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HMRC Standard Goods and Services Model Contract

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TERMS AND CONDITIONS

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DATED

2023

(1) THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

and

(2) SODEXO LIMITED

AGREEMENT

relating to

Inland Border Facilities (IBF) Enduring
Site Operator services

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THIS AGREEMENT is made on

2023

BETWEEN:

- (1) **THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS** of 100 Parliament Street, Westminster, London SW1A 2BQ (the "**Authority**"); and
- (2) **SODEXO LIMITED** a company registered in England and Wales under company number 00842846 whose registered office is at 1 Southampton Row, London, WC1B 5HA (the "**Supplier**"),

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) The Authority is responsible for the UK's tax administration and ensures that tax revenue is available to fund the UK's public services.
- (B) Following the UK's exit from the European Union His Majesty's Revenue and Customs HMRC (on behalf of HMG) has established 'Inland Border Facilities' and is seeking to develop further Inland Border Facilities to supplement port capacity for carrying out a range of border readiness activities, including document processing for inbound and outbound border readiness customs checks.
- (C) The Authority wishes to appoint a site services operator in respect of these Inland Border Facilities.
- (D) The Supplier is a leading provider of site service operator services and has experience in supplying the services similar to the Services (as defined below).
- (E) 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;

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- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation;
 - (e) 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”;
 - (f) 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;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (h) unless otherwise provided:
 - (i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;
 - (ii) 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; and
 - (i) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 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.
- 1.4 If there is any conflict or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
 - (c) Schedule 2.8 (*Data Processing and List of Sub-processors*), if such Schedule is used;
 - (d) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);
 - (e) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and
 - (f) any other document referred to in this Agreement or any other document

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attached to this Agreement.

- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 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 (as defined in 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 Effective Date) of all relevant details relating to the processes and requirements of the Authority;
- (d) it has entered into this Agreement in reliance on its own due diligence.

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

- (a) any unsuitable aspects of the Authority System;
- (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.

3 WARRANTIES

3.1 The Supplier represents and warrants that:

- (a) 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;
- (b) this Agreement is executed by its duly authorised representative;
- (c) it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this Agreement;
- (d) 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 that might affect its ability to perform its obligations under this Agreement;

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- (e) 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 SQ 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;
 - (f) in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;
 - (g) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;
 - (h) it has all necessary rights in and to the 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;
 - (i) any Cost, Supplier Profit or Supplier Profit Margin in the Cost Model is a true and accurate reflection of such Cost, Supplier Profit or 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 Models;
 - (j) 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;
 - (k) no profit warnings, proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - (l) that neither the Supplier nor any of its officers, employees or Sub-contractors:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries and to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

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SECTION B - THE SERVICES

4 TERM

4.1 Subject to Clause 4.2, this Agreement shall:

- (a) come into force on the Effective Date; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (Termination Rights), terminate at the end of the Initial Term or any Extension Period (as applicable).

4.2 Not used.

Extension of the Initial Term

4.3 The Authority shall have the right, at its sole discretion, to extend the Initial Term for periods of not more than twelve (12) months (each an "**Extension Period**"), for a maximum of two (2) years in the aggregate, by giving to the Supplier not less than three (3) months' written notice before the end of the Initial Term (or any Extension Period which has already been notified to the Supplier by the Authority, as appropriate).

4.4 The duration of any extension to the Term of this Agreement made in accordance with Clause 4.2 and the effect of extending the Initial Term (and any extension thereof) for the Extension Period shall be considered, documented and agreed by the Parties in accordance with the Change Control Procedure. As part of the foregoing, the Parties shall (acting reasonably) consider making an appropriate adjustment to the Management Overhead and/or Corporate Overhead taking into account that these are fixed and not subject to Indexation for the Initial Term, providing that there shall be no increase to the Management Overhead and/or Corporate Overhead unless, no less than 2 months prior to the end of the Initial Term (or the relevant Extension Period) the Supplier gives to the Authority notice setting out details of:

- (a) the anticipated impact on its costs comprised in its Management Overhead and/or Corporate Overhead during the proposed Extension Period;
- (b) its proposals for eliminating or mitigating such impact on its costs;
- (c) its proposals for increasing the Management Overhead and/or Corporate Overhead and the methodology for determining that increase; and
- (d) the impact that the Authority's acceptance of the proposals above on the Charges.

Unless the Parties agree otherwise in writing, each Extension Period will take effect on the terms of this Agreement that subsist immediately prior to the Extension Period taking effect.

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5 SERVICES**Standard of Services**

5.1 The Supplier shall provide to the Authority and the Service Recipients:

- (a) any Mobilisation from (and including) the Mobilisation Commencement Date; and
- (b) the Operational Services, in each case, from (and including) the relevant Operational Service Commencement Date.

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, without prejudice to Clause 1.4 (*order of precedence*), for the avoidance of doubt, where the Supplier Solution imposes obligations or requirements on the Supplier that are in excess of, or more onerous, than the Services Description, the Supplier shall perform those obligations and comply with those requirements in addition to the obligations and requirements set out in the Services Description.

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 Quality Standards;
 - (iv) the Baseline Security Requirements

(provided that revisions to such are notified to the Supplier with reasonable prior notice and further provided that the Supplier's direct and demonstrable costs of complying with enhanced requirements in respect of revised Baseline Security Requirements shall be recoverable as an ancillary element of the Charges);
 - (v) 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)(iv);
- (b) where applicable, maintain accreditation with the relevant Quality Standards authorisation body;
- (c) comply with the Policies when supplying the Services on Authority Premises; and

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- (d) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(iv), 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.

Supplier Covenants

5.5 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 the Authority is expressly required to obtain and maintain the same under this Agreement 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 IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority and any Service Recipients which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority and any Service Recipients; and
- (ii) 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;
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's, any Service Recipients' and/or any Other Suppliers' operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority, any Service Recipients and Other Suppliers are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with any Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to provide services to the Authority 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, any Service Recipients and/or to any Replacement Supplier;
- (g) provide the Authority and any Service Recipients with such assistance as the

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Authority may reasonably require during the Term in respect of the supply of the Services;

- (h) gather, collate and provide such information and co-operation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (i) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (j) 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; and
- (k) ensure that neither it, nor any of its Affiliates, embarrasses the Authority and any Service Recipients or otherwise brings the Authority and any Service Recipients into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority and any Service Recipients, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement.

5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

5.7 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 breach of its obligations in Clauses 5.5(b) and Clause 5.5(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 5.5(a) and Clauses 5.5(e) to 5.5(f) 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 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Software

- 5.8 The Supplier shall ensure that the Software (if any) complies with Good Industry Practice in all respects including in respect of availability, change, incident, knowledge, problem, release and deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio

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management.

- 5.9 The Supplier shall comply with and feed into the Authority's incident and problem management processes and procedures in respect of any Software.

