

Dated _____ 2015

THE SECRETARY OF STATE FOR DEFENCE

and

CONTRACTOR

CONSOLIDATED CONTRACT

for the delivery of Integrated User Services under the PSN Services Framework Agreement

for Contract Number DCNS/119

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This Consolidated Contract is made on _____ 2015 **between:**

- (1) The Secretary of State for Defence (the “**Customer Authority**”); and
- (2) British Telecommunications Public Limited Company, a company incorporated in England with registered number 01800000 whose registered office is at 81 Newgate Street, London, EC1A 7AJ (the “**Contractor**”).

Background:

- (A) The Customer Authority has put in place a Defence Core Network Services (“**DCNS**”) programme, which provides the overarching framework for the transformation of ICT service delivery within the Customer Authority and is aimed at delivering coherence in service delivery, architecture and engineering, commercial constructs and financials to improve agility, deliver flexibility, affordability and Customer Authority efficiency. One of the core values of the DCNS programme is for the Customer Authority to work with contractors - like the Contractor - who will support the Customer Authority in becoming better equipped to manage and navigate through the fast-moving world of information and communication services.
- (B) As part of this programme, the Customer Authority has defined a target supply chain model for ICT, which splits the Customer Authority’s ICT requirements into five categories, with each category being known as a “**Tower**”.
- (C) The Customer Authority wishes to outsource the supply of services for the Tower known as the “**IUS Tower**”, including fixed voice services, voice and video conferencing services, operator assistance services, mobile voice and data services and related services. The objectives of the outsourcing of the supply of such services are to:
 - (i) reflect the DCNS values;
 - (ii) enhance End Users’ experience of the Services (and services which depend on the Services);
 - (iii) ensure that the Customer Authority receives fully managed Services, with the Contractor ensuring the end-to-end, comprehensive delivery and management of the Services and its other obligations, including with respect to management of Customer Authority inputs and the infrastructure and resources used in its performance of the Services and its other obligations;
 - (iv) provide the Customer Authority with greater agility by ensuring that the Services can flex to meet its changing needs;
 - (v) ensure that the Services remain affordable and that they continue to represent good value for money throughout the Term;
 - (vi) deliver greater efficiencies (including financial efficiencies, asset efficiencies and service performance efficiencies) to the Customer Authority; and
 - (vii) reduce the overall cost of the Services to the Customer Authority.
- (D) This Consolidated Contract has been entered into pursuant to the Framework Agreement put in place by the Government Procurement Service (under Government Procurement Service contract number RM1498). The Customer Authority commenced competition under the Framework Agreement on 6 November 2014 and selected the Contractor to provide the Services.

- (E) Under the terms of the Framework Agreement, the Parties are to enter into a contract for its call-off comprising the provisions set out in:

- (i) the Call-Off Terms; and
- (ii) the Call-Off Form.

For ease of reading and certainty, the Parties have decided to set out in this Consolidated Contract a combined set of the entire provisions of the Call-Off Terms and the Call-Off Form. This Consolidated Contract represents and evidences the entire agreement between the Parties in relation to the Customer Authority's call-off under the Framework Agreement (including in relation to the delivery of the Services).

- (F) The Contractor represents that it:

- (i) has experience and expertise in the supply of services similar to the Services; and
- (ii) has considered the Services and believes that it is able to provide the Services in accordance with the provisions of this Consolidated Contract,

and on that basis, the Customer Authority has decided to appoint the Contractor to deliver the Services on the terms of this Consolidated Contract to the Customer Authority.

- (G) The Contractor understands that receiving seamless, secure, efficient and cost-effective end-to-end information, communications and technology services is vital to the Customer Authority's ability to fulfil its functions. Therefore, it is key that the Contractor engages with the Customer Authority Third Parties in an open and co-operative manner in accordance with this Consolidated Contract, and the Contractor acknowledges that any failure to do so may prejudice the Customer Authority's receipt of such services. In particular, the Contractor acknowledges that a failure to perform its obligations relating to the provision of Exit Management Information, Exit Assistance and Re-Procurement Assistance may prejudice the Customer Authority's ability to conduct a fair and effective competition for Replacement Services and to safeguard the continuity of the Services at a price that represents value for money for the taxpayers of the United Kingdom.

- (H) The Contractor is aware that this Consolidated Contract contains special obligations in relation to DEFCON 659 and that therefore the Contractor may have access from time to time to information protected under the Official Secrets Act 1989, including information that is to be protected as OFFICIAL, SECRET or TOP SECRET. The Contractor understands that a breach of security may compromise the security of the Customer Authority's personnel, as well as the people of the United Kingdom and other nations.

- (I) The Contractor appreciates that the Customer Authority has a duty to obtain value for money and that the Contractor is expected to consider making use of Government procurement frameworks for the procurement of New Exclusive Equipment where these frameworks are appropriate and available.

- (J) The Contractor recognises that a failure to provide the Services in accordance with this Consolidated Contract may:

- (i) damage the Customer Authority's ability to defend the United Kingdom and its interests, and to strengthen international peace and stability;
- (ii) result in substantial detriment to the reputation and integrity of the Government; and
- (iii) result in loss of life.

- (K) The Contractor acknowledges that the nature of the Customer Authority's functions is such that crises and emergency situations routinely occur and that this requires the Contractor to deliver a scalable and flexible solution for the delivery of the Services in accordance with the terms of this Consolidated Contract.
- (L) In addition, the Contractor understands that it is vital that it seeks to remedy any failures within any of the Services expeditiously, regardless of whether the Contractor believes that the cause(s) of such failure are acts or omissions of the Contractor, or otherwise.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1** In this Consolidated Contract, the definitions set out in Consolidated Schedule 1 (*Definitions*) shall apply unless expressly stated to the contrary in a provision of this Consolidated Contract. If a capitalised term or phrase used in this Consolidated Contract:
- 1.1.1** is not defined within Consolidated Schedule 1 (*Definitions*), it shall have the meaning as set out in Consolidated Schedule 1 (*Definitions*) of the Framework Agreement; or
 - 1.1.2** does not have an interpretation in the Framework Agreement, it shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the Oxford English dictionary meaning.
- 1.2** The interpretation and construction of this Consolidated Contract shall at all times be subject to the following provisions:
- 1.2.1** words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2** words importing the masculine include the feminine and the neuter and vice versa;
 - 1.2.3** the words “including”, “includes”, “in particular”, “for example” or words having a similar effect, shall be construed as illustrative and without limitation to the generality of the related general words;
 - 1.2.4** references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted (whether or not having separate legal personality) and their successors and permitted assigns or transferees;
 - 1.2.5** references to a company shall include any company, corporation or any body corporate, wherever incorporated;
 - 1.2.6** references to an Act of Parliament, Law (including the Regulations), statutory provision or statutory instrument include a reference to that Act of Parliament, Law (including the Regulations), statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any subordinate legislation or regulations made under it, whether before or after the date of this Consolidated Contract. The impact of any such amendment, extension or re-enactment on this Consolidated Contract shall be dealt with in accordance with Clause 38 (*Change in Law*);

- 1.2.7 reference to a Regulatory Body shall include any successor to that Regulatory Body;
- 1.2.8 references to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm;
- 1.2.9 references to obligations to be performed for “**three hundred and sixty five (365) days**” in a year shall include the performance of those obligations for three hundred and sixty-six (366) days in a leap year;
- 1.2.10 unless otherwise specified in this Consolidated Contract, if a matter is subject to a Party’s consent, the grant of that consent shall be in that Party’s sole and absolute discretion;
- 1.2.11 the Customer Authority shall not be considered to have knowledge of any Government policy, fact, matter or thing unless that Government policy, fact, matter or thing is within the knowledge of the Customer Authority Representative;
- 1.2.12 the Customer Authority’s oversight of, participation in any discussions or consultations about, comments on, or approval of, any item (including any Correction Plans) shall not prejudice the Customer Authority’s rights and remedies. In addition, nor shall such oversight of, participation in any discussions or consultations about, comments on or approval of, any such item constitute a waiver, variation or acquiescence (including any acceptance that the Contractor has performed the Services in accordance with this Consolidated Contract). The Contractor shall use its own judgment in determining whether any comments made by the Customer Authority are reasonable, taking into account practical, technical and operational considerations, and shall at all times remain responsible for ensuring that the Services are delivered in accordance with this Consolidated Contract;
- 1.2.13 references to the “**Parties**” means the Customer Authority and the Contractor and their respective successors and permitted assigns. References to a “**third party**” or “**third parties**” shall not include members of the Contractor’s Group;
- 1.2.14 headings are included in this Consolidated Contract for ease of reference only and shall not affect the interpretation or construction of this Consolidated Contract;
- 1.2.15 references to this Consolidated Contract shall include any recitals, Consolidated Schedules and appendices to it;
- 1.2.16 references in this Consolidated Contract to any Clause or Consolidated Schedule or Appendix to a Consolidated Schedule without further designation shall be construed as a reference to the clause or schedule or appendix to a schedule to this Consolidated Contract so numbered;
- 1.2.17 references in this Consolidated Contract to any Paragraph without further designation shall be construed as a reference to the paragraph of the relevant Consolidated Schedule to this Consolidated Contract so numbered;
- 1.2.18 references to a Clause or Paragraph are a reference to the whole of that clause or paragraph unless stated otherwise; and

1.2.19 references to any English legal term shall, in respect of any jurisdiction other than England, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.

1.3 The Framework Authority wishes to avoid the situation where, through completion of a Call-Off Form by the Customer Authority and the Contractor, a Call-Off Contract creates a conflict with the Framework Agreement. Therefore, if there is a conflict between this Consolidated Contract and the Framework Agreement, the Framework Agreement shall prevail to the extent of such conflict and the Customer Authority and the Contractor shall comply with the instructions of the Framework Authority (acting reasonably and in consultation with the Customer Authority and the Contractor) on how such conflict shall be resolved. Notwithstanding this, nothing agreed between a Party and the Framework Authority shall affect the Parties' rights, obligations and remedies under this Consolidated Contract, unless previously agreed in writing between the Parties, such form of writing to refer to this Clause 1.3. In addition, the Parties agree that, having read the terms of this Consolidated Contract carefully, they do not believe that there are any conflicts between this Consolidated Contract and the Framework Agreement.

1.4 In the context of this Consolidated Contract only, where the Framework Agreement refers to a part of the Call-Off Terms or the Call-Off Form, such reference shall be read as a reference to the corresponding document in this Consolidated Contract. In particular:

1.4.1 a reference in the Framework Agreement to Clauses of the Call-Off Terms shall be read as references to the corresponding Clauses of this Consolidated Contract; and

1.4.2 the preamble at the beginning of each Consolidated Schedule shows which parts of: (a) the Schedules to the Call-Off Terms; and (b) the Appendices to the Call-Off Form, that Consolidated Schedule consolidates the requirements of. Therefore, for example, a reference in the Framework Agreement to Appendix 10 (*Charging and Invoicing*) to the Call-Off Form shall be read as a reference to Consolidated Schedule 9 (*Charges and Invoicing*)

1.5 Without prejudice to Clauses 6.15.1 and 8.2 and subject to Clause 1.3 above, if there is any conflict between the Clauses and the Consolidated Schedules, any appendices to the Consolidated Schedules or any other documents referred to in this Consolidated Contract (as applicable), the following order of precedence shall apply:

1.5.1 the Clauses of this Consolidated Contract and Consolidated Schedule 1 (*Definitions*);

1.5.2 any other Consolidated Schedules to this Consolidated Contract and their appendices (except for Appendix 4 (*Contractor's Outline Implementation Plan*) to Consolidated Schedule 2 (*Implementation Plan*), Appendix 1 and Appendix 2 to Consolidated Schedule 5 (*Technology Refresh Plan and Procurement Plan*) and Part B (*Contractor Service Descriptions*) of Consolidated Schedule 3 (*Service Requirements and Contractor Service Descriptions*) which sets out the Contractor Service Descriptions);

1.5.3 the Standards;

1.5.4 Appendix 4 (*Contractor's Outline Implementation Plan*) to Consolidated Schedule 2 (*Implementation Plan*), Appendix 1 and Appendix 2 to Consolidated Schedule 5 (*Technology Refresh Plan and Procurement Plan*) and Part B (*Contractor Service*

Descriptions) of Consolidated Schedule 3 (*Service Requirements and Contractor Service Descriptions*) (which sets out the Contractor Service Descriptions); and

1.5.5 any other document referred to in any of the above.

- 1.6** Prompt and expedited performance of this Consolidated Contract is important to the Customer Authority. In all cases therefore where the Contractor is obliged to take action, provide notice or complete a task under this Consolidated Contract then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in this Consolidated Contract. However, unless stated otherwise, time is not of the essence in this Consolidated Contract.
- 1.7** The Contractor acknowledges that the Customer Authority may at any time and at its sole discretion appoint one or more third parties (including a service/system integrator, an operational service management provider or a strategic partner) to act in pursuance of any of the Customer Authority's rights or to perform any of the Customer Authority's obligations or functions under this Consolidated Contract. The role, activities and rights of such third parties shall be as notified to the Contractor by the Customer Authority in writing from time to time. Accordingly, the Contractor agrees to deal with such appointed third parties (including a service/system integrator, an operational service management provider or a strategic partner) as directed by the Customer Authority from time to time.
- 1.8** The Parties acknowledge that there are no PSN Supply Agreements connected with this Consolidated Contract.

2 DUE DILIGENCE

- 2.1** The Contractor acknowledges that it has:
- 2.1.1** made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer Authority;
 - 2.1.2** raised all relevant due diligence questions with the Customer Authority (or with the Framework Authority as part of the procurement of the Framework Agreement) before the Contract Date;
 - 2.1.3** carried out due diligence in accordance with Good Industry Practice with the objective of satisfying itself as to all risks, contingencies and circumstances to do with the performance of this Consolidated Contract; and
 - 2.1.4** entered into this Consolidated Contract in reliance on its own due diligence alone.
- 2.2** The Contractor shall not be relieved of its obligations and shall not be entitled to recover any additional costs or charges from the Customer Authority relating to any unsuitable aspects of the Operating Environment, except to the extent expressly allowed under Clause 36 (*Customer Authority Dependencies and Rights*).
- 2.3** The Customer Authority gives no warranty, representation or undertaking that any information supplied to the Contractor, whether by or on behalf of the Customer Authority or otherwise (and whether or not such information was provided before or after the Contract Date, including during the tender period for the Services) is complete, relevant, accurate, up-to-date or fit for purpose.

SECTION B - SERVICE IMPLEMENTATION

3 IMPLEMENTATION PLAN

3.1 The Contractor shall perform its obligations set out in Consolidated Schedule 2 (*Implementation Plan*) and provide the Services in accordance with the Implementation Plan, which shall be the Outline Implementation Plan until a Detailed Implementation Plan is Approved, after which it shall be the most recently Approved version of the Detailed Implementation Plan. The Contractor shall ensure that each Milestone and Test is Achieved by the relevant Milestone Date.

3.2 The Contractor shall be responsible for the completion of: (a) activities set out in the Implementation Plan; and (b) the Implementation Programme, including project management of the overall Implementation Programme.

3.3 The Contractor shall develop a draft Detailed Implementation Plan based on:

3.3.1 the Contractor's Outline Implementation Plan (set out in Appendix 4 (*Contractor's Outline Implementation Plan*) to Consolidated Schedule 2 (*Implementation Plan*)); and

3.3.2 the Outline Implementation Plan (including all of the Milestones, dates and tasks set out in the Outline Implementation Plan),

and shall deliver that draft Detailed Implementation Plan to the Customer Authority within thirty (30) Working Days of the Effective Date (or such other period as set out in the Outline Implementation Plan or as otherwise agreed by the Parties in writing). In the event of a conflict between the Outline Implementation Plan and the Contractor's Outline Implementation Plan, the Outline Implementation Plan shall prevail, unless previously agreed in writing between the Parties, such form of writing to refer to this Clause 3.3.

3.4 The Detailed Implementation Plan must contain information at the level of detail necessary to manage the Implementation projects effectively and this shall include identification of Milestones, Tests and Milestone Dates and the other requirements set out in Consolidated Schedule 2 (*Implementation Plan*). The revised draft Detailed Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Contractor. However, the Contractor shall not propose any new Customer Authority Dependencies or any amendments to Customer Authority Dependencies, except through the Contract Change Procedure.

3.5 Once the revised draft Detailed Implementation Plan is Approved by the Customer Authority (such agreement not to be unreasonably delayed or withheld), the Contractor shall:

3.5.1 monitor its performance against the Detailed Implementation Plan (as varied from time to time in accordance with Clause 3.7 below);

3.5.2 report to the Customer Authority on such performance, including performance against any Project Milestones; and

3.5.3 maintain and update the Detailed Implementation Plan as set out in Paragraph 6 (*Detailed Implementation Plan*) of Consolidated Schedule 2 (*Implementation Plan*).

- 3.6** If the Customer Authority does not Approve the draft Detailed Implementation Plan submitted for Approval, the Contractor shall continue to amend and resubmit such document to the Customer Authority for Approval in accordance with Clause 3.3 above until the Contractor obtains such Approval. The Parties acknowledge that the Contractor's Outline Implementation Plan is unlikely to contain all of the information, or the level of detail required, by the Customer Authority. In particular, it shall be reasonable for the Customer Authority to require such plan to be revised in accordance with this Clause 3 in order to include details of further Project Milestones.
- 3.7** The Detailed Implementation Plan shall only be varied in accordance with the processes set out in Consolidated Schedule 2 (*Implementation Plan*).
- 3.8** Where the Implementation Programme is taking place in a number of phases, the Customer Authority may request that the process of agreeing Detailed Implementation Plans under this Clause 3 takes place in phases and the Contractor shall comply with such request.

4 TESTING

- 4.1** When the Contractor has completed the Services in respect of a Milestone, it shall submit any Deliverables, Services and Service Elements (as applicable) relating to that Milestone for Testing and shall follow the applicable provisions of the Testing Procedures set out in Consolidated Schedule 19 (*Testing Procedures*).
- 4.2** Each Party shall bear its own costs in respect of the Testing Procedures. However, if a Milestone, Deliverable, Service or Service Element does not satisfy the relevant Test Success Criteria, the Customer Authority shall be entitled to recover from the Contractor any reasonable additional costs it may incur as a direct result of further review or re-Testing of the relevant Milestone, Deliverable, Service or Service Element. In such circumstances and without prejudice to Clause 5.4 below, the Contractor shall bear all costs related to amending the relevant Milestone, Deliverables, Services or Service Elements (as applicable), re-performing the Services and re-submitting the relevant Milestones, Deliverables, Services or Service Elements (as applicable) for Testing.
- 4.3** If the Contractor successfully completes the requisite Tests, the Customer Authority shall issue a Milestone Achievement Certificate in accordance with Consolidated Schedule 19 (*Testing Procedures*). Issuing a Milestone Achievement Certificate under this Clause 4.3 shall be without prejudice to any of the Customer Authority's rights under this Consolidated Contract and, without limitation, any failure to identify a failure to complete a Milestone or any part of the Detailed Implementation Plan shall not preclude the Customer Authority from requiring the Contractor to complete such Milestone or such part of the Detailed Implementation Plan at a later stage or relieve the Contractor from its obligation to provide the Services.
- 4.4** In particular, notwithstanding the issuing of any Milestone Achievement Certificate or Test Certificate and without prejudice to Paragraph 2 (*Risk*) of Consolidated Schedule 19 (*Testing Procedures*), the Contractor shall remain solely responsible for ensuring that:
- 4.4.1** the Contractor Service Descriptions are and will continue to be suitable for the delivery of the Services;
 - 4.4.2** the Services are implemented and provided in accordance with this Consolidated Contract; and

4.4.3 each of the Service Levels is achieved from the Operational Service Commencement Date of the Service to which each such Service Level relates.

4.5 No estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate or a Test Certificate.

4.6 If the Contractor does not successfully Achieve any Milestone or Test by the relevant Milestone Date, the provisions of Clause 5 (*Implementation Delays – General Provisions*) below shall apply.

5 IMPLEMENTATION DELAYS - GENERAL PROVISIONS

5.1 If, at any time, for any reason and regardless of whose fault the Contractor considers the Delay to be, the Contractor becomes aware that it will not (or is unlikely to) Achieve any Milestone or Test by the Milestone Date it shall promptly (and in any event within one (1) Working Day of becoming aware that it will not (or is unlikely to) Achieve any such Milestone or Test):

5.1.1 notify the Customer Authority in writing of the fact and likely length of such Delay and summarise the reasons for it;

5.1.2 notify the Customer Authority of the consequences or likely consequences of such Delay;

5.1.3 take all remedial action that is reasonable to avoid or reduce so far as possible such Delay and the effects of such Delay on Achieving other Milestones and Tests, including providing all additional resources, to identify, mitigate and resolve such failure and to ensure the relevant Milestone(s) and Test(s) are Achieved as soon as reasonably practical; and

5.1.4 mitigate the impact(s) on the Customer Authority of such Delay.

5.2 The Contractor shall, as soon as reasonably practicable and in any event not later than three (3) Working Days (or such other period as the Parties agree in writing, such form of writing to refer to this Clause 5.2) after the initial notification under Clause 5.1 above, give the Customer Authority full details in writing of:

5.2.1 the reasons for and likely length of (if such length is different to that given under Clause 5.1.1 above) the Delay;

5.2.2 the consequences of the Delay (if such consequences are different to those given under Clause 5.1.2 above);

5.2.3 the remedial action and the action taken by the Contractor to mitigate the impact of the Delay referred to under Clauses 5.1.3 and 5.1.4 above; and

5.2.4 if the Contractor claims that the Delay is due to a Customer Authority Cause, the reason for that claim.

5.3 Whether or not a Delay is due to a Customer Authority Cause or if there is a Dispute about a Delay, the Contractor shall nevertheless comply with Clauses 5.1 to 5.2 (inclusive) above.

Correction Plan

5.4 Where the Contractor:

- 5.4.1 becomes aware that it will not Achieve a Milestone by the Milestone Date; or
- 5.4.2 has failed to Achieve a Milestone by its Milestone Date, whether that failure arises because of:
 - (i) a failure to submit any or all Deliverables in respect of that Milestone prior to the Milestone Date; or
 - (ii) the failure of any Deliverable relating to the Milestone to successfully complete or Achieve any Test so that the relevant Unconditional Milestone Achievement Certificate cannot be issued; or
 - (iii) where there are no Tests in respect of the relevant Milestone, any non-conformance in respect of that Milestone,

the Customer Authority may require the Contractor to submit a draft Correction Plan for the Customer Authority's Approval.

5.5 The draft Correction Plan shall:

- 5.5.1 identify the issues arising out of the Delay, including the consequential impact that the Delay may have on any other Milestones;
- 5.5.2 where Testing has taken place, categorise the Test Issues as described in the Testing Procedures;
- 5.5.3 where no Testing has taken place, set out in detail the non-conformities of the relevant Deliverable, Service or Service Element; and
- 5.5.4 include any other reasons for the relevant Milestone not being Achieved.

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

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

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

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

Delays

5.10 Notwithstanding Clause 5.4 above, if the Contractor has failed to Achieve a Milestone by its Milestone Date (including where a Deliverable does not Achieve its associated Test(s) so that the relevant Unconditional Milestone Achievement Certificate cannot be issued by the Milestone Date):

- 5.10.1 the Contractor may only charge to the Customer Authority (and invoice the Customer Authority for) Milestone Payments if, and to the extent, it is entitled to do so in accordance with Consolidated Schedule 9 (*Charges and Invoicing*);
 - 5.10.2 the Contractor shall apply automatically any Milestone Payment Reductions that the Customer Authority is entitled to receive in accordance with Consolidated Schedule 9 (*Charges and Invoicing*); and
 - 5.10.3 the Customer Authority may, in its sole discretion, decide to issue a Conditional Milestone Achievement Certificate, in which case the Customer Authority shall (without waiving any of its rights or remedies, however arising) notify the Contractor of a revised Milestone Date for the failed Milestone (each such revised date being a **“Revised Milestone Date”**) and the Contractor shall ensure that the Customer Authority issues to it an Unconditional Milestone Achievement Certificate for that Milestone by the Revised Milestone Date. The Contractor acknowledges that, if the Contractor has failed to Achieve a Milestone any notification of a Revised Milestone Date is likely to be a part of normal mitigation and planning activities undertaken by the Customer Authority in response to the failure. Therefore, the Customer Authority’s discussion, notification or agreement of, any Revised Milestone Date shall not act as a waiver of the Customer Authority’s rights and remedies (however arising) in relation to, or acquiescence to, the Contractor’s failure to meet the original Milestone Date for that Milestone.
- 5.11 Any Correction Plan required by the Customer Authority shall be agreed in accordance with Clauses 5.6 to 5.9 (inclusive) above before the issue of a Conditional Test Certificate and/or Conditional Milestone Achievement Certificate unless the Customer Authority agrees otherwise. Where an event which has caused a Delay has also given rise to other cause(s) of action for the Customer Authority or to other rights under this Consolidated Contract, including its right under Clause 7.27 (*Warning Notices and Increased Monitoring*) to issue a Warning Notice, Clause 5.10 above does not affect the Customer Authority’s rights in respect of such cause of action.

SECTION C - SERVICE SUPPLY

6 SERVICES

- 6.1 The Contractor is appointed by the Customer Authority under this Consolidated Contract as the non-exclusive provider of the Services and nothing in this Consolidated Contract shall prevent the Customer Authority from acquiring the Services or services similar to the Services from another supplier or from performing any such services for itself internally.
- 6.2 The Contractor shall provide each of the Services from their relevant Operational Service Commencement Dates, and shall throughout the Term (and during any Exit Period) ensure that all the Services:
 - 6.2.1 comply in all respects with the Service Requirements;
 - 6.2.2 are provided in an economic, efficient and effective manner;
 - 6.2.3 are PSN Compliant Services, except where otherwise Approved;
 - 6.2.4 are supplied in accordance with the Contractor Service Descriptions and the terms of this Consolidated Contract; and

6.2.5 do not prejudice the Customer Authority's compliance with, or cause the Customer Authority to breach, the Code of Connection, the PSN Compliance Certificate or both (except where otherwise Approved).

6.3 The Contractor acknowledges the importance to the Customer Authority of receiving a technical and operational solution for the Services (the "**Actual Solution**") that is not only suitable for the delivery of the Services, but which seeks to minimise the solution-specific challenges that the Customer Authority or a Replacement Contractor might face as a result of any transfer of the Services to a Replacement Contractor. Therefore, the Contractor shall ensure that, once the Services have been Migrated, the Actual Solution uses standard market products and services to the greatest extent possible, with such standard market products and services being deployed, configured and located in such a way as to minimise the amount of intervention, risk, effort and cost that would be required to be undertaken in order to replace, or transfer the delivery of, such Services to a Replacement Contractor. In particular, the Contractor shall ensure that the Actual Solution is designed and deployed in such a way that:

6.3.1 it uses minimal bespokeing;

6.3.2 there are minimal technological, geographical, commercial or financial constraints with respect to the transfer of Services to a Replacement Contractor. Where possible and not cost prohibitive, the Contractor shall seek to locate Exclusive Equipment on Customer Authority Sites;

6.3.3 it does not constrain the Customer Authority from being able to maintain full interoperability during any transfer of the Services to a Replacement Contractor;

6.3.4 the transfer of New Exclusive Equipment and the Exit Management Information is capable of being effected reasonably swiftly and simply;

6.3.5 it uses, and adheres to, architectures and standards prescribed by the Government in connection with the PSN or its successors;

6.3.6 the Services are capable of being transferred to any PSN Service Provider (or similar) within a period of 6 (six) months from the date on which an Exit Period begins; and

6.3.7 the potential burden on a Replacement Contractor in achieving re-Certification of the Services (or any Replacement Services) is minimised.

