions associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and
- (D) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*); and/or

(iv) where the Supplier Non-Performance constitutes a Performance Failure:

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

- (B) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
- (C) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4 (*Unacceptable KPI Failure*); and
- (D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

27.2 In order to claim any of the rights and/or relief referred to in Clause 27.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Agreement;
- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- (d) the relief and/or compensation claimed by the Supplier;

and the Supplier shall update such details as soon as, and to the extent that, further information becomes available.

27.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

27.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

27.5 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
- (b) 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.

- 27.6 Any Change that is required to the Transition Plan or to the Charges pursuant to this Clause 27 shall be implemented in accordance with the Change Control Procedure.

28 FORCE MAJEURE

- 28.1 Subject to the remaining provisions of this Clause 28 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 28 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. For the avoidance of doubt, the Parties agree that the Covid-19 pandemic and any known or related strains of Covid-19 shall not be classed as a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement 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.
- 28.2 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.
- 28.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 28 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated but the Supplier has failed to do so;
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 28.4 Subject to Clause 28.5, 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.
- 28.5 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.

28.6 Where, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 29.1(c) (*Termination by the Authority*) or Clause 29.4(b) (*Termination by the Supplier*); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 25 (*Remedial Adviser*) and/or Clause 26 (*Step-in Rights*) as a result of such failure;
 - (B) to deduct Delay Deductions pursuant to Clause 24 (*Delay Deductions*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4 (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - (ii) 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 Agreement during the occurrence of the Force Majeure Event.

28.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

28.8 Relief from liability for the Affected Party under this Clause 28 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 Agreement and shall not be dependent on the serving of notice under Clause 28.7.

SECTION I - TERMINATION AND EXIT MANAGEMENT**29 TERMINATION RIGHTS****Termination by the Authority**

29.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if this Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

29.2 Where the Authority:

- (a) is terminating this Agreement under Clause 29.1(b) due to the occurrence of either limb (b), (h) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 29.1(b) or Clause 29.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

29.3 Where the Authority is terminating this agreement in accordance with Clause 29.2(a), it shall have the right to claim such damages as may have been sustained as a result of the Supplier's material Default including but not limited to any costs and expenses incurred by the Authority in:

- (a) carrying out any work that may be required to make the Deliverables comply with this Agreement; or
- (b) obtaining the Deliverables in substitution from another supplier.

Termination by the Supplier

29.4 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds an amount equivalent to one (1) month's average Charges for the applicable Contract Year and such amount remains outstanding forty (40) Working Days after the

receipt by the Authority of a notice of non-payment from the Supplier; or

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

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 29.4(b) would result in a Partial Termination, the provisions of Clause 29.5 (*Partial Termination*) shall apply.

Partial Termination

- 29.5 If the Supplier notifies the Authority pursuant to Clause 29.4(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 29.5, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 29.6 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
 - (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
 - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.
- 29.7 Unless stated otherwise, such termination as provided for in this Clause 29, shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority or the Supplier.

30 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 30.1 The provisions of Clauses 5.11 (*Specially Written Software warranty*), 10.4 and 10.5 (VAT), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 17 (*Confidentiality*), 18 (*Transparency and Freedom of Information*), 18.8 (*Protection of Personal Data*), 21 (*Limitations on Liability*), 30 (*Consequences of Expiry or Termination*), 36 (*Severance*), 38 (*Entire Agreement*),

39 (*Third Party Rights*), 41 (*Disputes*) and 42 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 5 (*Intellectual Property Rights*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfers*), shall survive the termination or expiry of this Agreement.

- 30.2 Accumulated rights of the Parties shall not be affected by Termination of expiry of this Agreement.

Exit Management

- 30.3 The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

- 30.4 If this Agreement is terminated by the Authority pursuant to Clause 29.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 29.4(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:
 - (i) the period from (but excluding) the date that the Termination Notice is given by the Authority pursuant to Clause 29.1(a) (*Termination by the Authority*) to (and including) the Termination Date; or
 - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause 29.4(a) (*Termination by the Supplier*) to (and including) the Termination Date.

- 30.5 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 29.1(b), 29.1(c) and/or 29.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

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

- (a) either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 29.1(c) or 29.2(b) (*Termination by the Authority*) or 29.4(b) (*Termination by the Supplier*); or

(b) the Authority terminates this Agreement under Clause 29.1(d).

(d) **Payments by the Supplier**

- 30.7 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 30.8 If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 29.1(b) (*Termination by the Authority*) prior to Achievement of the SCD(3) Milestone then, without prejudice to Paragraph 1.3 (Milestone Payments) of Part B of Schedule 7.1 (Charges and Invoicing), the Authority shall be entitled to retain all Milestone Retentions that have been retained by the Authority.

SECTION J - MISCELLANEOUS AND GOVERNING LAW**31 COMPLIANCE****Health and Safety**

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

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Authority Premises.

31.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware, and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Employment Law

31.3 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

Equality and Diversity

31.4 The Supplier shall:

- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, marital status, civil partnership, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- (b) without prejudice to the generality of Clause 31.4(a), not unlawfully discriminate, and procure that its Sub-contractors do not unlawfully discriminate, within the meaning and scope of the Equality Act 2010 (and any statutory modification or re-enactment thereof), or within the scope of other relevant or equivalent legislation in any country where this Agreement is being performed; and
- (c) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

31.5 The Supplier shall:

- (a) undertake such acts and provide assistance as the Authority requests so as to enable the Authority to comply with its obligation under the public sector equality duty as set out at section 149 of the Equality Act 2010;
- (b) do everything that is required by the Authority so as to enable the Authority to comply with the public sector equality duty as set out at section 149 of the Equality Act 2010;
- (c) have proper regard to and comply with statutory and non-statutory codes of practice and guidance as issued from time to time by the Equality and Human Rights Commission or Secretary of State or other competent authority; and
- (d) comply with the Authority's equal opportunities policies as provided to the Supplier from time to time, where Supplier's Personnel are required to carry out work on premises occupied by or on behalf of the Authority or a Crown Body or alongside Authority staff.

Official Secrets Act and Finance Act

31.6 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

Conflicts of Interest

31.7 The Supplier:

- (a) must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest; and
- (b) must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

31.8 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Agreement immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

Modern Slavery

31.9 The Supplier:

- (a) shall not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour;

- (b) shall not require any Supplier Personnel or the personnel of any Sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- (e) shall make reasonable enquires to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-contractor's anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Agreement;
- (h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report (in respect of which, a statement under section 54 of the Modern Slavery Act would be sufficient) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. A statement made under section 54 of the Modern Slavery Act will be deemed to satisfy this Clause 31.9(h);
- (i) shall not use, nor allow its employees or Sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors;
- (j) shall not use or allow child or slave labour to be used by its Sub-contractors; and
- (k) shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or any labour rights abuses by it or its Sub-contractors to the Authority, the Modern Slavery Helpline and any relevant national or local law enforcement agencies.

31.10 If the Supplier is in Default under Clause 31.9 the Authority may by notice:

- (a) require the Supplier to remove from performance of this Agreement any Sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate this Agreement.

31.11 The Supplier shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Agreement, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan

which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains).

- 31.12 If the Supplier notifies the Authority pursuant to Clause 31.9(k) it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with this Agreement.

Whistleblowing

- 31.13 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or Suspected Breach of:

- (i) Law;
- (ii) Clauses 31.1 to 31.9 or 31.14; or
- (iii) Clause 35 (*Prevention of Fraud and Bribery*).

- 31.14 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

Child Labour

- 31.15 The Supplier shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Agreement is performed.