Continuing obligation to provide the Services

- 5.10 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 due to deduction of any Deductions;
- (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 33.6(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

- 5.11 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.

- 5.12 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Contract Change will have on the relevant Optional Services.

- 5.13 Following receipt of the Authority's notice pursuant to Clause 5.11:

- (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 mobilise and, if applicable, test the relevant Optional Services in accordance with a mobilisation plan which the Parties shall agree in respect of such Optional Services ("**Optional Services Mobilisation Plan**"); and
- (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Part B of Schedule 7.1 (*Charges and Invoicing*).

Scope

- 5.14 The Supplier acknowledges and agrees that:

- (a) its relationship with the Authority is not exclusive; and
- (b) the Authority may at any time during the Term contract with any third party to perform services which are the same as or similar to the Services.

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Conflicts of Interest

- 5.15 The Supplier shall take appropriate steps to ensure that, to the best of its knowledge, neither the Supplier nor any Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any member of the Supplier Personnel and the duties owed to the Authority under the provisions of the Agreement. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.
- 5.16 Where, in the reasonable opinion of the Authority, there is or may be a material actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Agreement, the Authority reserves the right to treat this as a material breach of this Agreement and, accordingly, a Supplier Termination Event.

6 MOBILISATION AND PROJECTS**Mobilisation Plan and Delays**

- 6.1 The Parties shall comply with the Mobilisation Plan and provisions of Schedule 6.1 (*Mobilisation*) in relation to the agreement and maintenance of the Mobilisation Plan.
- 6.2 The Supplier shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall apply in respect of the steps to be taken by the Parties.

Testing and Achievement of Milestones

- 6.4 In respect of any Milestone Payments:
- (a) the Parties shall comply with the provisions of Schedule 6.2 (*Assurance Procedures*) in relation to the procedures to determine whether a Milestone has been Achieved; and
 - (b) no Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued.

Orders

- 6.5 The Authority may order Goods and/or Services in accordance with Schedule 6.3 (*Projects*) and/or Schedule 6.4 (*Billable Works*), if such Schedules are used.

Quality Plans

- 6.6 The Supplier shall provide Quality Plans in accordance with Schedule 2.3 (*Standards*), if such Schedule is used.

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7 PERFORMANCE INDICATORS

- 7.1 The Parties shall comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to Performance Indicators and performance monitoring.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Authority of the Services and the way it provides them, with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services. The Parties shall provide each other with any information reasonably required to meet this objective.
- 8.2 The Supplier shall, throughout the Term, identify new or potential improvements to the provision of the Services with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Authority, in each case subject to Clause 5.5(d).
- 8.3 The Parties shall comply with the provisions of Part A of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to the Supplier's ongoing obligation of continuous improvement.

9 ASSETS, EQUIPMENT, ACCOMMODATION AND SUPPLY OF GOODS.**Assets**

- 9.1 The Supplier shall record all of the Supplier Equipment and Authority Supplied Equipment that will be used at the Authority Premises as at the Effective Date in Schedule 4.5 (*Assets*), if such Schedule is used, and shall maintain a Register of all Supplier Equipment and Authority Supplied Equipment in accordance with Schedule 8.5 (*Exit Management*).

Supplier Equipment

- 9.2 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Authority Premises, including its off-loading; removal, safe disposal or storage (as appropriate) 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 Authority Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Authority Premises following removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements. For the avoidance of doubt, the Supplier shall ensure that all Supplier Equipment is (as applicable) collected, delivered, treated, recovered and disposed of in accordance with the Waste Electrical and Electronic Equipment Regulations ("WEEE") and that all Supplier Equipment shall be supplied inclusive of any costs or charges for compliance with the collection, delivery, treatment, recovery and environmentally sound disposal of such Supplier Equipment as required by WEEE.
- 9.3 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier.

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- 9.4 Subject to any express provision of any 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.

Supply of Goods

- 9.5 Where, as part of the Services, the Supplier is to sell Goods to the Authority:
- (a) 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 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; and
 - (e) without prejudice to any other rights or remedies of the Authority the risk and title in the Goods shall pass to the Authority at the time of delivery or such earlier time as required at the Authority's sole discretion.

Accommodation

- 9.6 Not used.
- 9.7 Where the Authority or any Service Recipient grants access to and/or use of any of the Authority Premises (or any part thereof, including relevant IBF Sites), such access and/or use is subject to the following:
- (a) no tenancy or other right of occupation will be created in relation to such access and/or use by the Supplier or any Sub-contractor;
 - (b) any such access and/or use is on a non-exclusive basis;
 - (c) the Supplier will (and will procure that its Sub-contractors will) only use the same to perform the Services in accordance with the terms of this Agreement and not for any other purpose whatsoever;
 - (d) the Supplier will not allow anyone else to use or occupy the same apart from the relevant Supplier Personnel.

9A AUTHORITY SUPPLIED EQUIPMENT AUTHORITY MAINTAINED ASSETS**Authority Supplied Equipment**

- 9A.1 The Authority hereby grants to the Supplier a non-exclusive licence to use the Authority Supplied Equipment throughout the Term (or such earlier termination of

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the Agreement in part, in relation to such Authority Supplied Equipment related to the partial termination). Such licence shall be on the following basis:

- 9A.1.1 legal and beneficial ownership of the Authority Supplied Equipment shall remain with the Authority at all times; and
 - 9A.1.2 the Supplier shall be entitled to use the Authority Supplied Equipment solely for the purpose of performing the Services and its other obligations pursuant to this Agreement.
- 9A.2 Notwithstanding the grant of licence pursuant to Clause 9A.1, the Authority shall continue to have the right to use the Authority Supplied Equipment licensed to the Supplier. The right to use Authority Supplied Equipment shall extend to the Sub-contractors to the extent necessary for the performance of the Services and compliance with the Supplier's other obligations under this Agreement.
- 9A.3 The Supplier shall:
- 9A.3.1 keep the Authority Supplied Equipment in such a way that they remain readily identifiable as the Authority's property;
 - 9A.3.2 maintain the Authority Supplied Equipment so as to meet its obligations under this Agreement;
 - 9A.3.3 not destroy, deface or obscure any identifying mark on or relating to the Authority Supplied Equipment;
 - 9A.3.4 not damage or destroy the Authority Supplied Equipment and shall keep them in the condition they were in at the Effective Date, fair wear and tear excepted;
 - 9A.3.5 hold to the Authority's order and not dispose of or alienate the Authority Supplied Equipment without the Authority's prior written consent; and
 - 9A.3.6 make its own enquiries as to the condition, fitness for purpose, state and adequacy of any Authority Supplied Equipment. The Authority gives no warranty as to the condition, fitness for purpose or state of the Authority Supplied Equipment.
- 9A.4 No later than ninety (90) days prior to the end of the licence to use set out in Clause 9A.1, the Supplier shall provide written notice to the Authority setting out the following:
- 9A.4.1 (i) that the licence is due to expire; and (ii) confirming the date of such expiry;
 - 9A.4.2 the Authority's options in terms of the Authority Supplied Equipment, being:
 - 9A.4.2.1 the Authority to take back control of any Authority Supplied Equipment (and for the Supplier to provide such Authority Supplied Equipment back to the

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Authority upon expiry of the relevant licence to use as set out in Clause 9A.1); and/or

9A.4.2.2 the Supplier to dispose of the Authority Supplied Equipment on behalf of the Authority (at the Supplier's cost and in accordance with all applicable Laws and Good Industry Practice).