6.4 The Contractor shall perform its obligations under this Consolidated Contract including those in relation to the Services with all due care, skill and attention and in particular:

6.4.1 in accordance with:

(i) the Implementation Plan;

(ii) the Service Requirements and Contractor Service Descriptions;

(iii) the Standards;

(iv) Good Industry Practice;

(v) the Security Policy; and

(vi) the relevant Codes, GCN Service Agreement and agreements with Other PSN Services Contractors and Wider PSN Contractors; and

6.4.2 so as to co-ordinate with and facilitate the operations of the Customer Authority.

6.5 The Services shall be deemed to include:

6.5.1 all activities, functions and services necessary for the proper provision of, ancillary to or customarily included as part of, the Services described in Consolidated Schedule 3 (*Service Requirements and Contractor Service Descriptions*); and

6.5.2 an obligation on the Contractor to properly supervise the carrying out of the Services and adequately manage the risks to the Customer Authority associated with the provision of the Services.

6.6 Any Deliverables, work or material produced by the Contractor as part of the Services shall be:

6.6.1 of satisfactory quality and free from non-trivial defects; and

6.6.2 supported by adequate documentation, where applicable.

6.7 The Contractor shall, to the extent permitted under this Consolidated Contract, deliver the Services in a way that enables the sharing of services across the Customer Authority and any Customers of the Services and maximises the cost savings to be achieved by the Customer Authority by such sharing of Services.

6.8 The Contractor shall ensure that any PSN Services and GCN Services that it supplies, or are supplied by others, pursuant to this Consolidated Contract shall have been awarded and retain at all times a PSN Compliance Certificate, except where otherwise Approved.

6.9 The Contractor shall ensure that any PSN Services and GCN Services that it supplies, or are supplied by others, pursuant to this Consolidated Contract are delivered in accordance with the applicable Code, Codes or the Deed of Understanding.

6.10 The Customer Authority shall procure that any Customer Environment used to consume PSN Services and GCN Services supplied pursuant to this Consolidated Contract shall have been awarded and retain at all times a PSN Compliance Certificate.

6.11 The Customer Authority shall procure that any Customer Environment used to consume PSN Services and GCN Services supplied pursuant to this Consolidated Contract shall be provided and maintained in accordance with the applicable Code or Codes.

6.12 Each of the Parties warrants and undertakes that they shall throughout the Term, where specifically requested in writing by the PSN Authority acting on advice from the Infrastructure SIRO, immediately disconnect its GCN Services, PSN Services or Customer Environment (as the case may be) from such PSN Services (including any Direct Network Services), GCN Services and Customer Environments as the PSN Authority instructs where there is an event affecting national security, or the security of the GCN or PSN. The Contractor shall notify the Customer Authority immediately on receipt of such a request and shall invoke the BCDR Plan and take all reasonable steps to mitigate any adverse effect of such disconnection on the Customer Authority. If requested by the Customer Authority, the Contractor shall (within a timeframe reasonably specified by the Customer Authority) also carry out an impact assessment in relation to any disconnection requested by the PSN Authority.

6.13 The Parties acknowledge and agree that the PSN Authority shall not be liable to them or the other Party for any claims, proceedings, actions, damages, costs, expenses and any

other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to Clause 6.12.

6.14 Each of the Parties acknowledges and agrees that Clauses 6.7 to 6.13 above are for the benefit of and may be enforced by the PSN Authority, notwithstanding the fact that the PSN Authority is not a party to this Consolidated Contract, pursuant to the Contracts (Rights of Third Parties) Act 1999.

6.15 The Contractor shall:

6.15.1 draw any conflict between any of the requirements of Clauses 6.2 and 6.3 below to the attention of the Customer Authority and (subject to Clause 1.3 (*Definitions and Interpretation*) above and Clause 8.3 (*Standards*) below) shall comply with the Customer Authority's decision on the resolution of that conflict; and

6.15.2 ensure that the Services and the Contractor System integrate with the Customer Authority System (including the Customer Authority Equipment set out in Consolidated Schedule 25 (*Customer Authority Equipment and Exclusive Equipment*)) as required in order for the Customer Authority to receive the Services in accordance with this Consolidated Contract.

6.16 If the Contractor becomes aware of any Default in its performance of the Services or of another obligation under this Consolidated Contract, it shall:

6.16.1 promptly notify the Customer Authority of such Default if it is not insignificant; and

6.16.2 where such Default is capable of remedy, at its own expense remedy the same as soon as is reasonably practicable.

6.17 If the Contractor fails to provide the Services or to comply with its obligations in accordance with this Consolidated Contract, the Customer Authority may, without prejudice to its other rights or remedies, require the Contractor to re-perform the Services or to comply with its obligations within a reasonable time period. If the Contractor fails to so re-perform or comply within such time period, the Customer Authority may, or may instruct a third party to, so re-perform or comply, and the reasonable costs of such re-performance or compliance shall be borne by the Contractor, subject to the limitations of liability set out in Clause 44 (*Limitations on Liability*).

6.18 Within thirty (30) Working Days of the Effective Date (or such other period as specified in the Implementation Plan or otherwise agreed by the Parties in writing, such form of writing to refer to this Clause 6.18), the Contractor shall deliver a draft Call-Off Operating Manual to the Customer Authority for its Approval, based on the information that is then available to the Contractor. The draft Call-Off Operating Manual shall be in English and contain sufficient information as is reasonably necessary for the Customer Authority and a reasonably skilled person to understand how the Services are delivered, including:

6.18.1 details of the Contractor System (including software) and other details necessary for the Customer Authority to understand the technology used to provide the Services;

6.18.2 details of the procedures and processes used by the Contractor Personnel to provide the Services;

6.18.3 the mechanisms used by the Contractor to measure the Service Levels;

- 6.18.4 the measures taken to protect Customer Authority Data generated, Processed or stored as part of the Services;
 - 6.18.5 the mechanisms used by the Contractor to provide Information Assurance;
 - 6.18.6 the resilience, availability and equipment life of the technology used to deliver the Services;
 - 6.18.7 the measures put in place to comply with the Standards; and
 - 6.18.8 the information that is to be set out in the Technical Infrastructure Register referred to in Appendix 3 (*Re-procurement Information and Exit Management Information*) to Consolidated Schedule 14 (*Performance Monitoring and Reporting*).
- 6.19** The Customer Authority shall not unreasonably withhold its Approval of a draft Call-Off Operating Manual. If the Customer Authority does not Approve a draft Call-Off Operating Manual it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Call-Off Operating Manual, which shall be resubmitted to the Customer Authority within five (5) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) of the rejection of the first draft. The Contractor shall comply with the Call-Off Operating Manual following its Approval by the Customer Authority. Approval of the Call-Off Operating Manual by the Customer Authority shall not relieve the Contractor of any responsibility to deliver the Services in accordance with this Consolidated Contract.
- 6.20** The Contractor shall ensure that the Call-Off Operating Manual is developed, maintained and updated regularly and in particular shall update and deliver to the Customer Authority for its Approval a copy of the Call-Off Operating Manual:
- 6.20.1 on the Contractor's receipt of a Milestone Achievement Certificate in respect of Milestone number 2: *Key Milestone, Service Management Established* in respect of any of the Services;
 - 6.20.2 as required under the Implementation Plan;
 - 6.20.3 within thirty (30) days of the end of each Contract Year;
 - 6.20.4 within ten (10) days of a Termination Notice being served; and
 - 6.20.5 within thirty (30) days of a Contract Change being agreed that results in the introduction or not insignificant amendment of a Service or Service Element.
- 6.21** The Contractor shall amend the Call-Off Operating Manual promptly in accordance with any reasonable recommendations or requirements stipulated by the Customer Authority from time to time, including in order to add further detail to the Call-Off Operating Manual.
- 6.22** The Contractor shall provide a copy of the most recently Approved Call-Off Operating Manual to the Customer Authority on request from time to time.

7 SERVICE LEVELS, PERFORMANCE MONITORING AND WARNING NOTICES

- 7.1** The Contractor shall ensure that each of the Services meets or exceeds the relevant Service Levels from the relevant Operational Service Commencement Date.
- 7.2** The Contractor shall measure its performance against the Service Levels in accordance with Consolidated Schedule 4 (*Service Levels and Related Remedies*) and Consolidated Schedule 14 (*Performance Monitoring and Reporting*).

Planned Downtime

- 7.3** The Contractor may request from the Customer Authority a period of Planned Downtime in relation to any of the Services, subject to Clause 7.15 below, in accordance with the Standards (including ISSP 153 – Planned Outages (“**ISSP 153**”)) and Clauses 7.3 to 7.15.
- 7.4** The Contractor shall not implement any Planned Downtime without Approval.
- 7.5** Without prejudice to Clause 7.1 above, the Contractor may request (without having to submit a Planned Downtime Request for the same) that the Customer Authority Approves a specified time period (for example, during the period between 18:00 hours on a Sunday and 06:00 hours on a Monday morning in the relevant jurisdiction(s)) during which the Contractor may, unless otherwise notified by the Customer Authority, complete routine, low-risk maintenance and upgrades that the Contractor reasonably believes are unlikely to have an adverse impact on the Availability of the Services or the services provided by Other Tower Service Providers.
- 7.6** If the Contractor wishes to request a period of Planned Downtime, it shall provide to the Customer Authority a written request for such Planned Downtime (the “**Planned Downtime Request**”), and shall ensure that such request gives the Customer Authority the requisite period of notice (subject to Clause 7.15 below) stipulated in ISSP 153.
- 7.7** From time-to-time, the Customer Authority may make the Contractor aware of a period within which it would prefer Planned Downtime to be scheduled, and the Contractor shall use its Best Endeavours to schedule any Planned Downtime required within this period.
- 7.8** In submitting Planned Downtime Requests, the Contractor shall, wherever possible, propose Planned Downtime outside of the Working Hours of the Customer Authority Sites likely to be affected by the relevant works. The Contractor acknowledges that the Customer Authority is only likely to grant Planned Downtime during working hours where the Contractor has demonstrated a compelling and exceptional reason for this to occur.
- 7.9** Each Planned Downtime Request shall be provided to the Customer Authority in the format, and via the means, detailed in ISSP 153. In addition, the Contractor shall revise and resubmit each Planned Downtime Request in accordance with the Standards, until it is Approved by the Customer Authority. Once the Planned Downtime Request has been Approved by the Customer Authority, the Contractor shall be responsible for the management and co-ordination of all of the work required to be carried out during the Planned Downtime and all such work shall be carried out at the Contractor’s own cost.
- 7.10** Where, in relation to any Service, the Contractor provides the Planned Downtime Request to the Customer Authority without providing the period of notice required in ISSP 153, prior to the proposed commencement date for the Planned Downtime for that Service, such Planned Downtime will (except for activities in relation to which the Contractor is entitled not to provide the period of notice required in ISSP 153 pursuant to Clause 7.15 below) be counted as Service Downtime for the purposes of Service Availability, unless otherwise agreed in writing with the Customer Authority in advance of such Planned Downtime occurring, such form of writing to refer to this Clause 7.10.
- 7.11** In all circumstances, the Contractor must use its Best Endeavours to keep the length of any interruption to, or delay in, the provision of the Services to the absolute minimum required to perform the activities to be performed during the Planned Downtime and any associated Testing.

- 7.12** The Contractor shall, maintain and keep up-to-date a forward schedule of Planned Downtime that sets out all Planned Downtime Requests for the next twelve (12) months, as well as the Customer Authority's response to such requests (the "**Planned Maintenance Forward Schedule**"). The Contractor shall provide the Customer Authority with an updated copy of the Planned Maintenance Forward Schedule at the start of each calendar month during any period during which Services are to be provided. The Contractor shall make the Planned Maintenance Forward Schedule available to all Other Tower Service Providers. Nothing in this Clause 7.12 shall permit the Contractor to vary the length of the period of Planned Downtime specified in the Planned Downtime Request.
- 7.13** If the Contractor receives a forward schedule of planned maintenance from an Other Tower Service Provider, it shall take into account the periods of downtime and planned downtime set out in that Other Tower Service Provider's planned maintenance forward schedule and shall use all reasonable endeavours to plan its own Planned Downtime to minimise the overall Service Downtime experienced by the Customer Authority across all of the Towers in any twelve (12) month period.
- 7.14** The Contractor shall, in respect of all Implementation activity, work collaboratively and proactively with the Customer Authority, the Customer Authority OSM and Other Tower Service Providers in refining its Detailed Implementation Plan, so that its Planned Downtime Requests minimise any adverse impacts on the Customer Authority, the Services and other services provided by Other Tower Service Providers (including by minimising the overall Service Downtime experienced by the Customer Authority across all of the Towers).
- 7.15** In respect of activity required to effect Implementation only, the Contractor may request Planned Downtime for the completion of such activity without giving the requisite period of notice stipulated in ISSP 153. Nonetheless, the Contractor shall plan Planned Downtime in such a way as to ensure that End Users are given reasonable notice of any actual or potential interruption to the Services or the Outgoing Services.
- 7.16** The Contractor shall, on request from time to time, provide the Customer Authority (within five (5) Working Days of such request) with an assessment of the potential impact on the Services of any Planned Downtime. Such assessment may be requested by the Customer Authority or a Customer Authority Third Party for any reason from time to time. The Contractor shall provide such assessment in the format set out in ISSP 153.
- 7.17** Notwithstanding the completion of the process set out in Clauses 7.3 to 7.15 above, the Customer Authority may, for either urgent business or operational reasons unconnected with any failure of the Contractor, cancel any Approved Planned Downtime period.

Correction Plan

- 7.18** If there is a Service Failure, or if there are reasonable grounds for the Contractor to believe that there will be a Service Failure, in each case having the effect of taking any or all of the Contractor System, Services or Service Elements below the Service Failure Threshold (regardless of whether such Service Failure has or will have arisen as a result of a failure in a Customer Authority Dependency or as a result of a Force Majeure Event), the Contractor shall:
- 7.18.1** immediately notify the Customer Authority in writing, such form of writing to refer to this Clause 7.18;

7.18.2 immediately use its Best Endeavours to mitigate the impact of the Service Failure and to rectify or to prevent the Service Failure from taking place or recurring; and

7.18.3 if action taken under Clause 7.18.1 or 7.18.2 above has not already remedied the Service Failure, provide the Customer Authority (but only where such a plan is required by the Customer Authority) with a Correction Plan within four (4) Working Days (or such other period as the Parties agree in writing, such form of writing to refer to this Clause 7.18.3) from the day the Customer Authority notifies the Contractor that such a Correction Plan is required. The Contractor will set out in the Correction Plan:

- (i) details of the actual or potential Service Failure;
- (ii) details of the underlying cause(s) of the actual or potential Service Failure;
- (iii) the proposed correction project, including the objectives, scope and Deliverables of that project;
- (iv) the action that the Contractor will take to remedy the proposed Service Failure, including action to:
 - (a) rectify or prevent the Service Failure (including the timeframe for rectifying the Service Failure); and
 - (b) prevent the Service Failure from recurring;
- (v) any assumptions, constraints, risks or dependencies relating to the Correction Plan or the actions contained within it; and
- (vi) any other relevant information (including an indication of the impact of the Correction Plan on other services or service elements provided by Other Tower Service Providers and other Customer Authority Third Parties).

The Contractor shall not propose any new Customer Authority Dependencies or any amendments to Customer Authority Dependencies, except through the Contract Change Procedure. In addition, the Contractor shall not make any specific changes identified in a Correction Plan prior to having submitted that plan to the Customer Authority for review in accordance with Clause 7.19 below.

7.19 If the Customer Authority notifies the Contractor within one (1) Working Day of receiving such Correction Plan that, in its reasonable opinion, that Correction Plan is unlikely to resolve the Service Failure or may impact on other services or service elements provided by Other Tower Service Providers and other Customer Authority Third Parties, the Contractor shall update the Correction Plan to address the Customer Authority's concerns and shall resubmit the updated Correction Plan to the Customer Authority for Approval. If the Customer Authority does not notify the Contractor of any objections to a Correction Plan within one (1) Working Day of receiving such Correction Plan, the Contractor shall proceed with the changes set out in that Correction Plan. In the case of a significant security or operational issue, the Contractor may seek the Customer Authority's agreement to respond to a Correction Plan within shorter timescales.

7.20 Once the Customer Authority has notified the Contractor that it Approves the Correction Plan, the Contractor shall carry out such Approved Correction Plan in accordance with its terms and, during its performance of the activities set out in the Correction Plan, shall

provide weekly reports to the Customer Authority on the progress of the implementation of the Correction Plan, including (as applicable):

- 7.20.1 a summary status of progress against the Correction Plan;
- 7.20.2 a status report detailing the performance of the Contractor against each milestone set out in the Correction Plan;
- 7.20.3 any identified risks, issues, or dependencies related to the implementation of the Correction Plan; and
- 7.20.4 any other relevant status information.

7.21 The Contractor is not entitled to delay in fixing a Service Failure for any reason (including where the Contractor believes that, or in fact, the Service Failure has arisen as a result of a failure or delay in a Customer Authority Dependency or a Force Majeure Event). To the extent that the Contractor's failure to perform its obligations under the immediately preceding sentence is a direct result of a Customer Authority Cause or a Force Majeure Event, Clauses 36 (*Customer Authority Dependencies and Rights*) and 42 (*Force Majeure*), respectively, shall apply. Any Dispute with respect to liability for Service Failures shall be referred to the Dispute Resolution Procedure.

7.22 Approval or implementation of any Correction Plan by the Customer Authority shall not relieve the Contractor of any responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppel or waiver shall arise from any such Approval or implementation.

Service Credits

7.23 Where, in any Relevant Month, a Service Failure (to the extent that it is not a direct result of a Customer Authority Cause) results in the Contractor accruing Service Credits in accordance with Consolidated Schedule 4 (*Service Levels and Related Remedies*), then the Contractor shall automatically credit the Customer Authority with the accrued Service Credits, and such Service Credits shall be shown as an abatement on the next Monthly Billing Summary for that Relevant Month and the relevant Final Invoice. If no further Charges fall due after the Service Credits accrue or no Final Invoice is due to be issued then the Contractor shall issue a credit note to the Customer Authority (as applicable):

- 7.23.1 for a sum equal to any such Service Credits then outstanding; or
- 7.23.2 against the previous Final Invoice,

and the amount for the Service Credits shall be repayable by the Contractor to the Customer Authority as a debt within the same period as applies to the payment of the Contractor's undisputed invoices under this Consolidated Contract and Paragraph 17 (*Payment Terms*) of Consolidated Schedule 9 (*Charges and Invoicing*).

7.24 Where Service Credits are provided as a remedy for Service Failures in respect of the Contractor System, a Service or a Service Element, they shall be the Customer Authority's exclusive financial remedy for such Service Failure, except where:

- 7.24.1 the aggregate number of:
 - (i) Cumulative Service Failures relating to Instance Service Levels;
 - (ii) Cumulative Service Failures relating to Site Service Levels;

- (iii) Service Failures relating to Network Service Levels; or
 - (iv) Service Failures relating to Aggregated Site Service Levels, exceed four (4) over a Service Measurement Period (in any combination);
- 7.24.2 the Service Failure exceeds the Service Failure Threshold;
- 7.24.3 the failure to perform the Services in accordance with the Service Levels has arisen due to theft, gross negligence, Fraud or Wilful Default as caused by the Contractor or its Sub-contractors;
- 7.24.4 the Service Failure results in corruption or loss of data;
- 7.24.5 the Contractor fails to provide, or provides inaccurate, information on the Service Levels as part of the Management Information;
- 7.24.6 the Contractor brings any claim, action, suit or proceeding against the Customer Authority;
- 7.24.7 the Customer Authority is otherwise entitled under this Consolidated Contract to, or does, terminate (other than for convenience) or Step-in in accordance with this Consolidated Contract (whether in whole or part) for the Contractor's Default; or
- 7.24.8 the Contractor has failed to comply with an Approved Correction Plan within the timescales set out in that Correction Plan, or has failed to submit a Correction Plan required by the Customer Authority in accordance with Clause 7.18 above.
- 7.25 The Parties agree that the Service Credits are not a penalty and are less than the estimated adjustment to the Charges that would be necessary to reflect the reduced value of services actually rendered as opposed to that which was contracted for.
- 7.26 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Customer Authority within a reasonable time period specified by the Customer Authority, then the Customer Authority may, on written notice to the Contractor, require that the Service Charges are reduced by a sum which is proportionate to the severity and impact of the Service Failure until such time as the relevant Service Failure is remedied and Service Restoration occurs. If the Contractor disputes the amount of the reduction that has been determined by the Customer Authority and notified to the Contractor in accordance with this Clause 7.26, the matter shall be resolved pursuant to the Dispute Resolution Procedure.
- Warning Notices and Increased Monitoring**
- 7.27 Without prejudice to the other rights or remedies of the Customer Authority, if at any time the Contractor has:
 - 7.27.1 committed any material Default;
 - 7.27.2 failed in a Service Measurement Period to perform a Service or Service Element (which was subject to a Correction Plan that was due to have been completed in the immediately prior Service Measurement Period) in accordance with the relevant Service Levels;
 - 7.27.3 in respect of its performance of the Services, fallen to or below a Service Failure Threshold;

7.27.4 accrued in aggregate four (4) or more:

- (i) Cumulative Service Failures relating to Instance Service Levels;
 - (ii) Cumulative Service Failures relating to Site Service Levels;
 - (iii) Service Failures relating to Network Service Levels; and
 - (iv) Service Failures relating to Aggregated Site Service Levels,
- in any combination, over a Service Measurement Period;

7.27.5 accrued five (5) or more events giving rise to Service Credits over a Service Measurement Period;

7.27.6 failed to Achieve any Milestone or Test by its associated Milestone Date; or

7.27.7 failed to achieve, obtain or maintain PSN Compliance,

then the Customer Authority may, but is not obliged to, give a written notice (a “**Warning Notice**”) to the Contractor setting out the matter or matters giving rise to such notice and containing a reminder to the Contractor of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.

7.28 Without prejudice to the other rights or remedies of the Customer Authority, if the Contractor receives a Warning Notice within a Service Measurement Period in respect of any Services (or any part thereof), the Customer Authority may, by written notice to the Contractor, reasonably increase the level of its monitoring of the Contractor or (at the Customer Authority's option) require the Contractor to increase the level of its monitoring of its own performance of its obligations under this Consolidated Contract, in respect of the Services (or relevant part thereof) to which the Warning Notices relate until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Customer Authority that it shall perform (and is capable of performing) its obligations in accordance with this Consolidated Contract. If the Customer Authority does exercise its rights under this Clause 7.28, the following provisions shall apply:

7.28.1 any such notice to the Contractor shall specify in reasonable detail the additional measures to be taken by the Contractor in monitoring and reporting on the performance of the Contractor, or to allow the Customer Authority additional monitoring of the performance of the Contractor;

7.28.2 the Contractor shall notify the Customer Authority in writing of its acceptance of the measures set out in the relevant Warning Notice and shall comply with such measures promptly. However, if the Contractor (acting reasonably) objects to any of the measures specified by the Customer Authority in the Warning Notice on the grounds that they are excessive, it shall notify the Customer Authority in writing within four (4) Working Days of receipt of the Warning Notice of the measures objected to (and of any changes it reasonably believes are necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Consolidated Contract). Notwithstanding any such objections, the Contractor shall comply promptly with all measures set out in the relevant Warning Notice to which it does not object;

7.28.3 if the Contractor gives notice of any objection under Clause 7.28.2 above and the Parties are unable to agree the measures to be taken within three (3) Working Days of the Customer Authority's receipt of the Contractor's objection, the

measures shall be determined pursuant to the Dispute Resolution Procedure. The Contractor shall comply promptly with the outcome of the Dispute Resolution Procedure; and

7.28.4 the Contractor shall bear its own costs and shall reimburse the Customer Authority in respect of any additional costs that are directly incurred by the Customer Authority in respect of any such additional measures.

7.29 In Clause 7.28 above, references to “**monitoring**” shall include any of: the gathering of information, the provision of reports, site visits, management meetings and audits.

7.30 The provisions of Consolidated Schedule 4 (*Service Levels and Related Remedies*) shall apply.

8 STANDARDS

8.1 Without prejudice to Clause 36.6.2 (*Customer Authority Dependencies and Rights*), the Contractor shall comply with the Standards in providing the Services and performing its obligations under this Consolidated Contract. The Contractor shall develop the Quality Plans in accordance with the timescale set out in Consolidated Schedule 2 (*Implementation Plan*) for the Customer Authority's Approval and the Customer Authority shall not unreasonably withhold or delay its Approval to such Quality Plans.

8.2 The Contractor shall discuss with the Customer Authority any conflict that the Contractor reasonably believes that there is or will be between:

8.2.1 any of the Standards set out in Consolidated Schedule 6 (*Standards*); or

8.2.2 any of the Standards set out in Consolidated Schedule 6 (*Standards*) and any other obligation under this Consolidated Contract,

and shall comply with the Customer Authority's decision on the resolution of that conflict.

8.3 In accordance with the Framework Agreement, the Contractor shall discuss with the Framework Authority and the Customer Authority any conflict that the Contractor reasonably believes that there is or will be between:

8.3.1 any of the Standards set out in Schedule 6 (*Standards*) of the Framework Agreement; or

8.3.2 any of the Standards set out in Schedule 6 (*Standards*) of the Framework Agreement and any other obligation under this Consolidated Contract,

and shall comply with the Framework Authority's decision on the resolution of that conflict.

8.4 The Contractor represents, warrants and undertakes to the Customer Authority that, as at the Contract Date, the Contractor does not believe that there are, and has not identified, any actual or potential conflicts of the type referred to in Clause 8.2 and Clause 8.3 above. From time to time, if the Contractor believes that any conflicts of the type referred to in Clause 8.2 and Clause 8.3 above have arisen or may arise, then the Contractor shall promptly notify the Customer Authority of this fact in writing and submit proposals as to how such conflict can be avoided or worked around to ensure that the Customer Authority's requirements are met. Where possible, such notification and proposals shall be provided to the Customer Authority prior to any discussions with the Framework Authority. The Contractor shall notify the Customer Authority as soon as possible after becoming aware of any meetings or conference calls to be held with the Framework Authority for the

purpose of discussing or resolving such conflict and shall also provide copies of any related correspondence to the Customer Authority promptly upon such correspondence being created or received from time to time.

8.5 The Contractor shall only provide the Services from within the United Kingdom, except to the extent:

8.5.1 necessary to provide Services to Customer Authority Sites outside of the United Kingdom; or

8.5.2 otherwise agreed previously in writing with the Customer Authority, such form of writing to refer to this Clause 8.5.

