

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

(1) **DEPARTMENT OF HEALTH AND SOCIAL CARE**

AND

(2) **ENTSERV UK LIMITED**

AGREEMENT

relating to the provision of Information Management Services



Government Legal Department

CONTENTS

SECTION A – PRELIMINARIES	5
1 DEFINITIONS AND INTERPRETATION	5
2 DUE DILIGENCE	8
3 WARRANTIES	9
SECTION B – THE SERVICES	11
4 TERM	11
5 PROVISION OF GOODS AND SERVICES	12
6 IMPLEMENTATION	17
7 PERFORMANCE INDICATORS	18
8 GOODS AND SERVICES IMPROVEMENT	20
9 EQUIPMENT AND MAINTENANCE	20
SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS	21
10 FINANCIAL AND TAXATION MATTERS	21
SECTION D – CONTRACT GOVERNANCE	23
11 GOVERNANCE	23
12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA	24
13 CHANGE	24
SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN	25
14 SUPPLIER PERSONNEL	25
15 SUPPLY CHAIN RIGHTS AND PROTECTIONS	28
SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY	37
16 INTELLECTUAL PROPERTY RIGHTS	37
17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER	38
18 LICENCES GRANTED BY THE AUTHORITY	43
19 IPRs INDEMNITY	43
20 OPEN SOURCE PUBLICATION – NOT USED	44
21 AUTHORITY DATA AND SECURITY REQUIREMENTS	44
22 CONFIDENTIALITY	45
23 TRANSPARENCY AND FREEDOM OF INFORMATION	47
24 PROTECTION OF PERSONAL DATA	48
25 PUBLICITY AND BRANDING	55
SECTION G – LIABILITY, INDEMNITIES AND INSURANCE	55
26 LIMITATIONS ON LIABILITY	55
27 INSURANCE	58
SECTION H – REMEDIES AND RELIEF	58
28 RECTIFICATION PLAN PROCESS	58
29 DELAY PAYMENTS	60
30 REMEDIAL ADVISER	60
31 STEP-IN RIGHTS	62
32 AUTHORITY CAUSE	63
33 FORCE MAJEURE	65
SECTION I – TERMINATION AND EXIT MANAGEMENT	66
34 TERMINATION RIGHTS	66
35 CONSEQUENCES OF EXPIRY OR TERMINATION	68
SECTION J – MISCELLANEOUS AND GOVERNING LAW	70
36 COMPLIANCE	70

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

37	ASSIGNMENT AND NOVATION	71
38	WAIVER AND CUMULATIVE REMEDIES.....	71
39	RELATIONSHIP OF THE PARTIES	72
40	PREVENTION OF FRAUD AND BRIBERY	72
41	SEVERANCE	73
42	FURTHER ASSURANCES	74
43	ENTIRE AGREEMENT.....	74
44	THIRD PARTY RIGHTS	74
45	NOTICES.....	75
46	DISPUTES.....	77
47	GOVERNING LAW AND JURISDICTION.....	77
48	COUNTERPARTS/DUPLICATES	77

SCHEDULES

1. **Definitions**
2. **Service Requirements**
 - 2.1 Services Description
 - 2.2 Performance Levels
 - 2.3 Standards
 - 2.4 Security Management
 - 2.5 Insurance Requirements
3. **Authority Responsibilities**
4. **Supplier Matters**
 - 4.1 Not Used
 - 4.2 Commercially Sensitive Information
 - 4.3 Notified Key Sub-contractors
 - 4.4 Third Party Contracts
5. **Software**
6. **Implementation and Testing**
 - 6.1 Implementation Plan
 - 6.2 Testing Procedures
7. **Financial Matters**
 - 7.1 Charges and Invoicing
 - 7.2 Payments on Termination
 - 7.3 Benchmarking
 - 7.4 Financial Distress
 - 7.5 Financial Reports and Audit Rights
 - 7.6 Not Used
8. **Governance**
 - 8.1 Governance
 - 8.2 Change Control Procedure
 - 8.3 Dispute Resolution Procedure
 - 8.4 Reports and Records Provisions
 - 8.5 Exit Management
 - 8.6 Service Continuity Plan and Corporate Resolution Planning
 - 8.7 Conduct of Claims
 - 8.8 Collaboration Agreement
9. **Employment**
 - 9.1 Staff Transfer
 - 9.2 Key Personnel
10. **Guarantee**
11. **Processing Personal Data**

THIS AGREEMENT is **made** on the date on which the last Party signed the signature section at the end of this document.

