



**Ministry of  
JUSTICE**

**OFFICIAL**

**Contract For The Provision Of Electronic Monitoring Network Services – Lot 4**

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**CONTRACT FOR THE PROVISION OF  
ELECTRONIC MONITORING SERVICES**

**LOT 4**

**Network Services**

**Contract Terms and Conditions**



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## **Contract Schedules**

Schedule 1 Interpretation and Definitions

Schedule 2 Specifications

Schedule 3 Not used

Schedule 4 EM Testing

Schedule 5 Mobilisation Plan

Schedule 6 Price and Payment Mechanism

Schedule 7 Contract Delivery Indicators

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Schedule 8 TUPE, Employees and Pensions

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Schedule 22 Insurance Requirements

Schedule 23 Dispute Resolution

Schedule 24 Acceptance Procedure

Schedule 25 Commercially Sensitive Information

Schedule 26 Legacy Services

Schedule 27 Not Used

Schedule 28 Not used



**THIS CONTRACT** is made on [ ] 2018

**BETWEEN:**

- (1) The Secretary of State for Justice (the "**Authority**"); and
  - (2) Telefonica UK Limited, a company registered in England and Wales of 260 Bath Road, Slough SL1 4DX with company number 01743099 (the "**Contractor**"),
- each one "**a Party**" and together "**the Parties**".

**BACKGROUND:**

- (A) The Authority has entered into EM Services Contracts with the EM Contractors for the provision of electronic monitoring and related services.
- (B) EM Services Contracts were originally awarded in August 2014 to the EM Contractors (other than the EM Hardware Contractor) for the implementation and operation of the EM Services. An Integration Agreement was also entered into at the same time between the EM Contractors at that time and the Authority. In the period from [22<sup>nd</sup> December 2016 to 20<sup>th</sup> September 2018 the EM Programme has been suspended following the termination of the original Lot 3 Contract and the re-procurement process to identify a new Lot 3 Contractor. The new Lot 3 Contractor has been identified and a new Lot 3 EM Services Contract was entered into on 10<sup>th</sup> November 2017.
- (C) The Authority wishes to re-enter into this EM Services Contract which will supersede the original EM Services Contract with the Contractor.
- (D) Not used.
- (E) As part of the consideration for the Authority entering into this Contract, the Contractor has in conjunction with this Contract also entered into the Collaboration Agreement with the Authority and each of its other EM Contractors on the same date as this Contract as part of the Contractor's commitment to deliver the EM Services.

**SECTION A: INTERPRETATION**

**1. INTERPRETATION AND DEFINITIONS**

In this Contract, the rules of interpretation and definitions set out in Schedule 1 (Interpretation and Definitions) shall apply.

**2. CONTRACT STRUCTURE**

**2.1 Schedules**

- 2.1.1 The Schedules to this Contract form part of this Contract.
- 2.1.2 The Parties acknowledge and agree that the versions of the Mobilisation Plan, High Level Design and the Interface Control Documents as at the Contract Reset Date are baseline documents that provide details of the understandings of the Parties in these areas as at the Contract Reset Date. Such documents will continue to be developed during the course of



Mobilisation in accordance with the timescales set out in Schedule 5 (Mobilisation).

**2.2 Precedence of Documentation**

- 2.2.1 If there is any inconsistency between the provisions of the body of this Contract and the Schedules, the provisions of the body of this Contract shall take precedence over the Schedules.
- 2.2.2 If there is any inconsistency between Schedule 15 (Authority Policies) and any of the other Schedules, Schedule 15 (Authority Policies) shall take precedence over the other Schedules. Any amendments to Schedule 15 (Authority Policies) and to the Authority's security policies referred to in Clause 14.1 shall be agreed between the Authority and the Contractor as a Necessary Change through the Integrated Contract Change Procedure as set out in Schedule 21 (Integrated Contract Change Procedure).
- 2.2.3 Not used
- 2.2.4 The Contractor agrees that nothing contained in any Annex or Appendix to any Schedule will relieve the Contractor from complying with the provisions of the body of the Contract or with Schedule 2 (Specification).
- 2.2.5 If there is any inconsistency between the provisions of this Contract and the Collaboration Agreement, the provisions of this Contract shall take precedence over the provisions of the Collaboration Agreement.
- 2.2.6 The Parties acknowledge that the Contractor will enter into Operating Level Agreements with the other EM Contractors. The Operating Level Agreements are not intended to be legally binding.
- 2.2.7 The Parties acknowledge that the Operating Manual is not intended to be legally binding.

**2.3 Succession**

References to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.

**SECTION B: SCOPE**

**3. SCOPE OF AGREEMENT**

**3.1 Underpinning Obligations**



- 3.1.1 This Clause 3.1 sets out obligations on the Contractor which underpin the provision of the Services by the Contractor and shall apply to all aspects of the provision of the Services by the Contractor.