8.6 Subject to Clause 8.7 below, the Contractor shall comply with any updates or amendments to the Standards promptly and in any event within six (6) months from the date of any such update or amendment or such earlier date as is otherwise agreed previously in writing by the Customer Authority and the Contractor, such form of writing to refer to this Clause 8.6, or stipulated by Law.

8.7 If an update or amendment to a Standard necessitates a material change to the Services or the cost of providing the Services, the Contractor shall submit a Contract Change Request in respect of such material change. If an update or amendment to a Standard does not necessitate a material change to the Services, the Contractor shall comply with such update or amendment at its own cost.

9 DEALING WITH THIRD PARTIES

Third Party Co-Operation

9.1 The Contractor shall be open, co-operative and provide reasonable assistance to any third party supplier providing services to the Customer Authority or to any third party to whom the Customer Authority sub-contracts or delegates (or tasks to act in pursuance of) any of its rights and obligations under this Consolidated Contract, including Other PSN Services Contractors, Wider PSN Contractors and Other Tower Service Providers (each being a "**Customer Authority Third Party**"). This assistance shall include:

9.1.1 providing such information about the manner in which the Services are provided as is reasonably necessary for the Customer Authority Third Parties to provide their services to the Customer Authority or carry out such activities as have been delegated to them by the Customer Authority;

9.1.2 making available to, or accepting information from, the Customer Authority Third Parties;

9.1.3 developing interfaces so that the Contractor System can communicate and interface automatically with the systems used by the Customer Authority Third Parties, save that to the extent such interfaces are not otherwise required under this Consolidated Contract, the details of such interfaces and the costs of development of such interfaces shall be agreed using the Contract Change Procedure;

9.1.4 within six (6) months from the Contract Date, agreeing and documenting:

(i) a non-binding Operating Level Agreement with the Outgoing Service Providers, the supplier of the Customer Authority OSM, the Customer

- Authority's supplier of certain satellite services known as 'Skynet' services, and the Connectivity Tower Contractor; or
- (ii) only if the Contractor is unable to put in place a non-binding Operating Level Agreement, with:
 - (a) the Outgoing Service Providers;
 - (b) the supplier of the Customer Authority OSM; or
 - (c) the Customer Authority's supplier of certain satellite services known as 'Skynet' services,
 a form of operating level agreement previously accepted under the Customer Authority's contracts with its relevant suppliers and which the Contractor has used its Best Endeavours to amend to cover the matters set out in Consolidated Schedule 31 (*Operating Level Agreement*));
- 9.1.5** from time to time during the term (including at the Customer Authority's request), the Contractor agreeing and documenting non-binding Operating Level Agreements with other Customer Authority Third Parties, including any Other Tower Service Providers;
- 9.1.6** within twenty (20) Working Days of entering into an Operating Level Agreement (or an alternative operating level agreement pursuant to Clause 9.1.4(ii) above):
- (i) providing the Customer Authority with a copy of such agreement; and
 - (ii) notifying the Customer Authority promptly of any changes to such agreements as they occur from time to time by providing an amended copy of such amended Operating Level Agreements (and alternative operating level agreements pursuant to Clause 9.1.4(ii) above) to the Customer Authority within twenty (20) Working Days of such change being made;
- 9.1.7** using its reasonable endeavours to prevent, resolve and limit the impact on the Customer Authority of any disputes or disagreements between it and any Customer Authority Third Parties; and
- 9.1.8** meeting with the Customer Authority and the Customer Authority Third Parties to discuss the Services and the services provided by third parties.
- 9.2** The Contractor shall inform the Customer Authority of any disputes or disagreements between it and any of the Customer Authority Third Parties that arise when fulfilling its obligations under this Clause 9 (*Dealing with Third Parties*).

Managing Third Party Contractors

- 9.3** Where as part of the Services, the Contractor is required to manage a third party with whom the Customer Authority has a contract (a "**Managed Contractor**"), the Contractor shall manage such Managed Contractor on behalf of the Customer Authority in accordance with the terms and conditions of the agreement between the Managed Contractor and the Customer Authority. In complying with its obligation under this section of Clause 9 (*Managing Third Party Contractors*), the Contractor shall:
- 9.3.1** monitor and report to the Customer Authority on the performance of the Managed Contractor in a timely manner with appropriate frequency;

- 9.3.2** use all reasonable endeavours to ensure that each Managed Contractor performs its obligations to the Customer Authority in accordance with the terms and conditions of its agreement with the Customer Authority;
- 9.3.3** advise the Customer Authority and each Managed Contractor of the steps to be taken to avoid or mitigate:
- (i) any event of which the Contractor is aware which may materially adversely affect the performance by that Managed Contractor of its obligations to the Customer Authority; and
 - (ii) any defect in the service provided by that Managed Contractor or failure by that Managed Contractor to perform its obligations to the Customer Authority; and
- 9.3.4** provide to the Customer Authority any other information that the Customer Authority may from time to time reasonably request in relation to the performance of the Managed Contractor.
- 9.4** The Customer Authority shall use all reasonable endeavours to ensure that each Managed Contractor provides all necessary co-operation to the Contractor in relation to the Contractor's obligations set out in Clause 9.3 above.
- 9.5** Subject to Clause 9.6 below, the Contractor shall to the maximum extent legally possible discharge all of the Customer Authority's obligations and liabilities created by or arising under each agreement entered into between the Customer Authority and the Managed Contractors and, to the extent that it is not possible, direct the Customer Authority to discharge those obligations.
- 9.6** The Contractor's obligations to discharge the Customer Authority's obligations and liabilities in Clause 9.5 above shall not include any obligation to make payment on behalf of the Customer Authority unless and until the Customer Authority provides written notice, not less than sixty (60) days prior to the date such payments are due, requiring the Contractor to make such payments.
- 9.7** Any payments made by the Contractor pursuant to Clause 9.6 above shall be charged by the Contractor to the Customer Authority, and shall not include any margin, mark-up or any other mechanism that would result in such charges being higher than the sums paid by the Contractor pursuant to Clause 9.6 above.
- 9.8** Each Managed Contractor as at the date hereof, and the agreements relating to them, are identified in Consolidated Schedule 27 (*Managed Contractors*).
- 9.9** The Parties agree that each Managed Contractor is an independent third party and that the obligations and liabilities of the Contractor in relation to each Managed Contractor and each act or omission on their part shall be only as set out in these Clauses 9.3 to 9.9 (*Managing Third Party Contractors*). The Contractor shall not be liable for the performance, or failure to provide services or comply with obligations, of any Managed Contractor unless such performance, failure or non-compliance is the result of Contractor's failure to fulfil its obligations in these Clauses 9.3 to 9.9 (*Managing Third Party Contractors*). Nothing in this Consolidated Contract shall or is intended to alter the existing contract between the Customer Authority and the Managed Contractor.

10 SERVICES IMPROVEMENT

- 10.1** Subject to Clauses 10.4, 10.5 and 23.3, the Contractor shall be committed to the process of continuous improvement and improved efficiency of the Services. Throughout the Term, the Contractor shall take the initiative in identifying and evaluating improvements for application to the Services to the Customer Authority and responding to any Customer Authority requests for information in respect of potential improvements to the Services that the Customer Authority has identified, including in accordance with the Standards. As part of this obligation, the Contractor shall identify and report to the Service Operations Board quarterly in the first Contract Year and once every six (6) months for the remainder of the Term on:
- 10.1.1** subject to any obligation of confidentiality to third parties, the emergence of new and evolving relevant technologies which could improve the Services and those technological advances potentially available to the Contractor and the Customer Authority which the Parties may wish to adopt;
 - 10.1.2** potential improvements to the Services, including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and Customer Authority support services in relation to the Services;
 - 10.1.3** potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customer Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - 10.1.4** changes in business processes and ways of working that would enable the Services to be delivered at lower costs, at greater benefits to the Customer Authority or both.
- 10.2** The Contractor shall ensure that the information that it provides to the Customer Authority shall be sufficient for the Customer Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Customer Authority reasonably requests.
- 10.3** The Customer Authority shall determine its own ICT strategy. The Customer Authority may, at any time during the Term, notify the Contractor in writing of any changes to the Customer Authority's ICT strategy and request the Contractor to consider, review and respond to such changes. If, in the Contractor's opinion, any notified change to the Customer Authority's ICT strategy would impact upon the provision of the Services, the Contractor shall refer the matter to the Contract Change Procedure.
- 10.4** If the Customer Authority wishes to incorporate any improvement identified by the Contractor pursuant to Clause 10.1 above, such an improvement shall be initiated in accordance with the Contract Change Procedure set out in Consolidated Schedule 16 (*Contract Change Procedure*).
- 10.5** Notwithstanding anything to the contrary in this Consolidated Contract, the Parties may not change or improve, or propose any change or improvement, to the Services which affects or may affect the PSN Compliance of the Services (once implemented). The Parties shall refer any such changes or improvements to the PSNA and comply with the PSNA's decision (which shall be final and conclusive).

11 EQUIPMENT

- 11.1** The Parties agree that all Exclusive Equipment shall be Customer Authority Equipment.
- 11.2** The Customer Authority shall permit the Contractor to use the Customer Authority Equipment listed in Consolidated Schedule 25 (*Customer Authority Equipment and Exclusive Equipment*) (the “**Legacy Equipment**”) in the provision of the Services.
- 11.3** The Contractor shall procure and provide all Equipment and other Assets necessary to enable it to provide the Services in accordance with the Service Levels and other provisions of this Consolidated Contract. Without prejudice to the foregoing, the Contractor shall:
- 11.3.1** procure any Exclusive Equipment (other than the Legacy Equipment) necessary to enable it to provide the Services in accordance with the Service Levels and other provisions of this Consolidated Contract, (such equipment being known as “**New Exclusive Equipment**”), including New Exclusive Equipment required for Implementation activities, business-as-usual delivery of the Services and technology refresh purposes; and
- 11.3.2** as a minimum, purchase and replace:
- (i) Equipment; and
 - (ii) licences for Third Party Software to be used exclusively in the provision of the Services,
- in accordance with the Procurement Plan and the Technology Refresh Plan as set out in Consolidated Schedule 5 (*Technology Refresh Plan and Procurement Plan*).
- 11.4** The Contractor shall, no more than sixty (60) days following the Effective Date, provide the Customer Authority with an updated draft of the Technology Refresh , such updated plan to include details of its planned technology refreshment programme and up-to-date information on:
- 11.4.1** the timescale for refreshment of Contractor Equipment and Customer Authority Equipment relating to each relevant Service and type of Equipment;
- 11.4.2** the methods to be adopted by the Contractor to achieve the technology refreshment programme; and
- 11.4.3** the portfolio of projects that are required to implement the technology refreshment programme during the Term, including:
- (i) clear details of all the steps required to achieve the activities to be carried out by the Contractor to deliver the technology refreshment programme;
 - (ii) a detailed description of the approach the Contractor is going to take to deliver the technology refreshment programme;
 - (iii) details of:
 - (a) the governance, management and organisation of the technology refreshment programme;
 - (b) stakeholder management;

- (c) methodology and approach, including managing potential impacts on, or interfaces with, services provided by any Other Tower Service Provider and/or any other technology refresh activities;
- (d) technology refreshment programme delivery activities, including as they relate to:
 - (I) installation and roll-out activities (including delivery lifecycles);
 - (II) testing being carried out in accordance with the Standards (including the ISS ITIL Processes);
 - (III) as is appropriate, completion of Certification for the Service(s), including in accordance with Consolidated Schedule 7 (*Security Requirements*); and
 - (IV) any training required as part of the technology refreshment programme that is identified by the Contractor as being suitable for the Customer Authority or End Users and is to be provided by the Contractor in accordance with the technology refreshment plan;
- (iv) identification of, and any mitigations for, major risks, actions, issues and interdependencies, to be set out in a risks, actions, issues, and dependencies (RAID) log;
- (v) all other matters that are required to give the Customer Authority and the Customer Authority Third Parties a reasonable understanding of how the technology refreshment programme shall be delivered and how Quality shall be assured; and
- (vi) details of planning products, such as project schedules, stage plans, detailed roll-out plans and resource plans produced using any software tool Approved by the Customer Authority (for example, MS Project, Primavera or other),

and the Contractor acknowledges that the Technology Refresh Plan as set out in Appendix 1 to Consolidated Schedule 5 (*Technology Refresh Plan and Procurement Plan*) does not contain a sufficient level of detail to satisfy these requirements.

- 11.5** Following provision of the Technology Refresh Plan pursuant to Clause 11.4 above, the Contractor shall implement any reasonable requirements of the Customer Authority in the Technology Refresh Plan (including by amending the Technology Refresh Plan in accordance with the Customer Authority's reasonable comments). The Contractor shall provide such amended plan to the Customer Authority promptly, and shall continue to amend and resubmit the Technology Refresh Plan until such Technology Refresh Plan has been Approved.
- 11.6** The Contractor shall update the Technology Refresh Plan to include up-to-date information on the matters set out in Clause 11.4, and shall provide such up-to-date Technology Refresh Plan to the Customer Authority at least ten (10) Working Days prior to the annual Asset Budget review described in Consolidated Schedule 9 (Charges and Invoicing).

- 11.7** The Customer Authority may require the Contractor to demonstrate new technology or novel solutions proposed as part of the Contractor's technology refreshment programme in a suitable environment to the satisfaction of the Customer Authority before the Contractor is permitted to deploy such solutions or technology. Such demonstrations shall be in addition to the normal assurance, testing and trialling activity to be undertaken as required by the ISS ITIL Processes relevant to the introduction of new or changed Services.
- 11.8** The Contractor shall ensure that the Procurement Plan includes details of its planned programme for the procurement of New Exclusive Equipment and that such plan is updated and provided to the Customer Authority at least ten (10) Working Days prior to the annual Asset Budget review described in Consolidated Schedule 9 (*Charges and Invoicing*), such updated plan to include up-to-date information on the Contractor's then current procurement strategy for New Exclusive Equipment in at least the same level of detail as that contained in Appendix 2 (*Procurement Plan*) to Consolidated Schedule 5 (*Technology Refresh Plan and Procurement Plan*). The Contractor shall use all reasonable endeavours in accordance with Good Industry Practice to minimise the purchase of New Exclusive Equipment to be deployed as spares.
- 11.9** The Contractor may invoice and charge the Customer Authority for New Exclusive Equipment in accordance with Paragraph 8 (*Asset Budget*) of Consolidated Schedule 9 (*Charges and Invoicing*).
- 11.10** The Contractor shall ensure that title to any New Exclusive Equipment shall pass to the Customer Authority automatically on payment of the price (irrespective of whether such payment is made by the Customer Authority or the Contractor, and irrespective of whether the costs of such New Exclusive Equipment are to be invoiced to the Customer Authority or borne in whole or part by the Contractor in accordance with Paragraph 8 (*Asset Budget*) of Consolidated Schedule 9 (*Charges and Invoicing*)).
- 11.11** The Contractor shall:
- 11.11.1** use the Customer Authority Equipment (and the relevant Customer Authority Assets) in its performance of the Services; and
 - 11.11.2** be responsible for maintaining the Equipment (including the Customer Authority Equipment).
- 11.12** The Contractor shall comply with its obligations in relation to the provision and management of all matters connected with the lifecycle of all Equipment in accordance with its obligations under Consolidated Schedule 3 (*Service Requirements and Contractor Service Descriptions*).
- 11.13** The Customer Authority makes no warranty as to the condition or suitability for the Services of the Customer Authority Equipment.
- 11.14** All Exclusive Assets will be used by the Contractor solely for the purposes of providing the Services and will not be used for the Contractor's own purposes or in providing any other services to third parties.
- 11.15** The risk in the Customer Authority Equipment shall pass to the Contractor on the date on which the Contractor begins performing (or is due to begin performing) any Service provided using such Equipment or on such other date identified through the Contract Change Procedure, and the Contractor shall be liable for all loss and damage to Customer Authority Equipment from such date and until the date on which the Contractor has

handed over responsibility for such Customer Authority Equipment back to the Customer Authority or a Replacement Contractor (such date of handover to be determined by the Customer Authority in its sole discretion or as set out in an Exit Plan that is Approved in accordance with Consolidated Schedule 20 (*Exit Management*)).

11.16 The Contractor shall be solely responsible for:

11.16.1 obtaining all permits relating to and for the cost of carriage of Equipment to the Sites and to the Customer Authority Premises, including its import and clearance through customs, payment of any duties or imposts, off-loading, removal of all packaging and all other associated costs. If the Customer Authority wishes to follow a particular process the Contractor shall cooperate with the Customer Authority in this; and

11.16.2 on termination or expiry of this Consolidated Contract, except where the Customer Authority acquires such Equipment and does not wish it to be removed, the removal of all relevant Contractor Equipment from the Customer Authority Premises, including the cost of packing, carriage and making good the Customer Authority Premises or any objects contained therein following removal.

11.17 All the Contractor's property located on the Customer Authority Premises, including Contractor Equipment, shall remain at the sole risk and responsibility of the Contractor, except that the Customer Authority shall be liable (subject to Clause 44 (Limitation of Liability)) for loss of or damage to any of the Contractor's property located on Customer Authority Premises which is due to a malicious act of the Customer Authority.

11.18 Where a failure of an item of Equipment or any component part of Equipment causes two (2) or more Service Failures in any twelve (12) month period, the Contractor shall notify the Customer Authority in writing and shall (acting reasonably and taking into account its obligations under this Consolidated Contract (including under Clause 11.3 above)) determine whether it should replace such Equipment or component part thereof with a new item of Equipment or component part thereof (of the same specification or having the same capability as the Equipment being replaced).

11.19 In the event that an Insolvency Event affects the Contractor, no Customer Authority Equipment shall pass to any appointed receiver or any other third party, and the Contractor shall promptly notify the Customer Authority immediately upon becoming aware of the occurrence of such Insolvency Event and shall (at the Customer Authority's option and sole discretion) return all Customer Authority Equipment to the Customer Authority or its nominee.

11.20 Neither the Contractor nor any of its Sub-contractors or any other third party shall be entitled to claim that it has a lien over any of the Customer Authority Equipment, and the Contractor shall ensure that it informs all Sub-contractors and other third parties that the Customer Authority is the owner of such Customer Authority Equipment.

11.21 The Contractor shall open and maintain a public store account ("**PSA**") in accordance with the Standards. In addition, the Contractor shall ensure that all Customer Authority Assets, including the Customer Authority IPR are recorded in the PSA and that the PSA is available for inspection and audit on request by the Customer Authority from time to time (and in any event within one (1) Working Day of any such request being made).

11.22 The Contractor shall supply to the Customer Authority, at the start of each Quarter, reports on the current Customer Authority Assets, including the Customer Authority IPR. At least

one report in any Financial Year shall be a report that the Contractor has reconciled with all Customer Authority Assets (including the Customer Authority IPR) under the control or remit of the Contractor, which in respect of Equipment means such Equipment that is under the Contractor's physical control.

11.23 The Contractor shall retain all PSA reports for a period of three years after disposal or return of the last Customer Authority Asset to be disposed of or returned to the Customer Authority or Replacement Contractor (as the case may be).

11.24 The Customer Authority reserves the right to amend the PSA without further consultation where requirements arise from the Customer Authority's proper and reasonable accounting requirements. The Contractor shall implement such amendments at the commencement of the Customer Authority's next Financial Year, provided that the Customer Authority shall use its reasonable endeavours to provide the Contractor with at least 6 (six) months' prior written notice (or such other period of notice as may be agreed between the Parties from time to time) of any amendment required. Such amendments shall not have retrospective effect.

12 CUSTOMER AUTHORITY PREMISES AND CUSTOMER AUTHORITY SITES

12.1 The Contractor acknowledges that the Customer Authority Sites to which it shall provide the Services from time to time vary in demand, physical size, occupancy levels and types (including listed buildings, domestic residences and airports) and are situated in differing environments (including those affected by, or which are nearby, tropical conditions, permafrost, seawater, rodents, wind and lightning). Accordingly, the Contractor shall ensure that it is aware of any constraints on its delivery of the Services at any of the Customer Authority Sites and that its solutions enable it to deliver the Services in accordance with the Service Levels.

12.2 In determining what Equipment or resources to deploy (including how to deploy such resources) at Customer Authority Sites, the Contractor shall use its Best Endeavours to optimise its use of physical space including in accordance with the Standards.

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

SECTION D - PAYMENT AND VALUE FOR MONEY PROVISIONS

13 CHARGING, INVOICING AND MANAGEMENT INFORMATION

Charges and Invoicing

13.1 In consideration of the Contractor carrying out its obligations in accordance with this Consolidated Contract, including the provision of the Services, the Customer Authority shall pay the Charges to the Contractor in accordance with the payment profile and the invoicing procedure specified in Consolidated Schedule 9 (*Charges and Invoicing*). The Customer Authority acknowledges that the Contractor may pass on all or part of the

Management Charge to Customers and accordingly Consolidated Schedule 9 (*Charges and Invoicing*) sets out the portion and amount (if any) of the Management Charge that will be passed on to the Customer Authority.

- 13.2** The Contractor shall ensure that a term is included in any Sub-contract permitted under this Consolidated Contract which requires the Contractor to pay any undisputed sums due to the relevant Sub-contractor within a specified period that does not exceed thirty (30) Working Days from the date the Contractor receives the Sub-contractor's invoice in accordance with the terms of the relevant Sub-contract. The Contractor shall comply with such terms.
- 13.3** In the event that the Framework Authority is entitled to exercise its rights and remedies under paragraph 3.2 of Schedule 7 to the Framework Agreement (*Financial Distress*), and until such time as the Customer Authority receives from the Contractor a copy of the written agreement provided for in paragraph 3.6 of that Schedule, the Customer Authority shall be entitled to pay to any Sub-contractor (without set off or deduction) any sums properly due from the Contractor to that Sub-contractor and to deduct the equivalent amount from any sums properly due to be paid by the Customer Authority to the Contractor.
- 13.4** If the Customer Authority reasonably disputes its obligation to pay part or all of an amount specified in the Monthly Billing Summary submitted by the Contractor or a Final Invoice submitted by the Contractor in the P2P System, then notwithstanding anything to the contrary in this Consolidated Contract:
- 13.4.1** the Customer Authority's failure to pay the amount specified in the Monthly Billing Summary or Final Invoice (as applicable) which it disputes being obligated to pay (the "**Disputed Amount**") shall be deemed not to be a breach of this Consolidated Contract;
- 13.4.2** the Customer Authority shall pay the undisputed balance of the Final Invoice to the Contractor in accordance with this Consolidated Contract;
- 13.4.3** the Parties must as soon as reasonably practicable discuss and use their respective reasonable endeavours to agree how much of the Disputed Amount is payable to the Contractor;
- 13.4.4** if the Contractor does not agree with a position taken by the Customer Authority, the Contractor shall, in accordance with Paragraph 15 (*Supporting Documents*) of Consolidated Schedule 9 (*Charges and Invoicing*), provide the Customer Authority with such information as is reasonably required by the Customer Authority to substantiate the Contractor's position;
- 13.4.5** if the Parties agree that all or parts of the Disputed Amount is payable by the Customer Authority, such amount shall be included in the next Monthly Billing Summary issued after such agreement has been reached and shall be clearly identified as an amount that was previously disputed; and
- 13.4.6** if the Parties are unable to reach agreement pursuant to Clause 13.4.3 above within ten (10) Working Days, then either Party may refer the matter to the Dispute Resolution Procedure.

- 13.5** If, in any Relevant Month, any Disputed Amount which the Parties agree is not payable has already been paid by the Customer Authority, a credit equal to the Disputed Amount will be applied to the amount specified in the following month's Monthly Billing Summary.
- 13.6** Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with Paragraph 16 (*Contractor Invoices*) of Consolidated Schedule 9 (*Charges and Invoicing*) at the rate of eight per cent (8%) per annum above the Bank of England base rate from time to time.
- 13.7** Except as otherwise provided in this Consolidated Contract, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Consolidated Contract. In particular, the Parties agree that the Customer Authority is not liable to pay any amount under or in connection with this Consolidated Contract or the Services, except as expressly stated in this Consolidated Contract.
- 13.8** The Contractor may at any time reduce the prices (including the Service Unit Prices) set out in the Contractor's Call-Off Service Catalogue and shall implement such reductions by notice to the Customer Authority in accordance with Clause 23.2 (*Contract Change*).
- 13.9** The Contractor shall notify the Customer Authority promptly (and in any event within five (5) Working Days) if it believes (acting reasonably) that the Customer Authority has overpaid any Charges, giving reasons. The Contractor shall pay to the Customer Authority the amount overpaid within thirty (30) Working Days of determining the existence of such overpayment. Without prejudice to any other rights of the Customer Authority under this Consolidated Contract, the Customer Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment.

Management Information

- 13.10** Without prejudice to the monitoring rights which the Customer Authority has under this Consolidated Contract, the Contractor shall submit Management Information to the Customer Authority throughout the Term (and any Exit Period, as applicable) in accordance with Consolidated Schedule 14 (*Performance Monitoring and Reporting*). The Customer Authority may audit the Management Information in accordance with Clauses 22.1.7 and 22.4.
- 13.11** The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver accurate Management Information to the Customer Authority in accordance with this Consolidated Contract. If the Contractor does not have such processes and procedures in place, the Contractor's performance of the Services shall be deemed to have failed all Service Levels against which the Contractor's performance cannot be measured fully for the relevant Service Measurement Period. If the Contractor fails to put such processes in place within twenty (20) Working Days of a written notice from the Customer Authority requiring it to do so, the Customer Authority may serve a Termination Notice.
- 13.12** If the Customer Authority identifies, or has reason to believe, that any Management Information contains any information which is incorrect, is inconsistent with other Management Information, is incomplete, or does not comply with any agreed Report definition or Report template, the Customer Authority may (in its sole discretion) require the Contractor to promptly:
- 13.12.1** address the inadequacies and re-submit the Management Information to the Customer Authority; or

13.12.2 include an erratum note which addresses the inadequacies in the subsequent item of Management Information of the same series.

13.13 The Contractor acknowledges that the Management Information is the Confidential Information of the Customer Authority.

13.14 The Customer Authority may, in accordance with the Contract Change Procedure, make changes to the Management Information which the Contractor is required to supply.

14 TAX

14.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer Authority following delivery of a valid VAT invoice. The Charges are inclusive of all other Taxes and Telecommunications Levies.

14.2 The Contractor shall indemnify the Customer Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer Authority at any time in respect of the Contractor's failure to account for or to pay any VAT or other Taxes and Telecommunications Levies relating to payments made to the Contractor under this Consolidated Contract. Any amounts due under this Clause 14.2 shall be paid in cleared funds by the Contractor to the Customer Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer Authority.

15 RECOVERY OF SUMS DUE

15.1 The Customer Authority may retain or set off any amount owed to it by the Contractor (including any sum which the Contractor is liable to pay to the Customer Authority in respect of any breach of this Consolidated Contract) against any amount due to the Contractor under this Consolidated Contract or under any other agreement between the Contractor and the Customer Authority.

15.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

15.3 The Contractor shall make any payments due to the Customer Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has Approval or a valid court order requiring an amount equal to such deduction to be paid by the Customer Authority to the Contractor.