9A.5 Where any Authority Supplied Equipment is to be returned to the Authority in accordance with Clause 9A.4.2.1, there shall be no payment due from the Authority to the Supplier. The Supplier shall not be required to make any payment to the Authority in respect of such Authority Supplied Equipment upon return to the Authority unless any Authority Supplied Equipment does not meet the Acceptable Equipment Condition. In circumstances where the Acceptable Equipment Condition for any Authority Supplied Equipment has not been met the Supplier shall pay to the Authority, in respect of any such affected Authority Supplied Equipment, the difference between (i) the value had the Acceptable Equipment Condition been met and (ii) the value on the basis of the actual condition at the point of hand-back to the Authority. Any amounts due from the Supplier to the Authority pursuant to this Clause shall be paid within thirty (30) days of the date the relevant Authority Supplied Equipment must be returned to the Authority (pursuant to Clause 9A.4.2.1), otherwise the Authority shall be permitted to recover such amounts from the Supplier as a debt.

9A.6 The Authority may, acting reasonably, require the redistribution by the Supplier of any Authority Supplied Equipment from and to any IBF Site(s) where the Authority believes there is excess Authority Supplied Equipment at any IBF Site(s) and insufficient Authority Supplied Equipment at any other IBF Site(s).

9A.7 Where during the Term any Authority Supplied Equipment is no longer suitable to be deployed in the provision of the Services the Supplier shall promptly inform the Authority in writing and the following provisions shall apply:

9A.7.1 where the condition of the relevant Authority Supplied Equipment is (in the reasonable opinion of the Authority) due to fair wear and tear, the Authority shall provide replacements for such Authority Supplied Equipment and the cost of replacement shall be discharged by the Authority; or

9A.7.2 where the condition of the Authority Supplied Equipment is not (in the reasonable opinion of the Authority) due to fair wear and tear, the Supplier shall provide replacements for such Authority Supplied Equipment and the cost of replacement shall be discharged by the Supplier.

Authority Maintained Assets

9A.8 The Supplier shall maintain the Authority Maintained Assets during the Term in accordance with the provisions of Schedule 2.1 (*Services Description*).

9B ADDITIONAL IBF SITES AND CESSATION OF SERVICES TO EXISTING IBF SITES

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- 9B.1 The Parties hereby acknowledge that the Authority may, at its discretion, require:
- 9B.1.1 the provision of all or part of the Services by the Supplier to any Additional IBF Site(s); and/or
- 9B.1.2 the cessation of the Services to any IBF Site(s),
- and in each case any such changes to the Services shall be dealt with as a Change in accordance with Schedule 8.3 (*Change Control Procedure*). For the avoidance of doubt (and without limitation), where the Services (or part thereof) are required to be provided to any Additional IBF Site(s) the Authority may require a Mobilisation Plan to be provided and agreed by the Supplier in relation to any such Additional IBF Site(s).
- 9B.2 Where Services are ceased by the Authority at any IBF Site(s) pursuant to Clause 9B.1.2:
- 9B.2.1 the Charges shall be reduced accordingly (and agreed pursuant to Schedule 8.3 (*Change Control Procedure*)) having regard to the Charges relating to such IBF Site(s) as set out in the Cost Model (and as part of the Change an updated copy of each Model shall be provided by the Supplier in accordance with Paragraph 10(c) and (d) of Schedule 8.3 (*Change Control Procedure*));
- 9B.2.2 the provisions of Schedule 8.5 (*Exit Management*) shall apply to the cessation of Services at any IBF Site(s); and
- 9B.2.3 the cessation of Services at the relevant IBF Site shall be treated as a partial termination for convenience and Clause 34.3 (*Payments by the Authority*) shall apply accordingly.
- 9B.3 Where the provision of the Services (or part thereof) are required to be provided to any Additional IBF Site(s), the Charges shall only be increased (and agreed pursuant to Schedule 8.3 (*Change Control Procedure*)) to the extent such increase is fair and reasonable in all of the circumstances, having due regard to the Cost Model for the existing IBF Sites (and the applicability of the same to the Additional IBF Site(s)) and the scope and duration of the additional Services (or part thereof) being required by the Authority. The Supplier shall be required to provide an updated Cost Model as part of the Change.
- 9B.4 Notwithstanding the provisions of Paragraph 7 of Schedule 8.3 (*Change Control Procedure*), the Supplier shall only be entitled to reject a proposed Change in relation to the Services (or part thereof) being provided to any Additional IBF Site(s) if:
- 9B.4.1 the Supplier does not have the expertise to deliver services at the proposed Additional Site to the standard required by the Authority; or
- 9B.4.2 consenting to the Change would have a material adverse effect on the reputation of the Supplier.

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

- 10.1 Subject to Clause 10.2 and Clause 10.3, 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 Without prejudice to the generality of the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*), the Supplier shall:
- (a) comply with UK GAAP or the International Financial Reporting Standard; and
 - (b) procure discrete purchase order numbers from the Authority for each Service and/ or Order prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a purchase order number:
 - (i) the Supplier does so at its own risk; and
 - (ii) the Authority shall not be obliged to pay the Charges without a valid purchase order number having been provided to the Supplier.
 - (c) submit each invoice and any Supporting Documentation required to be submitted in accordance with this Clause 10, as directed by the Authority from time to time, via the Authority's electronic transaction system.
- 10.3 To facilitate payment, the Supplier shall use the electronic transaction system chosen by the Authority and shall:
- (a) register for the electronic transaction system in accordance with the instructions of the Authority;
 - (b) allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system;
 - (c) designate a Supplier representative as the first point of contact with the Authority for system issues; and
 - (d) provide such data to the Authority as the Authority reasonably deems necessary for the effective operation of the system including, but not limited to, electronic catalogue information.
- 10.4 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.4 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and Clause 30 (*Step In Rights*).
- 10.5 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

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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.

Set-off and Withholding

10.6 The Authority may:

- (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 under this Agreement or under any other agreement between the Supplier and the Authority; and/or
- (b) exercise any right it may have pursuant to Schedule 2.2 (*Performance Levels*) to withhold payment of a proportion of the Service Charges as Compensation for Unacceptable KPI Failure,

on giving 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.

Value For Money

10.7 The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to savings initiatives in relation to the provision of the Services.

Financial Distress

10.8 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 the consequences of a change to that financial standing.