***Contribution to Authority aims***

- 3.1.2 The Contractor shall, in its provision of and to the extent relevant and practicable for the EM Network Services, support the Authority in delivering effective custodial and community sentences to reduce re-offending and protect the public. The Contractor shall do so by:
- 3.1.2.1 supporting the provision of a reliable EM option for the courts, prisons and Related Organisations, either as a sole option or in combination with other options, in dealing with Subjects within the framework of the Criminal Justice Act 2003 and other relevant criminal justice legislation throughout the Contract Period; and
  - 3.1.2.2 co-operating with Her Majesty's Prison and Probation Service, the National Probation Service and Community Rehabilitation Companies and other criminal justice agencies in identifying opportunities for developing joint working arrangements, communicating effectively, and sharing information with criminal justice partners to the maximum extent permitted under the law.

***Quality of services***

- 3.1.3 The Contractor shall provide the Services in accordance with the following:
- 3.1.3.1 the hardware, software and equipment provided by the Contractor and used in the provision of the Services shall be technically robust and fit for purpose; and
  - 3.1.3.2 all EM activities associated with the provision of the Services shall be completed in a timely manner.

***Flexibility and innovation***

- 3.1.4 The provision of the Services by the Contractor shall be responsive to changes in demand for EM, and to developments in EM technology. In particular and subject to the Integrated Contract Change Procedure:
- 3.1.4.1 the Contractor shall enable EM innovations to be piloted promptly in accordance with Clause 17 ; and
  - 3.1.4.2 the Contractor shall be open to the results of research and development so as to ensure that the Contractor and the Services remain at the forefront of technological capability in EM.

***Transparency***



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- 3.1.5 The provision of the Services by the Contractor shall be subject to a general principle of transparency, pursuant to which the Authority will, subject to the provisions of Schedule 12 (Audit), have full and unfettered access to all of the Contractor's premises, IT systems, data, documentation, records, information and supporting materials relating to the provision of the Services promptly on request by the Authority. In particular, but without limitation to the foregoing, the Contractor shall provide full and unfettered access to the Authority in respect of all data, documentation, records, information and other supporting materials:
- 3.1.5.1 relating to the calculation of each of the charges making up the Contract Price; and
  - 3.1.5.2 relating to all of the Contractor's activities in the provision of the Services.
- 3.1.6 The Contractor shall only keep one set of accounts relating to the provision of the Services and the Mobilisation activities under the Contract.
- 3.1.7 Whenever there is an obligation on the Contractor to provide "details" to the Authority or a similar expression, this shall require the Contractor to provide data, documentation, records, information and other supporting materials to the Authority as may be available in a particular circumstance.

***Charging***

- 3.1.8 The Contractor shall calculate the charges making up the Contract Price and any payments thereof strictly in accordance with the provisions of the Contract.
- 3.1.9 In the event that the Contractor considers at any time that there is any ambiguity in the provisions of the Contract relating to the calculation of the charges making up the Contract Price or any payments thereof, the Contractor shall promptly notify the Authority of the ambiguity. Until the ambiguity is resolved between the Authority and the Contractor the Contractor must interpret the Contract on the basis of the interpretation of the Contract that is least favourable to the Contractor and calculate amounts payable by the Authority on this basis. In the event of any default of this Clause 3.1.9 by the Contractor, the Authority shall be entitled to recover any amounts paid by the Authority in excess of the interpretation of the Contract that is least favourable to the Contractor as an overpayment pursuant to Clause 21.7.

**3.2 Supply of the Services**

- 3.2.1 The Contractor shall perform the Services in accordance with the terms and conditions of this Contract (including the provisions of Schedule 7 (Contract Delivery Indicators)).
- 3.2.2 Not used.
- 3.2.3 Unless otherwise stated in the Contract, the Contractor acknowledges that the Authority makes no minimum volume commitment in respect of





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the Services to be ordered under this Contract and that the Contractor has no exclusivity of supply to the Authority in respect of the Services which form the scope of this Contract.

**3.3 Integration of the Services**

3.3.1 The Contractor shall provide the Services in such manner so as to ensure that at all times the EM Services are fully integrated pursuant to the Operating Model and so that the Services comply with the Interface Control Documents.

3.3.2 The Contractor shall collaborate with, and follow the directions of, the Authority and shall permit the Services to be integrated with the products and services comprised within the EM Services provided by the other EM Contractors in accordance with Schedule 2 (Specifications), including maintaining common processes applicable to all EM Contractors (including the Contractor).