15.4 Any requirement of Law to account for the Services in Euros, (or to prepare for such accounting) instead of or in addition to sterling, shall be implemented by the Contractor free of charge to the Customer Authority.

15.5 Upon written request from the Contractor, the Customer Authority shall use reasonable endeavours to provide such assistance as the Contractor reasonably requires from the Customer Authority to assist the Contractor in complying with Clause 15.4 above.

16 VALUE FOR MONEY

The Contractor shall comply with its obligations set out in Consolidated Schedule 11 (*Value for Money*).

17 FINANCIAL MODEL

The provisions of Consolidated Schedule 10 (*Financial Model*) shall apply in relation to the Financial Model and the Contractor shall comply with its obligations in Consolidated Schedule 10 (*Financial Model*).

18 EXCESS PROFIT SHARING

The provisions of Consolidated Schedule 12 (*Excess Profit Sharing*) shall apply and the Contractor shall comply with its obligations in Consolidated Schedule 12 (*Excess Profit Sharing*).

SECTION E - CONTRACT GOVERNANCE

19 REPRESENTATIVES

- 19.1** Each Party appoints the persons named as such in Consolidated Schedule 17 (*Representatives and Key Personnel*) as the Customer Authority Representative and the Contractor Representative.
- 19.2** The Representatives shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Consolidated Contract. Either Party may, by further written notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.
- 19.3** The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and be granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Consolidated Contract.
- 19.4** The Customer Authority may require the Contractor to replace the Contractor Representative in accordance with Clause 26.14.

20 GOVERNANCE

The Parties agree to manage this Consolidated Contract through the governance structure detailed in Consolidated Schedule 15 (*Governance*).

21 SUPPLY CHAIN RIGHTS

Sub-contracting

- 21.1** Subject to Clause 21.2 below, the Contractor shall not sub-contract any of its obligations under this Consolidated Contract without the Customer Authority's Approval, which shall not be unreasonably withheld or delayed.
- 21.2** If the Customer Authority or the Contractor wish to remove any Material Sub-contractors or add any more Sub-contractors to the list of Material Sub-contractors in relation to this Consolidated Contract, they must give prior written notice to the Framework Authority and obtain the Framework Authority's approval in accordance with Clause 30.3 of the Framework Agreement.
- 21.3** When seeking approval from the Framework Authority to add any Sub-contractors to the list of the Approved Sub-contractors:

- 21.3.1 the Contractor must confirm to both the Framework Authority and the Customer Authority whether each of the proposed Sub-contracts will include the provisions set out in Clause 21.8 below; and
- 21.3.2 the Customer Authority must advise the Framework Authority and the Contractor whether or not it would consent to such Sub-contractors if the Contractor has been unable to include any or all of the provisions set out in Clause 21.8 below.
- 21.4 The Customer Authority may withhold or delay its Approval to the Contractor sub-contracting any of its obligations under this Consolidated Contract in its sole discretion.
- 21.5 Subject to Clause 21.6, in making a request pursuant to Clause 21.1 above, the Contractor shall provide the Customer Authority with the following information about the proposed Sub-contractor:
 - 21.5.1 its name, registered office and company registration number;
 - 21.5.2 a copy of the proposed Sub-contract, including details of the value of the proposed Sub-contract;
 - 21.5.3 details of the method by which the proposed Sub-contract will be procured;
 - 21.5.4 the purposes for which the proposed Sub-contractor will be employed, including the scope of any services to be provided by the proposed Sub-contractor;
 - 21.5.5 if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant Service Levels;
 - 21.5.6 where the proposed Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Customer Authority that the proposed Sub-contract has been agreed on “arms-length” terms; and
 - 21.5.7 any further information reasonably requested by the Customer Authority (including its long term credit ratings).
- 21.6 If the supply of information required pursuant to Clause 21.5 above would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall be obliged to provide the Customer Authority with the relevant information only to the extent and at the first opportunity permitted by those rules and regulations and shall then provide the fullest information permitted.
- 21.7 Subject to Clause 21.2 above, the Customer Authority has Approved the engagement of the Sub-contractors listed in Consolidated Schedule 18 (*Approved Sub-contractors*).
- 21.8 Subject to Clause 30.3 of the Framework Agreement the Contractor shall ensure that:
 - 21.8.1 each Key Sub-contract includes the following provisions:
 - (i) a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer Authority to enforce the terms of that Sub-contract (including in particular the wording referred to in Clause 21.8.2(iii) below) as if it were the Contractor;
 - (ii) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights or obligations under the Key Sub-contract to (at the

Customer Authority's option) the Customer Authority or a Replacement Contractor and also obliging the Key Sub-contractor to (at the Customer Authority's request) enter into a direct contract with the Customer Authority or a Replacement Contractor in respect of the services provided for the benefit of the Customer Authority on the same terms as are in place with the Contractor, in such cases the Key Sub-contractor shall be entitled to terminate without penalty all or the relevant part of the Key Sub-contract from the time that the new direct contract becomes effective;

- (iii) a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Customer Authority on the same terms as set out in Clause 34;
- (iv) a provision restricting the ability of the Key Sub-contractor to further sub-contract the service provided to the Contractor without first obtaining the consent of the Contractor and the Customer Authority;
- (v) a provision requiring the Key Sub-contractor to have in place an appropriate exit and migration plan which enables it to comply (and will enable the Contractor to comply) with the requirements of this Consolidated Contract, to put such plan into effect on any termination or expiry of the Key Sub-contract, and otherwise to ensure that any such termination or expiry will not affect the continuity of the Services;
- (vi) a provision enabling the Contractor, the Customer Authority or any other person on behalf of the Customer Authority and Framework Authority to step-in on substantially the same terms as are set out in Clause 51;
- (vii) a provision requiring the Key Sub-contractor to comply with the provisions placed in this Consolidated Contract on the Contractor in relation to the PSN Compliance Conditions and PSN Compliance including Clauses 6.2.3, 6.4.1(vi), 10.5, 37.2.3, 37.2.7(ii) and 37.2.17(iv);
- (viii) a provision requiring the Key Sub-contractor to report to the Framework Authority and the Customer Authority, within ten (10) Working Days (or such other period as the Framework Authority and Customer Authority may permit and notify to the Contractor in writing) of the due date for payment, any material non-payment or late payment of any sums due to it from the Contractor under the provisions of the Key Sub-contract;
- (ix) any or all of the provisions set out in Consolidated Schedule 26 (*Further Terms for Third Party Contracts*); and

21.8.2 each Sub-contract, including any Key Sub-contract, includes:

- (i) a provision requiring the Contractor to pay all sums due to the Sub-contractor within a specified period, not to exceed thirty (30) Working Days, from the date of receipt by the Contractor of a valid invoice under the Sub-contract;
- (ii) if the relevant Sub-contractor is to Process any data relating to living individuals, a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to Clauses 31 (*Customer Authority Data*) and 32 (*Protection of Personal Data*);

- (iii) the following wording (amended only as appropriate to conform with the layout of and definitions in the Sub-contract):

“In any situation where either (1) the [Sub-contractor] has the right to terminate the [Sub-contract] otherwise than for convenience or (2) the [Customer Authority] has the right to terminate [this Consolidated Contract] or step into [this Consolidated Contract] pursuant to Clause 51 of [this Consolidated Contract], then the [Customer Authority] may require that the rights and obligations of the [Contractor] under the [Sub-contract] will be assigned and transferred to the [Customer Authority] either permanently or for such a period as the [Customer Authority] may specify and the [Sub-contractor] will consent to such assignment and transfer and continue to perform the [Sub-contract] directly for the benefit of the [Customer Authority]. The [Sub-contractor] shall not exercise any termination right referred to in (1) without having first given the [Customer Authority] at least fourteen (14) days’ advance notice in writing.”

If the Customer Authority does require an assignment and transfer of rights and obligations pursuant to such wording, the Contractor shall automatically be relieved to the extent of its obligations to provide Services under this Consolidated Contract and the Customer Authority’s obligation to pay the Charges shall be reduced proportionately.

- 21.9** Without prejudice to Clause 21.8 above, the Contractor shall (unless otherwise agreed by the Customer Authority in writing) procure that all Key Sub-contracts and other agreements with third parties which are necessary to enable the Customer Authority or any Replacement Contractor(s) to perform the Services (in accordance with this Consolidated Contract) or the Replacement Services, shall be assignable, or capable of novation, without restriction (including any need to obtain any approval or any need for the Customer Authority or any Replacement Contractor (as applicable) to make any payment) at the request of the Customer Authority to the Customer Authority (or its nominee), any Replacement Contractor(s) or the Customer Authority and one or more Replacement Contractors (as applicable) upon the Contractor ceasing to provide the Services (or any part of them).
- 21.10** Where the Contractor, having used all reasonable endeavours, is unable to comply with Clauses 21.8 or 21.9 above in relation to Sub-contractors and Key Sub-contractors (as applicable), it shall promptly notify the Customer Authority in writing of the issue. The Contractor shall act in good faith and without undue delay to try to find a resolution which is acceptable to the Customer Authority within ten (10) Working Days (or such other period as the Parties agree in writing). If the Parties are unable to find a resolution which is acceptable to the Customer Authority, the Contractor shall act as directed by the Customer Authority in relation to such requirements, which may include the Contractor seeking an alternative Sub-contractor, to be agreed in writing with the Customer Authority. Notwithstanding the foregoing, the approval of a Sub-contractor by the Framework Authority is required in accordance with Clause 21.2.
- 21.11** The Contractor shall not make use of a pre-existing contract with any Sub-contractor without the prior written consent of the Framework Authority and the Approval of the Customer Authority, which in the case of the Framework Authority shall not be unreasonably withheld or delayed. In such cases the Framework Authority and the

Customer Authority may consent on the basis that all or part of the requirements of Clause 21.8 or 21.9 above may be waived.

- 21.12** Upon request by the Customer Authority from time to time, the Contractor shall promptly provide the Customer Authority with a copy of any Sub-contract, including visibility over the value of the relevant Sub-contract, with any Key Sub-contractor or Material Sub-contractor.

Termination of Sub-contracts

- 21.13** The Contractor shall not terminate or materially amend the terms of any Sub-contract without the prior written consent of the Framework Authority and the Customer Authority's Approval, which in the case of the Framework Authority shall not be unreasonably withheld or delayed.
- 21.14** The Customer Authority may require the Contractor to cease to use a Sub-contractor in connection with the Services where the acts or omissions of the relevant Sub-contractor have given rise to the Customer Authority's right of termination pursuant to Clause 47.3 (*Termination for Cause by the Customer Authority*). If it does so require and, subject to Clause 21.2 above, the Contractor fails to cease to use the Sub-contractor within twenty (20) Working Days (or such other period as the Parties agree in writing) of such notice, then this shall constitute an irremediable material Default for the purposes of Clause 47.6.2 (*Termination for Cause by the Customer Authority*). Accordingly, the Customer Authority shall notify the Framework Authority in writing if it wishes to exercise its rights under this Clause 21.14.
- 21.15** The Customer Authority may require the Contractor to cease to use the relevant Sub-contractor in connection with the Services if there is a Change of Control of a Sub-contractor on the same terms as those set out in Clause 47.12 (*Termination for Change of Ownership*). If it does so require and, subject to Clause 21.2 above, the Contractor fails to cease to use the Sub-contractor within twenty (20) Working Days (or such other period as the Parties agree in writing) of such notice, then this shall constitute an irremediable material Default for the purposes of Clause 47.6.2 (*Termination for Cause by the Customer Authority*). Accordingly, the Customer Authority shall notify the Framework Authority in writing if it wishes to exercise its rights under this Clause 21.14.

Retention of Legal Obligations

- 21.16** Despite the Contractor's right to sub-contract pursuant to this Clause 21, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.
- 21.17** An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that it, its Sub-contractors and Affiliates, and its and their employees, officers, and agents also do, or refrain from doing, such act or thing.

22 AUDITS, NOTIFICATIONS AND RECORD KEEPING

Audits

- 22.1** Where a Regulatory Body wishes to carry out, or requires the Customer Authority to carry out an audit, the Customer Authority may comply with such request without affecting its other rights under this Clause 22. In addition, the Customer Authority may carry out from time to time, a maximum of two Financial Audit(s) in any Contract Year, a maximum of two

Operational Audit(s) in any Contract Year and any number of Security Audit(s) as it deems appropriate in connection with any of the Services for any or all of the following purposes:

- 22.1.1 to verify any or all of: (i) the accuracy of Charges (and proposed or actual variations to them in accordance with this Consolidated Contract); (ii) any cost reduction and income generation initiatives carried out pursuant to Clause 10 (*Services Improvement*); and (iii) the costs of all Key Sub-contractors of the Services (a “**Financial Audit**”);
- 22.1.2 to review the integrity, confidentiality and security of the Customer Authority’s Confidential Information;
- 22.1.3 to review the Contractor’s compliance with its obligations under this Consolidated Contract;
- 22.1.4 to review any records created during the design and development of the Contractor System and pre-operational environment such as information relating to Testing;
- 22.1.5 to carry out the audit and certification of the Customer Authority’s accounts;
- 22.1.6 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer Authority has used its resources;
- 22.1.7 to verify the accuracy and completeness of any Management Information, Service Management reporting, Re-Procurement Information and Exit Management Information delivered or required by this Consolidated Contract;
- 22.1.8 to inspect the ICT Environment, the Assets and the Customer Authority Assets, equipment, facilities and maintenance;
- 22.1.9 to ensure that the Contractor is complying with the Standards and to assess how the Standards and ISS ITIL Processes have been followed in the provision of the Services;
- 22.1.10 to carry out an audit (at the Customer Authority’s sole discretion, in conjunction with the Contractor Personnel responsible for Fraud detection) to investigate and identify Fraud in connection with the delivery of the Services or any other element of this Consolidated Contract; and
- 22.1.11 to carry out and audit the security aspects of any of the Services as outlined in Consolidated Schedule 7 (*Security Requirements*) (any such security aspects audit being a “**Security Audit**”),

(and an audit for any of the purposes referred to in Clauses 22.1.2 to 22.1.10 (inclusive) above is an “**Operational Audit**”). For each of the audits described in this Clause 22.1, the Customer Authority may then carry out a follow-up assessment limited in scope to confirming that actions from the Operational Audit have been carried out.

22.2 The Customer Authority shall use its reasonable endeavours to ensure that:

- 22.2.1 where an audit relates to information which is available from the Performance Monitoring System or the Framework Authority as a result of the records and accounts which the Contractor is required to submit in accordance with Clause 17.1 of the Framework Agreement, it will seek that information from the Performance Monitoring System or the Framework Authority in the first instance;

- 22.2.2** the conduct of each audit does not unreasonably disrupt the Contractor, delay the provision of the Services, or cause the Contractor to breach any confidentiality obligations it has in relation to other customers and suppliers; and
- 22.2.3** any external auditor used by it to conduct an audit is bound by confidentiality provisions preventing unlawful disclosure of the Contractor's Confidential Information to direct competitors of the Contractor or its Sub-contractors.
- 22.3** In addition to the Operational Audits and Financial Audits, the Customer Authority may carry out a Security Audit of the Services at a time agreed between the Contractor and the Framework Authority, including in relation to the Assets used and the Contractor System or any component of it, and the Contractor shall facilitate such audit. A Security Audit may, at the Customer Authority's discretion, include penetration testing of any Asset (whether software or Equipment) used in the provision of the Services, whether or not it is an Exclusive Asset, and the Contractor shall procure that the Customer Authority may have such access. If, following a Security Audit, the Customer Authority believes that the Services or any element of the Contractor System or any Asset, Software or Equipment has the potential to prejudice security or Information Assurance, the Customer Authority may:
- 22.3.1** subject to Clauses 10.5 (*Services Improvement*), 23.3 (*Contract Change*) and 38 (*Change in Law*), require the Contractor to do any or all of the following, within such time period as required by the Customer Authority:
- (i) amend the manner in which it provides the Services;
 - (ii) cease using all such Assets as part of the Services immediately;
 - (iii) suspend provision of the Services (or any part thereof);
 - (iv) replace all such Assets with new Assets which are of equivalent capability in terms of their ability to provide the Services; and
 - (v) submit the replacement Assets for a Security Audit; and
- 22.3.2** if any of the actions in Clause 22.3.1 above have not or cannot be done by the Contractor within the time period required by the Customer Authority pursuant to Clause 22.3.1 above, the Customer Authority may terminate this Consolidated Contract for irremediable material Default pursuant to Clause 47.6.2 (*Termination for Cause by the Customer Authority*).
- 22.4** In addition to the Operational Audits, Financial Audits and the Security Audits, the Customer Authority shall, at any time during the Term, have the right to audit any Management Information, reports, registers, Re-Procurement Information, Exit Management Information or other information provided to the Customer Authority in accordance with Consolidated Schedules 14 (*Performance Monitoring and Reporting*) and 20 (*Exit Management*) to assess the accuracy, availability and completeness of such information (an "**Exit Information Audit**").
- 22.5** If, following any Exit Information Audit, the Customer Authority identifies, and notifies the Contractor of, any actual or potential failings, inaccuracies or shortcomings in the information provided, the Contractor shall at its own cost:
- 22.5.1** remedy any actual failings, inaccuracies or shortcomings (as applicable) and provide accurate Management Information, reports, registers, Re-Procurement

Information, Exit Management Information or other information (as applicable) within twenty (20) Working Days of being notified of the relevant failings, inaccuracies or shortcomings; and

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

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

22.5.3 such failure shall be deemed to be a material Default of this Consolidated Contract; and

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

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

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

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

22.6.3 access to the Contractor System; and

22.6.4 access to Contractor Personnel within a reasonable period of a request.

22.7 Except for a Security Audit, the Customer Authority shall endeavour (but is not obliged) to provide at least ten (10) Working Days' notice of its intention to conduct any audit.

22.8 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 22, unless the audit reveals a material Default by the Contractor or, in the case of an Exit Information Audit, a material error, or a number of errors, in the information provided, in which case the Contractor shall reimburse the Customer Authority for all reasonable costs incurred by the Customer Authority in the course of the audit.

22.9 If an audit or follow up assessment identifies that:

22.9.1 the Contractor has failed to perform its obligations under this Consolidated Contract in any material manner, the Contractor shall, at the Customer Authority's option, agree with the Customer Authority and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Customer Authority about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;

22.9.2 the Customer Authority has overpaid any Charges, the Contractor shall pay to the Customer Authority the amount overpaid within twenty (20) Working Days of such

audit or assessment. Without prejudice to any other rights of the Customer Authority under this Consolidated Contract, the Customer Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and

- 22.9.3** the Customer Authority has underpaid any Charges, the Customer Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Customer Authority if this was due to a Default by the Contractor in relation to invoicing within twenty (20) Working Days of receipt of an invoice from the Contractor for such underpaid Charges.

Correspondence with Regulatory Bodies

- 22.10** If the Contractor receives any correspondence or requests from any Regulatory Body that relate to the Services (including requests to access or copy the Customer Authority Data), it shall provide a copy of that correspondence or request to the Customer Authority unless it is prevented from doing so by Law or a Regulatory Body. The Contractor shall consult with the Customer Authority over such correspondence or request and shall only respond to the Regulatory Body if:

22.10.1 the terms and nature of the response have been Approved by the Customer Authority (such consent not to be unreasonably withheld or delayed); or

22.10.2 the Contractor is required by Law to respond to the Regulatory Body without the Customer Authority's consent.

Notifications to the Customer Authority

- 22.11** Without prejudice to the Customer Authority's other rights or remedies or to the Contractor's other reporting obligations set out in this Consolidated Contract, the Contractor shall notify the Customer Authority in writing, as soon as reasonably practicable after it comes to the Contractor's attention, of any event or circumstance which may adversely affect the performance of the Contractor's obligations under this Consolidated Contract, in whole or in part (including its performance against the Service Levels), or which is reasonably likely to result in any material Delay in the Implementation or delivery of any of the Services, including any actual or potential:

22.11.1 change in the role or status of any Key Personnel;

22.11.2 Service Failure, Delay, failure or interruption of performance (including in respect of any delay, failure or interruption under, or termination of any Sub-contract);

22.11.3 threat of, or planned, industrial action affecting the Contractor or any Sub-contractor, including any strikes or lock-outs;

22.11.4 failure of any Equipment used in the provision of the Services;

22.11.5 loss or corruption of any Customer Authority Data;

22.11.6 breach of Law or enforcement notice or other regulatory investigation;

22.11.7 breach of confidentiality or failure to comply with any of the Security Requirements;

22.11.8 Force Majeure Event;

22.11.9 failure by the Customer Authority to comply with its obligations under this Consolidated Contract; and

22.11.10 failure by the Customer Authority to provide adequate resource or information as is reasonably necessary to enable the Contractor to perform its obligations under this Consolidated Contract.

22.12 Upon notifying the Customer Authority of any relevant event or circumstance in accordance with Clause 22.11 above, the Contractor shall (in addition to any other obligations) provide the Customer Authority with a written proposal regarding the steps it considers the Parties should take to avert, remedy or mitigate the effect of that event or circumstance.

22.13 Following receipt by the Customer Authority of any such proposal pursuant to Clause 22.12 above, if requested by the Customer Authority, the Contractor shall, within three (3) Working Days (or such other period as the Parties agree in writing) of the Customer Authority's request, meet with the Customer Authority to discuss the Contractor's proposal and agree any appropriate steps which the Parties should take to avert, remedy or mitigate any adverse impact on the performance of the Contractor's obligations. If the Parties fail to agree upon those steps, either Party may, at its option and without prejudice to its other rights and remedies, refer the matter for resolution in accordance with the Dispute Resolution Procedure.

22.14 The Contractor shall copy any notice provided under Clause 22.11 to the Framework Authority within four (4) Working Days of providing such notice to the Customer Authority.

Record Keeping

22.15 The Contractor shall comply with the provisions set out in Consolidated Schedule 29 (*Records Provisions*).

23 CONTRACT CHANGE

23.1 Any requirement for a Contract Change shall be subject to the Contract Change Procedure for dealing with Contract Changes which is set out in Consolidated Schedule 16 (*Contract Change Procedure*).

23.2 The Contractor shall maintain and keep the Contractor's Call-Off Service Catalogue up-to-date throughout the Term. The Customer Authority, acting as Direct Customer, requires the Contractor's Call-Off Service Catalogue to relate to all Services. Any amendment to the Contractor's Call-Off Service Catalogue shall be subject to the Contract Change Procedure. The Contractor shall not propose any change which would be in breach of:

23.2.1 any Laws or cause the Customer Authority to be in breach of any Laws; or

23.2.2 Clauses 10.5, 23.1 or 23.3.

23.3 Neither Party may make or allow to be made any changes to the Services which affects the PSN Compliance of the Services (once implemented), except to the extent that the PSNA has given its prior written consent to such changes. However, the Parties acknowledge that the PSN Compliance of the Services may be affected during the process of implementing of a change.

23.4 Where a Contract Change is requested, then the Contractor shall prepare a quotation for the cost of the Contract Change in accordance with Consolidated Schedule 9 (*Charges and Invoicing*).

- 23.5** If the Contract Change is adopted by the Customer Authority in accordance with Consolidated Schedule 16 (*Contract Change Procedure*) then the Contractor shall update the Financial Model in accordance with Consolidated Schedule 10 (*Financial Model*) and, where applicable, shall update Consolidated Schedule 24 (*Intellectual Property Rights*) within ten (10) Working Days of the relevant Contract Change being adopted to reflect any additional IPR to be used to perform the Services following such Contract Change, including any Customer Authority Data, Designated IPR, other Customer Authority IPR, Contractor IPR and Contractor Third Party IPR (including Special Contractor IPR),
- 23.6** The Contractor shall prepare and provide to the Customer Authority an updated version of this Consolidated Contract at least every six (6) months, which shall incorporate all Contract Changes made to this Consolidated Contract since the last version.

24 DISPUTES

- 24.1** Subject to Clause 57.6 (*Corrupt Gifts*), the Parties shall seek to resolve all Disputes in accordance with the Dispute Resolution Procedure set out in Consolidated Schedule 23 (*Dispute Resolution Procedure*).
- 24.2** Disputes relating to pensions shall be resolved in accordance with the Dispute Resolution Procedure.
- 24.3** The Contractor shall have no right to suspend or terminate any Service in connection with a Dispute.

SECTION F – SITE VISITS AND PERSONNEL

25 SITE VISITS

Forward Work Schedule

- 25.1** If the Contractor wishes to carry out any works at a Customer Authority Premises, the Contractor shall submit a Forward Work Schedule (or update an existing Forward Work Schedule) for such Customer Authority Premises (subject to Clause 25.2 below) no later than thirty (30) days prior to the date on which Contractor Personnel are to first attend the relevant Customer Authority Premises in order to commence work. Such Forward Work Schedule (or updated Forward Work Schedule, as the case may be) shall include:
- 25.1.1** the nature of the work to be carried out by the Contractor;
 - 25.1.2** the relevant dates on which the work will be carried out;
 - 25.1.3** the contact numbers and names of Contractor Personnel due to attend the Customer Authority Premises for specific works, along with Security Confirmations relating to such Contractor Personnel;
 - 25.1.4** the parts of the Customer Authority Premises the Contractor Personnel need to access in order to deliver the Services (including an indication of whether the Contractor requires access to any existing ducting and wiring); and
 - 25.1.5** where applicable, any request that the Customer Authority makes available standard Institution of Engineering and Technology certification for power installation testing for Customer Authority Premises that is needed,

and shall be submitted for the Customer Authority's Approval (such Approval not to be unreasonably withheld). The Contractor shall not carry out works on any Customer Authority Premises prior to such works being included in an Approved version of the Forward Work Schedule for that Customer Authority Premises.

- 25.2** The thirty (30) day notice period required pursuant to Clause 25.1 above shall not apply in respect of Emergency Forward Work Schedule Amendments or any works that the Customer Authority agrees can be carried out without a Forward Work Schedule being submitted.
- 25.3** No later than fifteen (15) Working Days prior to the date on which the Contractor is to first attend the Customer Authority Premises in order to commence work on the Customer Authority Premises, the Contractor shall confirm to the Customer Authority the Security Confirmations, numbers and names of the Contractor Personnel required to be granted regular access to the relevant Customer Authority Premises for routine tasks and in order to perform MACs. The Contractor shall not request that regular access be granted for Contractor Personnel who are likely to attend the Customer Authority Premises in question less than once a month.

Ad Hoc Access Requests

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

H&S Requests

- 25.5** No later than fifteen (15) Working Days prior to the date on which the Contractor is to first attend a Customer Authority Premises in order to commence work, the Contractor shall request in writing that the Customer Authority provides the Contractor, within five (5) Working Days of receiving such request, with the relevant health and safety information required under JSP 375 in respect of the specific work to be undertaken at that Customer Authority Premises ("**H&S Information**") (each request being a "**H&S Request**").
- 25.6** The Contractor shall ensure that all Contractor Personnel planning to attend a Customer Authority Premises shall report to the Customer Authority Premises health and safety

representative on the first day on which the relevant Contractor Person attends the Customer Authority Premises in order to commence work.