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE ACTING AS PART OF THE CROWN THROUGH THE DEPARTMENT OF HEALTH AND SOCIAL CARE of 39 Victoria Street, Westminster, London, SW1H 0EU** (the “**Authority**”); and
- (2) **ENTSERV UK LIMITED** a company registered in England and Wales under company number 00053419 whose registered office is at Royal Pavilion, Wellesley Road, Aldershot, Hampshire, GU11 1PZ (the “**Supplier**”)

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

INTRODUCTION

- (A) The Authority is a ministerial department, supported by fifteen (15) arm's length bodies and a number of other agencies and public bodies. The Authority currently employs approximately 6,000 staff, who work in seven (7) office locations across the country. The Authority wishes to obtain goods and services relating to information management systems.
- (B) On 19 February 2021 the Authority advertised on the Find a Tender Service (reference 2021/S 000-003238 publication date 18th Feb 2021, inviting prospective suppliers to submit proposals for the provision of information management services.
- (C) The Supplier is a provider of information management and goods and services and has previous experience delivering related goods and services to ministerial departments, agencies and public bodies.
- (D) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier to provide the Goods and Services and the Parties have agreed to contract with each other in accordance with the terms and conditions set out in this Agreement.

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 (including the Glossary contained in Schedule 2.1 (*Services Description*)) in which that capitalised expression appears).
- 1.2 If a capitalised expression does not have an interpretation in Schedule 1 (*Definitions*) or relevant Schedule, it shall in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry (including interpretations under “ITIL 4”) where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 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

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

Central Government Body;

- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time) any EU:
 - (i) regulation, decision, tertiary legislation or provision of the European Economic Area (“EEA”) agreement (“EU References”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (ii) institution, authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
 - (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) any obligation on any Party not to do anything shall include an obligation on that Party not to permit, cause, or fail to prevent, that thing from being done;
 - (j) unless otherwise provided and save for references to Clauses and Schedules in Annexes 1 and 2 of Schedule 5 (*Software*) and 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 and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;
 - (k) Not used;
 - (l) references to any documents to be provided by any Other Consortium Member in connection with this Agreement, shall be deemed to include any Sub-contracts or guarantees; and
 - (m) unless expressly stated otherwise in this Agreement, or it is clear by the context that the reference is to the Financial Year, references to “annual” or “annually” (or any other derivatives thereof) shall be interpreted to refer to, or be in connection with, the relevant Contract Year, save where the Authority informs the Supplier of the relevant twelve (12) month period(s).
- 1.4 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.5 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*);

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (b) Part A of Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
- (c) any other Schedules and their Annexes (other than Part B of Schedule 2.1 (*Services Description*) and its Annexes, the Implementation Plan and the Security Management Plan); and
- (d) Part B of Schedule 2.1 (*Services Description*) and its Annexes (if any), the Implementation Plan and the Security Management Plan.

1.6 The Schedules and their Annexes form part of this Agreement.

1.7 In entering into this Agreement the Authority is acting as part of the Crown.

Other Consortium Member status

1.8 The Parties acknowledge and agree that as at the Effective Date there are no Consortium Members to this Agreement and, unless the Parties subsequently agree to introduce Consortium Members in accordance with the Change Control Procedure, any such references to Consortium Members shall have no effect.

1.9 Each Other Consortium Member is a signatory to this Agreement only for the purposes of its respective obligations under this Clause 1.9 to Clause 1.10 (inclusive) (*Other Consortium Member status*). Unless the contrary is expressly stated, and except for Clause 45 (*Notices*), references in this Agreement to "**Supplier**", "**Party**" or "**Parties**" shall not include any Other Consortium Member.