Promoting Tax Compliance

10.9 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.

10.10 The Supplier shall at all times comply with all other Laws and regulations relating to Tax.

10.11 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor. Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor or Sub-contractor.

10.12 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.

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- 10.13 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, 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.
- 10.14 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 Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.14 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.
- 10.15 The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 10.16 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.10 to 10.15 (inclusive) then this shall constitute a Supplier Termination Event.
- 10.17 The Authority may internally share any information which it receives under Clauses 10.11 to 10.13 (inclusive) and 10.15.

Use of Off-shore Tax Structures

- 10.18 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Sub-contractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Sub-contractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Sub-contract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Sub-contractor and its

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Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

- 10.19 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 10.20 In the event of a Prohibited Transaction being entered into in breach of Clause 10.18 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Sub-contractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 10.18 and 10.19, the Parties (and the Supplier shall procure that the Sub-contractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process set out in Clause 29.
- 10.21 Failure by the Supplier (or a Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Supplier Termination Event.

Competitive Terms

- 10.22 If the Authority is able to obtain from any third party other than a Key Sub-contractor (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- (a) require the Supplier to use all reasonable endeavours to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) enter into a direct agreement with that third party in respect of the relevant item.
- 10.23 If the Authority exercises either of its options pursuant to Clause 10.22, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 10.24 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Payment of Sub-contractors

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- 10.25 The Supplier shall 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.
- 10.26 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, 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).
- 10.27 Failure by the Supplier (or a Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Supplier Termination Event.

The Models

- 10.28 The Supplier shall:
- (a) complete each iteration of the Models using reasonable skill and care;
 - (b) prepare each iteration of the Models using the same methodology, software package, layout and format as that used for the initial iteration of the Models and ensure it does not have any parts which are hidden, protected, locked or made otherwise inaccessible or obscured to review or alteration;
 - (c) ensure that each iteration of the Models a true and fair reflection of the contents therein, is accurate and not misleading; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Models.
- 10.29 All changes to the Models shall be auditable and implemented and documented under formal version control in accordance with the Change Control Procedure.

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.
- 11.2 Each Party shall appoint a representative in accordance with this Clause 11 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 and the management of the Services.
- 11.3 The initial Supplier Representative shall be the person named as Account Director for the Supplier in Schedule 8.1 (*Governance*). Any change to the Supplier Representative shall be agreed in accordance with Schedule 9.2 (*Key Personnel*), if such Schedule is used, or Schedule 8.1 (*Governance*).
- 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.

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12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA**Audit Rights**

- 12.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term (exercisable not more than once in each twelve (12) month period of the term save where the Authority has reasonable grounds to suspect fraudulent activity on the part of the Supplier or to discharge a statutory duty) and for a period of eighteen (18) months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (b) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (c) to verify any certificate of costs required to be provided pursuant to Schedule 7.1 (*Charges and Invoicing*) and, if Schedule 7.5 (*Financial Reports*) is used, any Open Book Data and the integrity and content of any Rolling Financial Statement (as such terms are defined in Schedule 7.5);
 - (d) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Key Sub-contractors or their ability to perform the Services;
 - (g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (j) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (k) to verify the accuracy and completeness of any Management Information

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delivered or required by this Agreement;

- (l) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (m) to inspect the service delivery environment (or any part of it);
- (n) to review any information relating to any testing required pursuant to Schedule 6.2 (*Assurance Procedures*);
- (o) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) and the Supplier's compliance with the Quality Standards;
- (p) to inspect the Authority Assets for the purposes of ensuring that the Authority Assets are secure and that any register of assets (including the Registers) is accurate, complete and up to date; and/or
- (q) to review the integrity, confidentiality and security of the Authority Data.

12.2 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

Conduct of Audits

12.3 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

12.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the scope of the audit;
- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Supplier System; and
- (d) access to Supplier Personnel.

12.5 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

12.6 The Authority shall endeavour to (but is not obliged to) provide at least fifteen

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(15) Working Days' notice of its intention to conduct an audit.

- 12.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 12.1 to 12.10, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

Use of Supplier's Internal Audit Team

- 12.8 As an alternative to the Authority's right pursuant to Clause 12.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Clause 12.1.
- 12.9 Following the receipt of a request from the Authority under Clause 12.8 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

Response to Audits

- 12.10 If an audit undertaken pursuant to Clause 12.1 or Clause 12.8 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Model, the Supplier shall promptly rectify the error;
 - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) to the extent the overpayment arises as a result of an act or omission of the Supplier, interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit, the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
 - (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

Reports, Records and Open Book Data

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12.11 The Supplier shall comply with the provisions of:

- (a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records; and
- (b) Schedule 7.5 (*Financial Reports*), if such Schedule is used, in relation to open book accounting and the provision of financial information and reports.

13 CHANGE

Change Control Procedure

13.1 Any requirement for a Contract Change shall be subject to the Change Control Procedure as set out in Schedule 8.3 (*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 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:

- (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

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Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

- 13.5 Without prejudice to Clause 13.2, each Party shall monitor and shall keep the other Party informed in writing of any Change in Law which may impact the Services and/or Deliverables. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.

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 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, BPSS and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);
 - (iii) comply with all relevant Policies and reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*); and
 - (iv) meet the training and awareness requirements set out in Paragraph 1.2(e) of Schedule 2.8 (*Data Processing and List of Sub-Processors*);
- (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;
- (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;

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- (g) bear the familiarisation and other costs associated with any replacement of any Supplier Personnel;
 - (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement; and
 - (i) pay the Supplier Personnel the Mandatory Wage as required by Law.
- 14.2 The Authority in its sole discretion, subject to obtaining approval from the Authority's Operational Contract Manager and other person of Senior Civil Servant level 1 authority, may refuse to grant access to, and remove or require the Supplier to remove or procure the removal from the provision of the Services of, any Supplier Personnel:
- (a) who does not comply with Policies or the terms of this Agreement;
 - (b) who presents a security, confidentiality, probity or health and safety threat or risk;
 - (c) whose performance or conduct is unsatisfactory or who in the Authority's opinion has been guilty of misconduct or has been negligent or incompetent;
 - (d) who fails to comply with the Authority's or any Service Recipient's instructions; or
 - (e) whose continued presence or assignment is not appropriate or otherwise not acceptable to the Authority.
- 14.3 Following the removal of any of the Supplier Personnel for any reason under Clause 14.2, the Supplier will not reintroduce, and will procure that no Sub-Contractor reintroduces, such person again to the Services and will ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services. Any removal of such person and replacement of that person will be at the Supplier's cost, which shall not be charged directly or indirectly to the Authority. The Supplier will promptly supply or procure the supply of a new replacement individual (unless the Authority notifies the Supplier in writing that a replacement is not required). The Supplier will indemnify and keep indemnified the Authority and any Service Recipient from and against all costs, claims, expenses, losses and liabilities arising from or in connection with such removal. The exercise by the Authority of its rights under Clause 14.2 will not relieve the Supplier of any of its obligations under this Agreement.