26 CONTRACTOR PERSONNEL

- 26.1** The Customer Authority may refuse admission to the Customer Authority Premises and additionally may direct the Contractor to end the involvement in the provision of the Services of any of the Contractor Personnel whom the Customer Authority believes: (a) represents a security risk; (b) has breached the Security Policy or the Security Requirements; (c) does not have the required levels of training and expertise; or (d) where the Customer Authority has other reasonable grounds for doing so. The decision of the Customer Authority shall be final and it shall not be obliged to provide any reasons.
- 26.2** Following receipt by the Contractor of a refusal by the Customer Authority referred to in Clause 26.1 above, the Contractor shall end the involvement of the relevant Contractor Personnel in the provision of the Services immediately and, where required, shall remove the relevant Contractor Personnel from the Customer Authority Premises immediately.
- 26.3** The Contractor shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.
- 26.4** If any member of the Contractor Personnel is replaced, the Contractor shall ensure that any replacement Contractor Personnel are sufficiently qualified, experienced and competent to perform the tasks and responsibilities previously carried out by the replaced member of the Contractor Personnel.

Relevant Convictions

- 26.5** The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in the provision of any part of the Services without the Customer Authority's Approval.
- 26.6** For each of the Contractor Personnel who, in providing the Services, has, will have or is likely to have access to members of the public to whom the Customer Authority has notified the Contractor that it owes a special duty of care, the Contractor shall (and shall procure that any relevant Sub-contractor shall):

26.6.1 carry out a policy check with the records held by DfE;

26.6.2 conduct thorough questioning regarding any Relevant Convictions; and

26.6.3 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau,

and the Contractor shall not (and shall ensure that a Sub-contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

Key Personnel

- 26.7** The Parties have agreed to the appointment of the Key Personnel as set out in Consolidated Schedule 17 (*Representatives and Key Personnel*).

- 26.8** Without prejudice to Clause 26.10 or 26.11 below, the Contractor shall maintain and keep updated a list of Key Personnel throughout the Term (and during any Exit Period). The Contractor shall ensure that this list identifies if the Key Personnel carry out work on the Services on a full-time or part-time basis, as well as their areas of responsibilities. The Contractor shall make this list available to the Customer Authority from time to time upon request (and in any event, within ten (10) Working Days of receiving any such request).
- 26.9** Without prejudice to Clause 21.11 below, the Contractor shall (and shall ensure that the employer of any member of the Key Personnel not employed by the Contractor shall) endeavour to retain in employment each member of the Key Personnel for a minimum of eighteen (18) months and shall, in accordance with Good Industry Practice, ensure that each member of the Key Personnel shall devote a sufficient and appropriate amount of his or her time and effort to supplying the Services. In addition, the Contractor shall ensure that each member of the Key Personnel will continue to be offered terms and conditions of employment which are competitive with those offered elsewhere in comparable roles.
- 26.10** The Contractor shall, and shall procure that any Sub-contractor shall, obtain the Approval of the Customer Authority before removing or replacing any member of the Key Personnel from their role in the provision of the Services during the Key Role Minimum Period (including during any Re-Procurement Period or Exit Period), and, where possible, at least three (3) months' prior written notice must be provided by the Contractor of an intention to replace any member of Key Personnel or remove them from their role in the provision of the Services. Where there is good reason for a Key Personnel leaving their role in the provision of the Services, the Contractor or Sub-contractor does not need the Customer Authority's Approval, but shall give as much notice as possible and shall still comply with Clause 26.12 below. In this context "**good reason**" is where the individual concerned resigns, retires or dies, takes maternity or paternity leave, is required for long term jury service, suffers a long term sickness, applies for and is awarded another role in the Contractor's organisation (provided that no such application shall be made unless the individual concerned has been in post as a member of the Key Personnel for at least twelve (12) months) or where the individual is suspended or their employment or contractual arrangement with the Contractor or Sub-contractor is terminated for material breach of contract by the individual in question.
- 26.11** The Contractor shall obtain the Customer Authority's Approval for the appointment (including identity) of any replacement for any relevant member of Key Personnel by the Contractor or Sub-contractor, such Approval not to be unreasonably withheld or delayed. The Contractor shall provide to the Customer Authority the curriculum vitae of the candidates for Key Roles and shall allow the Customer Authority to interview the candidates for Key Roles before the Contractor appoints a candidate.
- 26.12** The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer Authority. The Contractor shall ensure that there is appropriate cover for short term absences, such as vacations and sickness and that no Key Role is vacant for any longer than ten (10) Working Days (or longer with the Customer Authority's Approval, not to be unreasonably withheld or delayed) and that any replacement shall be sufficiently qualified, experienced and competent to carry out such Key Role.
- 26.13** Without prejudice to Clause 26.10 above, the Contractor shall ensure that each of the Key Personnel shall work for such period of time in the performance of the Services as is commensurate with, and sufficient to, perform the obligations of that person's Key Role. To

the extent that it can do so without disregarding its statutory obligations, the Contractor shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.

- 26.14** If required by the Customer Authority, the Contractor shall remove and replace promptly any member of the Key Personnel that the Customer Authority reasonably considers in any respect unsatisfactory.
- 26.15** The Customer Authority shall not be liable for the cost of replacing any member appointed to a Key Role and the Contractor shall indemnify the Customer Authority against all Employee Liabilities that may arise in this respect.

Staffing Security

- 26.16** The Contractor shall comply with the Staff Vetting Procedures and the Standards in respect of all Contractor Personnel employed or engaged in the provision of the Services from time to time. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor at the Contract Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and in any event were vetted and recruited in accordance with the Standards.
- 26.17** The Contractor shall ensure that all Contractor Personnel employed or engaged in the provision of the Services receive annual security training to ensure that they are able to maintain compliance with JSP 440 and local security instructions notified to the Contractor by the Customer Authority from time to time.
- 26.18** Where the procedures set out in Clauses 26.5, 26.6 and 26.16 above cannot be applied to Contractor Personnel engaged overseas, the Contractor shall notify the Customer Authority of this fact and shall comply with the Customer Authority's determination in relation to any alternative vetting and recruitment procedures to be applied prior to such personnel being allowed to carry out the Services (or any part of them).
- 26.19** The Contractor shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise). The Contractor shall take all reasonable steps to secure the observance of the foregoing by the Contractor Personnel.
- 26.20** Clauses 26.1 to 26.19 above will not affect the application of Clause 5 of the Framework Agreement (*Framework Governance and Contractor's Staff*).

27 EMPLOYMENT INDEMNITY

The Contractor shall indemnify the Customer Authority against all Employee Liabilities that may arise as a result of any claims brought against the Customer Authority by any or all of the Customer Authority's employees or former employees or any of the Contractor Personnel where such claim arises from any act or omission of the Contractor, any Sub-contractor or any Contractor Personnel.

28 STAFF TRANSFER

The Parties acknowledge that the commencement of the provision of the Services (or any part of them) and the termination of the provision of the Services (or any part of them) by the Contractor pursuant to this Consolidated Contract may constitute a relevant transfer for the purposes of the Employment Regulations, and agree that the provisions of

Consolidated Schedule 21 (*Staff Transfer*) will apply in relation to such commencement or termination.

29 HEALTH AND SAFETY

29.1 The Contractor acknowledges that it has been supplied with a copy of the Customer Authority's rules regarding health and safety. The Contractor shall comply with these rules and any additional rules made known to the Contractor from time to time by the Customer Authority together with all applicable statutory rules and regulations regarding these matters. The Customer Authority shall procure that its employees and agents also comply with these rules and regulations.

29.2 Either Party shall notify the other in writing as soon as practicable of any health and safety hazards at the Customer Authority Premises of which it becomes aware. The Contractor shall draw these hazards to the attention of the Contractor Personnel and will instruct those persons in connection with any necessary associated safety measures.

SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

30 INTELLECTUAL PROPERTY RIGHTS

30.1 IPR Register

30.1.1 The Contractor shall develop and maintain a register of all material Intellectual Property Rights used in or for the delivery of the Services by the Contractor or the receipt of the Services by the Customer Authority (the "**IPR Register**"), which shall be divided into the following sections:

- (i) Part 1: material Contractor IPR;
- (ii) Part 2: material Customer Authority IPR;
- (iii) Part 3: material Customer Authority Third Party IPR; and
- (iv) Part 4: Contractor Third Party IPR.

30.1.2 Each entry in the IPR Register shall:

- (i) set out the name of the owner or licensor of the relevant material Intellectual Property Rights; and
- (ii) in respect of those entries in Part 4 (*Contractor Third Party IPR*) only:
 - (a) include details of who should be contacted to request a copy of any licence of any material Contractor Third Party IPR; and
 - (b) identify any licence of material Contractor Third Party IPR that is not fully paid up or freely transferable to the Customer Authority or any Replacement Contractor at the end of the Term or to the Customer Authority or any Other PSN Services Contractor (where applicable) in the event of Step-in.

30.1.3 The Customer Authority shall cooperate with the Contractor in developing and maintaining the IPR Register.

30.2 Ownership

- 30.2.1** Subject to Clause 30.2.3 below, neither the Customer Authority nor any Indirect Customers transfer ownership of any Intellectual Property Rights (including, in relation to the Customer Authority, any Customer Authority IPR) to the Contractor or to any Sub-contractor under this Consolidated Contract. All Intellectual Property Rights (including, in relation to the Customer Authority, any Customer Authority IPR) in any materials:
- (i) provided to the Contractor for use in the provision of the Services; or
 - (ii) transmitted, processed or stored whilst the Services are being utilised,
- and, in each case, which are owned by the Customer Authority or any Indirect Customer, shall be retained by or vest in the Customer Authority or Indirect Customer(s) (as applicable). If the Contractor or any Sub-contractor or Contractor Personnel acquires any interest in such Intellectual Property Rights which is inconsistent with this Clause 30.2.1 it shall (or shall procure that the relevant third party shall) assign all such right, title and interest to the Customer Authority or such person as the Customer Authority may nominate, free of all encumbrances and third party rights.
- 30.2.2** The Contractor shall not obtain any right, title or interest in or to the Customer Authority IPR save as set out in Clause 30.3.1 below.
- 30.2.3** Subject to Clause 30.2.1 above and Clause 30.2.4 below, the Contractor does not transfer ownership of any Contractor IPR to the Customer Authority or to any Indirect Customer under this Consolidated Contract and all Contractor IPR subsisting in or relating to any materials provided by the Contractor for use in the provision of the Services shall be retained by the Contractor. If the Customer Authority or any Indirect Customer acquires any interest in such Contractor IPR which is inconsistent with this Clause 30.2.3 it shall (or shall procure that the relevant Indirect Customer shall) assign all such right, title and interest to the Contractor or such person as the Contractor may nominate, free of all encumbrances and third party rights.
- 30.2.4** The Intellectual Property Rights created pursuant to this Consolidated Contract:
- (i) described in Paragraph 2 (*Designated IPR*) of Consolidated Schedule 24 (*Intellectual Property Rights*); and
 - (ii) in software which have been agreed through the Contract Change Procedure as being intended to be owned by the Customer Authority,
- shall be “**Designated IPR**”.
- 30.2.5** The Contractor shall mark any copyright work comprising Designated IPR with the legend “© Crown owned copyright” and the year of generation of the work.
- 30.2.6** All Designated IPR shall vest absolutely in and remain the property of the Customer Authority and the Contractor shall not acquire any rights in the Designated IPR except as set out in Clause 30.3.1 below.
- 30.2.7** To the extent any Designated IPR and any Intellectual Property Rights subsisting in or relating to Customer Authority Data do not initially vest in the Customer Authority, the Contractor hereby irrevocably assigns, transfers and conveys and shall procure that all Sub-contractors, Affiliates of Sub-contractors and Contractor

Personnel assign, transfer and convey to the Customer Authority or such person as it may nominate for no additional payment, with full title guarantee, all right, title and interest to or in the Designated IPR and the Intellectual Property Rights subsisting in or relating to the Customer Authority Data and shall undertake all additional necessary acts promptly upon creation of such rights, at its cost, to give effect to the assignment or transfer of such rights to the Customer Authority.

30.2.8 The assignment under Clause 30.2.7 above shall either take effect on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.

30.2.9 To the extent that any Moral Rights in or to the Designated IPR and Customer Authority Data vest in any individual and to the extent permitted by Law, the Contractor shall procure that such individual shall unconditionally and irrevocably waive all Moral Rights which he/she may have in the Designated IPR and Customer Authority Data.

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

30.2.11 The Contractor shall use all reasonable endeavours to take such steps as the Customer Authority may require in order to enforce the Customer Authority's rights in the Customer Authority IPR against third parties, provided that the Customer Authority shall:

- (i) reimburse the Contractor in respect of any costs reasonably incurred by the Contractor in taking such steps; and
- (ii) indemnify the Contractor against any consequent liability (including for costs) incurred by the Contractor to such third parties.

30.2.12 Consolidated Schedule 24 (*Intellectual Property Rights*) sets out a non-exhaustive list of the Intellectual Property Rights that the Parties agree falls within each of the categories listed below:

- (i) Customer Authority Data;
- (ii) Designated IPR;
- (iii) all other Customer Authority IPR;
- (iv) Contractor IPR;
- (v) Special Contractor IPR; and
- (vi) Contractor Third Party IPR.

30.3 Licence

30.3.1 Subject to Clause 31 (*Customer Authority Data*), the Customer Authority hereby grants, including by way of a present licence of future rights, a limited, revocable, non-exclusive, non-sublicensable (except to the Sub-contractors), non-transferable and royalty-free licence for the Contractor to use:

- (i) the Designated IPR, including those which have been assigned to the Customer Authority pursuant to Clause 30.2.7 above;
- (ii) the Customer Authority Data; and
- (iii) any other Customer Authority IPR in respect of which the Customer Authority has expressly confirmed using the Contract Change Procedure, at the time of making such Customer Authority IPR available, can be used by the Contractor (and, where required, its Sub-contractors) pursuant to this Clause 30.3.1,

for the duration of the Term (and any Exit Period), in each case, solely as may be necessary to provide the Services, subject to and in accordance with the terms of this Consolidated Contract, and for no other purposes whatsoever. This licence may be revoked by the Customer Authority at any time.

30.3.2 The Customer Authority hereby grants to the Contractor and its Sub-contractors, or shall use its reasonable endeavours to procure the grant by the relevant third party of, a limited, revocable, non-exclusive, non-sublicensable, non-transferable and royalty free licence to use such Customer Authority Third Party IPR as is expressly identified in Consolidated Schedule 8 (*Customer Authority Dependencies*) (and no other Customer Authority IPR) for the duration of the Term (and any Exit Period) solely as may be necessary to provide the Services, subject to and in accordance with the terms of this Consolidated Contract and the terms of any relevant third party licences to the extent that such terms have been notified to the Contractor in writing. The Customer Authority Third Party IPR shall remain with or vest in the Customer Authority's licensors.

30.3.3 In the event of the termination (however arising) or expiry of this Consolidated Contract, the licences granted under Clause 30.3.1 and Clause 30.3.2 above (and any permitted sub-licences) shall terminate automatically and the Contractor shall, and shall procure that all relevant Sub-contractors shall, at the Customer Authority's option on a case-by-case basis, in accordance with and without prejudice to Paragraph 7.1.2(i) of Consolidated Schedule 20 (*Exit Management*), return to the Customer Authority (or such person as the Customer Authority may nominate, including any relevant third party licensor), or destroy permanently, securely and in accordance with the Standards (but not before being expressly requested to do so by the Customer Authority) all Customer Authority IPR and Customer Authority Third Party IPR, including all materials in which the Customer Authority IPR and Customer Authority Third Party IPR subsist, which are in the Contractor's or the relevant Sub-contractor's possession or control. The Contractor shall supply a certificate signed by a director of the Contractor to confirm its compliance with the requirements of this Clause 30.3.3 as soon as practicable following any such request by the Customer Authority.

30.3.4 The Contractor hereby grants, including by way of a present licence of future rights, (or shall procure that any relevant third party shall grant) a non-exclusive, non-transferable (save in connection with the permitted assignment under Clause 54 (*Assignment and Novation*)) and royalty free licence for the Customer Authority to use:

- (i) the Special Contractor IPR, such licence being a Perpetual licence; and

- (ii) all other Contractor IPR and Contractor Third Party IPR, for the duration of the Term (and any Exit Period),

for the purpose of the Customer Authority receiving the benefit of this Consolidated Contract (including the benefit of any Services (including the Termination Services) and any Exit Assistance), to enable the transfer of the Services to the relevant Replacement Services and for any other internal purposes of the Customer Authority.

- 30.3.5 Subject to Clause 34 (*Confidentiality and Publicity*), the licence granted under Clause 30.3.4 above shall include the right to make such Contractor IPR and Contractor Third Party IPR available to Indirect Customers, End Users, Customer Authority Third Parties, Replacement Contractor(s) and any Replacement Body and to sub-license to Indirect Customers, End Users, Customer Authority Third Parties, Replacement Contractor(s) and any Replacement Body the use of the Contractor IPR and Contractor Third Party IPR.

30.4 Incorporated Contractor Third Party IPR and Contractor IPR

- 30.4.1 Subject to Clauses 30.4.2 and 30.4.3 below, the Contractor shall not incorporate any Contractor Third Party IPR or Contractor IPR into the Transferring Assets, the Deliverables, the Customer Authority Data or any other items, features, services, software, software tools, systems, documents, databases, reports, specifications or materials (including any of the foregoing in which Customer Authority IPR subsists) that are provided by or on behalf of the Contractor to the Customer Authority (the “**Delivered Items**”) without first receiving prior written permission from the Customer Authority to do so, such permission to be obtained by the Contractor using the Contract Change Procedure. As part of the permission process, the Contractor shall give full details of the implications for the Customer Authority of incorporating or using such Intellectual Property Rights referred to above, including details of whether the Contractor considers the materials to be commercially sensitive or potentially subject to restrictions or other commercial barriers imposed by the relevant third party with respect to any on-going licence of Contractor Third Party IPR sought by the Customer Authority following the expiry or termination of this Consolidated Contract.
- 30.4.2 In the event that the Customer Authority gives the Contractor permission to incorporate any Contractor Third Party IPR or Contractor IPR into the Delivered Items in accordance with Clause 30.4.1 above, the Contractor shall grant, or shall procure that any relevant third party shall grant, to the Customer Authority and such other person(s) as the Customer Authority may nominate from time to time, a royalty-free, Perpetual licence to use, copy and amend the Delivered Items.
- 30.4.3 In relation to Contractor Third Party IPR, the Contractor shall:
 - (i) where requested by the Customer Authority, use reasonable endeavours to obtain the right for the Customer Authority and any Replacement Contractor to purchase ongoing support and maintenance for Contractor Third Party IPR on commercially reasonable terms for the purpose of receiving or providing Replacement Services; and

- (ii) to the extent that the Contractor is unable to obtain such rights, the Contractor shall not introduce such Contractor Third Party IPR for use in providing the Services without the Customer Authority's Approval.

30.4.4 The Contractor shall be responsible for obtaining all necessary third party licences required to use the Equipment, including any licences required to use, amend or modify the Intellectual Property Rights in software, code, data or other materials stored or embedded on the Equipment (including any Customer Authority Equipment).

30.5 IPR Indemnities

The Contractor shall indemnify the Customer Authority against IPR Claims in accordance with Clause 43 (*Indemnity*).

30.6 Source Code Delivery

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

31 CUSTOMER AUTHORITY DATA

31.1 All Customer Authority Data shall remain owned by the Customer Authority at all times.

31.2 The Contractor shall not, and shall procure that its Sub-contractors do not, delete or remove any proprietary notices contained within or relating to the Customer Authority Data.

31.3 The Contractor shall not, and shall procure that its Sub-contractors do not, store, copy, disclose or use the Customer Authority Data except as necessary for the performance by (as applicable) the Contractor or Sub-contractor of its obligations under this Consolidated Contract or as otherwise expressly authorised in advance in writing by the Customer Authority.

31.4 To the extent that Customer Authority Data is held or Processed by the Contractor, the Contractor shall supply that Customer Authority Data to the Customer Authority as requested by the Customer Authority in the formats specified in Consolidated Schedule 20 (*Exit Management*) and Consolidated Schedule 14 (*Performance Monitoring and Reporting*) (or as otherwise specified by the Customer Authority).

31.5 To the extent that Customer Authority Data is held, accessed or Processed by the Contractor, the Contractor shall, and shall procure that its Sub-contractors, preserve the integrity of Customer Authority Data and prevent the corruption or loss of Customer Authority Data (including of any copy of such Customer Authority Data).

31.6 The Contractor shall perform secure back-ups of all Customer Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Customer Authority at all times upon request and are delivered to the Customer Authority at no less than monthly intervals.

- 31.7** The Contractor shall, and shall procure that its Sub-contractors, ensure that any system on which the Contractor or Sub-contractor holds or accesses any Customer Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 31.8** Without prejudice to Consolidated Schedule 6 (*Standards*), the Contractor shall, and shall procure that its Sub-contractors, ensure that any system on which it holds or accesses any Customer Authority Data shall be certified and accredited using HMG IA Standard Number 2 (Risk Management and Accreditation of Information Systems). The Contractor shall review such certification and accreditation status at least once in each Contract Year to assess whether material changes have occurred, or are likely to occur, to any such system which could alter the original accreditation decision. If any such changes have occurred, or are likely to occur, to any such system then the Contractor shall resubmit such system for accreditation and certification.
- 31.9** If the Customer Authority Data is corrupted, lost, or degraded as a result of the Contractor's Default so as to be unusable, the Customer Authority may do any or all of the following:
- 31.9.1** require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Authority Data to the extent and in accordance with the requirements specified in the Standards, in which case the Contractor shall do so as soon as possible; and
 - 31.9.2** itself restore or procure the restoration of Customer Authority Data, in which case the Customer Authority shall be repaid by the Contractor any reasonable expenses incurred in restoring the Customer Authority Data to the extent and in accordance with the requirements specified in Consolidated Schedule 22 (*Business Continuity and Disaster Recovery Provisions*).
- 31.10** If at any time the Contractor suspects or has reason to believe that Customer Authority Data or any copy thereof has, or may, become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Customer Authority in writing immediately and inform the Customer Authority of the remedial action the Contractor proposes to take. The Customer Authority may rely upon such report in relation to any action it then takes under this Consolidated Contract.

32 PROTECTION OF PERSONAL DATA

- 32.1** With respect to Personal Data for which the Customer Authority is the Data Controller and which are Processed by the Contractor or any Sub-contractor pursuant to or in connection with this Consolidated Contract (the "**Customer Authority Personal Data**"), the Parties agree that the Contractor is the Data Processor.
- 32.2** The Contractor recognises the value and importance of Customer Authority Personal Data and the material prejudice to individuals and the Customer Authority that may arise from it being mishandled. The Contractor shall, and shall ensure that the Sub-contractor shall:
- 32.2.1** Process the Customer Authority Personal Data only in accordance with instructions from the Customer Authority (which may be specific instructions or instructions of a general nature as set out in this Consolidated Contract or as otherwise notified by the Customer Authority to the Contractor during the Term);

- 32.2.2** subject to Clause 34.6 below, Process the Customer Authority Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 32.2.3** implement and maintain appropriate technical and organisational measures to protect the Customer Authority Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer Authority Personal Data and having regard to the nature of the Customer Authority Personal Data which is to be protected;
- 32.2.4** when implementing such technical and organisational measures, shall have regard to:
- (i) the sensitive nature of the Personal Data contained within the Customer Authority Personal Data and the substantial harm which would result from unauthorised or unlawful Processing or accidental loss or destruction of or damage to such Personal Data or copies thereof; and
 - (ii) the state of technological development and the cost of implementing such measures;
- 32.2.5** if there are options as to whether or how to Process Customer Authority Personal Data, always use the most secure commercially reasonable option (this shall include using dummy data rather than live Customer Authority Personal Data, and not downloading Customer Authority Personal Data onto portable media or devices or removing it from secure premises where it would be possible to carry out the activity required under this Consolidated Contract without doing so);
- 32.2.6** take reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Customer Authority Personal Data;
- 32.2.7** not disclose or transfer any Customer Authority Personal Data to any Sub-contractor or Affiliate without Approval from the Customer Authority, other than when strictly necessary for the provision of the Services;
- 32.2.8** ensure that all Contractor Personnel required to access the Customer Authority Personal Data:
- (i) are informed of the confidential nature of the Customer Authority Personal Data and comply with the obligations set out in this Clause 32;
 - (ii) have undergone all adequate training in the care, protection and handling of Customer Authority Personal Data; and
 - (iii) perform their duties in relation to this Consolidated Contract strictly in compliance with this Clause 32 and with the Data Protection Legislation;
- 32.2.9** ensure that none of the Contractor Personnel publish, disclose or divulge any of the Customer Authority Personal Data to any third party unless directed in writing to do so by the Customer Authority;
- 32.2.10** notify the Customer Authority (in writing within five (5) Working Days or such other period as required by the Customer Authority) if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Customer Authority's obligations under the Data Protection Legislation (including from the Information Commissioner's Office);
- 32.2.11** provide the Customer Authority with full cooperation and assistance in relation to any complaint or request made, including by:
- (i) providing the Customer Authority with full details of the complaint or request;
 - (ii) complying with:
 - (a) a data access request;
 - (b) a request from the Customer Authority or a Data Subject to rectify, block or erase any Customer Authority Personal Data, to prevent the Processing of such Customer Authority Personal Data in connection with direct marketing;
 - (c) a request from the Customer Authority or a Data Subject to require an explanation of any decision made by automated means in respect of such Data Subject's Personal Data; and
 - (d) the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer Authority's instructions;
 - (iii) providing the Customer Authority with any Customer Authority Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer Authority); and
 - (iv) providing the Customer Authority with any information requested by the Customer Authority;
- 32.2.12** permit the Customer Authority or the Customer Authority Representative (subject to reasonable confidentiality undertakings), to inspect and audit, in accordance with Clause 22 (*Audits, Notifications and Record Keeping*), the Contractor's data Processing activities (and those of its agents, Affiliates and Sub-contractors) and comply with all reasonable requests or directions by the Customer Authority to enable the Customer Authority to verify or, if relevant, procure that the Contractor is in full compliance with its obligations under this Consolidated Contract;
- 32.2.13** provide the Customer Authority with a written description of the technical and organisational methods employed by the Contractor for Processing Customer Authority Personal Data (within the timescales required by the Customer Authority); and
- 32.2.14** not Process Customer Authority Personal Data outside the United Kingdom without the Approval of the Customer Authority and, where the Customer Authority Approves to a transfer, to:
- (i) comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 (as such legislation may change from time to time) by providing an

adequate level of protection to any Customer Authority Personal Data that is transferred;

- (ii) comply with any reasonable instructions notified to it by the Customer Authority; and
- (iii) notify the Customer Authority in writing of any circumstances that may prevent the Contractor from fulfilling its obligations under this Clause 32.

32.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Consolidated Contract in such a way as to cause the Customer Authority to breach any of its applicable obligations under the Data Protection Legislation.

32.4 The Contractor shall not carry out any research, analysis or profiling activity which involves the use of any element of the Customer Authority Personal Data (including in aggregate form) or any information derived from the Processing of such Customer Authority Personal Data.