1.10 Each Other Consortium Member shall be jointly and severally liable with the Supplier, and has primary liability to the Authority, for all:

- (a) representations, warranties, undertakings, covenants, indemnities, agreements and obligations made, given or entered into by the Supplier in and in respect of this Agreement (the "**Supplier Obligations**");
- (b) expenses, legal fees and taxes incurred by the Authority in connection with the Authority seeking to enforce any Supplier Obligations against the Supplier and/or any Other Consortium Member; and
- (c) Supplier Obligations, whether future, past or present.

1.11 Each Other Consortium Member expressly acknowledges and agrees, without further notice from (or on behalf of) the Authority, that its respective liabilities under Clauses 1.9 to 1.10 (inclusive) (*Other Consortium Member status*) shall not be discharged or affected in any way, and its obligations shall remain in full force and effect, notwithstanding:

- (a) any legal limitation, disability, incapacity or other similar circumstances relating to the Supplier;
- (b) an Insolvency Event or Financial Distress Event of the Supplier;
- (c) any time, indulgence, concession or waiver granted to or composition with the Supplier;
- (d) the taking, holding, variation, compromise, renewal or release or refusal or neglect to perfect or enforce any rights, remedies or securities against the Supplier; and/or
- (e) any other act, omission, fact, circumstance, provision of statute or rule of law which (but for the operation of Clause 1.9 (*Other Consortium Member status*)) might affect the Parent Company's obligations and liabilities under Clause 1.9 (*Other Consortium Member status*) if the Parent Company's liability were to be secondary rather than primary.

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

1.12 There is no requirement on the Authority to:

- (a) take any action;
- (b) issue any proceedings; or
- (c) file any claim in the bankruptcy, administration, receivership, liquidation or other insolvency proceedings;

against the Supplier before taking any steps to enforce its rights under Clauses 1.9 to 1.10 (inclusive) (*Other Consortium Member status*).

2 DUE DILIGENCE

2.1 The Supplier acknowledges that:

- (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 Effective 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 Effective Date) future Operating Environment;
 - (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 Goods and 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 Goods and 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 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 or be entitled to recover any additional costs or charges on the grounds, or arising as a result of any:

- (a) unsuitable aspects of the Operating Environment;

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (b) misinterpretation of the Authority Requirements; and/or
- (c) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 WARRANTIES

3.1 The Authority represents and warrants that:

- (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, and each Other Consortium Members are, 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, and that each Other Consortium Member has full capacity and authority to enter into any documents in connection with this Agreement;
- (c) this Agreement is executed by its duly authorised representative, and that any documents executed (or to be executed) by each Other Consortium Member in connection with this Agreement have been (or will be) executed by a duly authorised representative of that Other Consortium Member;
- (d) it, and each Other Consortium Member, has all necessary rights, consents, authorisations, licenses, accreditations and regulatory approvals to enter into this Agreement and to supply the Goods and Services in accordance with the same;
- (e) 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 or any of its Affiliates or any Other Consortium Member, that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance by the Supplier or any Other Consortium Member of any obligations under this Agreement, or any documents executed in connection with 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 imposed on:
 - (i) the Supplier under this Agreement; or
 - (ii) any Other Consortium Member under any documents executed in connection with this Agreement,

constitute legal, valid and binding obligations, enforceable in accordance with their

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

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 award questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
 - (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is, or any Other Consortium Members are, 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 Goods and 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 Goods and Services inconsistent with the Financial Model;
 - (l) neither it, nor any Other Consortium Members are, subject to any contractual obligation, compliance with which is likely to have a material adverse effect on any of its respective obligations under this Agreement, or any documents executed in connection with this Agreement;
 - (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) as at the Effective Date for the winding up of the Supplier and/or any Other Consortium Member 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 assets or revenue of the Supplier or any Other Consortium Member;
 - (n) no Financial Distress Events (or any events that would have been deemed to be Financial Distress Events had this Agreement been in force at the relevant time) have occurred within the previous 12 months, or are subsisting as at the Effective Date, and there are currently no matters (of which it is aware) that would cause a Financial Distress Event (other than those Financial Distress Events which the Supplier has notified to the Authority, and the Authority has approved in writing, prior to the Effective Date);
 - (o) the Documentation and Documentary Deliverables that will be provided by the Supplier pursuant to this Agreement, including in the Authority Document Management System, Service Knowledge Management System and/ or the ITSM Dashboard (as applicable), are fit for purpose, up to date, and appropriate in the context of their subject matter and the requirements and obligations under this Agreement; and
 - (p) the Documentation and Documentary Deliverables
- 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