Key Personnel

- 14.4 The terms of Schedule 9.2 (*Key Personnel*) shall apply, if such Schedule is used.

Employment Indemnity

- 14.5 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

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- (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

14.6 Where the Supplier or any Supplier Personnel are liable to Tax 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 Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
- (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 Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and
- (c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.6(a) or why Clause 14.6(a) does not apply to the Supplier (including such specific information as the Authority may request),

and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.6 then this shall constitute a Supplier Termination Event.

14.7 The Authority may internally share any information which it receives under Clause 14.6(c).

Staff Transfer

14.8 The Parties agree that:

- (d) where the commencement of the provision of the 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,

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

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

15.1 The Parties shall comply with the provisions of Schedule 4.3 (*Sub-contractors*) in relation to the appointment of Sub-contractors and the terms of Sub-contracts.

Exclusion of Sub-contractors

15.2 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:

- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- (b) 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.

Exclusion of Sub-contractors

15.3 The Authority, at its sole discretion, may require the Supplier to terminate a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b) (*Termination by the Authority*);
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass 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;
- (c) 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;
- (d) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*); and/or

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- (e) the relevant Sub-Contractor has failed to comply with the terms of its Sub-Contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
- (f) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.2 (*Exclusion of Sub-contractors*); and or
- (g) there is a change of Control of the relevant Key Sub-contractor, 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.

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

16.1 Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors: and
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors.

Project Specific IPR

- 16.2 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs.
- 16.3 The assignment under Clause 16.2 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs as appropriate.
- 16.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.
- 16.5 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to effect the assignment under Clause 16.2.
- 16.6 The Authority shall grant to the Supplier a non-exclusive royalty-free licence of the Project Specific IPRs to enable the Supplier to provide the Services during the Term.
- 16.7 To the extent that the Project Specific IPRs include and/or incorporate Supplier Background IPR and/or Third Party IPR, the Supplier shall (and, in respect of any Third Party IPR, shall procure that the relevant third party shall) grant the licenses and rights set out in Clause 17 to the Authority and other entities set out in Clause

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17 in respect of the Supplier Background IPR and Third Party IPR included and/or incorporated in the Project Specific IPRs.

17 LICENCES GRANTED BY THE SUPPLIER

- 17.1 The Supplier hereby grants to the Authority and the Government Controlled Company a perpetual, royalty free and non-exclusive licence allowing them to use, load, execute, store, transmit, display and copy the Supplier Background IPR.
- 17.2 The Supplier shall extend the rights granted to the Authority and the Government Controlled Company under Clause 17.1 (including as to indemnification against IPRs Claims) to their respective contractors and sub-contractors for the duration of the Term solely for the purpose of providing services to the Authority or the Government Controlled Company.
- 17.3 The licences in Clause 17.1:
- (a) are granted for any purpose relating to the Services (or substantially equivalent services); or
 - (b) are granted for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
 - (c) includes the right to create an archival copy and a back-up copy;
 - (d) includes the right to sub-license the rights granted to it to a third party (including for the avoidance of doubt any Replacement Supplier) on no less favourable terms than granted to the Authority and the Government Controlled Company (including as to indemnification against IPRs Claims) for the benefit of the Authority and or the Government Controlled Company provided such third party is under a contractual obligation to the Authority to comply with confidentiality obligations that are broadly equivalent to those of the Authority pursuant to Clause 21 (*Confidentiality*);
 - (e) includes the right for the Authority to:
 - (i) assign, novate or otherwise dispose of its rights and obligations to any other body (including any other Central Government Body and or any private sector body) which substantially performs any of the functions that previously had been performed by the Authority; or
 - (ii) transfer the licences to other machines or users within the Authority.
- 17.4 For the avoidance of doubt any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.1 and the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.1 (including as to indemnification against IPRs Claims).
- 17.5 The Supplier hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.

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- 17.6 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

Third Party Non-COTS IPR and Third Party COTS IPR

- 17.7 Subject to Clause 17.9, the Supplier shall not use in the provision of the Services any Third Party Non-COTS IPR or Third Party COTS IPR unless it (i) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party COTS IPRs has granted a direct licence to the Authority on a royalty-free basis on terms no less favourable to the Authority than those set out in Clauses 17.1, 17.2 and 17.3; or (ii) complied with Clause 17.8 and where applicable Clause 17.9.
- 17.8 If the Supplier cannot obtain for the Authority a licence in respect of the relevant Third Party Non-COTS IPRs or Third Party COTS IPRs in accordance with the licence terms set out in Clause 17.7, the Supplier shall:
- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative Third Party IPRs which the Supplier could seek to use; and
 - (b) use the relevant Third Party Non-COTS IPRs or Third Party COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party; and
 - (c) if the Supplier cannot obtain for the Authority licence terms for the relevant Third Party Non-COTS IPRs and Third Party COTS IPR acceptable to the Authority, consult with the Authority on alternatives to the relevant Third Party Non-COTS IPRs and Third Party COTS IPRs. Any alternative Third Party Non-COTS IPRs and Third Party COTS IPRs approved by the Authority in accordance with this Clause 17.8(c) shall be henceforth Third Party Non-COTS IPRs or Third Party COTS IPRs (as applicable) for the purposes of this Agreement, to which the provisions of Clauses 17.7 and 17.8 (as applicable) shall apply.

Third Party COTS IPRs

- 17.9 Without prejudice to Clause 17.7 and 17.8, in relation to Third Party COTS IPRs, the Supplier shall:
- (a) notify the Authority in writing of all Third Party COTS IPRs that it uses and the terms on which it uses them;
 - (b) ensure that any licence procured pursuant to Clause 17.7 includes an IPR indemnification in respect of the relevant Third Party COTS IPRs no less favourable to the Authority than the provisions of Clause 19 (IPRs Indemnity); and
 - (c) ensure that any notice that details alternative licence terms pursuant to clause 17.8(a) also identifies whether those terms are at least as favourable as those on which such Third Party COTS IPRs are usually made commercially available by the relevant third party.

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18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:
- (a) the Authority Background IPR;
 - (b) the Authority's documentation, processes and procedures;
 - (c) the Authority's Know-How; and
 - (d) the Authority Data.
- 18.2 The licence granted in Clause 18.1:
- (a) includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
 - (b) is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.3 In the event of the termination or expiry of this Agreement, the licence referred to in Clause 18.1 and any sub-licence granted in accordance with Clause 18.2(a) shall terminate automatically and the Supplier and all Sub-contractors shall deliver to the Authority all material licensed to the Supplier pursuant to Clause 18.1 or Clause 18.2(a) in the Supplier's possession or control.

19 IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

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- (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
- (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:

- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
- (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19A OPEN SOURCE PUBLICATION

19A.1 The Supplier agrees that the Authority may publish, at its sole discretion, as Open Source software all or part of the Project Specific IPRs that are in the nature of software, if any.