Sub-contracts

- 31.16 The Supplier agrees to take all reasonable efforts to secure the observance of the provisions of this Clause 31 by each of its employees, agents and other persons acting under its direction or control who are engaged in the performance of this Agreement.
- 31.17 The Supplier agrees to reflect this Clause 31 in any Sub-contract that it enters into and to require its Sub-contractors to reflect this Clause 31 in any Sub-contracts they enter into to satisfy the requirements of this Agreement.

32 ASSIGNMENT AND NOVATION

- 32.1 The Supplier shall not give, bargain, sell, assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 32.2 The Authority may at its discretion give, bargain, sell, assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

- (c) and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 32.2.

32.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 32.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

32.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "Successor Body"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

33 WAIVER AND CUMULATIVE REMEDIES

33.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

34 RELATIONSHIP OF THE PARTIES

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

35 PREVENTION OF FRAUD AND BRIBERY

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

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

35.2 The Supplier shall not during the term of this Agreement:

- (a) commit a Prohibited Act;
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, Sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
- (c) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or execution of this or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown; and/or
- (d) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

35.3 The Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 35.3(a) and make such records available to the Authority on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.

35.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 35.1 and/or 35.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for

participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 35.5 If the Supplier makes a notification to the Authority pursuant to Clause 35.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).
- 35.6 If the Supplier is in Default under Clauses 35.1 and/or 35.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default;
 - (b) immediately terminate this Agreement and recover from the Supplier the amount of any loss resulting from the termination; or
 - (c) to recover from the Supplier any other loss sustained in consequence of such Default, where this Agreement has not been terminated.
- 35.7 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Supplier pursuant to this Clause 35.
- 35.8 Any notice served by the Authority under Clause 35.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

36 SEVERANCE

- 36.1 If any provision of this Agreement (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 Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 36.2 In the event that any deemed deletion under Clause 36.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 36.3 If the Parties are unable to agree on the revisions to this Agreement within five

(5) Working Days of the date of the notice given pursuant to Clause 36.2, the matter shall be dealt with in accordance with Paragraph 4 of Schedule 8.3 (*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 Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 36.3.

37 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 Agreement.

38 ENTIRE AGREEMENT

- 38.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 38.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 38.3 Nothing in this Clause 38 shall exclude any liability in respect of misrepresentations made fraudulently.
- 38.4 If the Supplier shall enter into any other contract with the Crown relating in any way to the subject matter of this Agreement, then, no breach by the Crown of that other Agreement nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:
- (a) give the Supplier any right under this Agreement to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;
 - (b) affect, modify, reduce or extinguish either the obligations of the Supplier or the rights or remedies of the Authority (including without limitation the right to liquidated damages under this Agreement); or
 - (c) be taken to amend, add to, delete or waive any term or condition of this Agreement.

39 THIRD PARTY RIGHTS

- 39.1 The provisions of Paragraph 3 of Schedule 5 (*Intellectual Property Rights*) (*Key Licences to the Authority*), Paragraph 2.5 of Part 2 of Schedule 9.1 (*Staff Transfers*) and the provisions of Paragraph 8.9 of Schedule 8.5 (*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.

- 39.2 Subject to Clause 39.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act
- 39.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 39.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 39.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

40 NOTICES

- 40.1 Any notices sent under this Agreement must be in writing.
- 40.2 Subject to Clause 40.4, the following table sets out the method by which notices may be served under this Agreement 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

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

	Supplier	Authority
Contact		Deputy Head Commercial AFRS With a copy to MOD Legal
Address	Serco Group plc Serco House 16 Bartley Wood Business Park Bartley Way, Hook Hampshire, RG27 9UY	<u>Deputy Head Commercial</u> <u>AFRS</u> Floor 1, Zone 8, Ramillies Building, Army HQ, Marlborough Lines, Monxton Road, Andover, Hants, SP11 8HJ <u>MOD Legal</u> MOD Abbey Wood Bristol BS34 8JH
Email		

- 40.4 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 40.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 29.4 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

- 40.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 40.4 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 40.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice. This Clause 40 does not apply to the service of any proceedings or other documents

in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

- 40.6 Where either party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

41 DISPUTES

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

42 GOVERNING LAW AND JURISDICTION

- 42.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 42.2 Subject to Clause 41 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of SERCO LIMITED

Signature: SERCO LIMITED

Name (block capitals):

Position: Date:

SIGNED by the Secretary of State for Defence

Signature:

Name (block capitals):

Position:

Date:

SCHEDULE 1 DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

“Access Permission”	means permission to access a category of required data uploaded to the Virtual Library in accordance with Annex 3 of Schedule 8.4 (<i>Records and Reports Provisions</i>);
“Accounting Reference Date”	means in each year the date to which the Supplier prepares its annual audited financial statements;
“Achieve”	means: <ul style="list-style-type: none"> (a) in respect of a Test, to successfully pass a Test without any Test Issues; and (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>), and “Achieved” and “Achievement” shall be construed accordingly;
“Achieved Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Actual Performance”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“AFRS Implementation Board”	the body as described in Schedule 8.1 (<i>Governance</i>);
“AFRS Operational Performance & Delivery Board”	the body as described in Paragraph 17 of Schedule 8.1 (<i>Governance</i>);
“AFRS Strategy Board”	the body as described in Paragraph 18 of Schedule 8.1 (<i>Governance</i>);

“Armed Forces Recruiting Headquarters” or “AFR HQ”	the joint headquarters between the Authority and the Supplier established in order to oversee the recruiting operations as set out in this Agreement;
“Allowable Assumptions”	means the assumptions set out in Annex 5 of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Annual Contract Report”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Annual Revenue”	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <ul style="list-style-type: none"> (a) figures for accounting periods of other than twelve (12) months should be scaled pro rata to produce a proforma figure for a twelve (12) month period; and (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
“Anticipated Contract Life Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Applicable Supplier Personnel”	has the meaning given in Schedule 7.2 (Payments on Termination);
“Application Programming Interface” or “API”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Assessment”	means a consideration of someone or something and a judgement about them;
“Assets”	means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
“Associated Person”	has the meaning given to it in section 44(4) of the Criminal Finances Act 2017;
“Associates”	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the

	undertaking to be treated as an associate under generally accepted accounting principles;
“Assurance”	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
“At Risk Percentage”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Attestation”	means evidencing the validity of the process leading to a Candidate’s enlistment by the Recruiter, and in particular, the genuineness of the Candidate’s answers on the relevant form (which occurs ordinarily at the start of Phase 1 (Militarisation) Training), and “Attest” , “Attesting” and “Attested” shall be construed accordingly;
“Attrition Baseline”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Audit”	means any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	means: <ul style="list-style-type: none"> (a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Audit Rights”	means the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Authority Change Manager”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Authority Assets”	means the Authority Materials, the Authority infrastructure and any other data, software, assets,

equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;

“Authority Background IPRs”

means:

- (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes and procedures;
- (b) IPRs created by the Authority independently of this Agreement; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;

but excluding IPRs owned by the Authority subsisting in the Authority Software;

“Authority Cause”

means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

“Authority Data”

means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Controller;

“Authority Employees”

means as defined in Schedule 9.1 (*Staff Transfers*);