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

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 of any Default under any representation or warranty given by it under Clause 3.1 or 3.2, or 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 any Default 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*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 25 (*Publicity and Branding*), 26 (*Limitations on Liability*), 38 (*Waiver and Cumulative Remedies*), 39 (*Relationship of the Parties*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 45 (*Notices*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) the Term shall commence on the Effective Date; and unless terminated at an earlier date by operation of Law or in accordance with Clause 34 (*Termination Rights*), the Agreement shall expire upon the latest of the end of the following periods or date, as applicable:
- (i) Initial Term;
 - (ii) last Termination Assistance Period;
 - (iii) last Extension Period, if the Authority elects to extend the Term by giving the Supplier at least three (3) months' notice (or as otherwise agreed) before the end of the Initial Term, at the end of the Extension Period; and
 - (iv) the date of termination of this Agreement.

4.2 The Authority is entitled to extend the Term by one or more Extension Periods provided that the aggregate of any extensions under this Clause 4.2 is no greater than two (2) years from the end of the Initial Term.

4.3 The Authority is entitled to revoke any notice to extend the Term pursuant to Clause 4.2 for the initial Extension Period only by giving the Supplier written notice ("**Revocation Notice**") within 30 Working Days from the date the Authority gave notice to extend the then-current Term under Clause 4.24.1(b)(iii). If the Revocation Notice is served:

- (a) within the time period specified by this Clause 4.3, the Revocation Notice shall not be treated as a termination of the Agreement by the Authority under sub-Clause 34.1(a) or Clause 34.1(b) (*Termination by the Authority*), as applicable; or; or
- (b) outside of the time period specified by this Clause 4.3, the Revocation Notice shall be treated as a termination of the Agreement by the Authority under sub-Clause 34.1(a) Clause 34.1(b) (*Termination by the Authority*), as applicable; or, with the Termination Date being the date specified in the Revocation Notice.

Condition Precedent

- 4.4 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 25 (*Publicity and Branding*), 26 (*Limitations on Liability*), 38 (*Waiver and Cumulative Remedies*), 39 (*Relationship of the Parties*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 45 (*Notices*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee in the form of the Deed contained in Schedule 10 (*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.
- 4.5 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. If the Condition Precedent is not satisfied within 20 Working Days after the date of execution of this Agreement by the Parties then, unless that Condition Precedent is waived by the Authority in accordance with Clause 4.4:
- (a) this Agreement shall automatically cease in full and shall be deemed to have never 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.
- 4.6 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the Condition Precedent set out in Clause 4.4 (*Condition Precedent*) and shall keep the Authority fully informed of its progress in satisfying the Condition Precedent and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.4.

5 **PROVISION OF GOODS AND SERVICES**

Standard of Services

- 5.1 The Supplier shall provide the:
- (a) Implementation Services from (and including) the Effective Date;
 - (b) Operational Services in each case from (and including) the relevant Operational Service Commencement Date;
 - (c) Optional Services for the period that such Optional Services are requested by the Authority (as such period is identified in the relevant Contract Change Request);
 - (d) Exit Services, if requested by the Authority, from the date specified in the relevant Termination Assistance Notice;
 - (e) Service Continuity Services, where required by Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*); and
 - (f) any Future Services (more particularly described in Paragraph 59 of Part A to Schedule 2.1 (*Services Description*)) introduced by the Authority pursuant to Schedule 8.2 (*Change Control Procedure*).
- 5.2 The Supplier shall ensure that:
- (a) the Goods and Services:
 - (i) comply in all respects with the Services Description (as applicable); and
 - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and
 - (b) where the:

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

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

then, without prejudice to the standards required for the Services set out in Part A to Schedule 2.1 (*Services Description*), the Operational Services to be provided from the relevant Operational Service 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 12 month period immediately prior to the relevant Operational Service Commencement Date.

5.3 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 and Authority Requirements;
 - (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;
 - (vi) the Authority IT Strategy
 - (vii) Performance Indicators; and
 - (viii) the Supplier's own established Procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi); and
- (b) provide the Goods and Services in accordance with the Service Requirements using reasonable skill and care, efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money during the Term.