32.5 The Contractor acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Customer Authority Personal Data that the Customer Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer Authority may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

33 FREEDOM OF INFORMATION

33.1 The Contractor acknowledges that the Customer Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer Authority to enable it to comply with its Information disclosure obligations.

33.2 The Contractor shall and shall procure that the Sub-contractors and Contractor Personnel shall:

33.2.1 transfer to the Customer Authority all Requests for Information that it or they receive as soon as practicable and in any event within two (2) Working Days of receipt;

33.2.2 provide the Customer Authority with a copy of all required Information in its possession or power in the form that the Customer Authority requests within five (5) Working Days (or such other period as the Customer Authority may specify in writing) of the Customer Authority's request; and

33.2.3 provide all necessary assistance as reasonably requested by the Customer Authority to enable the Customer Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

33.3 The Customer Authority may determine in its absolute discretion (and notwithstanding any other provision in this Consolidated Contract or any other agreement) whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

33.4 The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so in writing by the Customer Authority.

33.5 The Contractor acknowledges that (notwithstanding this Clause 33) the Customer Authority may, acting in accordance with the Access Code or otherwise as required by Law, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

33.5.1 in certain circumstances without consulting the Contractor; or

33.5.2 following consultation with the Contractor and having taken its views into account, provided always that, where Clause 33.5.1 above applies, the Customer Authority shall, in accordance with any recommendations of the Access Code, take reasonable steps where appropriate to give the Contractor advanced notice or, failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

34 CONFIDENTIALITY AND PUBLICITY

34.1 Except to the extent set out in this Clause 34 or where disclosure is expressly permitted elsewhere in this Consolidated Contract or to the Framework Authority under the Framework Agreement, each Party shall:

34.1.1 treat the other Party's Confidential Information as confidential and safeguard it from loss or disclosure accordingly; and

34.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

34.2 The Customer Authority IPR is the Customer Authority's (and not the Contractor's) Confidential Information.

34.3 Clause 34.1 above shall not apply to the extent that:

34.3.1 such disclosure is a requirement of Law placed upon the Customer Authority, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

34.3.2 such disclosure is a mandatory requirement of the Laws of the United Kingdom placed upon the Contractor;

34.3.3 such information was in the possession of the Party making the disclosure without restriction as to its disclosure before its disclosure by the information owner;

34.3.4 such information was obtained from a third party who acquired it lawfully and who is under no obligation restricting its disclosure;

34.3.5 such information was already in the public domain at the time of disclosure otherwise than by a Default; or

34.3.6 such information is developed independently, without access to the other Party's Confidential Information.

34.4 The Contractor may disclose the Customer Authority's Confidential Information only to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and comply with these obligations as to confidentiality.

- 34.5** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Customer Authority's Confidential Information other than for the purposes of this Consolidated Contract.
- 34.6** Nothing in this Consolidated Contract or the Framework Agreement shall permit the Contractor to, and therefore the Contractor shall not, monitor the Services (or any part of them) or to intercept or disclose any data relating to the Services (or any part of them), other than as expressly required (rather than permitted) by the Service Requirements or by a mandatory provision of the Laws of England and Wales. The Contractor acknowledges that the nature of the Customer Authority's operations means that disclosures of such data required by Laws other than the Laws of the England and Wales must not be complied with (and the Contractor shall not comply with such Laws and requirements, except with Approval (such Approval to refer expressly to this Clause 34.6) so as not to jeopardise the security of the United Kingdom and its citizens.
- 34.7** In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Consolidated Contract, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the Contractor shall provide such evidence to the Customer Authority as the Customer Authority may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Contractor is taking appropriate steps to comply with this Clause 34.7, including copies of any written communications to and from Contractor Personnel, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 34.8** In order to ensure that no unauthorised person gains access to any Customer Authority's Confidential Information or any data obtained in performance of this Consolidated Contract, the Contractor undertakes to maintain adequate security arrangements that meet the Security Requirements, acting in accordance with the Security Policy.
- 34.9** The Contractor will immediately notify the Customer Authority of any Breach of Security in relation to the Customer Authority's Confidential Information obtained in the performance of this Consolidated Contract and will keep a record of such Breaches of Security. The Contractor will use its Best Endeavours to recover such Customer Authority's Confidential Information however it may be recorded.
- 34.10** This obligation is in addition to the Contractor's obligations under Clauses 34.1 to 34.7 above. The Contractor will take all reasonable steps required by the Customer Authority to remedy and prevent any Breach of Security in relation to the Customer Authority's Confidential Information including co-operating with the Customer Authority in any investigation that the Customer Authority considers necessary to undertake as a result of any Breach of Security in relation to any Customer Authority's Confidential Information.
- 34.11** The Contractor shall, at its own expense, alter any security systems used in connection with the performance of this Consolidated Contract at any time during the Term at the Customer Authority's request if the Customer Authority believes (acting reasonably) the Contractor has failed to comply with either of Clauses 34.8 or 34.10 (or both) or Clause 18.12 of the Framework Agreement.

- 34.12** The Contractor shall, at its own expense, alter any security systems used in connection with the performance of this Consolidated Contract at any time during the Term (or any Exit Period) at the Customer Authority's request if the Customer Authority believes (acting reasonably) the Contractor has failed to comply with Clauses 34.8 or 34.10 above.
- 34.13** Nothing in this Consolidated Contract shall prevent the Customer Authority from disclosing the Contractor's Confidential Information:
- 34.13.1** to the PSNA, any Crown Body or any other Contracting Authority. The PSNA and all Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies and other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of the PSNA, any Crown Body or any Contracting Authority (or to any person which is a permitted assignee of either of them);
 - 34.13.2** as permitted under the Framework Agreement;
 - 34.13.3** subject to Clause 34.14 below, to a Replacement Contractor, or potential Replacement Contractor, in relation to the re-tendering or transfer of the Services who is subject to confidentiality obligations with the Customer Authority broadly equivalent to those set out in this Clause 34;
 - 34.13.4** for the purpose of fulfilling the Customer Authority's obligations to support contingent operations overseas and military operations in the United Kingdom (including the provision of military aid to the civil authorities) as required by the Customer Authority's publication, British Defence Doctrine (JDP 0-01 Fourth Edition), as set out in the Standards;
 - 34.13.5** made pursuant to the Transparency Agenda;
 - 34.13.6** to a tax authority in connection with the tax affairs of the Customer Authority;
 - 34.13.7** to a Regulatory Body at the request of such Regulatory Body;
 - 34.13.8** subject to Clause 34.14 below, to any third party appointed by the Customer Authority to perform its Step-in rights and to work with the Contractor in performing all or part of the Services, in accordance with Clause 51.5 below;
 - 34.13.9** subject to Clause 34.14 below, to any Customer Authority Third Party (including any consultant, contractor or other person engaged by the Customer Authority) and that person is subject to confidentiality obligations with the Customer Authority broadly equivalent to those set out in this Clause 34 (*Confidentiality*);
 - 34.13.10** to any Replacement Body or potential Replacement Body;
 - 34.13.11** in connection with a gateway review;
 - 34.13.12** for the purpose of the examination and certification of the Customer Authority's accounts or those of the Framework Authority or any Indirect Customer;
 - 34.13.13** for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer Authority has used its resources; or
 - 34.13.14** for the purpose of responding to any Parliamentary questions that the Customer Authority may be required to respond to from time to time.

- 34.14** The Customer Authority shall use its reasonable endeavours to ensure that any person to whom the Contractor's Confidential Information is disclosed pursuant to Clause 34.13 above is made aware of the Customer Authority's obligations of confidentiality.
- 34.15** Nothing in this Clause 34 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of this Consolidated Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 34.16** Where, pursuant to Clause 56.2 below, the Customer Authority appoints an Other PSN Services Contractor or Wider PSN Contractor to act on its behalf or represent it to the Contractor in relation to this Consolidated Contract, then, dependent on the role allocated to the Other PSN Services Contractor or Wider PSN Contractor, the Contractor may be required by the Customer Authority to provide information to the Other PSN Services Contractor or Wider PSN Contractor rather than, or as well as, the Customer Authority. The Contractor shall not be required to disclose information directly relating to its costs to the Other PSN Services Contractor or Wider PSN Contractor. If the Contractor reasonably believes that the disclosure to the Other PSN Services Contractor or Wider PSN Contractor of other Contractor's Confidential Information which it regards as commercially sensitive would prejudice its ability to compete with the Other PSN Services Contractor or Wider PSN Contractor (or any person to whom the Other PSN Services Contractor or Wider PSN Contractor acts as a sub-contractor), then the Contractor may notify the Customer Authority in writing of its concerns and the reasons for them and, where the Customer Authority, acting reasonably, believes that such concerns are justified, the Customer Authority may:
- 34.16.1** direct the Contractor to redact specific elements of the information disclosed to the Other PSN Services Contractor or Wider PSN Contractor;
 - 34.16.2** disclose the relevant Contractor's Confidential Information to the Framework Authority; or
 - 34.16.3** not itself disclose the relevant Contractor's Confidential Information to the Other PSN Services Contractor or Wider PSN Contractor,
- in each case to the extent necessary to protect the legitimate interests of the Contractor as identified above. However the Contractor agrees that, subject to the provisions of this Clause 34, the Customer Authority may disclose the Contractor's Confidential Information to the Other PSN Services Contractor or Wider PSN Contractor.
- 34.17** The Contractor shall comply with, and shall ensure that the Contractor Personnel comply with:
- 34.17.1** the Official Secrets Act 1911 to 1989; and
 - 34.17.2** Section 182 of the Finance Act 1989.
- 34.18** The Contractor shall not and shall procure that its Sub-contractors and the Contractor Personnel shall not:
- 34.18.1** do anything which may damage the reputation of the Customer Authority (or any Indirect Customer) or bring the Customer Authority (or any Indirect Customer) into disrepute; or

34.18.2 make any press announcements or publicise this Consolidated Contract in any way without the Customer Authority's Approval. Where the Contractor or a Holding Company is required to make a public announcement by the applicable rules of any regulated securities exchange, it may do so, but shall notify the Customer Authority in writing and in advance of the announcement it intends to release and shall make any reasonable changes requested by the Customer Authority.

34.19 The Customer Authority may publicise this Consolidated Contract in accordance with any legal obligation upon the Customer Authority (or any Indirect Customer), including any examination of this Consolidated Contract by an auditor or otherwise.

34.20 The Contractor acknowledges to the Customer Authority that nothing in this Consolidated Contract either expressly or by implication constitutes an endorsement of any goods or services of the Contractor (including the Services) and the Contractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

34.21 The Parties acknowledge that the content of this Consolidated Contract is Confidential Information.

34.22 Subject to Clause 34.23 below, and notwithstanding any other term of this Consolidated Contract, the Contractor hereby gives his consent for the Customer Authority to publish this Consolidated Contract in its entirety, including from time to time agreed changes to this Consolidated Contract, to the general public.

34.23 The Customer Authority may consult with the Contractor to inform its decision regarding any exemptions under the provisions of the FOIA but the Customer Authority shall have the final decision in its absolute discretion as to whether any content is exempt from disclosure. The Contractor shall assist and cooperate with the Customer Authority to enable the Customer Authority to publish this Consolidated Contract.

SECTION H - CONTRACTOR AND AUTHORITY PROTECTIONS

35 GENERAL OBLIGATIONS OF THE PARTIES AND RIGHTS UNDER THE FRAMEWORK AGREEMENT

Contractor's Obligations

The Contractor shall:

35.1.1 at all times allocate sufficient resources to provide the Services as required by this Consolidated Contract;

35.1.2 subject to Clause 38 (*Change in Law*) obtain, and maintain throughout the Term, all the consents, authorisations (including PSN Compliance Certification and Certification), licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of the Services;

35.1.3 in addition to its obligations under any Call-Off Cooperation Agreement and subject to the relevant Customer Authority Third Party accepting duties of confidentiality to the Contractor in relation to such information (such duties may already be set out in any Call-Off Cooperation Agreement), provide (in a timely manner) to other Customer Authority Third Parties as are notified to the Contractor periodically, such reasonable cooperation, relevant information (including any Documentation),

advice and assistance in connection with the Services, including to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Consolidated Contract for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Contractor(s). The Contractor shall also work pro-actively with each of the Customer Authority Third Parties in a spirit of trust and mutual confidence;

- 35.1.4 in addition to its obligations under any Call-Off Cooperation Agreement the Contractor shall cooperate with suppliers of other PSN Services and GCN Service Providers to enable the efficient operation of the Public Services Network in accordance with the PSN Operating Model;
- 35.1.5 enter into a Call-Off Cooperation Agreement with any relevant Customer Authority Third Parties if reasonably required by the Customer Authority from time to time;
- 35.1.6 comply with its obligations in Consolidated Schedule 26 (*Further Terms for Third Party Contracts*) if required by the Customer Authority (acting reasonably); and
- 35.1.7 provide the Customer Authority with such assistance as the Customer Authority may reasonably require during the Term in respect of the supply of the Services including providing any or all ancillary or incidental services or functions not specified in the Service Requirements or the Contractor Service Descriptions where the relevant services and functions are reasonably and necessarily required for the proper performance of the Services under this Consolidated Contract.

36 CUSTOMER AUTHORITY DEPENDENCIES AND RIGHTS

- 36.1 The Parties acknowledge and agree that the Contractor's performance of the Services may depend on the Customer Authority's performance of the Customer Authority Dependencies. Therefore, the Contractor shall not be considered to be in breach of its obligations under this Consolidated Contract (including its obligations to ensure that each Milestone and Test is Achieved by the relevant Milestone Date and to ensure that the Services meet or exceed the Service Levels) to the extent that its failure to perform its obligations is as a direct result of a Customer Authority Cause, provided always that:
 - 36.1.1 the Contractor notifies the Customer Authority as soon as practicable, and in any event within five (5) Working Days, upon becoming aware that any Customer Authority Dependency has not or will not be performed or that its performance will be delayed (as applicable);
 - 36.1.2 the notification referred to in Clause 36.1.1 above includes details of the relevant Customer Authority Dependency, together with evidence of its adverse effect on the Contractor's ability to perform its obligations and the action the Contractor proposes to take to mitigate its effect, including the non-exhaustive mitigating steps described in Consolidated Schedule 8 (*Customer Authority Dependencies*); and
 - 36.1.3 the Contractor uses, and continues to use, all reasonable endeavours in accordance with Good Industry Practice to mitigate the effects of, and make good, the non-performance or delay in the performance of the Customer Authority Dependency and to facilitate the Contractor's continued performance of this Consolidated Contract.
- 36.2 If the Contractor has incurred any direct loss or expense as a result of a Delay due to a Customer Authority Cause (including as a result of complying with its obligations to put

forward a Correction Plan required by the Customer Authority pursuant to Clause 5 (*Implementation Delays – General Provisions*) or Clauses 7.18 to 7.22 (*Correction Plan*)) notwithstanding the Contractor fulfilling its obligations under Clause 36.1 above then, subject to Clause 36.3 below, the Contractor shall be entitled to reimbursement to the extent such loss exceeds five thousand pounds sterling (£5,000) in respect of any Customer Authority Cause and to the extent that it cannot mitigate that loss or expense in accordance with Clause 36.1 above. The Contractor shall provide the Customer Authority with any information the Customer Authority may reasonably require in order to assess the validity of the Contractor's claim to reimbursement (including full details of the direct loss or expense and why they are caused by the Customer Authority Cause). Such claim must be served by written notice on the Customer Authority as soon as possible after the Contractor incurs any such direct loss and in any event within ten (10) Working Days (or such other period as the Parties agree in writing). The value of the losses, expenses and reimbursements referred to in this Clause 36.2 shall be calculated on a Time and Materials Basis.

36.3 The Contractor shall in no circumstances be entitled to receive compensation under Clause 36.2 above, where the relevant Customer Authority Cause arose as a result of a Force Majeure Event.

36.4 If the Contractor is entitled to reimbursement in accordance with Clause 36.2 above then such compensation shall consist of staged payments to cover all direct loss and expense incurred by the Contractor as a result of a Delay due to a Customer Authority Cause provided that this reimbursement is intended to cover wasted costs only and shall not operate as to put the Contractor in a better position than it would have been but for the occurrence of the Customer Authority Cause. To the extent that:

36.4.1 any contributory or related breach of this Consolidated Contract (or any other agreement between the Customer Authority and the Contractor) by the Contractor caused or resulted in the Customer Authority Cause; or

36.4.2 the Customer Authority gives any advance notification that the Customer Authority Cause is or is likely to occur and the Contractor fails to comply with Clause 36.1.3 above,

then the reimbursement amount payable pursuant to Clause 36.2 above shall be reduced by a fair and equitable amount.

36.5 Any obligations of the Customer Authority not specified in Consolidated Schedule 8 (*Customer Authority Dependencies*), but specified elsewhere in this Consolidated Contract (including any obligations on the Customer Authority set out in the Standards) shall not be Customer Authority Dependencies unless they are specifically highlighted as 'Customer Authority Dependencies' in a CCN agreed and executed by the Customer Authority. There shall be no obligation on the Customer Authority to provide any advice or assistance to the Contractor save as set out in Consolidated Schedule 8 (*Customer Authority Dependencies*) and the sole remedy for failing to comply with the Customer Authority Dependencies shall be that set out in Clauses 36.1 to 36.4 above.

36.6 Without prejudice to any other Customer Authority rights and Contractor obligations under this Consolidated Contract, the following Customer Authority rights and Contractor obligations may be exercised and enforced by the Framework Authority under internal agreements between the Customer Authority and the Framework Authority:

36.6.1 Schedule 7 (*Financial Distress*) of the Framework Agreement;

36.6.2 adherence to Standards (excluding those Standards set out in Consolidated Schedule 6 (*Standards*) which shall be subject to the terms of this Consolidated Contract); and

36.6.3 Schedule 11 (*Insurance Requirements*) of the Framework Agreement.

36.7 Notwithstanding Clause 36.6 above, nothing agreed between the Contractor and the Framework Authority shall operate to relieve the Contractor of any of its obligations to the Customer Authority under this Consolidated Contract, except with the express, prior written consent of the Customer Authority. The Contractor shall provide the Customer Authority with copies of any notices or correspondence exchanged with the Framework Authority in relation to the items referred to in Clauses 36.6.1 to 36.6.3 above and shall request that the Framework Authority invites the Customer Authority, on reasonable notice, to any meetings or conference calls held to discuss these issues. Without prejudice to the generality of the foregoing, the Contractor shall notify the Customer Authority promptly of any Financial Distress Event or of any fact which could cause a Financial Distress Event and shall provide drafts of financial continuity plans shared with the Framework Authority to the Customer Authority at the same time as those plans are shared with the Framework Authority.

36.8 The rights and obligations referred to in Clause 36.6 above are set out in more detail in the Framework Agreement. Notwithstanding this, the Contractor agrees to comply, and shall ensure and procure that its Sub-contractors comply, with such obligations in the context of this Consolidated Contract and where any of the Contractor or its Sub-contractors breaches any obligation under the Framework Agreement which is intended to confer a benefit on the Customer Authority (either itself or for a number of Customers including the Customer Authority) Clause 44 (*Limitations on Liability*) of this Consolidated Contract shall apply when calculating the extent of the Contractor's liability.

36.9 The Contractor shall not propose any new Customer Authority Dependencies or any amendments to Customer Authority Dependencies, except through the Contract Change Procedure.

37 WARRANTIES

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

37.1.1 it has full capacity and authority to enter into and to perform this Consolidated Contract;

37.1.2 this Consolidated Contract is executed by a duly authorised representative of that Party;

37.1.3 it is Solvent and will remain Solvent throughout the Term;

37.1.4 there are no actions, lawsuits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Consolidated Contract; and

37.1.5 once duly executed this Consolidated Contract will constitute its legal, valid and binding obligations.

- 37.2** The Contractor warrants, represents and undertakes for the Term and any Exit Period that:
- 37.2.1** it has and will continue to hold all necessary regulatory approvals (if any) from the Regulatory Bodies necessary to perform its obligations under this Consolidated Contract;
 - 37.2.2** it has, and shall maintain in place, all necessary permits, licences, authorisations and consents to enter into this Consolidated Contract, perform the Services and comply with its obligations under this Consolidated Contract (including any obligations to assign or grant rights);
 - 37.2.3** where it provides PSN Services it is a PSN Service Provider and it has and will continue to maintain PSN Compliance Certification in respect of such PSN Services and will comply with all agreements and arrangements (whether or not legally binding) which it has entered into with the Framework Authority, the PSNA and the GCN Service Providers, or otherwise in relation to the governance and administration of the PSN;
 - 37.2.4** it has and will continue to have all necessary Intellectual Property Rights in and to all materials made available by any of the Contractor or the Sub-contractors to the Customer Authority in connection with this Consolidated Contract;
 - 37.2.5** it has, and shall have available, all systems, software (including the Software) and resources appropriate for, and fully fit for, the purpose of providing the Services that meet the Customer Authority's requirements as to scalability and security as specified in Consolidated Schedule 3 (*Service Requirements and Contractor Service Descriptions*);
 - 37.2.6** all components and equipment (including the Equipment) supplied or used in the course of provision of the Services will operate in a manner that will enable the Services to be performed so as to meet the Service Levels and will be used and maintained in accordance with Good Industry Practice;
 - 37.2.7** in performing its obligations under this Consolidated Contract, all software used by or on behalf of the Contractor shall:
 - (i) be currently supported versions of that software;
 - (ii) where applicable, comply with the PSN Compliance Conditions, except where the Contractor has obtained Approval to act otherwise; and
 - (iii) perform in all material respects in accordance with its specification;
 - 37.2.8** it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the:
 - (i) introduction, creation or propagation of any disruptive element, virus, worms or Trojans, spyware or other malware (including any Malware); and
 - (ii) unauthorised use of any codification or access;
 - 37.2.9** it shall take all measures necessary to avoid and prevent any and all data loss and data corruption during the provision of the Services, including as required by the Security Requirements;
 - 37.2.10** all Contractor Personnel are appropriately qualified, trained, and experienced to provide the Services in accordance with this Consolidated Contract;

- 37.2.11** as at the Contract Date all statements, information, warranties and representations contained in the Contractor's Response to the ITQ and (unless otherwise agreed) any other documents which resulted in the award of the Framework Agreement or this Consolidated Contract are to the best of its knowledge, information and belief, true and accurate and that it will advise the Customer Authority of any fact, matter or circumstance of which it may become aware which would render any such statement, information, warranty or representation to be false or misleading and all warranties and representations contained in the Contractor's Response to the ITQ shall be deemed repeated in this Consolidated Contract with reference to the circumstances existing at the time that they are deemed to be repeated;
- 37.2.12** it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under this Consolidated Contract;
- 37.2.13** it owns, has obtained or is able to obtain valid licences for all IPR that are necessary for the performance of its obligations under this Consolidated Contract and shall maintain the same in full force and effect;
- 37.2.14** the only Contractor Third Party IPR, Special Contractor IPR and Contractor IPR used in the provision of the Services and the performance of this Consolidated Contract shall be that Contractor IPR, Contractor Third Party IPR and Special Contractor IPR listed in Paragraphs 4 (*Contractor IPR*), 5 (*Special Contractor IPR*) and 6 (*Contractor Third Party IPR*) of Consolidated Schedule 24 (*Intellectual Property Rights*);
- 37.2.15** any manuals or other explanatory documentation provided by the Contractor to the Customer Authority (or any Indirect Customer) in respect of the use of the Services will contain all necessary information and explanation required for the purpose of executing the Exit Management Plan and for suitably experienced and qualified employees of the Customer Authority or of the Replacement Contractor to be able to use the Software and receive the Services and to perform the Replacement Services on termination or expiry;
- 37.2.16** all Re-Procurement Information and Exit Management Information provided under Consolidated Schedules 14 (*Performance Monitoring and Reporting*) and 20 (*Exit Management*) is complete and accurate in all material respects;
- 37.2.17** the Contractor System and Assets used in the performance of the Services will:
- (i) be free of all encumbrances except for hire purchase or leasing arrangements in respect of Equipment other than Exclusive Equipment;
 - (ii) (to the extent necessary for operation of the Services in accordance with this Consolidated Contract) be Date Compliant;
 - (iii) (to the extent necessary for operation of the Services in accordance with this Consolidated Contract) be Euro Compliant; and
 - (iv) where applicable, comply with the PSN Compliance Conditions; and
- 37.2.18** it shall at all times comply with the Law in carrying out its obligations under this Consolidated Contract.

37.3 The Contractor warrants, represents and undertakes that it shall:

37.3.1 obtain (in accordance with Paragraph 7.1 of Consolidated Schedule 7 (*Security Requirements*)); and

37.3.2 maintain during the Term and any Exit Period,

Certification for each Service.

37.4 The Contractor recognises that the warranties, representations and undertakings in this Consolidated Contract are material and have been designed to induce, and have actually induced, the Customer Authority to enter into this Consolidated Contract.

37.5 Except as expressly stated in this Consolidated Contract, all warranties and conditions implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

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

38 CHANGE IN LAW

38.1 Subject to Clause 34.6 (*Confidentiality and Publicity*), the Contractor shall comply with all Laws at all times when performing the Services, insofar as such Laws apply to the Services.

38.2 Subject to Clause 34.6 (*Confidentiality and Publicity*), the Contractor shall ensure the Services are performed so that any use, or receipt, by the Customer Authority of any of the Services does not cause it to be in breach of any Laws, to the extent its compliance with such Laws is dependent on the proper performance of the Services.

38.3 Each of the Parties shall advise the other immediately if it becomes aware of any non-compliance or potential non-compliance by the Contractor with the provisions of Clause 38.1 or 38.2 above in connection with the performance of the Services. If such an event occurs, the Contractor shall promptly make available to the Customer Authority any information that the Customer Authority reasonably requires for the purposes of any further investigation of such non-compliance or suspected non-compliance.

38.4 The Contractor shall not: (a) be relieved of its obligations to supply the Services in accordance with this Consolidated Contract; (b) be entitled to charge the Customer Authority for the cost of implementing changes that arise; or (c) be entitled to an increase in the Charges, as the result of:

38.4.1 new or revised PSN Compliance Conditions;

38.4.2 a General Change in Law; or

38.4.3 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Contract Date. The effect of a Specific Change in Law shall be “**known**” where the Contractor was aware or should reasonably have been aware of it as at the Contract Date.

38.5 If a Specific Change in Law occurs during the Term or any Exit Period (other than those referred to in Clause 38.4.3 above), the Contractor shall notify the Customer Authority in writing of the likely effects of that change, including whether any Contract Change is required.

- 38.6** As soon as practicable after any notification in accordance with Clause 38.5 above, the Parties shall discuss and seek to agree through the Contract Change Procedure the matters referred to in that Clause and any ways in which the Contractor can mitigate the effect of the Specific Change in Law, including:
- 38.6.1** providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - 38.6.2** demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred; and
 - 38.6.3** giving evidence as to how the Specific Change in Law has affected the overall cost of providing the Services (including by taking into account any expenditure that has been avoided).
- 38.7** Any change (if any) to the Charges resulting from any Specific Change in Law shall be made in accordance with, and subject to the provisions of, Consolidated Schedule 9 (*Charges and Invoicing*) and the Contract Change Procedure.
- 38.8** If there is any disagreement between the Parties under this Clause 38 regarding any Specific Change in Law or potential Specific Change in Law:
- 38.8.1** the Customer Authority shall have the right to determine: (a) whether a Specific Change in Law has occurred; and (b) how the Contractor should comply with that Specific Change in Law; and
 - 38.8.2** the cost of implementing any changes that result from the Specific Change in Law shall be made in accordance with, and subject to the provisions of, Consolidated Schedule 9 (*Charges and Invoicing*) and the Contract Change Procedure.