“Authority IT Strategy”	means the Authority’s IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;
“Authority Materials”	<p>means the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none"> (a) are owned or used by or on behalf of the Authority; and (b) are or may be used in connection with the provision or receipt of the Services; <p>but excluding any New IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
“Authority Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Authority engaged in the performance of the Authority’s obligations under this Agreement (with the exception of Embedded Service Personnel and other military personnel);
“Authority Premises”	means premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
“Authority Representative”	means the representative appointed by the Authority pursuant to Clause 11.4 (<i>Representatives</i>);
“Authority Requirements”	means requirements of the Authority as set out in this Agreement;
“Authority Responsibilities”	means the responsibilities of the Authority specified in Schedule 3 (<i>Authority Responsibilities</i>);
“Authority Software”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“Authority System”	means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for

	the Authority to receive and use the Services and Deliverables;
“Authority Transition Personnel”	means all employees, agents, consultants and contractors of the Authority, and all military personnel (including any Embedded Service Personnel), who in each case during the Transition Phase are engaged in the performance of the Authority’s obligations under this Agreement or are otherwise engaged in recruitment activity for or within the Authority;
“Background IPRs”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“Backstop Baseline”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Backstop Performance Level”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 2.2 (<i>Performance Levels</i>);
“Baseline Demand Plan”	means, in respect of each Recruiting Year, the Demand Plan priced by the Supplier as part of its Final Bid, as set out in Annex 6 of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Baseline Security Requirements”	means the Authority’s baseline security requirements contained in Schedule 2.1(<i>Services Description</i>) and Schedule 2.4 (<i>Security Management</i>);
“Benchmarked Services”	has the meaning given to it in Schedule 7.3 (<i>Benchmarking</i>);
“Benchmarker”	has the meaning given to it in Schedule 7.3 (<i>Benchmarking</i>);
“Benchmark Report”	has the meaning given to it in Schedule 7.3 (<i>Benchmarking</i>);
“Benchmark Review”	has the meaning given to it in Schedule 7.3 (<i>Benchmarking</i>);
“Bid Team”	has the meaning given to it in Paragraph 4.1 of Schedule 12 (<i>Conflict of Interest Mitigation Plan</i>);
“Board Member”	means the initial persons appointed by the Authority and the Supplier to the Boards as set out in Annex 1 of Schedule 8.1 (<i>Governance</i>) and any subsequent replacements from time to time as agreed between

	the Parties in accordance with Paragraph 9.3 of Schedule 8.1 (<i>Governance</i>);
“Boards”	the 3* Cabal, the AFRS Strategy Board, AFRS Operational Performance & Delivery Board, AFRS Implementation Board and any other boards which may be established from time to time by agreement between the Parties, and “Board” shall mean any of them;
“Board Confirmation”	has the meaning given to it in Schedule 7.4 (<i>Financial Distress</i>);
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Business Continuity Plan”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Business Continuity Services”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Candidate”	means an individual who has submitted an application to join the Armed Forces, but who has not yet become a Recruit or (re-)entered Service (depending on type of entry);
“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 1 Paternoster Lane, St Paul’s, London, EC4M 7BQ;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;

“Certificate of Costs”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Change”	means any change to this Agreement;
“Change Authorisation Note”	means a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Change Communication”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Change Control Procedure”	means the procedure for changing this Agreement set out in Schedule 8.2 (<i>Change Control Procedure</i>);
“Change in Law”	means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date, including both Specific Changes in Law and General Changes in Law;
“Change Request”	means a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Charges”	means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
“Chief Defence People” or “CDP”	has the meaning given in Schedule 8.1 (<i>Governance</i>);
“Child Labour Legislation”	means all International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child’s health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into UK law and directly applicable to the Supplier in the jurisdiction(s) in which it performs this Agreement;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“Collaboration Requirements”	means the key behavioural requirements and associated measurement criteria that the Supplier shall be required to demonstrate in the delivery of the Services as set out in Annex 8 of Schedule 8.1 (<i>Governance</i>);
“Collaboration Review”	has the meaning given to it in Paragraph 10.5 of Schedule 8.1 (<i>Governance</i>);

“Commander Armed Forces Recruiting” or “Comd AFR”	the individual appointed as such by the Authority, responsibilities for which are further set out in Paragraph 10 and the RACI Matrix at Annex 2, of Schedule 8.1 (<i>Governance</i>);
“Commercial Managers”	the individuals appointed as such by the Authority and the Supplier, responsibilities for which are set out in Paragraph 13, of Schedule 8.1 (<i>Governance</i>);
“Commercially Sensitive Information”	<p>means the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier’s IPRs; and (c) the Supplier’s business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Comparison Group”	has the meaning given in Schedule 7.3 (<i>Benchmarking</i>);
“Compensation for Unacceptable KPI Failure”	has the meaning given in Clause 7.4 (<i>Unacceptable KPI Failure</i>);
“Compensation Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Component”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Condition Precedent”	has the meaning given in Clause 4.2 (<i>Condition Precedent</i>);
“Confidential Information”	<p>means:</p> <ul style="list-style-type: none"> (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:

- (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
 - (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
 - (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
 - (d) Information derived from any of the above,
- but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;

(iv) was independently developed without access to the Confidential Information; or

(v) relates to the Supplier's:

1. performance under this Agreement; or
2. failure to pay any Sub-contractor as required pursuant to Clause 15.17(a) (*Supply Chain Protection*);

“Conflict of Interest”	means a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority under this Agreement, in the reasonable opinion of the Authority;
“Conflicted Personnel”	means any Supplier Personnel or personnel of an Affiliate who have or have had access to information which creates or may create a Conflict of Interest;
“Continuing Employee”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“Continuing Supplier”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B, of Schedule 7.5 (<i>Financial Reports</i>);
“Contract Breakage Costs”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Contract Change”	means any change to this Agreement other than an Operational Change;
“Contract Inception Report”	means the initial financial model in a form agreed by the Supplier and the Authority in writing, as of the Effective Date set out in Annex 9 (<i>Financial Model</i>) of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Contract Management Plan”	means any plan developed to enable the effective management of the provision of Services in accordance with the terms of this Agreement;
“Contract Year”	means, ordinarily, each successive period of twelve (12) months during the Term commencing on 1 st April in the relevant year, save that:

- (a) the first such Contract year shall commence on the Effective Date and end on 31st March in the year following the year in which the Effective Date occurs; and
- (b) the final such Contract year shall commence on 1st April in the relevant year and end on the expiry or termination of the Term;

“Contracts Finder”

the online government portal which allows suppliers to search for information about contracts as prescribed by Part 4 of the Public Contract Regulations 2015;

“Control”

means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person:

- a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or
- b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;

“Controller”

has the meaning given in the UK GDPR or the EU GDPR as the context requires;

“Core Milestones”

means the Milestones designated as such in Schedule 7.1 (Charges and Invoicing);

“Corporate Change Event”

means:

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are

listed on the main market of the London Stock Exchange plc;

- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any twelve (12) month period;
- (g) an order is made, or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Change Event Grace Period”

means a grace period agreed to by the Relevant Authority for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event;

“Corporate Resolvability Assessment (Structural Review)”

means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 and Annex 2: Corporate Resolvability Assessment (Structural Review) of Schedule 8.6 (*Service Continuity Plan And Corporate Resolution Planning*);

“Costs”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“COTS (commercial off the shelf) Software”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“Counter Notice”	has the meaning given in Paragraph 7.2, of Schedule 8.3 (<i>Dispute Resolution</i>);
“Critical National Infrastructure” or “CNI”	<p>means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:</p> <p>major detrimental impact on the availability, integrity or delivery of essential services - including those services whose integrity, if compromised, could result in significant loss of life or casualties - taking into account significant economic or social impacts; and/or</p> <p>significant impact on national security, national defence, or the functioning of the UK;</p>
“Critical Performance Failure”	<p>means:</p> <ul style="list-style-type: none"> (a) the Supplier accruing in aggregate seventy (70) or more Service Points (in terms of the number of points allocated) in any Measurement Period; or (b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;
“Critical Service Contract”	means the overall status of this Agreement as determined by the Authority and specified in Paragraph 10.1 of Part 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Crown Body”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“CRP Information”	means the Corporate Resolution Planning Information, together the:

	(b) Exposure Information (Contracts List);
	(c) Corporate Resolvability Assessment (Structural Review); and
	(d) Financial Information and Commentary;
“CRTPA”	means the Contracts (Rights of Third Parties) Act 1999;
“CCS Marketing framework”	means services governed by contracts RM6123, RM6124 and RM6125 as agreed between the Crown Commercial Service and the Agency (as defined therein);
“CSCS”	means the Civil Service Compensation Scheme, being the scheme established pursuant to section 1 of the Superannuation Act 1972;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	means <ul style="list-style-type: none"> (a) the UK GDPR; (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; (d) the guidance and codes of practice issued by the Information Commissioner’s Office which apply to a party; (e) all applicable Law about the processing of personal data and privacy; and (f) (to the extent that it applies) the EU GDPR; and

“Data Retention Policy”	has the meaning given in Annex 2 to Schedule 11 (<i>Data Protection and Governance</i>);
“Data Risk”	has the meaning given in Clause 16.10(d);
“Data Subject”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Data Subject Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Data Working Group”	means the body described in Annex 3 to Schedule 11 (<i>Data Protection and Governance</i>);
“Dedicated Supplier Personnel”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Deductions”	means all Service Credits, Compensation for Unacceptable KPI Failure, Delay Deductions or any other deduction which is paid or payable to the Authority under this Agreement;
“Default”	<p>means:</p> <p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach, or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Authority, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
“Delay”	<p>means:</p> <ul style="list-style-type: none"> (a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Transition Plan;
“Delay Deductions”	means the amounts to be deducted from the applicable Milestone Payment in respect of a Delay in

	Achieving a Milestone as specified in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Deliverable”	means an item or feature (including associated Documentation) delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
“Demand Plan”	means in respect of each Recruiting Year, the plan setting out the target number of Recruits required for each Role (as may be attributed to the relevant Group for the purposes of KPI 1.1) as provided to the Supplier through such Board or other governance process as the Authority determines from time to time and set out in the same form as the Baseline Demand Plan;
“Demand Target”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Demand Performance Level”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Demand Target Trajectory”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Detailed Transition Plan”	means the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 (<i>Transition Phase and Testing Procedures</i>);
“Department”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
“Digital”	means the software application used to deliver (or support delivery of) the Services;
“Digital Solution”	Has the meaning given in Schedule 4.1 (<i>Supplier Solution</i>) and the RoR Annexes to meet the requirements of the Authority within this Agreement;

“Direct Overhead”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Disaster”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Disaster Recovery Plan”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Disaster Recovery Services”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Disaster Recovery System”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Disclosing Party”	has the meaning given in Clause 17.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	means: <ul style="list-style-type: none"> (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;
“Dispute”	means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	means the dispute resolution procedure set out in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Documentation”	means descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system

performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Authority under this Agreement;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

“DOTAS”

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“DPA 2018”

means the Data Protection Act 2018;

“Due Diligence Information”

means any information supplied to the Supplier by or on behalf of the Authority prior to the Signature Date;

“EEA”

means European Economic Area;

“Effective Date”

means the later of:

- (a) the Signature Date;
- (b) 2 April 2025; and
- (c) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (*Condition Precedent*);

- “EIRs”** means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
- “Emergency Exit”** any termination of this Agreement which is a:
- (a) termination of the whole or part of this Agreement in accordance with Clause 29 (*Termination Rights*), except where the period of notice given under that Clause is greater than or equal to six (6) months;
 - (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 29 (*Termination Rights*); or
 - (c) wrongful termination or repudiation of this Agreement by either Party;
- “Emergency Maintenance”** means ad hoc and unplanned maintenance provided by the Supplier where:
- (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or
 - (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;
- “Employee Liabilities”** means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:
- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employee Liability Information”

has the same meaning as in Regulation 11(2) of the Transfer Regulations;

“Employee List”

has the meaning given in Schedule 9.1 (*Staff Transfers*);

“Employee Value Proposition” or “EVP”

means the unique set of benefits and rewards the Armed Forces offers its employees in return for the skills, capabilities and performance they bring to the Armed Forces;

“Employer Contributions”

has the meaning given in Schedule 9.1 (*Staff Transfers*);

“Employing Sub-Contractor”

has the meaning given in Schedule 9.1 (*Staff Transfers*);

“End User”

means any person authorised by the Authority to use the IT Environment and/or the Services;

“Expected Authority Transferee”

has the meaning given in Schedule 9.1 (*Staff Transfers*);

“Equivalent Services Data”

has the meaning given in Schedule 7.3 (*Benchmarking*);

“Estimated Year 1 Charges”	means the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
“EU”	means European Union;
“EU GDPR”	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
“Excess Profit”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Exit Debriefing Certification”	means the certification as set out in Appendix 2 to Schedule 12 (<i>Conflict of Interest Mitigation Plan</i>);
“Exit Management”	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
“Exit Plan”	means the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	means the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Expert”	means, in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	means determination by an Expert in accordance with Paragraph 6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Exposure Information (Contracts List)”	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 and Annex 1 of Part 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Ethical Wall Agreement”	means an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2 of Schedule 8.5 (<i>Exit Management</i>);

“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.3 of Schedule 8.5 (<i>Exit Management</i>);
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 3.3 of Schedule 8.5 (<i>Exit</i>), for managing the Parties’ respective obligations under this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8, of Schedule 8.2 (<i>Change Control Procedure</i>);
“3* AFR CABAL”	the body described in Paragraph 19, of Schedule 8.1 (<i>Governance</i>);
“FDE Group”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Final Bid”	means the Supplier’s final tender for the AFRS procurement submitted in response to the Authority’s invitation to submit final tenders, dated 6 March 2024;
“Final List of Subsequent Transferring Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“Financial Distress Event”	means the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Remediation Plan”	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs. This plan should include what the Authority would need to put in place to ensure performance and delivery of the Services in accordance with this Agreement up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard;
“Financial Indicator”	means in respect of the FDE Group means each of the financial indicators set out in Annex 2 of Schedule 7.4 (<i>Financial Distress</i>);
“Financial Information and Commentary”	means part of the CRP Information requirements set out in accordance with Paragraphs 11 and Annex 3 of

	Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“Financial Model”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Representative”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Target Threshold”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Transparency Objectives”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Firewall”	has the meaning given to it in Paragraph 2.3 of Schedule 12 (<i>Conflict of Interest Mitigation Plan</i>);
“First Option Period”	means a period of one (1) year from the end of the Initial Term;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Forecast Contingency Costs”	the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies

	that are identified in the Risk Register, such costs being those set out in the Financial Model;
“Former Authority Employee”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“General Anti-Abuse Rule”	means: <ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Full Operating Capability”	means the Solution being able to deliver end to end recruiting;
“Full Solution Implementation” or “FSI”	means the Milestone at which the Supplier has implemented all aspects of their ROM, to deliver the full demand of Authority recruiting, acknowledging that there may be a requirement to agree some discreet elements of the ROM, such as estate optimisation, that will be realised post-FSI. This is also the Milestone whereby all legacy RN and RAF data required from RITS must be transferred;
“Functional Meeting Groups”	the functional meeting groups described in Paragraph 15 of Schedule 8.1 (<i>Governance</i>);
“Gain Share Calculation”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Gain Share Calculation Date”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Gain Share Period”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“General Change in Law”	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“Goods”	has the meaning given in Clause 9.7 (<i>Supply of Goods</i>);
“Good Value”	has the meaning given in Schedule 7.3 (<i>Benchmarking</i>);
“Government Furnished Assets”	means the list of assets provided at Annex A of Schedule 3 (<i>Authority Responsibilities</i>);
“Group”	has the meaning given in Paragraph 1.1 of Part C of Schedule 2.2 (<i>Performance Levels</i>);
“Guarantee”	means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the Signature Date (which is in the form set out in Schedule 10 (<i>Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
“Guaranteed Agreement”	has the meaning given to it in Recital (A) of Schedule 10 (<i>Guarantee</i>);
“Guaranteed Maximum Cost” or “GMC”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Guaranteed Obligations”	has the meaning given to it in Recital (A);
“Guarantor”	means Serco Group PLC, a company registered in England and Wales with company number 02048608 and whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY ;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	means the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“Help Desk”	means the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
“Historic Performance” or “HP”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);

“Historic Performance Baseline” or “HPB”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“HMRC”	means HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Paragraph 5, of Schedule 8.2 (<i>Change Control Procedure</i>);
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3, of Schedule 8.2 (<i>Change Control Procedure</i>);
“Incurred Costs”	a) has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Indemnified Person”	means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
“Independent Controller”	means a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
“Indexation” and “Index”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>)
“Indicative Transition Plan”	means the outline plan set out at Annex 1 of Schedule 6.1 (<i>Transition Phase and Testing Procedures</i>);
“Indirect Overhead”	those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs incurred as a result of the provision of the Services (excluding any fines or penalties);
“Indicator Threshold”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Information”	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Information Asset”	means a body of information, defined and managed as a single unit so it can be understood, shared, protected and exploited effectively with a recognisable and manageable value, risk content and lifecycle;

“Information Asset Owner”	means a designated individual responsible for the safeguarding of Information Assets that are processed and/or held within a database, system or other media and which, in the case of the Services, shall be the Information Assets processed and/or held pursuant to or in connection with the Services and listed in any relevant Information Asset Register;
“Information Asset Register”	means the register designated as such by the Information Asset Owner for Information Assets processed and/or held pursuant to or in connection with the Services;
“Initial Term”	means the period commencing on the Effective Date and ending seven (7) years after the date of SCD3;
“Initial Upload Date”	means the occurrence of an event detailed in Annex 3 of Schedule 8.4 (<i>Reports and Records Provisions</i>) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;
“Insolvency Continuity Plan”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Insolvency Event”	<p>means with respect to any person, means:</p> <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) in respect of the Supplier, they have failed to comply with or to set aside a Statutory demand under section 268 of the Insolvency Act 1986 within 21 days of service of the Statutory Demand on them; (ii) in respect of the Supplier, execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part; (iii) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (iv) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the

Insolvency Act 1986;

- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that that person with one or more other companies or the solvent reconstruction of that person;
- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, an LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator

is filed at Court or given or if an administrator is appointed, over that person;

(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Intellectual Property Rights” or “IPRs” has the meaning given in Schedule 5 (*Intellectual Property Rights*);

“Interface” has the meaning given in Schedule 5 (*Intellectual Property Rights*);

“Interface Information” has the meaning given in Schedule 5 (*Intellectual Property Rights*);

“Interim Cost Payments” has the meaning given in Paragraph 5.5 of Part A of Schedule 7.1 (*Charges and Invoicing*)

“Intervention Cause” has the meaning given in Clause 25.1 (*Remedial Adviser*);

“Intervention Notice” has the meaning given in Clause 25.1 (*Remedial Adviser*);

“Intervention Period” has the meaning given in Clause 25.1(e) (*Remedial Adviser*);

“Intervention Trigger Event” means:

(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;

(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;

	<ul style="list-style-type: none"> (c) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or (d) the Supplier not Achieving a Milestone within seventy-five (75) days of its relevant Milestone Date;
“IP Completion Day”	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
“IPRs Claim”	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
“IT”	means information and communications technology;
“IT Environment”	means the Authority System and the Supplier System;
“Joint Controllers”	means where two or more Controllers jointly determine the purposes and means of processing;
“Key Performance Indicator” or “KPI”	means the key performance indicators set out in Sections 1 and 2 of Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Key Personnel”	means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (<i>Key Personnel</i>);
“Key Roles”	means a role described as a Key Role in Schedule 9.2 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with Clause 14.4 (<i>Key Personnel</i>);
“Key Sub-contract”	means each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	<p>means any Sub-contractor:</p> <ul style="list-style-type: none"> (a) which, in the opinion of the Authority, performs (or would perform if appointed) a

critical role in the provision of all or any part of the Services; and/or

- (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);

“Know-How”

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;

“KPI Failure”

means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

“KPI Service Threshold”

shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*);

“Law”

means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“Lead Service”

means the Army, as the body authorised to serve as the point of contact between the Authority and the Supplier, who will have the requisite authority and responsibility as outlined in the RACI matrix at Annex 2 of Schedule 8.1 (*Governance*), and governed by a Service Level Agreement between the three services and *UK StratCom* and *any other applicable Authority entity as may be deemed necessary from time to time*;

“Legacy Recruiting Environment”

means

- (1) for the Royal Navy and the Royal Airforce, the legacy inhouse recruitment services underpinned by various contracts which deliver discreet elements of the recruiting operation including the Recruiting Information Technology System (“RITS”); and

- (2) for the Army the legacy recruitment services provided under the Recruitment Partnering Project (“RPP”) contract primarily delivered using the Defence Recruiting System (“DRS”) which is intended to run until 31 March 2027;

“Licensed Software”	means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software and Third Party Software and/or any Specially Written Software (if the relevant alternative ownership provisions are selected in Appendix A);
“Loaned Assets”	means any Authority Assets loaned to the Supplier by the Authority and used in connection with the provision of the Services;
“Losses”	means losses, liabilities, claims, fines, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Macro Demand Performance”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Maintenance Schedule”	has the meaning set out in Clause 9.4 (<i>Maintenance</i>);
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Management Information” or “MI”	means the management information specified in this Agreement and in particular Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Marketing”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Marketing Strategy”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);

“Material Change”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Material KPI Failure”	means: <ul style="list-style-type: none"> (a) a Serious KPI Failure; or (b) a failure by the Supplier to meet a KPI Service Threshold;
“Material Test Issue”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Material PI Failure”	means: <ul style="list-style-type: none"> (a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Measurement Period; and/or (b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Measurement Period;
“Maximum Permitted Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Measurement Period”	means in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually) as specified in the applicable table in Part I of Annex 1 to Schedule 2.2 (<i>Performance Levels</i>). The first such Measurement Period commences on SCD3;
“Medical Assessment”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Mediation Notice”	has the meaning given in Paragraph 4.2 of Schedule 8.3 (<i>Dispute Resolution</i>);
“Medical Questionnaire”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 of Schedule 8.3 (<i>Dispute Resolution</i>), to mediate a Dispute;