5.4 If the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(viii) (inclusive), 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.

Goods

5.5 The Supplier shall ensure that Goods ordered by the Authority under this Agreement are new, consistent with any sample, and comply with all requirements set out in this Agreement (including Part A of Schedule 2.1 (*Services Description*)) together with all manufacturers' specifications.

5.6 Delivery of any and all Goods shall be completed when the relevant Goods have been unloaded at the agreed delivery location and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the agreed delivery location on the required delivery date in order to accept delivery.

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- 5.7 The Supplier shall ensure that a delivery note shall accompany each delivery of any Goods. Such delivery note shall contain the information specified in the order for the Goods made by the Authority or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority and a description and quantity of the Goods in the order made by the Authority.
- 5.8 The Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery and unloading of the Goods at the agreed delivery location.
- 5.9 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and, accordingly, the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged by it to deliver the Goods to the Authority and/or the Service Recipients (as applicable).

Supplier covenants

- 5.10 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables, Goods 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 Term, all the consents, authorisations, approvals, licences, accreditations and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, Embedded 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 Goods and 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 (except in relation to new software or Upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify the Authority 3 months before the release of any new software or Upgrade;
 - (iii) all software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are maintained in accordance with the relevant specifications and requirements for agreed Release Levels set out in Paragraph 12.3 of Part A to Schedule 2.1 (*Services Description*);
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in connection with the Deliverables, Goods 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 and provision of any Goods will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;
- (d) avoid, (or, where avoidance is not possible, minimise to the fullest extent possible) any disruption to the provision of the Goods and Services, the IT Environment

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

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 Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Goods and Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Goods and Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (g) 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, Goods and/or the Services and, where any such warranties are held on trust, at the Supplier's cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (h) 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 5.10(g);
- (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Goods and 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 in the Supplier or any Other Consortium Member;
- (l) notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits, proceedings (including any IPRs Claim) or regulatory investigations before any court, administrative body or arbitration tribunal pending or, to its knowledge, threatened against the Supplier, the Guarantor or any Key Sub-contractor or any Other Consortium Member that might affect the ability of the:
 - (i) Supplier, or any Other Consortium Member to perform any of its obligations under this Agreement, or any documents executed in connection with this Agreement;
 - (ii) Authority to enforce its rights under the Guarantee; or
 - (iii) Key Sub-contractor to perform any of its obligations and/or carry out its functions under its Key Sub-contract;
- (m) ensure that the Supplier, each of its Affiliates, Sub-contractors, Supplier Personnel or Key Personnel, and each Consortium Member do not embarrass the Authority or otherwise brings 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 relates to the Supplier's obligations under this Agreement; and
- (n) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- 5.11 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.
- 5.12 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any Default of its obligations in Clauses 5.10(b) to 5.10(d) (Supplier covenants) inclusive within three (3) Working Days of becoming aware of the Default or being notified of the Default 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 Default that has occurred);
 - (b) remedy any Default of its obligations in Clause 5.10(a) and Clauses 5.10(e) to 5.10(j) inclusive within twenty (20) Working Days of becoming aware of the Default or being notified of the Default 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 5.12(a) or Clause 5.12 (b) above within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

- 5.13 Without prejudice to Clauses 5.10 (*Supplier Covenants*) and 5.1 (*Standard of 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:
- (a) be free from material design and programming errors;
 - (b) provide the functionality set out in, and perform in all material respects in accordance with the relevant specifications contained in the Services Description, the Supplier Solution and Documentation; and
 - (c) not infringe any Third Party IPRs.

Continuing obligation to provide the Goods and Services

- 5.14 The Supplier shall continue to perform its obligations under this Agreement and shall not suspend the supply of the Goods or Services, notwithstanding:
- (a) any withholding of the Operational Service Charges by the Authority, including pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
 - (b) the existence of any unresolved Dispute or disagreement between the Parties, including with regard to the calculation and payment of any Service Credits;
 - (c) agreement by the Parties to any pending request for Change;
 - (d) agreement to adjust the Charges pursuant to the Annual Contract Report under Paragraph 2 of Part D of Schedule 7.1 (*Charges and Invoicing*); and/or
 - (e) any failure by the Authority to pay any Charges (subject always to the Supplier's right to terminate this Agreement for non-payment of the Charges under Clause 34.3 (*Termination by the Supplier*)).