SECTION I - RISK PROTECTION

39 SECURITY REQUIREMENTS

- 39.1** The Contractor shall comply, and shall ensure that the Sub-contractor and the Contractor Personnel comply, with the DCNS Enterprise Security Policies, the IMP(s), the RMADS, the PCP(s), the Code of Connection, and all of the obligations and requirements set out in Consolidated Schedule 7 (*Security Requirements*).
- 39.2** The Contractor shall: (i) keep itself fully informed of the latest security and risk mitigation measures relating to the Services (including CESG Good Practice Guide and JSP 440) in accordance with Good Industry Practice; and (ii) (subject to Clause 8.7 above) promptly implement such measures as required by the Customer Authority from time to time. Any changes to the CESG Good Practice Guide and JSP 440 that may occur from time to time (whether material or otherwise) shall be discussed by the Parties at the Security Working Group meetings prior to the Contractor's implementation of measures to reflect such changes.
- 39.3** The Contractor shall be responsible for all aspects of cryptographic key management applicable to each of the Services, except in so far as custodian or other roles are expressly stated to be undertaken by the Customer Authority in accordance with the Approved PCPs and the Standards.

- 39.4** The Contractor shall be responsible for obtaining Certification of the Services in accordance with the Standards. Unless otherwise previously agreed with the Customer Authority in writing (such form of writing to refer to this Clause 39.4), no Service shall be submitted for Certification prior to achieving authorisation to do so from the Security Working Group. The Contractor shall also, where necessary for compliance with the Security Requirements, procure the appropriate Information Assurance evaluation process, using a CESG recognised scheme, of the networks and systems delivering the Services. Within twelve (12) months of the Operational Service Commencement Date for a Service, the Contractor shall submit to the Customer Authority for Approval, proposals outlining its proposed Information Assurance evaluation and Certification processes and the steps it will take to comply with them. The selection of the most appropriate scheme for security evaluation and Certification shall be determined by the Customer Authority in its sole discretion and shall be documented in the RMADS.
- 39.5** On each anniversary of the Contract Date, the Contractor shall provide to the Customer Authority, and shall copy simultaneously to the Framework Authority, a letter from its managing director or equivalent officer confirming that, having made due and careful inquiry:
- 39.5.1** it has in the previous Contract Year carried out all Security Tests and has in place all procedures required in relation to security matters under this Consolidated Contract, including Consolidated Schedule 7 (*Security Requirements*); and
 - 39.5.2** it is confident that its security and risk mitigation procedures with respect to the Services remain effective.
- 39.6** The Contractor shall ensure that all relevant Services:
- 39.6.1** which fall within the scope of the UK Critical National Infrastructure as defined by the Centre for the Protection of National Infrastructure are provided in accordance with the requirements of the UK Critical National Infrastructure protection programme;
 - 39.6.2** are, and remain throughout the Term, PSN Compliant;
 - 39.6.3** have and continue to have any approval, accreditation and certification required under this Consolidated Contract, including PSNA approval and certification, such certification being subject to the approval of the SRO; and
 - 39.6.4** are not provided in such a way that causes or is likely to cause the Customer Authority to breach either or both of the PSN Compliance Certificate or the Code of Connection.
- 39.7** Except to the extent specified from time to time by the Customer Authority, the Contractor shall participate, and the Contractor shall ensure that appropriate Sub-contractors participate, in the UK Critical National Infrastructure protection programme and give all necessary assistance to those organisations responsible for this programme so as to ensure that the provision of the Services to the Customer Authority is protected at all times.
- 39.8** Following receipt of an instruction to do so from the Customer Authority (acting through the Customer Authority's Network Operating Authority or otherwise), the Contractor shall promptly and within any such timeframe as is reasonably notified to it by the Customer Authority from time to time, disconnect any designated traffic flow, Service or Services (or

any part of them) provided to the Customer Authority or any Indirect Customers, such disconnection to occur in the order of priority directed by the Customer Authority. Such disconnection in accordance with this Clause 39.8 shall not cause the Contractor to be in breach of its obligations under this Consolidated Contract (including its obligations to provide the affected Services in accordance with the Service Levels).

40 ENVIRONMENTAL REQUIREMENTS

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

41 BUSINESS CONTINUITY AND DISASTER RECOVERY

- 41.1** The Contractor shall comply with the BCDR Plan and Consolidated Schedule 22 (*Business Continuity and Disaster Recovery Provisions*).
- 41.2** The Contractor shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.
- 41.3** Subject to Clause 41.4 below, where a Disaster or Business Continuity Event affects the Customer Authority, the Contractor shall comply with instructions from the Customer Authority as to the order of priority in which the Services should be taken down, fixed and restored.
- 41.4** Where a Disaster or Business Continuity Event affects the Customer Authority and the Customers, the Contractor shall comply with instructions from the Framework Authority as to the order of priority in which Services should be restored.
- 41.5** The Contractor shall undertake regular risk assessments in relation to the provision of the Services, not less than once every six (6) months (or such other period as the Parties agree in writing) (commencing from the first Operational Service Commencement Date) and shall provide the results of, and any recommendations in relation to, those risk assessments to the Customer Authority promptly in writing following each review.
- 41.6** The Contractor shall establish, maintain and review its own internal processes and procedures regularly with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

42 FORCE MAJEURE

- 42.1** Subject to the remaining provisions of this Clause 42, each Party shall be relieved from liability under this Consolidated Contract (including for late performance or non-performance of any obligations under this Consolidated Contract and the Customer Authority Dependencies) to the extent that, due to the occurrence of a Force Majeure Event, the Affected Party is unable to perform its obligations (or in the case of the Customer Authority, the Customer Authority Dependencies) under this Consolidated Contract, provided that:

- 42.1.1** the Affected Party shall immediately give the other Party written notice of the Force Majeure Event. Such notification shall include details of the Force Majeure Event, together with evidence of its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect; and
- 42.1.2** where the Contractor is the Affected Party, the Contractor has used all reasonable endeavours in accordance with Good Industry Practice to:
- (i) resume full performance of its obligations under this Consolidated Contract; and
 - (ii) overcome or mitigate the consequences of the Force Majeure Event on the performance of the obligations under this Consolidated Contract.
- 42.2** As soon as practicable after the Affected Party's notification has been received by the other Party and in any event within one (1) Working Day, the Parties shall consult with each other and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Consolidated Contract.
- 42.3** Where the provision of the Services or part thereof is prevented or affected by a Force Majeure Event, then the Customer Authority's obligation to pay the Charges shall, to the extent that those Charges relate to the part of the Services whose provision is prevented or affected by the Force Majeure Event, be reduced by an equitable amount (which in the case of total suspension would be an amount equal to the total Charges for the period of suspension), until the Contractor resumes full performance of the Services (or the relevant part of them) in accordance with the terms of this Consolidated Contract.
- 42.4** Notwithstanding the generality of this Clause 42:
- 42.4.1** a Party shall not be able to rely on this Clause 42 to claim relief from liability:
- (i) if the relevant Force Majeure Event is caused by its Default, breach of the Framework Agreement, wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event; or
 - (ii) because a sub-contractor has failed to perform, or is delayed in performing, its obligations under a contract with the Party (unless that sub-contractor is itself prevented from, or delayed in, complying with its obligations as a result of a Force Majeure Event); and
- 42.4.2** the Contractor shall not be able to rely on this Clause 42 to claim relief from liability:
- (i) if the relevant Force Majeure Event is attributable to its Codes or agreements with Other PSN Services Contractors; or
 - (ii) to the extent that the failure to comply with its obligations as set out under this Consolidated Contract results from a failure to implement the BCDR Plan (except to the extent that the Force Majeure Event prevented the Contractor from implementing the BCDR Plan).
- 42.5** The Affected Party shall notify the other Party promptly after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Consolidated Contract. The relief from liability under this Clause 42 shall only last for the shorter of the duration of the relevant Force Majeure Event or the time at which

the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Consolidated Contract.

SECTION J - INDEMNITIES, LIABILITY AND INSURANCE

43 INDEMNITY

43.1 Without prejudice to any other obligations on the Contractor to indemnify the Customer Authority under this Consolidated Contract, the Contractor shall at all times, during and after the Term, indemnify the Customer Authority and keep the Customer Authority indemnified against all Liabilities incurred by, awarded against or agreed to be paid by the Customer Authority arising from any or all of:

43.1.1 an IPR Claim; or

43.1.2 an Other PSN Services Contractor Claim.

43.2 The Customer Authority will:

43.2.1 notify the Contractor in writing of any IPR Claim and Other PSN Services Contractor Claim of which it is aware;

43.2.2 allow (subject to Clause 43.3 below) the Contractor to conduct all negotiations and proceedings and will provide the Contractor with such reasonable assistance required by the Contractor, each at the Contractor's cost, regarding the relevant IPR Claim or Other PSN Services Contractor Claim; and

43.2.3 not, without first consulting with the Contractor, make an admission relating to the relevant IPR Claim or Other PSN Services Contractor Claim.

43.3 The Contractor shall consider and defend the IPR Claim and Other PSN Services Contractor Claim diligently using competent counsel and in such a way as not to bring the Customer Authority into disrepute.

43.4 The Contractor shall not settle or compromise any IPR Claim or Other PSN Services Contractor Claim without the Customer Authority's Approval (not to be unreasonably withheld or delayed).

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

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

43.5.2 replace or modify the relevant item with non-infringing substitutes provided that:

- (i) the performance and functionality of the replacement or modified item is at least equivalent to the performance and functionality of the original item;
- (ii) the replacement or modified item does not have an adverse effect on any other Services, the Overall Services or the ICT Environment;
- (iii) there is no additional cost to the Customer Authority or non-trivial alteration to End Users' experience; and

- (iv) the terms of this Consolidated Contract shall apply to the replacement or modified item.

43.6 If:

- 43.6.1** the Contractor's attempts to modify or replace an item pursuant to Clause 43.5.2 above or to procure a licence in accordance with Clause 43.5.1 above, are not successful and do not fully avoid or resolve the IPR Claim; or
- 43.6.2** any or all of the Customer Authority, any of its Indirect Customers or End Users become subject to a binding court order arising in connection with the IPR Claim to cease using all or any part of the Services or ICT Environment and the Contractor does not obtain the discharge of such order within ten (10) Working Days,

then this shall be an irremediable material Default for the purposes of Clause 47.6.2 (*Termination for Cause by the Customer Authority*) and, without prejudice to the indemnity set out in Clause 43.1 above or the Customer Authority's other rights and remedies, the Contractor shall be liable during the remainder of the Term and any Exit Period for all reasonable and unavoidable costs of the relevant substitute items and services including the additional costs of procuring, implementing and maintaining the substitute items and services.

43.7 Clause 43.1 above shall not apply in respect of any IPR Claim caused by the use by the Customer Authority of the Software:

- 43.7.1** in combination with any item not supplied pursuant to this Consolidated Contract;
- 43.7.2** in a manner not reasonably to be inferred from the Contractor Service Descriptions or the other provisions of this Consolidated Contract; or
- 43.7.3** otherwise than in accordance with Clause 30.3.4 above.

44 LIMITATIONS ON LIABILITY

44.1 The limits on liability set out in this Clause 44 shall not apply in respect of liability arising in relation to:

- 44.1.1** death or personal injury caused by a Party's negligence, or that of its employees, agents or Sub-contractors (as applicable);
- 44.1.2** Fraud or fraudulent misrepresentation by a Party or by its employees;
- 44.1.3** Wilful Default by the Contractor;
- 44.1.4** the obligation on the Customer Authority to pay Charges that have become due in accordance with Consolidated Schedule 9 (*Charges and Invoicing*);
- 44.1.5** any breach of any obligation implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 44.1.6** the obligations or liability under the indemnities in Clause 14.2, Clause 26.15, Clause 27 (*Employment Indemnity*), Clause 43 (*Indemnity*) (excluding Clause 43.1.2), Clause 57 (*Corrupt Gifts*) and Consolidated Schedules 20 (*Exit Management*) and 21 (*Staff Transfer*);
- 44.1.7** breach of any obligation of the Contractor under Clause 34 (*Confidentiality and Publicity*); or

44.1.8 any matters to the extent liability in relation to such matters cannot be lawfully limited or excluded.

Financial Limits

44.2 Subject to Clause 44.1 above and to the maximum extent permitted by Law, the Contractor's aggregate liability in respect of all Liabilities including any Service Credits paid or payable in accordance with Clause 7 (*Service Levels, Performance Monitoring and Warning Notices*) and Consolidated Schedule 4 (*Service Levels and Related Remedies*), whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or connection with this Consolidated Contract, shall be limited to £51,166,261 .

44.3 Subject to Clause 44.1 above and to the maximum extent permitted by Law, the Customer Authority's aggregate liability, whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or connection with this Consolidated Contract, shall:

44.3.1 in respect of reimbursements paid or payable under Clause 36.2 above, be limited to £10,233,252; and

44.3.2 in respect of all Liabilities (taken together), be limited to £40,933,009.

44.4 Subject to Clause 44.1 above and Clause 44.5 below, neither Party will be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of any:

44.4.1 indirect loss or damage;

44.4.2 special loss or damage;

44.4.3 consequential loss or damage;

44.4.4 loss of profits (whether direct or indirect);

44.4.5 loss of turnover (whether direct or indirect);

44.4.6 loss of business opportunities (whether direct or indirect); or

44.4.7 damage to goodwill (whether direct or indirect),

and in each case, even if that Party was aware of the possibility of such loss or damage to the other.

44.5 Subject to Clauses 44.1 and 44.2 above, the provisions of Clause 44.4 above shall not be taken as limiting the right of the Customer Authority to, amongst other things, recover as a direct loss:

44.5.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Customer Authority: (i) to Customer Authority Third Parties; (ii) to any other third party; and (iii) for putting in place workarounds for the Services and other services that are reliant on the Services;

44.5.2 any or all: (i) wasted expenditure; (ii) Liabilities rendered unnecessary; and (iii) Liabilities incurred by the Customer Authority, arising from the Contractor's Default (including wasted management time);

44.5.3 the additional cost of procuring and maintaining in place transitional assistance and Replacement Services for the remainder of the Term and any Exit Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the charges for the Replacement Services over and above the fees that would have been payable for the relevant Services);

44.5.4 any Liabilities arising in connection with the loss, destruction, corruption, inaccuracy or degradation of the Customer Authority Data, or other data, including the cost and expense of reconstituting the Customer Authority Data; or

44.5.5 damage to the Customer Authority's property and assets.

44.6 If any limitation or provision contained or expressly referred to in this Clause 44 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 44.

44.7 Nothing in this Clause 44 shall affect a Party's general duty to mitigate its loss (other than in relation to indemnities).

44.8 Where certain obligations in the Framework Agreement are intended to benefit and may be enforced by the Customer Authority (including those clauses listed in Clause 1.4 of the Framework Agreement), any breach of such obligations shall, in the context of this Consolidated Contract, be subject to the terms of this Consolidated Contract rather than the Framework Agreement including this Clause 44.

45 INSURANCE

45.1 Without prejudice to Clauses 36.6 (*Customer Authority Dependencies and Rights*) and 44 (*Limitations on Liability*), and in addition to its obligations under Clause 27 of the Framework Agreement (*Insurance*) and Schedule 11 (*Insurance Requirements*) of the Framework Agreement, the Contractor shall ensure that throughout the Term (and any Exit Period) it maintains in place the following classes of insurance shown in the table below:

Class	Minimum Sum Insured	Maximum Deductible Value
Third Party Public and Products Liability Insurance	At least: (i) in relation to third party public liability, ten million pounds sterling (£10,000,000) per occurrence, with the number of occurrences being unlimited in any annual period of insurance; and (ii) in relation to third party products and pollution liability, ten million pounds sterling (£10,000,000) per	In relation to third party property claims, the maximum deductible value shall not exceed [REDACTED] per claim. There shall be no deductible for personal injury claims. In other words, the maximum deductible value for personal injury claims is zero (0).

Class	Minimum Sum Insured	Maximum Deductible Value
	occurrence and no less than ten million pounds sterling (£10,000,000) in aggregate per annum.	
Professional Indemnity Insurance	At least fifteen million pounds sterling (£15,000,000) per claim and in aggregate per annum.	Not to exceed [REDACTED] per claim.
Employers Liability Insurance	As set out in the Law (including the Employers' Liability Act 1969 as at the Contract Date).	There shall be no deductible for employers' liability insurance claims. In other words, the maximum deductible value for employers liability insurance claims is zero (0).
Third Party Motor Insurance	As set out in the Law (including the Road Traffic Act 1988 as at the Contract Date).	There shall be no deductible for Third Party Motor Insurance claims. In other words, the maximum deductible value for Third Party Motor Insurance claims is zero (0).

45.2 All of the insurances referred to in this Clause 45 form part of the “**Required Insurances**”.

45.3 Where the minimum limit of indemnity required in relation to any of the Required Insurances is specified as being “in aggregate” in Clause 45.1 above then:

45.3.1 if a claim or claims which do not relate to this Consolidated Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, within five (5) Working Days of being notified the Contractor shall submit to the Customer Authority and the Framework Authority full written details of the policy concerned and provide its proposed solution for maintaining the minimum limit of indemnity specified in Clause 45.1 above;

45.3.2 if, and to the extent that the level of cover available falls below that minimum because a claim or claims which do not relate to this Consolidated Contract are paid by insurers, the Contractor shall ensure that the cover is reinstated as soon as is reasonably practicable to maintain at all times the minimum limit of indemnity specified for claims relating to this Consolidated Contract; and

45.3.3 without prejudice to its obligations to maintain the classes of insurance set out in Clause 45.1 above, if the Contractor is or has reason to believe that it will be unable to ensure that cover is reinstated to maintain at all times the minimum limit of indemnity specified, within five (5) Working Days of its belief it shall submit to the

Customer Authority and the Framework Authority full written details of the policy concerned and shall provide its proposed solution.

SECTION K - TERM, TERMINATION AND EXIT MANAGEMENT

46 TERM

46.1 This Consolidated Contract will begin on the Contract Date and, unless terminated at an earlier date by operation of Law or in accordance with Clause 47 (*Termination Rights*), will terminate at:

46.1.1 the end of the Initial Term; or

46.1.2 if the Customer Authority elects to extend the Initial Term in accordance with Clause 46.2 below, at the end of last Extension Period.

46.2 The Customer Authority shall have the right to extend this Consolidated Contract by up to two (2) one-year periods by serving no less than three (3) months' written notice to the Contractor prior to the expiry of the Initial Term of this Consolidated Contract or the first Extension Period (as applicable). Any such extensions shall continue on the same terms and conditions, save that the Charges shall be reduced in accordance with Consolidated Schedule 9 (*Charges and Invoicing*).

47 TERMINATION RIGHTS

47.1 The rights of the Customer Authority (to terminate or otherwise) under this Clause 47 are in addition (and without prejudice) to any other right or remedy which the Customer Authority may have, including to claim the amount of Liabilities suffered by the Customer Authority on account of the acts or omissions of the Contractor (subject to the limitations of liability set out in Clause 44 (*Limitations on Liability*)).

47.2 Unless stated otherwise, any reference in this Clause 47 to the termination of this Consolidated Contract "**in part**", shall be interpreted to include the termination of one or more Services.

Termination for Cause by the Customer Authority

47.3 The Customer Authority may terminate this Consolidated Contract in whole or in part (for example, in relation to one or more Services) by issuing a Termination Notice to the Contractor if one or more of the circumstances set out in Clause 47.6 below exist.

47.4 Where the Customer Authority is terminating this Consolidated Contract (or a part of it) for a material Default of this Consolidated Contract or one of the specific provisions in Clause 47.6 below, it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.

47.5 Circumstances where a Default shall be deemed not capable of remedy include where the Contractor has already failed to resolve the relevant Default in accordance with a Correction Plan pursuant to Clauses 5 (*Implementation Delays - General Provisions*) or 7 (*Service Levels, Performance Monitoring and Warning Notices*).

- 47.6** The circumstances giving rise to the Customer Authority's right to issue a Termination Notice to terminate this Consolidated Contract in whole or in part for cause are any of the following:
- 47.6.1** the Contractor is in material Default which it has failed to remedy within twenty (20) Working Days of written notice to do so (a material Default will include the Contractor failing to comply, in whole or in part, with Clause 39.6);
 - 47.6.2** the Contractor commits a material Default of this Consolidated Contract which is irremediable;
 - 47.6.3** the circumstances set out in Clause 13.11 (*Management Information*);
 - 47.6.4** the Contractor's failure:
 - (i) to Achieve a Milestone by its associated Milestone Date; and
 - (ii) if a Correction Plan is required under Clause 5.4, to comply with a Correction Plan for a Milestone, Test or Service Failure because:
 - (a) the Contractor does not submit or resubmit any required draft Correction Plan for Approval within the timescales required or at all;
 - (b) where the Customer Authority does not Approve the draft Correction Plan and the Customer Authority does not Approve that proposed Correction Plan (as amended in accordance with this Consolidated Contract) on the second occasion of seeking Approval; or
 - (c) the Contractor does not comply with an Approved Correction Plan;
 - 47.6.5** the Contractor's failure to Achieve a Key Milestone within twenty-five (25) Working Days of its Milestone Date;
 - 47.6.6** if, in respect of a Service which is required by the Customer Authority to be a PSN Service, the Contractor ceased to be a PSN Service Provider or the Service in question ceases to maintain PSN Compliance Certification, except where the Contractor ceases to be a PSN Service Provider or the Service in question ceases to maintain PSN Compliance Certification as a direct result of the dissolution or replacement of the PSN;
 - 47.6.7** if the Contractor is in material Default (whether or not subsequently remedied) of:
 - (i) Clause 32 (*Protection of Personal Data*);
 - (ii) Clause 34 (*Confidentiality and Publicity*);
 - (iii) the Security Requirements;
 - (iv) the obligation to implement the BCDR Plan under Consolidated Schedule 22 (*Business Continuity and Disaster Recovery Provisions*); or
 - (v) Clause 57 (*Corrupt Gifts*),
 - 47.6.8** the Contractor's level of performance constitutes a Critical Service Failure;
 - 47.6.9** if the Contractor breaches Clause 34.6 (*Confidentiality and Publicity*);
 - 47.6.10** if the Customer Authority has issued six (6) or more Warning Notices in a twelve (12) month period;

- 47.6.11 if, in any three consecutive Service Measurement Periods, the total Service Credits equal or exceed, in aggregate, seventy five per cent (75%) of the sum of the At Risk Amounts for those Service Measurement Periods;
- 47.6.12 an Insolvency Event affecting the Contractor, the Guarantor (if a Guarantee has been given), or any Holding Company of either of them, occurs;
- 47.6.13 in respect of a Financial Distress Event affecting any Relevant Entity;
- 47.6.14 if, as a result of the Contractor's Default, the Customer Authority suffers Liabilities that exceed seventy five per cent (75%) of the aggregate value of the liability cap set out in Clause 44.2 (*Financial Limits*). If the Contractor wishes to put forward proposals to increase its liability caps set out in Clause 44.2 (*Financial Limits*) so as to avoid this Consolidated Contract being terminated in accordance with this Clause 47.6.14, it shall notify the Customer Authority in writing and put forward increased liability caps within two (2) Working Days of receipt of the Customer Authority's notice. The decision as to whether to accept the proposed increased liability caps shall be determined solely by the Customer Authority and its decision shall be final and conclusive;
- 47.6.15 where the Contractor commits a Default (other than as a consequence of a Default by the Customer Authority) which results in the criminal investigation, prosecution and conviction of the Contractor or any Sub-contractor under the Health and Safety Regime where it would be reasonable and proportionate to do so in the light of the gravity and other circumstances of any offence;
- 47.6.16 if the Contractor makes any public announcement, or a director of the board of directors of the Contractor advises an officer of the Customer Authority, that the Contractor is no longer going to (or is unsure whether it is going to) continue to develop or to offer the provision of services similar to the Services and there is evidence that such announcement will materially adversely impact the ability of the Contractor to provide the Services. Where possible, the Contractor shall give the Customer Authority at least twenty (20) Working Days' prior written notice of any such planned announcement or advice; and
- 47.6.17 the Framework Authority Suspends the Framework Agreement (or any part thereof).

47.7 Any termination by the Customer Authority under Clause 47.3 above shall be deemed to be termination for breach of contract, and the Customer Authority shall, (without prejudice to the Customer Authority's rights to claim for any Liabilities in other circumstances), subject to Clause 44 (*Limitations on Liability*), be entitled to claim for the Liabilities that have been suffered, flowing from such breach of contract.

47.8 The Customer Authority may exercise any right of termination under Clause 47.3 above without first instigating the Dispute Resolution Procedure or without awaiting its final outcome. Where the Customer Authority does not do so, the Parties' obligations under Clause 24 (*Disputes*) shall continue to apply. The foregoing does not preclude the Contractor from disputing that the Customer Authority is entitled to terminate this Consolidated Contract.

Termination for Convenience by the Customer Authority

- 47.9** The Customer Authority may terminate this Consolidated Contract in whole or in relation to one or more Services for convenience at any time on serving a Termination Notice on the Contractor. The Contractor may be entitled to a Termination Payment pursuant to Clause 49 (*Payments Made on Termination*).
- 47.10** Unless otherwise stipulated by the Customer Authority in its Termination Notice, if the Customer Authority serves a Termination Notice to terminate this Consolidated Contract in whole, any Services that have not commenced at the date of the Customer Authority's Termination Notice shall be cancelled automatically and no payment shall be due from the Customer Authority in relation to such cancellation. This Clause 47.10 shall apply only to Services where at the relevant time, performance of the Contractor's obligations pursuant to Clause 3.1 (*Implementation Plan*) has not begun and where the Contractor has not entered into any binding commitments with Sub-contractors in relation to such Services.
- 47.11** This right of termination is in addition to any other rights of the Customer Authority under this Consolidated Contract and its exercise shall be without prejudice to any claim, remedy or right of action that either Party may have in relation to this Consolidated Contract.

Termination for Change of Ownership

- 47.12** The Customer Authority may terminate this Consolidated Contract in whole or in part by serving a Termination Notice on the Contractor if there is an Ultimate Holding Company Change to which the Customer Authority objects, except where the Customer Authority:
- 47.12.1** has given its Approval to the particular Ultimate Holding Company Change, which subsequently takes place as proposed; or
 - 47.12.2** has not served its notice within three (3) months of the later of the date the Ultimate Holding Company Change took place or the date on which the Customer Authority was given written notice of the Ultimate Holding Company Change.
- 47.13** The Contractor shall notify the Customer Authority in writing within one (1) month of any Change of Ownership taking place.