“Milestone”	means an event or task described in the Transition Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	means the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Milestone Date”	Means: <ul style="list-style-type: none"> (a) in respect of a Milestone, the target date set out against the relevant Milestone in the Transition Plan by which the Milestone must be Achieved; and (b) in respect of an Overhead Milestone, the date on or following which the Supplier can issue an invoice in respect of such Overhead Milestone, as set out in the Transition Plan;
“Milestone Payment”	means a payment identified in Schedule 7.1 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate or, in the case of an Overhead Milestone, upon the Milestone Date;
“Milestone Retention”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Minimum Acceptable Performance Levels”	as the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“MOD Cloud”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Month”	means a calendar month and “monthly” shall be interpreted accordingly;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6 of Schedule 8.3 (<i>Dispute Resolution</i>);
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6 of Schedule 8.3 (<i>Dispute Resolution</i>);

“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“NCSC”	means the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
“New IPRs”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“New Release”	means an item produced primarily to extend, alter, or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services, but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Non-trivial Customer Base”	means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
“Non-COTS Software”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“Non-Traditional Entry” or “NTE”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Notifiable Default”	has the meaning given in Clause 23.1 (<i>Rectification Plan Process</i>);
“Notional Transfer Date”	means as set out in Part 1 of Schedule 9.1 (<i>Staff Transfers</i>);
“Object Code”	means software and/or data in machine-readable, compiled object code form;

“Occasion of Tax Non-Compliance”

means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Signature Date or to a civil penalty for fraud or evasion;

“Offer of Service”has the meaning given to it Schedule 2.1 (*Services Description*);**“Onboarding”**has the meaning given to it in Schedule 2.1 (*Services Description*);**“Onerous Contract”**has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);**“Onerous Contract Report”**means a report provided by the Supplier pursuant to Paragraph 2 of Part A of Schedule 7.5 (*Financial Reports and Audit Rights*);**“Open Book Data”**has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*)**“Open Source”**has the meaning given in Schedule 5 (*Intellectual Property Rights*);**“Open Standards Principles”**has the meaning given to it in Schedule 2.3 (*Standards*);

“Operating Environment”	means the Authority System and the Sites;
“Operational Change”	means any change in the Supplier’s operational procedures which in all respects, when implemented: <ul style="list-style-type: none"> (a) will not affect the Charges and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority’s IT infrastructure; and (d) will not require a change to this Agreement
“Option Period”	means any of the First Option Period, Second Option Period or Third Option Period;
“Ordinary Exit”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Other Supplier”	means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time;
“Overhead Milestone”	means the Milestones indicated as "TEAM Serco Programme Overhead" in the Transition Plan;
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 29.2(b) (<i>Termination by the Authority</i>) or 29.4(b) (<i>Termination by the Supplier</i>) or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Pass-Through Costs”	has the meaning given in Paragraph 9.1 of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Performance Failure”	means a KPI Failure or a PI Failure;
“Performance Indicators”	means the Key Performance Indicators and the Subsidiary Performance Indicators;

“Permitted Maintenance”	has the meaning given in Clause 9.4 (<i>Maintenance</i>);
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1(a) of Part B of Schedule 2.2 (<i>Performance Levels</i>);
“Performance Review Meeting”	means the regular meetings between the Supplier and the Authority to manage and review the Supplier’s performance under this Agreement, as further described in Paragraph 1.9 of Part B of Schedule 2.2 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Personal Data Breach”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Phase 1 Training” or “Phase 1 (Militarisation) Training”	has the meaning given to Phase 1 Training in Schedule 2.1 (<i>Services Description</i>);
“PI Failure”	means a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“PI Service Threshold”	means shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Prescribed Person”	<p>means a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, available online at:</p> <p>https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies,</p> <p>as updated from time to time;</p>
“Previous Supplier”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“Previous Supplier Employee”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“Previous Supplier Protections”	means as defined in Paragraph 3.4.1 of Schedule 9.1 (<i>Staff Transfers</i>);
“Previous Supplier Relevant Transfer”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);

“Previous Supplier Relevant Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“Processor”	has the meaning given to it under the UK GDPR or the EU GDPR as the context requires;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;
“Prohibited Act”	<p>means:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) an offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
“Profit Already Paid”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);

“Protective Measures”:	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier’s Group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Quality Plans”	has the meaning given in Clause 6.2 (<i>Quality Plans</i>);
“Quarter”	means the first three Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
“Receiving Party”	the Party which received a proposed Contract Change within the meaning of Schedule 8.2 (<i>Change Control Procedure</i>);
“Recipient”	has the meaning given in Clause 17.1 (<i>Confidentiality</i>);
“Records”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Recruit”	means: <ul style="list-style-type: none"> (a) for the purpose of regular engagement, a Candidate who has Attested but has not yet completed the required Phase 1 (Militarisation) Training module(s) to categorise them being of ‘trained strength’; and (b) for the purpose of reserve engagement, a Candidate who has accepted an Offer of Service, and is ready to be allocated to the ‘Parent Unit’, but who has not yet completed the required Phase 1 (Militarisation) Training module(s) to categorise them as being of ‘trained strength’;
“Recruiter”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);

“Recruitment Strategy”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Recruiting Year” or “RY”	means the period of twelve (12) months commencing on 1 st April in the relevant year and ending on 31 st March in the subsequent year;
“Rectification Plan”	means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	means: <ul style="list-style-type: none"> (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 23.4 (<i>Submission of the draft Rectification Plan</i>) or 23.8 (<i>Agreement of the Rectification Plan</i>); (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 23.7 (<i>Agreement of the Rectification Plan</i>); (c) the Supplier failing to rectify a material Default within the later of: <ul style="list-style-type: none"> (i) thirty (30) Working Days of a notification made pursuant to Clause 23.2 (<i>Notification</i>); and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in the Measurement Period immediately subsequent to the Measurement Period in which the initial Material KPI Failure occurred; (e) the Supplier not Achieving a Milestone by the expiry of the Delay Deduction Period; and/or

	(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;
“Rectification Plan Process”	means the process set out in Clauses 23.4 (<i>Submission of the draft Rectification Plan</i>) to 23.9 (<i>Agreement of the Rectification Plan</i>);
“Redundancy Costs”	has the meaning given in Schedule 7.2 (Payments on Termination);
“Registers”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Rejoiners”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Related Service Provider”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Related Third Party”	a party to: <ul style="list-style-type: none"> a) another contract with the Authority or the Supplier which is relevant to this Agreement; or b) a Sub-contract;
“Relevant Authority” or “Relevant Authorities”	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Relevant IPRs”	means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Specially Written Software, the Non-COTS Software, the Non-COTS Background IPRs, and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority’s Background IPRs, the COTS Software, the COTS Background IPRs and/or the Third Party COTS IPRs;
“Relevant Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Relevant Requirements”	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010

	and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Statutory Scheme”	has the same meaning as in Regulation 8 of the Transfer Regulations;
“Relevant Tax Authority”	means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	has the meaning given in Part 1 to Schedule 9.1 (<i>Staff Transfers</i>);
“Relevant Transfer Date”	means the date on which a Relevant Transfer is affected for Authority Employees;
“Relief Notice”	has the meaning given in Clause 27.2 (<i>Authority Cause</i>);
“Remedial Adviser”	means the person appointed pursuant to Clause 25 (<i>Remedial Adviser</i>);
“Remedial Adviser Failure”	has the meaning given in Clause 25.5 (<i>Remedial Adviser</i>);
“Repeat Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Replacement Services”	means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	means any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request for Estimate”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Request For Information”	means a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 26.1(a) (<i>Step-In Rights</i>);
“Retained Capped Costs”	has the meaning given in Paragraph of 8.2 of Part A of Schedule 7.1 (<i>Charges and Invoicing</i>);