Optional Services

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

- 5.16 If a Contract Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Contract Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.17 Following receipt of the Authority's notice pursuant to Clause 5.15:
- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan; and
 - (c) any additional charges for the Optional Services shall be incorporated in the Charges in accordance with Schedule 7.1 (*Charges and Invoicing*); and
 - (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Power of attorney

- 5.18 By way of security for the performance of its obligations under Clauses 5.10(g) and 5.10(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 5.18 (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

- 5.19 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*) in accordance with the provisions of that Schedule.

6 IMPLEMENTATION

Quality Plans

- 6.1 The Supplier shall develop, within thirty (30) Working Days of the Effective Date, quality plans that ensure that all aspects of the Goods and Services provided under this Agreement are subject to quality management systems consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 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. 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 Goods and Services are provided to the standard required by this Agreement.
- 6.3 Following the approval by the Authority of the Quality Plans:
- (a) the Supplier shall design and deliver all Goods, Services and 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.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) including in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- (a) comply with the Implementation Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 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 28.1 (*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 Key Milestone, the provisions of Clause 29 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) including 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 Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for the relevant Service Commencement Date; 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 Service Period:
- (a) a KPI Failure occurs, Service Credits shall be deducted from the Operational Service Charges in accordance with 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 SPI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring; and/or
 - (d) a Material SPI Failure occurs:
 - (i) the Supplier shall comply with the Rectification Plan Process; and
 - (ii) the Authority may withhold a proportionate amount of the Operational Service Charges in accordance with the process set out in Clause 10.8 (*Set Off and Withholding*) until the relevant Material SPI Failure is rectified

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

- 7.3 Service Credits shall not be the Authority's exclusive financial remedy for a Performance Failure. The Authority agrees that any Service Credits paid to the Authority by the Supplier shall be deducted from any Losses that the Authority may incur, or any claim that the Authority may issue against the Supplier, in respect of the relevant Performance Failure(s).

Unacceptable KPI Failure

- 7.4 If in any Service Period an Unacceptable KPI Failure occurs:

- (a) the Authority shall be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Operational Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and
- (b) if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this 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 Operational 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 34.1 or 34.2 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

- 7.7 Not more than once per Quarter the Authority may, on giving the Supplier at least 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) KPIs into an SPI; and/or
 - (ii) SPIs into a KPI,

and the provisions of Paragraphs 4.2 to 4.5 (inclusive) of Part B of Schedule 2.2 (*Performance Levels*) shall apply.

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

- (a) the total number of Key Performance Indicators does not exceed 45;
- (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.

7.9 The Supplier acknowledges and agrees that the Authority may introduce new Performance Indicators during the Term, and that such introduction shall be in accordance with the Change Control Procedure.

8 GOODS AND SERVICES IMPROVEMENT

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Goods and Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every (six) 6 months (unless directed otherwise by the Authority) on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Goods and Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Goods and Services including the quality, responsiveness, Procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the same;
- (c) 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;
- (d) changes in business processes and ways of working that would enable the Goods and/or Services to be delivered at lower cost and/or with greater benefits to the Authority;
- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of the Goods and Services and power consumption of assets; and/or
- (f) commercially reasonable and technically possible new or potential improvements that could be made by the Other Suppliers for the benefit of the wider programme.

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 Contract 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 the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

9.2 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 and any Goods 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 IT Environment (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 “**Planned 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 Planned Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Goods and/or 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, provision of the Goods and the Services.