Termination on Financial Standing

- 47.14** The Customer Authority may terminate this Consolidated Contract in whole or in part by serving a Termination Notice on the Contractor where (in the reasonable opinion of the Customer Authority), there is a material detrimental change in the financial standing or the credit rating of the Contractor which adversely impacts on the Contractor's ability to supply the Services under this Consolidated Contract, or could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Services under this Consolidated Contract.

Partial Termination

- 47.15** Where the Customer Authority exercises a right of termination under Clauses 47.3, 47.6, 47.9, 47.12, 47.14 or 47.21, it may, at its option, terminate in respect of one or more Services only, in which case the Parties' obligations in respect of the remaining Services shall continue unaffected.
- 47.16** Where the Customer Authority terminates a Service, then no further Charges for such Service will apply from the date on which the Contractor ceases to provide that Service.
- 47.17** Termination in accordance with Clause 47.15 above shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

Date of Termination

47.18 Subject to any obligation to provide Services in accordance with any Exit Plan and Consolidated Schedule 20 (*Exit Management*), in the event that the Customer Authority issues a Termination Notice in accordance with Clause 47.6, Clause 47.9, Clause 47.12 and Clause 47.14 above, this Consolidated Contract will terminate on the date specified in the Termination Notice, provided that:

47.18.1 the Customer Authority may not specify a date beyond the end of the Term in any Termination Notice; and

47.18.2 if the Customer Authority fails to specify a date for termination of this Consolidated Contract, the Customer Authority shall not have waived its termination right but shall be required to re-submit a Termination Notice including a date for termination.

Termination by the Contractor

47.19 The Contractor may only terminate this Consolidated Contract in whole (and not in part), and only if there are any overdue charges and Contractor sends a written notice to the Customer Authority stating that it intends to serve a Termination Notice in respect of those overdue charges, and the Customer Authority has not paid the overdue charges within three (3) months of that notice. In this Clause 47.19 "**overdue charges**" means Charges that: (a) relate to three consecutive, valid Final Invoices that were properly issued in accordance with Consolidated Schedule 9 (*Charges and Invoicing*); (b) remain unpaid sixty (60) days after the last due date for payment of the most recent of the three Final Invoices; (c) are not disputed by the Customer Authority; and (d) are in excess of fifty million pounds sterling (£50,000,000). The Contractor's right of termination under this Clause 47.19 shall not apply to non-payment of the Charges by the Customer Authority where such non-payment is due to the Customer Authority exercising its rights under Clause 15 (*Recovery of Sums Due*).

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

Termination for Continuing Force Majeure Event

47.21 The Customer Authority may, by written notice to the Contractor, terminate this Consolidated Contract with immediate effect (or the Customer Authority may require the Partial Termination of any part of the Services on the occurrence in relation to that part), if a Force Majeure Event occurs which affects:

47.21.1 all or a substantial part of the Services (or any single Service) for a continuous period of more than three (3) months; or

47.21.2 a part but not a substantial part of the Services for a continuous period of more than four (4) months.

48 CONSEQUENCES OF EXPIRY OR TERMINATION

The provisions of Clauses 22 (*Audits, Notifications and Record Keeping*), 30 (*Intellectual Property Rights*), 32 (*Protection of Personal Data*), 33 (*Freedom of Information*), 34 (*Confidentiality and Publicity*), 43 (*Indemnity*), 44 (*Limitations on Liability*), 48 (*Consequences of Expiry or Termination*), 49 (*Payments Made on Termination*), 56 (*Relationship of the Parties and Indirect Customers*), 58 (*Severance*), 60 (*Entire*

Agreement), 61 (*Third Party Rights*) and 63 (*Governing Law and Jurisdiction*) and the provisions of Consolidated Schedules 1 (*Definitions*), 20 (*Exit Management*), 21 (*Staff Transfer*) and 29 (*Records Provision*) shall survive the termination or expiry of this Consolidated Contract.

49 PAYMENTS MADE ON TERMINATION

49.1 If the cost of any Contractor Equipment has not been fully paid for through Milestone Payments or otherwise amortised at the time of expiry or termination of this Consolidated Contract, then on any termination or expiry taking effect during the Initial Term, the Customer Authority shall pay the Contractor the lower of the Net Book Value and the end of use price as specified in the Contractor's Call-Off Service Catalogue (if specified, if not then the Net Book Value shall apply) of any Contractor Equipment that the Customer Authority elects to have transferred to it in accordance with Consolidated Schedule 20 (*Exit Management*).

49.2 Save for any payments in respect of any Assets made in accordance with Clause 49.1 above and Consolidated Schedule 20 (*Exit Management*), the Customer Authority shall not make a payment to the Contractor:

49.2.1 by reason of the expiry of the Term;

49.2.2 by reason of termination for cause by the Customer Authority in accordance with Clauses 47.3 and 47.6 or for Partial Termination arising out of rights under Clause 47.15 above (except in relation to the right under Clause 47.9); or

49.2.3 by reason of termination for an Ultimate Holding Company Change in accordance with Clause 47.12 above.

49.3 The Customer Authority shall pay the Contractor the Termination Payment in respect of the Services only if:

49.3.1 this Consolidated Contract is terminated for convenience by the Customer Authority pursuant to Clause 47.9 or by the Contractor pursuant to Clause 47.19; and

49.3.2 such termination takes effect during the Initial Term.

49.4 Subject to Clause 49.3 above, the costs of termination incurred by the Parties shall lie where they fall if the Customer Authority terminates, or partially terminates, this Consolidated Contract pursuant to Clause 47.21.

Payments made by the Contractor

49.5 The Contractor shall pay to the Customer Authority on demand the aggregate sum of all Milestone Payments paid to the Contractor in respect of the issue of Milestone Achievement Certificates in relation to Key Milestones if this Consolidated Contract is terminated by the Customer Authority pursuant to Clause 47.3 before the Contractor Achieves all of the Milestones linked to CPP in the Implementation Plan.

49.6 In the event of termination (however arising) or expiry, the Contractor shall repay to the Customer Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of such expiry or termination (save to the extent that such Services are provided after such date pursuant to Consolidated Schedule 20 (*Exit Management*)).

50 EXIT MANAGEMENT

- 50.1** The Customer Authority and the Contractor shall comply with the Exit Management requirements set out in Consolidated Schedule 20 (*Exit Management*) and any current Exit Plan. Notwithstanding any other provision of this Consolidated Contract the Customer Authority shall have the rights set out in this Clause 50 and Consolidated Schedule 20 (*Exit Management*).
- 50.2** The Customer Authority's rights under this Clause 50 and Consolidated Schedule 20 (*Exit Management*) shall be exercisable by the Customer Authority:
- 50.2.1** if an Insolvency Event occurs, at any time before the winding up of the Contractor or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;
 - 50.2.2** in the event of termination (whether in whole or in part) of this Consolidated Contract for any reason; and
 - 50.2.3** upon the expiry of this Consolidated Contract.
- 50.3** The Contractor shall not, without the Customer Authority's Approval, encumber any Assets in any way which would require the consent of a third party to the exercise by the Customer Authority of its rights under Consolidated Schedule 20 (*Exit Management*) or which would in some other way restrict the exercise by the Customer Authority of its rights under that Consolidated Schedule. For the purposes of this Clause 50.3 “**encumber**” does not include any leasing agreement but shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement (except for a floating charge attaching generally to the assets and any undertaking of the Contractor which has not crystallised) or which otherwise restricts the Contractor's ability to use and deal with the relevant Asset.
- 50.4** Unless the Customer Authority otherwise requires, during the time between service of a Termination Notice and such termination or exercise taking effect, the Contractor shall take all steps which are necessary and consistent with its continuing obligations, to mitigate any Liabilities which the Contractor may incur as a result of the termination, including to:
- 50.4.1** cancel all capital and recurring cost commitments in connection with the Implementation Plan, the provision of Services (or both) on the most cost-effective terms;
 - 50.4.2** terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Customer Authority whether such contracts are required to be transferred to the Customer Authority or Replacement Contractor instead, in which case such contracts shall not be terminated but shall instead be transferred in accordance with Consolidated Schedule 20 (*Exit Management*);
 - 50.4.3** reduce labour costs by the redeployment or release of Contractor Personnel other than Key Personnel to the extent possible in the circumstances; and
 - 50.4.4** apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in Clauses 50.4.1 to 50.4.3 (inclusive) above.

- 50.5** If the Contractor does not fulfil its obligations in accordance with Clause 50.4 above, the Customer Authority shall not pay any sums in excess of those which the Customer Authority would have paid had such action been taken.

51 STEP-IN RIGHTS

- 51.1** In relation to the Services, the Customer Authority may take action under this Clause 51 in any of the following circumstances:

- 51.1.1** the Customer Authority has issued three or more Warning Notices in a six (6) month period;
- 51.1.2** performance against a Service Level fails to meet the Service Failure Threshold for 3 or more consecutive months;
- 51.1.3** the Customer Authority does so to discharge its obligations to defend the United Kingdom and its interests;
- 51.1.4** the Customer Authority is entitled to terminate in accordance with Clause 47.3 (*Termination for Cause by the Customer Authority*);
- 51.1.5** there is a Default by the Contractor that is materially preventing or materially delaying the performance of any Services or any part thereof;
- 51.1.6** there is a Delay that has resulted in, or the Customer Authority reasonably anticipates will result in, the Contractor's failure to Achieve a Milestone linked to Authority to Proceed or CPP by its Milestone Date;
- 51.1.7** a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part thereof;
- 51.1.8** if, in any three consecutive Service Measurement Period, the total Service Credits equal or exceed fifty per cent (50%) of the sum of the At Risk Amounts for those Service Measurement Periods;
- 51.1.9** where the Contractor is not in Default of its obligations under this Consolidated Contract but the Customer Authority considers that the circumstances constitute an emergency;
- 51.1.10** if the Customer Authority has reasonable grounds to suspect acts of Fraud are being committed in relation to the Services;
- 51.1.11** where a Regulatory Body has advised the Customer Authority that the exercise by the Customer Authority of its rights under this Clause 51 is necessary;
- 51.1.12** because a serious risk exists to the health or safety of persons, property or the environment;
- 51.1.13** to discharge a statutory duty;
- 51.1.14** on the occurrence of an Insolvency Event in respect of the Contractor; or
- 51.1.15** where it is required to do so by the PSNA or the Framework Authority on behalf of the PSNA.

Action to be taken before the exercise of the right of Step-in

- 51.2** Before the Customer Authority exercises its right of step-in under this Clause 51 it shall permit the Contractor the opportunity to demonstrate to the Customer Authority's reasonable satisfaction within ten (10) Working Days of the step-in right arising that the Contractor is still able to provide the Services in accordance with the terms of this Consolidated Contract and remedy the circumstances giving rise to the right to Step-in without the requirement for the Customer Authority to take action.
- 51.3** If the Customer Authority is not satisfied with the Contractor's demonstration pursuant to Clause 51.2 above, the Customer Authority may:
- 51.3.1** where the Customer Authority considers it expedient to do so, require the Contractor by notice in writing to take those steps that the Customer Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rise to the Customer Authority's right to Step-in;
 - 51.3.2** appoint any person to work with the Contractor in performing all or a part of the Services (including those provided by any Sub-contractor); or
 - 51.3.3** take the steps that the Customer Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-contractor).
- 51.4** The Contractor shall cooperate fully and in good faith with the Customer Authority, or any other person appointed in respect of Clause 51.3.2 above, and shall adopt any reasonable methodology in providing the Services recommended by the Customer Authority or that person.

Exercise of the right of Step-in

- 51.5** If the Contractor fails to:
- 51.5.1** confirm within three (3) Working Days of a notice served pursuant to Clause 51.3.1 above that it is willing to comply with that notice;
 - 51.5.2** work with a person appointed in accordance with Clause 51.3.2 above; or
 - 51.5.3** take the steps notified to it by the Customer Authority pursuant to Clause 51.3.3 above,
- then the Customer Authority may exercise its right to Step-in under this Clause 51 either through itself or with the assistance of any Other PSN Services Contractors, provided that the Contractor may request that the Customer Authority requires any Other PSN Services Contractors to comply with a confidentiality undertaking equivalent to Clause 34 (*Confidentiality and Publicity*).
- 51.6** If the Customer Authority takes action pursuant to Clause 51.5 above, the Customer Authority shall serve written notice ("**Step-in Notice**") on the Contractor. The Step-in Notice shall set out the following:
- 51.6.1** the action the Customer Authority wishes to take and in particular the Services it wishes to control (or appoint any Other PSN Services Contractors to control). The Customer Authority may exercise its rights under this Clause 51 in respect of all or part of the Services;

- 51.6.2 the reason for and the objective of taking the action and whether the Customer Authority reasonably believes that the primary cause of the action is due to the Contractor's Default;
- 51.6.3 the date it wishes to commence the action;
- 51.6.4 the time period which it believes will be necessary for the action;
- 51.6.5 whether the Customer Authority will require access to any of the Contractor Premises or Sites; and
- 51.6.6 to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period the action is being taken.

51.7 Following service of a Step-in Notice, the Customer Authority shall:

- 51.7.1 take the action, or procure that any Other PSN Services Contractor takes the action, set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary (together, the **"Required Action"**);
- 51.7.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
- 51.7.3 cooperate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide any Services in relation to which the Customer Authority is not assuming control; and
- 51.7.4 take such steps as are reasonably open to it to limit the amount of the cost that the Contractor shall incur as a result of the exercise of the Customer Authority's rights under this Clause 51 (provided that this does not prejudice achievement of the Customer Authority's objectives).

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

- 51.8.1 cooperate fully with the Customer Authority and any Other PSN Services Contractor appointed by the Customer Authority to facilitate the steps taken;
- 51.8.2 suspend performance of those parts of the Services subject to the step-in rights (the **"Step-in Services"**) to the extent that the Customer Authority so requests for the purposes of its exercise of Step-in rights, provided always that the exercise of the Step-in right shall not excuse the Contractor from its obligation to provide the Services (excluding the relevant Step-in Services for the period only of exercise of the Step-in right) in accordance with this Consolidated Contract or be deemed to frustrate or waive performance of that obligation;
- 51.8.3 grant and procure that any Sub-contractor or relevant third party grants such licences and permissions as are reasonably required provided that these are no more expensive than the charges that would have been payable by the Contractor; and
- 51.8.4 afford (and procure that its Sub-contractors afford as applicable) to the Customer Authority such cooperation, access to and use of (as applicable):
 - (i) the Equipment used to provide the Services and any other goods and services used to provide the Services;

- (ii) all necessary and associated documentation relating to the Equipment used by the Contractor to provide the Services to the Customer Authority and any other goods and services used to provide the Services so as to enable the same to be operated;
- (iii) the Contractor's Intellectual Property Rights used in relation to the Services; and
- (iv) premises, equipment, personnel, documents, information or other items as are reasonably required.

51.9 For so long as and to the extent that the Required Action is continuing, then subject to Clause 51.13 below, the Customer Authority shall pay to the Contractor the Charges after deduction of any applicable Service Credits and the Customer Authority's reasonable and direct costs of taking the Required Action in respect of any of the Services that it is receiving.

51.10 Before ceasing to exercise its Step-in rights under this Clause 51 the Customer Authority shall deliver a written notice to the Contractor ("**Step-Out Notice**"), specifying:

51.10.1 the Required Action it has actually taken; and

51.10.2 the date on which the Customer Authority plans to end the Required Action ("**Step-Out Date**") subject to the Customer Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's Step-Out Plan developed in accordance with Clause 51.11 below.

51.11 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days before the Step-Out Date, develop for the Customer Authority's Approval a draft plan ("**Step-Out Plan**") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Consolidated Contract.

51.12 If the Customer Authority does not Approve the draft Step-Out Plan, the Customer Authority shall inform the Contractor of its reasons for not Approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Customer Authority for the Customer Authority's Approval. The Customer Authority shall not withhold or delay its Approval of the draft Step-Out Plan unnecessarily.

51.13 The Contractor shall bear its own costs in connection with any Step-in by the Customer Authority under this Clause 51 provided that the Customer Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-in by the Customer Authority under:

51.13.1 Clause 51.1.9 above; or

51.13.2 Clauses 51.1.11, 51.1.12 and 51.1.13 above provided that the primary cause of the Customer Authority serving the Step-in Notice was not a Contractor's Default.

52 GUARANTEE

52.1 Where the Customer Authority has requested a Guarantee pursuant to Clause 28.2 of the Framework Agreement and under Paragraph 5 of the Call-Off Form, Clauses 28.2 and 28.3 of the Framework Agreement shall apply.

52.2 Where the Contractor has procured a Guarantee, the Customer Authority may terminate this Consolidated Contract with immediate effect if:

52.2.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

52.2.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

52.2.3 any of the events set out in Clauses 47.6.12, 47.6.13, 47.12 or 47.14 above occurs in respect of the Guarantor; or

52.2.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever.

SECTION L - MISCELLANEOUS AND GOVERNING LAW

53 CUSTOMER AUTHORITY INITIATED SERVICE SUSPENSION

Without prejudice to any other right that the Contractor may have to suspend all or part of the Services pursuant to this Consolidated Contract, the Contractor shall suspend all or part of the Services promptly upon receiving the Customer Authority's request to do so, provided that where such request for suspension has not resulted from a Contractor Default, the Customer Authority shall continue to pay for the suspended Services during the period of suspension. Such disconnection in accordance with this Clause 53 shall not cause the Contractor to be in breach of its obligations under this Consolidated Contract in respect of the Services that the Customer Authority has requested the Contractor to suspend and any Services which are reliant on such suspended Services (including its obligations to provide the affected Services in accordance with the Service Levels).

54 ASSIGNMENT AND NOVATION

54.1 Subject to Clause 21.2 above, the Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Consolidated Contract without the Approval of the Customer Authority.

54.2 The Customer Authority may:

54.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Consolidated Contract and any associated third party licences to any other Contracting Authority; or

54.2.2 assign, novate or otherwise dispose of any or all of its rights and obligations under this Consolidated Contract and any associated third party licences to any Replacement Body or Replacement Contractor. If this transfer increases the burden of the Contractor's obligations under this Consolidated Contract the Contractor shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Contract Change Procedure.

54.3 A change in the legal status of the Customer Authority shall not (subject to Clause 54.4 below) affect the validity of this Consolidated Contract and this Consolidated Contract shall be binding on any successor body to the Customer Authority.

54.4 If this Consolidated Contract is novated to a body which is not a Contracting Authority, or a body which is not a Contracting Authority succeeds the Customer Authority, (both "**transferee**" in the rest of this Clause 54.4):

54.4.1 the Contractor shall be entitled to exercise a right of termination if:

- (i) the transferee suffers an Insolvency Event; or
- (ii) the transferee commits:
 - (a) a material Default which Default is not remedied within forty (40) Working Days after notice of Default from the Contractor to the transferee requiring its remedy; or
 - (b) a material Default which is irremediable; and

54.4.2 the transferee may assign, novate or otherwise dispose of its rights and obligations under this Consolidated Contract (or any part) only with the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed).

55 WAIVER AND CUMULATIVE REMEDIES

55.1 The rights and remedies provided by this Consolidated Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

55.2 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies provided at law or in equity or otherwise under this Consolidated Contract. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

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

56 RELATIONSHIP OF THE PARTIES AND INDIRECT CUSTOMERS

56.1 Nothing in this Consolidated Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or, save as expressly agreed in writing, to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

56.2 The Customer Authority may appoint any third party or third parties to act on its behalf in carrying out its obligations and exercising its rights under this Consolidated Contract. The Customer Authority shall give the Contractor written notice of such appointment(s), and relevant contact details, and the Contractor shall cooperate in good faith with each such third party. However, where an Other PSN Services Contractor or Wider PSN Contractor has been appointed by the Customer Authority to represent or act on behalf of the Customer Authority in relation to the Contractor, the Contractor shall not accept the instructions of such Other PSN Services Contractor or Wider PSN Contractor in circumstances where it reasonably believes that the Other PSN Services Contractor or Wider PSN Contractor has exceeded the scope of the authority granted to it by the Customer Authority as disclosed to the Contractor by the Customer Authority.

- 56.3** The Contractor shall provide the Services for the benefit of: (i) the Customer Authority; (ii) the other third parties who are designated as Indirect Customers; and (iii) any Replacement Body.
- 56.4** Where indicated in Consolidated Schedule 28 (*Indirect Customers*) or following written notice from the Customer Authority, an Indirect Customer or a Replacement Body may, under the Contracts (Rights of Third Parties) Act 1999, enforce the benefit of this Consolidated Contract to the extent that the Services are being provided to that Indirect Customer or Replacement Body (as applicable). However, this right shall be limited to a right to recover financial losses through a claim for damages and shall not include the right to terminate this Consolidated Contract. Subject to Clause 56.2 above, only the Customer Authority may exercise rights of termination, Step-in or other non-financial remedies under this Consolidated Contract. In any event, any Service Credits, Milestone Payment Reductions or Excess Profit Share payments or the Mobile Service Technology Refresh Fund shall be applied only for the benefit of the Customer Authority.
- 56.5** No Indirect Customer, Replacement Body or other third party may authorise any Contract Change.
- 56.6** Save where an Indirect Customer or a Replacement Body has the rights set out in Clause 56.4 above, the Contractor shall be liable only to the Customer Authority and shall deal only with the Customer Authority. If any breach arises out of any act or omission of an Indirect Customer or a Replacement Body, any claim by the Contractor shall be brought only against the Customer Authority and not against any Indirect Customer or the Replacement Body.
- 56.7** The Customer Authority may recover all Liabilities suffered by any Indirect Customer or Replacement Body as though it had suffered such loss itself, provided that in no event may the Customer Authority or any Indirect Customer or Replacement Body recover twice in respect of the same loss (so that loss recovered by an Indirect Customer or a Replacement Body may not be recovered by the Customer Authority and vice versa).
- 56.8** The Indirect Customers' and any Replacement Bodies' rights under Clause 56.4 above and the Customer Authority's rights under Clause 56.7 above shall not increase the limitations on liability in Clause 44.2 above.
- 56.9** The Customer Authority may change the contact details of any point of contact of any Indirect Customer detailed in Consolidated Schedule 28 (*Indirect Customers*) as required from time to time.

57 CORRUPT GIFTS

- 57.1** In this Clause 57, the expression "**Prohibited Act**" shall mean any offer or agreement to give any person working for or engaged by the Customer Authority or any other Crown Body any commission, gift or other consideration of any kind, which could act as an inducement or a reward for any act or failure to act connected to this Consolidated Contract or any other agreement between the Contractor and the Customer Authority or any other Crown Body including:
- 57.1.1** the award of this Consolidated Contract to the Contractor or any other agreement to the Contractor or a Sub-contractor; and
- 57.1.2** any award of the rights and obligations contained within this Consolidated Contract or another agreement with a Crown Body or the showing of any favour or disfavour

to any person in relation to this Consolidated Contract or any other agreement with a Crown Body.

57.2 The Contractor warrants, represents and undertakes on a continuing basis throughout the Term or any Exit Period that it has not entered into this Consolidated Contract knowing (or in circumstances in which it ought reasonably to have known) that a Prohibited Act has been committed in connection with this Consolidated Contract.

57.3 The Contractor shall not (and shall procure that the Sub-contractors shall not) enter into any agreement knowing (or in circumstances in which it ought reasonably to have known) that in connection with that agreement any Prohibited Act has been committed.

57.4 Any:

57.4.1 commission by the Contractor or its Sub-contractors of a Prohibited Act or any other breach of this Clause 57; or

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

shall, without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Customer Authority, entitle the Customer Authority to terminate this Consolidated Contract by written notice with immediate effect. The Contractor shall indemnify the Customer Authority from and against any other loss sustained by it in consequence of any breach of this Clause 57, whether or not this Consolidated Contract has been terminated.

57.5 For the purposes of Clause 57.4, the Contractor shall be taken to have 'commissioned' a Prohibited Act or offence where it has done such act and also where it has attempted to do a Prohibited Act or offence or has aided, abetted, counselled, procured or conspired with any person to do a Prohibited Act or offence.

57.6 Notwithstanding anything to the contrary in Clause 24 (*Disputes*), any dispute relating to:

57.6.1 the interpretation of Clauses 57.1 to 57.5 (inclusive) above; or

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

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

58 SEVERANCE

If any provision of this Consolidated Contract (other than Clause 34.6 (*Confidentiality and Publicity*)) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions hereof, which shall continue in full force and effect as if this Consolidated Contract had been executed with the invalid, illegal or unenforceable provision eliminated. If a provision of this Consolidated Contract that is fundamental to the accomplishment of the purpose of this Consolidated Contract is held to any extent to be invalid, the Parties shall immediately commence good faith negotiations to remedy that invalidity.

59 FURTHER ASSURANCES

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

60 ENTIRE AGREEMENT

- 60.1** This Consolidated Contract, together with a completed, signed and dated Call-Off Form and the other documents referred to in them, constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in it, and supersedes, any previous agreement between the Parties in relation to such matters.
- 60.2** Each of the Parties acknowledges and agrees that in entering into this Consolidated Contract and the documents referred to herein, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Consolidated Contract. The only remedy available to either Party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Consolidated Contract.
- 60.3** Nothing in this Clause 60 shall operate to exclude any liability for Fraud.

61 THIRD PARTY RIGHTS

- 61.1** Subject to Clauses 6.14 (*Services*), 34.13 (*Confidentiality and Publicity*) and 56 (*Relationship of the Parties and Indirect Customers*) and Paragraph 6 (*Third Party Rights*) of Consolidated Schedule 21 (*Staff Transfer*), a person who is not a Party to this Consolidated Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Consolidated Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 61.2** Any rights created under Clauses 6.14 (*Services*), 34.13 (*Confidentiality and Publicity*) and 56 (*Relationship of the Parties and Indirect Customers*) and Paragraph 6 (*Third Party Rights*) of Consolidated Schedule 21 (*Staff Transfer*) referred to in Clause 61.1 above may be altered or extinguished by the Parties without notice to or the consent of the third party beneficiaries.

62 NOTICES

- 62.1** Any notice given under or in relation to this Consolidated Contract shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or email to the address and for the attention of the relevant Party notified for such purpose which:
- 62.1.1** in the case of the Customer Authority, shall be the Customer Authority Commercial Manager; and
- 62.1.2** in the case of the Contractor, shall be confirmed upon the award of the contract to the Contractor.
- 62.2** A notice shall be deemed to have been received:

- 62.2.1** if delivered personally, at the time of delivery or, if delivered after 16.00 hours on the next Working Day;
- 62.2.2** in the case of pre-paid first class post, recorded delivery, registered post or airmail, three (3) Working Days from the date of posting;
- 62.2.3** in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
- 62.2.4** in the case of email, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within twenty four (24) hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery, registered post or airmail, or delivered personally, to the intended recipient.

62.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party in writing) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail, or that the notice was transmitted by fax to the fax number of the relevant Party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party in writing).

62.4 Any changes to any service of notice details such as designated service address, number, or named person shall only be changed by service of a written notice setting out the changes, which must be agreed between the Parties acting reasonably. Neither Party shall object to or refuse to accept any such proposed changes except on reasonable grounds including where the changes would require notices to be served outside of the jurisdiction of England and Wales. Methods of service cannot be changed except through the Contract Change Procedure.

63 GOVERNING LAW

This Consolidated Contract shall be governed by and construed in accordance with English law.