19A.2 The Supplier hereby warrants that any Project Specific IPRs that are in the nature of software:

- (a) are suitable for release as Open Source and that any release shall not allow a third party to use the Open Source software in any way to compromise the operation, running and security of the Project Specific IPRs or the Authority System;
- (b) have been developed using reasonable endeavours to ensure that their publication by the Authority shall not cause any harm or damage to any party using them and that they have been tested using the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor;
- (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
- (d) can be published by the Authority as Open Source without breaching the rights of any third party; and
- (e) will be supplied in a format suitable for publication as Open Source no later than the date notified by the Authority to the Supplier.

19A.3 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any

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Non-Party IPRs arising from publication of the Project Specific IPRs that are in the nature of software as Open Source under Clause 19A.1.

20 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 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.
- 20.3 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*).
- 20.4 The Supplier shall preserve the integrity, confidentiality and accessibility of Authority Data and prevent the unauthorised access, interception, 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.
- 20.5 The Supplier shall perform and maintain secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with any 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 no additional cost to the Authority, and that the data contained in the back-ups are available 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).
- 20.6 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 in this Agreement.
- 20.7 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 Plans 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 Plans and Corporate Resolution Planning*).
- 20.8 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 notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

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20.9 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).

Obligations under the Finance Act 1989, the Commissioners for Revenue and Customs Act 2005 and the Social Security Administration Act 1992

20.10 The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub-contractors and Supplier Personnel shall duly observe:

- (a) the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and
- (b) Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

20.11 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in Clause 20.10 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

20.12 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

21 **CONFIDENTIALITY**

21.1 For the purposes of this Clause 21, 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.

21.2 Except to the extent set out in this Clause 21 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;

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- (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.
- 21.3 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, provided that Clause 22 (*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.
- 21.4 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.
- 21.5 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 21.5, 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.

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- 21.6 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 21.6(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 30 (*Step-In Rights*) 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 21.

- 21.7 Nothing in this Clause 21 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.

22 TRANSPARENCY AND FREEDOM OF INFORMATION

- 22.1 The Parties acknowledge that:
- (a) the Transparency Reports; and
 - (b) the content of this Agreement, including any Contract Changes or Operational Changes 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;
- (together the "**Transparency Information**") are not Confidential Information.
- 22.2 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

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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.

- 22.3 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 Schedule 8.2 (*Reports and Records*).
- 22.4 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.
- 22.5 The Authority shall publish the Transparency Information in a format that 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 the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 22.6 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 21.6(c)) and, if required to be provided under Schedule 7.5 (*Financial Reports*, any 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.
- 22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re-use of Public Sector Information Regulations 2015 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
 - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

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- 22.8 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.

23 PROTECTION OF PERSONAL DATA

- 23.1 The Parties shall comply with Schedule 2.8 (*Data Processing and List of Sub-processors*) in relation to the processing of Personal Data, if such Schedule is used.

24 PUBLICITY AND BRANDING

- 24.1 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.

- 24.2 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**25 LIMITATIONS ON LIABILITY****Unlimited liability**

- 25.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability for:
 - (i) death or personal injury caused by its negligence, or that of its employees, officers, agents or Sub-contractors (as applicable);
 - (ii) fraud or fraudulent misrepresentation by it or its employees;
 - (iii) 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
 - (iv) any liability to the extent it cannot be limited or excluded by Law;

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- (b) the Supplier's liability in respect of the indemnities in Clause 10.14 (VAT), Clause 14.5 (*Employment Indemnity*), Clause 14.6 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Clause 19A.3 (*Open Source Publication*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*); or
- (c) the Authority's liability in respect of the indemnities in Clause 14.5 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*).

Financial and other limits

25.2 Subject to Clause 25.1 (*Unlimited Liability*) and Clauses 25.5 and 25.6 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property, equipment 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:
 - (i) in relation to Defaults occurring in the first Contract Year, [REDACTED]
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, [REDACTED] and
 - (iii) in relation to Defaults occurring after the end of the Term, [REDACTED]
- (b) the Supplier's aggregate liability in respect of all losses, fines and/or expenses incurred by the Authority, including any further costs required in order to meet any additional requirements imposed by a relevant regulatory body as a result of the relevant breach, arising out of or in connection with loss of or damage to Authority Data or breach of any of its obligations under Clause 20 or 23 of this Agreement or of the Relevant Data Protection Laws that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, [REDACTED]
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, [REDACTED] and
 - (iii) in relation to Defaults occurring after the end of the Term, [REDACTED]
- (c) the Supplier's aggregate liability in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Unacceptable KPI Failure;
 incurred in any month shall be subject to the Service Credit Cap; and
- (d) the liability of the Supplier in respect of claims for physical loss, mis-delivery of or damage to the contents of any Consignment during transit (except damage to or loss of the contents of any Consignment caused by any Default of the

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Supplier), howsoever arising, shall in all circumstances be limited to a sum calculated at the rate of £1,300 per tonne on the gross weight of the goods actually lost, mis-delivered or damaged. In this Clause, transit shall: (i) commence when the Supplier takes possession of the Consignment whether at the point of collection or at the Authority Premises or any Authority approved offsite storage; and (ii) end when the Consignment is tendered at the usual place of delivery at the Authority Premises or any Authority approved offsite storage; and

- (e) the Supplier's aggregate 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:
- (i) in relation to Defaults occurring during any Contract Year, an amount equal to one hundred and fifty per cent (150%) of the Charges paid or due to be paid or payable during the Contract Year in which the Default occurred; and
 - (ii) in relation to Defaults occurring after the end of the Term, an amount equal to one hundred and fifty per cent (150%) of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to in this Clause have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement (whether in whole or in part), 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 Clause to one hundred and fifty per cent (150%) shall be deemed to be references to two hundred per cent (200%).

25.3 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clauses 25.2(a), 25.2(b), 25.2(d) and 25.2(e).

25.4 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.5 (*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 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 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.6(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*); and
 - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and

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- (b) the Authority's aggregate liability in respect of 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 during any Contract Year, an amount equal to one hundred per cent (100%) of the total Charges paid, due to be paid or payable in the Contract Year in which the Default occurred; and
 - (ii) in relation to Defaults occurring after the end of the Term, an amount equal to one hundred per cent (100%) of the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

- 25.5 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.6, neither Party shall be liable to the other Party for:
- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 25.6 Notwithstanding Clause 25.5 but subject to Clause 25.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority and/or the Service Recipients to the extent that they arise as a result of a Default by the Supplier which are deemed to be a non-exhaustive list of direct and recoverable Losses:
- (a) the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Authority had the Default not occurred;
 - (b) notwithstanding Clauses 25.6(c) and 25.6(h), any operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;
 - (c) 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;
 - (d) any wasted expenditure or charges;
 - (e) 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;
 - (f) any compensation or interest payable by mandatory operation of Law to a third party by the Authority;

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- (g) 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;
- (h) without prejudice to Clause 20 (*Authority Data and Security Requirements*), any losses associated with corruption, loss or degradation to Authority Data; and
- (i) any Losses incurred by any Service Recipient to the extent that such Losses would have been recoverable if suffered by the Authority.