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell and/or provide goods and/or equipment (as applicable) (“**Goods**”) to the Authority:
- (a) unless otherwise stated in Schedule 7.1 (*Charges and Invoicing*), the relevant Goods and their prices shall be as set out in Schedule 7.1 (*Charges and Invoicing*);
 - (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 12 months after delivery (or such other period offered by the relevant manufacturer on sale, if longer);
 - (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; 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 Goods and/or 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*). All information from the Supplier in relation to such Charges and any related costs and expenses shall be on an Open Book Data basis.
- 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 this Agreement, including Clauses 6.7

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

(*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 23 (*Transparency and Freedom of Information*), 24 (*Protection of Personal Data*) and, to the extent specified therein, Clause 30 (*Remedial Adviser*) and Clause 31 (*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 Working Days before the date upon which the tax or other liability is payable by the Authority.
- 10.6 Without limiting Clause 10.4, the Charges shall be inclusive of all other duties, sales, taxes, charges, tariffs and levies.

Set-off and Withholding

- 10.7 The Authority may set off any amount (including Delay Payments) 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.
- 10.8 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 10.7; or
 - (b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Operational 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

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

Financial Distress

- 10.10 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

- 10.11 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 5 Working Days of its occurrence; and
 - (b) promptly provide to the Authority:

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (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.

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 Term 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*). Notwithstanding the information listed in Schedule 9.2 (*Key Personnel*), all Supplier Representatives shall be deemed to be Key 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.

Collaboration

- 11.5 If requested by the Authority in writing at any time during Term, the Supplier shall enter into the Collaboration Agreement set out in Schedule 8.8 (*Collaboration Agreement*) by the date identified in such request.
- 11.6 The following collaboration provisions shall apply during the Term irrespective of whether or the Collaboration Agreement (or similar agreement) has been entered into by the Authority and the Supplier; the Supplier shall:
- (a) work pro-actively with each of the Other Suppliers in a spirit of trust and mutual confidence;
 - (b) cooperate with the Other Suppliers of services to enable the efficient provision and operation of the Goods and Services under this Agreement;
 - (c) assist in sharing information with the Other Suppliers for the purposes of facilitating adequate provision of the Goods and Services;
 - (d) comply with the following collaboration behaviours:
 - (i) work collaboratively with the Authority and other relevant Other Suppliers towards the successful end-to-end transition of the Services to the Authority in order to support the Implementation Services;
 - (ii) avoid hindering provision of services by any Other Suppliers to the Authority;
 - (iii) facilitate the successful delivery of services by Other Suppliers to the Authority;
 - (iv) avoid unnecessary duplication of effort;
 - (v) avoid undue disturbance to the Authority and Other Suppliers;

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (vi) ensure efficient and effective delivery of its obligations under this Agreement;
- (vii) ensure integration and interfacing, where the Goods and Services are provided under this Agreement, are subject to inter-party dependencies; and
- (viii) achieve value for money solutions for the Authority; and
- (e) adopt a 'fix first, find fault later' approach, to prioritise achieving solutions to problems or issues over seeking to blame any other party, and to support and contribute to investigations to resolve incidents and problem investigations;
- (f) be proactive and honest in its dealings with the Authority and with other relevant Other Suppliers and open to honest feedback;
- (g) adopt a culture of openness that encourages all parties to raise and discuss concerns, solve problems and deal directly with any issues, including those that are difficult; and
- (h) demonstrate a preparedness to be flexible and to innovate and adopt best practices and be forthcoming in initiating proposals for new best practices which could deliver improved value to the Authority.

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 Schedule 8.2 (*Change Control Procedure*) unless otherwise directed in accordance with the terms of Schedule 8.2 (*Change Control Procedure*).

Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Goods and/or Services (as applicable) 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 provision of the Goods and/or Services is reasonably foreseeable at the Effective Date.

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:

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (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 Goods, Deliverables, 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 Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Goods and 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 (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

- 14.1 The Supplier shall:
- (a) provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars and information relating to those Supplier Personnel as the Authority may reasonably require;
 - (b) ensure that all Supplier Personnel:
 - (i) subject to Clause 14.3, are appropriately qualified, trained and experienced to provide the Goods and 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 Paragraph 16.4 of Part A to 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 Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the 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;

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (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 end of the Term.
- 14.2 If the Authority reasonably believes (at the result of its own investigation or otherwise) that any of the Supplier Personnel are unsuitable to undertake the provision of Goods and/or the Services in respect of this Agreement, it may:
- (a) refuse admission to the relevant person(s) to the Authority Premises;
 - (b) direct the Supplier to end (or not to start, as the case may be) the involvement in the provision of the Goods and Services of the relevant person(s); and/or
 - (c) direct the Supplier to require the relevant person(s) to perform different roles in respect of the provision of the Goods and Services (as applicable).
- 14.3 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Goods and/or Services in compliance with the requirements set out in Paragraph 4 of Annex A1 of Schedule 2.4 (*Security Management*).