“Retained Cost Cap”	has the meaning given in Paragraph 8.2 of Part A of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Retained Cost Incurred”	has the meaning given in Paragraph 8.4 of Part A of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Retained Costs”	has the meaning given in Paragraph 8.1 of Part A of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Review Report”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Royal Fleet Auxiliary” or “RFA”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“RFA Recruitment Process Stage 1 Completion”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“RFA Recruitment Process Stage 2 Completion”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“RITS”	means the Recruiting Information Technology System, which forms part of the Legacy Recruiting Environment;
“Risk Register”	means the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Role”	means each of the roles or non-role specific employment streams as specified in the Baseline Demand Plan, which the Supplier is required to fill with Recruits under this Agreement, as such list may be amended and set out in any subsequent iteration of the Demand Plan. A Role may be whether identified as an individual Role or within Group;
“ROM”	means the Recruiting Operating Model;
“RoR Annexes”	has the meaning given to it in Schedule 3 (<i>Authority Responsibilities</i>);
“Satisfaction Survey”	has the meaning given in Paragraph 4.1 of Part II of Annex 1 to Schedule 2.2 (<i>Performance Levels</i>);
“Second Option Period”	means a period of one (1) year from the end of the First Option Period;
“Security Breach”	has the meaning given in Schedule 2.4 (<i>Security Management</i>);

“Security Management Plan”	has the meaning given in Schedule 2.4 (<i>Security Management</i>);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Service Charges”	means the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Services;
“Service Commencement Date”	means either or all of SCD1, SCD2 and/or SCD3 as the context requires;
“Service Commencement Date 1” or “SCD1” or “SCD(1)”	<p>means 12 January 2027, this being the date at which the Supplier shall:</p> <ul style="list-style-type: none"> (a) have the new Digital Solution and full operating model capable of delivering Full Operating Capability; (b) be responsible for all new Officer (“OF”) applications into the Army; and (c) commence the transfer of inflight Army OF candidates to their new operating model and digital solution, which shall be completed by 28 February 2027; <p>and for the avoidance of doubt until the transfer of all inflight Army OF candidates is complete, there shall commence a period of inactivity within the RPP Army OF candidate pipeline and during the transfer windows for this cohort, there will also be an Army OF Rejoiner freeze until such time as that cohort is actively operating in the new Supplier Solution;</p>
“Service Commencement Date 2” or “SCD2” or “SCD(2)”	<p>means 1 March 2027 this being the date at which the Supplier shall:</p> <ul style="list-style-type: none"> (a) be responsible for all new Other Ranks (“OR”) applications into the Army; and (b) commence the transfer of inflight Army OR Candidates to their new operating model and digital solution, which shall be completed by 28 March 2027; <p>and for the avoidance of doubt until the transfer of all inflight Army OR candidates is complete, there will be a period of inactivity within the RPP Army OR Candidate pipeline and during the transfer windows for this cohort, there will also be an Army ORs</p>

	Rejoiner freeze until such time as that cohort is actively operating in the new Supplier solution;
“Service Commencement Date 3” or “SCD3” or “SCD(3)”	<p>means 1 April 2027, this being the start of the first Recruiting Year at which the Supplier shall:</p> <ul style="list-style-type: none"> (a) be responsible for inflow against the full demand for all of the Tri-Services; (b) be responsible for delivering end-to-end recruiting for Royal Navy and Royal Air Force either utilising their new Digital Solution, or the legacy Royal Navy and Royal Air Force digital systems until no later than 30 Sep 27; and (c) have completed the transfer of all legacy Army data from DRS and RN and RAF data from RITS;
“Service Continuity Plan”	has the meaning given in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Service Credit Cap”	<p>means an amount equal to the sum of:</p> <ul style="list-style-type: none"> (a) the applicable Target Profit (being the expected Supplier Profit, as calculated in accordance with Paragraph 6.1 of Part A of Schedule 7.1 (<i>Charges and Invoicing</i>)), in the Contract Year in respect of which Service Credits are accrued; and (b) in the event of an Unacceptable KPI Failure, the applicable At Risk Percentage;
“Service Credits”	means the credits accrued and payable by the Supplier due to the occurrence of one (1) or more KPI Failure(s), calculated as a reduction in the Target Profit in accordance with Paragraph 2 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Service Handover”	has the meaning given to it in Paragraph 16.1 of Schedule 8.1 (<i>Governance</i>);
“Service Period”	<p>means a calendar month, save that:</p> <ul style="list-style-type: none"> (a) the first service period shall begin on SCD3 and shall expire at the end of the calendar month in which the date of SCD3 falls; and (b) the final service period shall commence on the first (1st) day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

“Service Points”	means, in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Services”	means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>);
“Services Description”	means the services description set out in Schedule 2.1 (<i>Services Description</i>);
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1 of Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Shortfall Period”	has the meaning given in Paragraph 6.2, of Schedule 7.2 (<i>Payments on Termination</i>);
“Signature Date”	means the date on which this Agreement is executed by both parties;
“Single Service” or “sS”	means each of the individual services of the Royal Navy, Army, and Royal Air Force, which when combined, make up the UK Armed Forces;
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
“SME”	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Social Value”	means the additional social benefits that can be achieved in the delivery of this Agreement set out in the Authority’s Requirements;
“Social Value PI”	means the Social Value performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Social Value KPI”	means the Social Value key performance indicators set out in Table 1 of Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Software”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“Source Code”	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information, system architecture and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
“Specialist Assessment”	has the meaning given to it in Schedule 2.1 (<i>Services Description</i>);
“Specially Written Software”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“Specific Change in Law”	means a Change in Law that relates specifically to the business of the Authority, and which would not affect a Comparable Supply;
“Standards”	means the standards, policies and/or procedures identified in Schedule 2.3 (<i>Standards</i>);
“Standards Hub”	has the meaning given to it in Schedule 2.3 (<i>Standards</i>);
“Statement of Good Standing”	means the template as shall be provided by the Authority from time to time to be completed by the Supplier and its Key Sub-contractors in accordance with this Agreement;
“Step-In Notice”	has the meaning given in Clause 26.1 (<i>Step-In Rights</i>);
“Step-In Trigger Event”	means: <ul style="list-style-type: none"> (a) any event falling within the definition of a Supplier Termination Event;

- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 26 (*Step-In Rights*) is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty;

“Step-Out Date” has the meaning given in Clause 26.5(b) (*Step-In Rights*);

“Step-Out Notice” has the meaning given in Clause 26.5 (*Step-In Rights*);

“Step-Out Plan” has the meaning given in Clause 26.6 (*Step-In Rights*);

“Strategic Supplier” means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

“Sub-contract” means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Sub-contractor” means any third party with whom:

- (a) the Supplier enters into a Sub-contract; or
- (b) a third party under (a) above enters into a Sub-contract,

	or the servants or agents of that third party;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
“Subsequent Relevant Transfer”	means as defined in Part 2 of Schedule 9.1 (<i>Staff Transfers</i>);
“Subsequent Transfer Date”	means as defined in Part 2 of Schedule 9.1 (<i>Staff Transfers</i>);
“Subsequent Transferring Employee”	means as defined in Part 2 of Schedule 9.1 (<i>Staff Transfers</i>);
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Subsidiary Performance Indicator”	means the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Successor Body”	has the meaning given in Clause 32.4 (<i>Assignment and Novation</i>);
“Suggested Challenge”	has the meaning given to it in Schedule 2.3 (<i>Standards</i>);
“Supplier Background IPRs”	means: <ul style="list-style-type: none"> (a) Intellectual Property Rights owned by the Supplier before the Signature Date, for example those subsisting in the Supplier’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier’s Know-How or generic business methodologies; and/or (b) Intellectual Property Rights created by the Supplier independently of this Agreement; <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative;