3.3.3 [Not used]

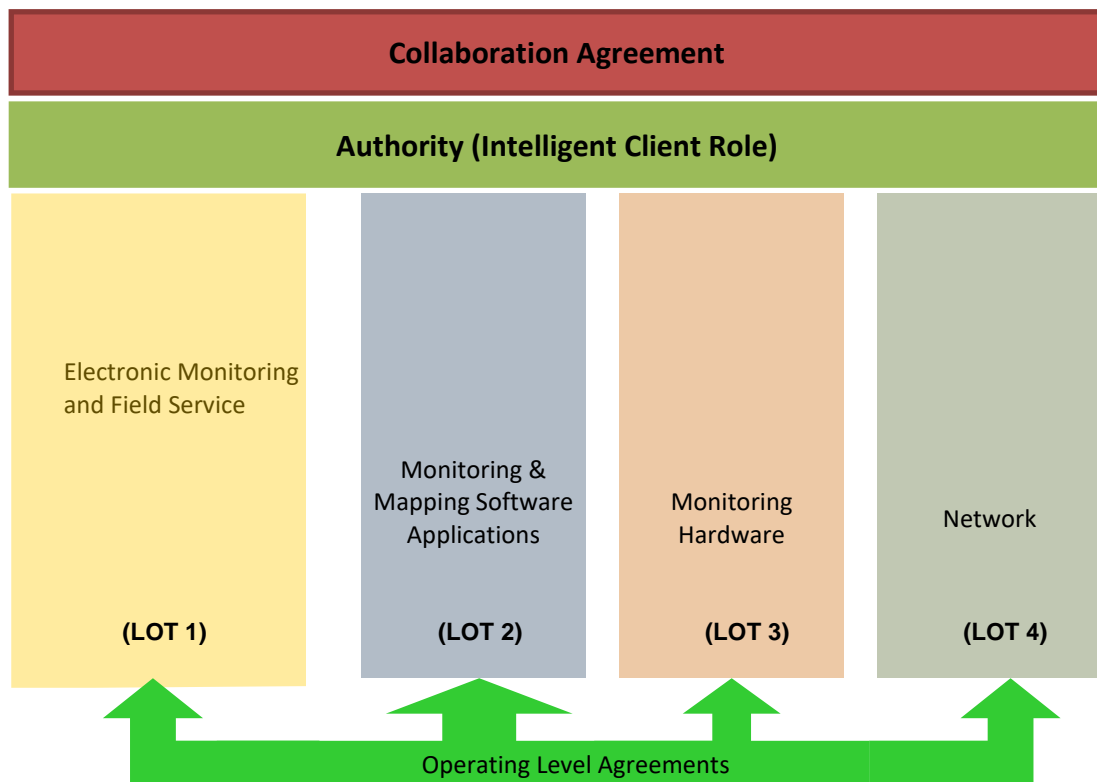


Table 1: The Operating Model

3.3.4 The Contractor acknowledges and agrees that, as a consequence of the Operating Model set out in Table 1 above, the flow of liabilities between the Contractor and the Authority and the other EM Contractors is required to be addressed in each of the EM Services Contracts.

**3.4 Integrated System Design**



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- 3.4.1 The Contractor shall provide their Services under this Contract in compliance with the Integrated High Level Design at all times during the term of this Contract and as may be varied by the Authority from time to time.
- 3.4.2 The Authority shall be entitled to make proposals for changes to the Integrated High Level Design to take account of developments in technology, legislative changes and other matters. The Contractor shall not unreasonably reject proposals for changes to the Integrated High Level Design. Where the Contractor considers that a proposed change will: a) result in it incurring costs, b) has another impact on this Contract, or c) the timescales are unachievable, the Contractor shall be entitled to initiate the Integrated Contract Change Procedure in order to review the implications of the proposed change in more detail and for the Parties to agree on a solution.
- 3.4.3 In all circumstances the Authority shall not be responsible for performing the obligations and responsibilities of any EM Contractor under their individual EM Services Contracts and shall not be liable for such performance by any EM Contractor.
- 3.4.4 The Contractor shall be responsible for ensuring that the Specification shall be and shall remain consistent with the Integrated High Level Design. Notwithstanding the foregoing obligation, in the event that the Contractor becomes aware that any aspect of the Specification is inconsistent with the Integrated High Level Design, the Contractor will not be entitled to alter the Specification without notifying and obtaining the approval of the Authority, which may involve dealing with the issue through the Integrated Contract Change Procedure.
- 3.4.5 The Contractor shall ensure that the elements of their Services which interface with the EM Services provided by other EM Contractors shall comply with the relevant Interface Control Documents.