Key Personnel

- 14.4 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.
- 14.5 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.
- 14.6 The Supplier shall not remove or replace any Key Personnel (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 or long-term sick leave;
 - (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).
- 14.7 The Supplier shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 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 10 Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing
- (e) personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the provision of the Goods or Services; and
- (f) 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

14.8 The Parties agree that:

- (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 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 person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.9 Where 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 arising from or made in connection with the provision of the Goods or Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.10 The Parties agree that:

- (a) where the commencement of the provision of the Goods or Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

A, B and D of Schedule 9.1 (*Staff Transfer*) shall apply; and

- (iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- (b) where commencement of the provision of the Services or a part of the provision of Goods and Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply, Part D of Schedule 9.1 may apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and
- (c) Part E of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the provision of the Goods and Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Agreement in the provisions of the Goods and 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.
- 15.2 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, cost and what percentage of aggregate Charges, fees and expenses forecast to be payable under this Agreement to the proposed Sub-contractor;
 - (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; and
 - (d) whether the proposed Sub-contractor is a Higher Risk Sub-contractor in accordance with Schedule 2.4 (*Security Management*).
- 15.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract; and
 - (b) any further information reasonably requested by the Authority.
- 15.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (or, if later, receipt of any further information requested pursuant to Clause 15.3), object to the appointment of the relevant Sub-contractor including for the following reasons:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Goods, any Deliverables or 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 Goods and Services to its other customers;

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.21 (*Termination of sub-contracts*);

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

15.5 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 15.2; and
 - (ii) any further information requested by the Authority pursuant to Clause 15.3; 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 15.7 (*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 provision of any Goods or Services, may notify the Authority that the relevant Sub-contract shall constitute a Supplier Third Party Contract for the purposes of Schedule 4.4 (*Third Party Contracts*).

15.6 If the supply of information required pursuant to Clause 15.2 would amount to a breach of any rules and regulations of any exchange on which the shares of the Supplier are admitted for listing and/or trading, or any other rules or regulations with which the Supplier is obliged to comply as a result of that listing, the Supplier shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.

Appointment of Key Sub-contractors

15.7 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 including for the following reasons:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Goods or 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;
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.21 (*Termination of sub-contracts*).

15.8 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*).

15.9 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;

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (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 21 (*Authority Data and Security Requirements*) and 24 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 23 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.10(m) (*Supplier Covenant*);
 - (iv) the keeping of Records in respect of the sub-contracted 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 which:
 - (i) enable 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 34.1(a) or Clause 34.1(b) (*Termination by the Authority*), as applicable; or (Termination by the Authority);
 - (ii) where the Key Sub-contract is terminated by the Supplier on a similar basis to Clause 34.1(a) or Clause 34.1(b) (*Termination by the Authority*), as applicable; or (Termination by the Authority) or by the Key Sub-contractor on a similar basis to Clause 34.3 (*Termination by the Supplier*), limit the Supplier's obligations to make payments to the Key Sub-contractor (whether by way of compensation or otherwise) for the termination of the Key Sub-contractor to:
 - A. the types of payments recoverable by the Supplier from the Authority under Clause 35.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*); and
 - B. caps which are the same as or lower than the caps imposed on the Supplier under Schedule 7.2 (*Payments on Termination*); and
 - (iii) impose obligations on the Key Sub-contractor which are no less onerous than those imposed on the Supplier under Schedule 7.2 (*Payments on Termination*);
- (g) a provision allowing the Authority to obtain a copy of the latest version of the Key Sub-contract on request.
- (h) a provision enabling the Authority to publish to the general public the Transparency Information, and for the Key Sub-contractor to assist and co-operate with the Authority with such publication, on substantially the same terms as are set out in Clause 23 (*Transparency and Freedom of Information*);
- (i) a provision restricting the ability of the Key Sub-contractor to Sub-contract all or any part of the sub-contracted Services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;