“Supplier COTS Software”	means Supplier owned COTS Software;
“Supplier Equipment”	means the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-COTS Software”	means Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 27.1 (<i>Authority Cause</i>);
“Supplier Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
“Supplier Profit”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Representative”	means the representative appointed by the Supplier pursuant to Clause 11.3 (<i>Representatives</i>);
“Supplier Request”	has the meaning given in Schedule 8.3 (<i>Dispute Resolution</i>);
“Supplier Software”	means software which is proprietary to the Supplier (or an Affiliate of the Supplier), and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Intellectual Property Rights</i>);
“Supplier Solution” or “Solution”	means the Supplier’s solution for the Services set out in Schedule 4.1 (<i>Supplier Solution</i>) including any Annexes of that Schedule and the RoR Annexes;
“Supplier System”	means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
“Supplier Termination Event”	means:

- (a) the Supplier's level of performance constituting a Critical Performance Failure;
- (b) the Supplier committing a material Default which is irremediable;
- (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 21.5(a) (*Financial and other limits*);
- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) Paragraph 8 of Schedule 5 (*Intellectual Property Rights*);
 - (ii) Clause 31 (*Compliance*);
 - (iii) Clause 35.6(b) (*Prevention of Fraud and Bribery*); and/or
 - (iv) Paragraph 6 of Schedule 7.4 (*Financial Distress*);
 - (v) Paragraph 12 of Part 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5.4 (*Services*);

- (ii) Clause 18.8 (*Protection of Personal Data*);
- (iii) Clause 18 (*Transparency and Freedom of Information*);
- (iv) Clause 17 (*Confidentiality*); and
- (v) Clause 31 (*Compliance*); and/or

in respect of any security requirements set out in the Baseline Security Requirements; and/or

in respect of any requirements set out in Schedule 9.1 (*Staff Transfers*);

- (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (*Benchmarking*);
- (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (m) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control (such consent not to be unreasonably withheld), which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
- (n) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Authority that it objects to such change of Control, the Supplier terminates

the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.11 (*Appointment of Key Sub-contractors*);

- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under Schedule 9.1 (*Staff Transfers*);
- (p) the Authority 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 Agreement;
- (q) 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; and
- (r) in relation to Schedule 2.4 (*Security Management*):
 - (i) the Authority has issued two rejection notices in respect of the Risk Management Document Set under Paragraph 4.5.2 (Part A)/ Paragraph 6.8.2 (Part B);
 - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
 - (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Authority has agreed in writing;
 - (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or
 - (v) the Supplier fails to comply with the Incident Management Process as set out in the Risk Management Documentation;

“Supporting Documentation” sufficient information in writing to enable the Authority reasonably to assess whether the Charges

	and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Supply Chain Transparency Report”	means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Target Cost Incentive Fee” or “TCIF”	means the Service Charges calculated in accordance with the pricing mechanism set out in Paragraph 4 of Part A of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Target Cost”	has the meaning given in Paragraph 6.1 of Part A of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Target Profit”	means the expected Supplier Profit for a Contract Year, as specified in the Financial Model;
“Target Performance Level”	means the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Technology Code of Practice”	has the meaning given to it in Schedule 2.3 (<i>Standards</i>);
“Term”	means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Option Period or on earlier termination of this Agreement;
“Termination Assistance Notice”	has the meaning given in Paragraph 7.1 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Assistance Period”	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 7.3 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Estimate”	has the meaning given in Paragraph 10.2 of Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Notice”	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice

	to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	means the payment determined in accordance with Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Services”	means the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Test Issue Threshold”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Test Issue Management Log”	a log for the recording of Test Issues as described in Paragraph 9.1 of Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Test Plan”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Test Reports”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Tests” and “Testing”	means any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>) and “ Tested ” shall be construed accordingly;
“Testing Procedures”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Test Specification”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Test Success Criteria”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Test Witness”	has the meaning given in Schedule 6.2 (<i>Transition Phase and Testing Procedures</i>);
“Third Option Period”	means a period of one (1) year from the end of the Second Option Period;
“Third Party Auditor”	means an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information

	uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Third Party Beneficiary”	has the meaning given in Clause 39.1 (<i>Third Party Rights</i>);
“Third Party Contract”	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the service;
“Third Party COTS IPRs”	means Third Party IPRs that: <ul style="list-style-type: none"> (a) the owner makes generally available commercially prior to the Signature Date (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base;
“Third Party COTS Software”	means COTS Software owned by a third party;
“Third Party IPRs”	means the Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
“Third Party Non-COTS IPRs”	means Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	means Third Party Software that is not Third Party COTS Software;
“Third Party Provisions”	has the meaning given in Clause 39.1 (<i>Third Party Rights</i>);
“Third Party Software”	means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Intellectual Property Rights</i>);
“Total Costs Incurred”	has the meaning given in Schedule 7.2 (<i>Payments on Termination Charges and Invoicing</i>);
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to the Authority;

“Transferable Contracts”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Transfer Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, each as amended or replaced by similar provisions from time to time as appropriate;
“Transferring Assets”	has the meaning given in Paragraph 8.2(a) of Schedule 8.5 (<i>Exit Management</i>);
“Transferring Contracts”	has the meaning given in Paragraph 8.2(b) of Schedule 8.5 (<i>Exit Management</i>);
“Transition Governance”	has the meaning given to it in Paragraph 16.2 of Schedule 8.1 (<i>Governance</i>);
“Transition Party”	has the meaning given to it in Paragraph 16.4 of Schedule 8.1 (<i>Governance</i>);
“Transition Plan”	means the Indicative Transition Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 6.1 (<i>Transition Phase and Transition Plan</i>)) the Detailed Transition Plan as updated in accordance with Paragraph 4 of Schedule 6.1 (<i>Transition Phase and Transition Plan</i>) from time to time;
“Transition Phase”	means the period of transition commencing on the Effective Date and extending across SCD1, SCD2 and SCD3 until Full Solution Implementation;
“Transparency Information”	has the meaning given in Clause 18.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Tri-Service(s)” or “tS”	All three services (Army, Royal Navy, and Royal Air Force) as one;
“UK”	means the United Kingdom;
“UK GDPR”	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;

“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm’s length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“Unacceptable KPI Failure”	means the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Measurement Period;
“Unexpected Employee”	has the meaning given in Schedule 9.1 (<i>Staff Transfers</i>);
“Unexpected Subsequent Transferring Employee”	means as defined in Paragraph 2.3.1 of Part 2 of Schedule 9.1 (<i>Staff Transfers</i>);
“Unconnected Sub-contract”	means any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	means any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Costs”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Updates”	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Annex 3 of Schedule 8.4 (<i>Reports and Records Provisions</i>) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Upgrades”	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;

“Upper Quartile”	has the meaning given in Schedule 7.3 (<i>Benchmarking</i>);
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“VAT”	means value added tax or any equivalent tax chargeable in the UK or elsewhere;
“VCSE”	means a non-governmental organisation that is value-driven, and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Vendor Independent”	has the meaning given in Schedule 5 (<i>Intellectual Property Rights</i>);
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Annex 5 of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Working Day”	<p>means any day other than:</p> <ol style="list-style-type: none"> (1) a Saturday, Sunday, or public and statutory holiday in England and Wales; (2) public and statutory holidays in the jurisdiction of either Party; (3) privilege days notified in writing by the Authority to the Supplier at least ten (10) business days in advance; or <p>such periods of holiday closure of the Supplier’s premises of which the Authority is given written notice by the Supplier at least ten (10) business days in advance.</p>