Conduct of indemnity claims

25.7 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

25.8 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.

Service Recipients

25.9 The liabilities (including the limitations and exclusions of these) of the Authority under this Agreement sets out the entire liability (whether in contract, tort, negligence or otherwise and howsoever arising) of the Authority and the Service Recipients provided that:

- (a) nothing in this Agreement shall increase or replicate any such liabilities of the Supplier by reason of the rights granted to each Service Recipient under this Agreement;
- (b) the Authority shall to the extent permitted by Law and subject to Paragraph 1.5(c) of Schedule 2.7 (*Service Recipients*), in respect of any claims relating to the rights granted to each Service Recipient, bring such claims on behalf of each relevant Service Recipient.

26 INSURANCE

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

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SECTION H - REMEDIES AND RELIEF**27 RECTIFICATION PLAN PROCESS**

27.1 Without limitation to this Clause 27 and without prejudice to the Authority's rights under this Agreement, if there is a KPI Failure or if the Supplier otherwise fails to perform its obligations under this Agreement, the Supplier will:

- (a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;
- (b) advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;
- (c) minimise the impact of and correct the problem and thereafter recommence performance in accordance with and so as to meet or exceed the Target Performance Level of all the KPIs as soon as possible; and
- (d) take appropriate preventative measures so that the problem does not reoccur.

27.2 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) in any Service Period there has been a KPI Failure;
- (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); and/or
- (d) following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a 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, 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. Any notice provided pursuant to this Clause 27.2 must detail the actual or anticipated effect of the Notifiable Default.

Notification

27.3 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.2 that a Notifiable Default has occurred; or

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- (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),
- (c) then unless the Notifiable Default also constitutes:
 - (i) a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice;
 - (ii) an Escalation Process Trigger Event and the Authority serves an Escalation Notice; or
 - (iii) a Step-In Trigger Event and the Authority serves a Step-In Notice,the Supplier shall comply with the Rectification Plan Process. If the Notifiable Default is a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall also apply and if the Notifiable Default is a KPI Failure, Paragraph 3 (*KPI Failure*) of Part A of Schedule 2.2 (*Performance Levels*) shall also apply.

27.4 The “**Rectification Plan Process**” shall be as set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

27.5 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 27.3 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.6 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).

27.7 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 5 of Schedule 8.4 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

27.8 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

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within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

- 27.9 If the Authority consents to the Rectification Plan the Supplier shall immediately start work on the actions set out in the Rectification Plan.

28 DELAY PAYMENTS, SERVICE CREDITS AND COMPENSATION FOR UNACCEPTABLE KPI FAILURE

- 28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, Delay Payments may be payable in accordance with Part C of Schedule 7.1 (*Charges and Invoicing*).

- 28.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits may be deductible from the Service Charges; and/or
- (b) an Unacceptable KPI Failure occurs, Compensation for Unacceptable KPI Failure may be deductible from the Service Charges,

in either case, in accordance with Schedule 2.2 (*Performance Levels*) and Schedule 7.1 (*Charges and Invoicing*).

29 ESCALATION PROCESS

- 29.1 Where an Escalation Process Trigger Event occurs, without prejudice to any other rights or remedies under this Agreement, the Authority may give not less than five (5) Working Days' notice ("**Escalation Notice**") to the Supplier requiring a meeting(s) between the Supplier Executive and the Authority ("**Escalation Meeting(s)**").

- 29.2 The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).

- 29.3 The Parties agree and acknowledge that the Escalation Meeting(s) shall take place on Authority Premises and at times and durations as the Authority may determine.

- 29.4 Subject to Clause 29.5, the Escalation Meeting(s) shall continue until such time as the Escalation Process Trigger Event has been resolved to the reasonable satisfaction of the Authority.

- 29.5 Where the Escalation Meeting(s) have continued for more than five (5) Working Days, either of the Parties may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.

- 29.6 If the Supplier is in Default of any of its obligations under Clause 29 (*Escalation Process*), the Authority shall be entitled to terminate this Agreement pursuant to Clause 33.1(b) (*Termination by the Authority*).

30 STEP-IN RIGHTS

- 30.1 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 30 (*Step-in Rights*), either itself or with the assistance of a third party (including any Service Recipient) (provided that the Supplier may require any third

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parties to comply with a confidentiality undertaking equivalent to Clause 21 (*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 (whether all of the Services, part of the Services or any constituent part of the relevant part of the Services) (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.

30.2 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 30.

30.3 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) without prejudice to any Deductions which may have accrued in respect of the period prior to the commencement of the Required Action, 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 30.4 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 provided that if the Authority's costs are greater than the Charges then, save for when the step-in action is taken by the Authority under:
 - (i) limbs (c) or (d) of the definition of a Step-In Trigger Event; or

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- (ii) limbs (e), (f) and (g) 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)

the Supplier shall pay the difference on demand to the Authority.

- 30.4 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.
- 30.5 Before ceasing to exercise its step-in rights under this Clause 30 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 30.6.
- 30.6 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.
- 30.7 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 within five (5) Working Days 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.
- 30.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 30, 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), (f) and (g) 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).

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31 AUTHORITY CAUSE

31.1 Notwithstanding any other provision of this Agreement, if the Supplier

(a) has failed to:

(i) Achieve a Milestone by its Milestone Date;

(ii) provide the Operational Services in accordance with the Target Performance Levels; and/or

(iii) 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 Clauses 31.2 and 31.4 the Supplier shall not be treated as being in breach of this Agreement, but only to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause.

31.2 In order to claim the relief referred to in Clause 31.1, 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.

31.3 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.

31.4 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.

31.5 Without prejudice to Clause 5.10 (*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

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- (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.

32 FORCE MAJEURE

- 32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plans and Corporate Resolution Planning*)), a Party may claim relief under this Clause 32 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. 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.
- 32.2 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.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including any Business Continuity Services, but the Supplier has failed to do so; and/or
 - (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.
- 32.4 Subject to Clause 32.5, 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.
- 32.5 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.
- 32.6 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

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pursuant to Clause 33.1(c) (*Termination by the Authority*) or Clause 33.6(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 during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Step-in Rights*) as a result of such failure;
 - (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.
- 32.7 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.
- 32.8 Relief from liability for the Affected Party under this Clause 32 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 32.7.

SECTION I - TERMINATION AND EXIT MANAGEMENT**33 TERMINATION RIGHTS****Termination by the Authority**

- 33.1 The Authority may terminate this Agreement in whole or in part - including part of any particular Service pillar (as the same are described in Paragraph 3.1.2 of Schedule 2.1 (*Service Description*)) by issuing a Termination Notice to the Supplier:
- (a) for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
 - (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 the 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.

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33.2 Where the Authority:

- (a) is terminating this Agreement under Clause 33.1(b) due to the occurrence of either limb (c) and/or (j) 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 33.1(b) or Clause 33.1(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.

Termination for Persistent Breach

33.3 If a Default by the Supplier has occurred on more than one occasion then without prejudice to any other right of the Authority to terminate this Agreement, the Authority may serve a notice ("**Termination Warning Notice**") on the Supplier:

- (a) specifying that it is a formal Termination Warning Notice;
- (b) giving reasonable details of the Default; and
- (c) stating that if such Default recurs or continues, it may result in termination of this Agreement for Persistent Breach.

33.4 If the Default specified in the Termination Warning Notice recurs after the date of service of the relevant Termination Warning Notice then the Authority may serve a further notice on the Supplier ("**Final Termination Warning Notice**"):

- (a) specifying that it is a Final Termination Warning Notice;
- (b) stating that the specified Default has been the subject of a Termination Warning Notice served within the twelve (12) month period prior to the date of the Final Termination Warning Notice; and
- (c) stating that if such Default continues or recurs on one or more occasion within the six (6) month period following the date of the Final Termination Warning Notice the Authority may serve written notice on the Supplier to terminate this Agreement for Persistent Breach (termination to take effect from the date set out in the notice).

33.5 Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

Termination by the Supplier

33.6 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 £1,000 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

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- (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 33.6(b) would result in a Partial Termination, the provisions of Clause 33.7 (*Partial Termination*) shall apply.

Partial Termination

- 33.7 If the Supplier notifies the Authority pursuant to Clause 33.6(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 33.7, 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.
- 33.8 The Parties shall agree the effect of any Contract 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 Models and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.

34 CONSEQUENCES OF EXPIRY OR TERMINATION**General Provisions on Expiry or Termination**

- 34.1 The provisions of Clauses 10.9 and 10.17 (*Promoting Tax Compliance*), 10.6 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.5 (*Employment Indemnity*), 14.6 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19 (*IPRs Indemnity*), 19A.3 (*IPR Indemnity for Open Source Software*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports*), 8.2 (*Reports and Records*), 8.4 (*Dispute Resolution Procedure*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

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Exit Management

34.2 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

34.3 If this Agreement is terminated by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.6(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).

34.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b), 33.1(c) and/or 33.2 (*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 Supplier Equipment 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.

34.5 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 33.1(c) or 33.2(b) (*Termination by the Authority*), Clause 33.6(b) (*Termination by the Supplier*) or Clause 33.7 (*Partial Termination*); or
- (b) the Authority terminates this Agreement under Clause 33.1(d).

Payments by the Supplier

34.6 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.

SECTION J - MISCELLANEOUS AND GOVERNING LAW**35 COMPLIANCE****Health and Safety**

35.1 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.

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35.2 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.

Equality and Diversity

35.3 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, 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; and
- (b) 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).

Official Secrets Act

35.4 The Supplier shall comply with the provisions of the Official Secrets Acts 1911 to 1989.

Modern Slavery Act

35.5 In performing its obligations under the Agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and
- (c) notify the Authority as soon as it becomes aware, and in any event within five (5) Working Days, of any actual or suspected breach of its obligations under Clause 35.5(a) and/or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:
 - (i) remedy the breach; and
 - (ii) ensure future compliance with Clause 35.5(a) and (b).

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- 35.6 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 35.5 then this shall constitute a Supplier Termination Event.

Social Value

- 35.7 The Parties shall comply with the provisions of Schedule 11 (Social Value) in relation to the standards and principles that will apply to this Agreement.

36 ASSIGNMENT AND NOVATION

- 36.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

- 36.2 The Authority may at its discretion 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,

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 36.2.

- 36.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

- 36.4 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 (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and references to a Party in the definition of Insolvency Event were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

- 37.1 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.

- 37.2 Unless otherwise provided in this Agreement, rights and remedies under this

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

38 RELATIONSHIP OF THE PARTIES

- 38.1 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.
- 38.2 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Supplier.

39 PREVENTION OF FRAUD AND BRIBERY

- 39.1 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 Effective 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.
- 39.2 The Supplier shall not during the term of this Agreement:
- (a) commit a Prohibited Act; and/or
 - (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.
- 39.3 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; and
 - (b) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request.

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- 39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, 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.
- 39.5 If the Supplier makes a notification to the Authority pursuant to Clause 39.4, 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*).
- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, 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; or
 - (b) immediately terminate this Agreement.
- 39.7 Any notice served by the Authority under Clause 39.6 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).

40 SEVERANCE

- 40.1 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.
- 40.2 In the event that any deemed deletion under Clause 40.1 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.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within five

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(5) Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this 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 40.3.

41 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.

42 ENTIRE AGREEMENT

42.1 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.

42.2 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.

42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43 THIRD PARTY RIGHTS

43.1 The provisions of Clause 19 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 8.11 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named 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.

43.2 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.

43.3 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

43.4 Subject to Clause 43.1 and, if such Schedule is used, Schedule 2.7 (*Service Recipients*) 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.

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44 NOTICES

44.1 Any notices sent under this Agreement must be in writing.

44.2 Subject to Clause 44.4, 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

44.3 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	[REDACTED]	[REDACTED]
Address	[REDACTED]	[REDACTED]

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Email		
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- 44.4 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 44.2:
- (a) Step-In Notices;
 - (b) Force Majeure Notices;
 - (c) notices issued by the Supplier pursuant to Clause 33.6 (*Termination by the Supplier*);
 - (d) Termination Notices; and
 - (e) Dispute Notices.
- 44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 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 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 44.6 This Clause 44 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 8.4 (*Dispute Resolution Procedure*)).
- 45 NON-SOLICITATION**
- 45.1 Except in respect of implementing any Relevant Transfer, neither Party shall, and in the case of the Supplier shall procure that any Sub-contractor shall not, during the Term and for 12 months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other Party any person employed by such Party in the provision, receipt and/or administration of the Services. Such restriction shall not prevent either Party from recruiting personnel who apply to a general advertising campaign.
- 46 DISPUTES**
- 46.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 46.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
- 47 GOVERNING LAW AND JURISDICTION**
- 47.1 Each Party irrevocably agree that 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 exclusively governed by and construed in

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accordance with the laws of England and Wales.

47.2 Subject to Clause 45 (*Disputes*) and Schedule 8.4 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties irrevocably 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 7.

SIGNED for and on behalf of **SODEXO LIMITED**

Signature: [Redacted]

Name (block capitals): [Redacted]

Position: [Redacted]

Date: 20 March 2023

SIGNED for and on behalf of ***The Commissioners for His Majesty's Revenue and Customs***

Signature: [Redacted]

Name (block capitals): [Redacted]

Position: [Redacted]

Date: 21 March 2023