**3.5 Fix First/Resolve Later**

- 3.5.1 If any problem arises which prevents or impairs the implementation or performance of the Services in accordance with the Contract (including but not limited to compliance with the CDIs set out in Schedule 7 (Contract Delivery Indicators)) at any point during the term of this Contract and in respect of any and all such problems, the Parties agree to work together under the general principles set out in the Collaboration Agreement and that the general principle of 'fix first, resolve later' will apply to all EM Contractors and the Authority. This principle requires that EM Contractors shall use reasonable endeavours to solve the issue as expeditiously and cost effectively as possible as overseen by the Authority. The Contractor shall defer any disputes concerning responsibility for the issue, and which Party should bear the cost of fixing the issue and any associated legal issues, until resolution of the relevant problem.
- 3.5.2 In such circumstances, if the Contractor considers that the rectification of the problem is outside the scope of its responsibilities under the



Contract the Contractor shall be entitled to notify the Authority pursuant to Clause 38 (Notification Requirements).

### **3.6 Contractor's Due Diligence**

- 3.6.1 The Contractor shall be deemed to have:
  - 3.6.1.1 gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it; and
  - 3.6.1.2 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract.
- 3.6.2 The Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including the Disclosed Data and any other information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

## **SECTION C: MOBILISATION**

### **4. MOBILISATION PLAN**

- 4.1 The Contractor shall implement and comply with its mobilisation and transition activities set out in:
  - 4.1.1 ; the Mobilisation Plan and the Integrated Mobilisation Plan
  - 4.1.2 the EM Programme Test Strategy and the Contractor's Test Strategy and the Test Plan;
  - 4.1.3 Appendix 1 of Schedule 24 (Acceptance Procedure) - List Of Documentary Deliverables, Deliverables And Milestones Requiring A Product Description; and
  - 4.1.4 Schedule 8 (TUPE, Employees and Pensions) and Schedule 13 (Security);

in each case so as to comply with: the Specification; the High Level Design; the Integrated High Level Design; and the Interface Control Documents; and in cooperation with the other EM Contractors and the Authority.
- 4.2 The Contractor shall be responsible for ensuring that at all times:
  - 4.2.1 the Network Design and the High Level Design comply with the Integrated High Level Design;
  - 4.2.2 the Mobilisation Plan complies with the Integrated Mobilisation Plan;
  - 4.2.3 the Contractor's Test Strategy complies with the EM Programme Test Strategy and the Test Plan; and
  - 4.2.4 Appendix 1 of Schedule 24 (Acceptance Procedure) - List Of Documentary Deliverables, Deliverables And Milestones Requiring A Product Description complies with the Mobilisation Plan,



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and shall as soon as practicable (and in any event within two (2) Business Days of becoming aware of such) notify the Authority of any inconsistency between such documents, and shall in each case rectify the relevant document under this Contract (the Network Design, the High Level Design, the Mobilisation Plan, the EM Programme Test Strategy, the Contractor's Test Strategy (pursuant to Schedule 24 (Acceptance Procedure)) as applicable) at the Contractor's cost and submit such revised document to the Authority for review in accordance with the Integrated Contract Change Procedure, and shall once revised thereafter comply with the revised document.

**5. PRE-INTEGRATION ACTIVITIES**

5.1.1 **Not Used.**

**5.2 Network Design**

5.2.1 **Not Used.**

5.2.2 The Contractor shall be responsible for ensuring that the Network Design complies with:

5.2.2.1 the Integrated High Level Design;

5.2.2.2 the Specification;

5.2.2.3 the High Level Design;

5.2.2.4 the Interface Control Documents;

5.2.2.5 reasonable skill and care and Good Industry Practice; and

5.2.2.6 all other applicable provisions of the Contract.

5.2.3 Following incorporation of any changes made to the Network Design, the Network Design shall be subject to a review by the Authority for the purpose of formally evaluating whether such Network Design shall meet the requirements of Clause 5.2.2.

5.2.4 The approval by the Authority of any design submitted by the Contractor or the failure by the Authority to reject any design submitted by the Contractor shall be without prejudice to the Contractor's obligations to ensure that such design, and the Services to which it relates, complies with the requirements of Clause 5.2.2 and the rest of this Contract.

5.2.5 In the event that the Contractor wishes to modify any design or document which has previously been submitted for review, the Contractor shall immediately give notice to the Authority to this effect and shall, thereafter, at the Contractor's own cost, submit revised documents to the Authority in compliance with the timeframes set out in the Mobilisation Plan and the Integrated Mobilisation Plan and in accordance with the Integrated Contract Change Procedure.

**5.3 Live Testing**

5.3.1 If a live trial of Services identifies the need for changes to the SIM Cards or the Network Design (subject to any specific limitations on the extent



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of such changes identified in Schedule 2 (Specification)), the Contractor shall make such changes in consultation with the Authority. If necessary, changes shall be made to the Integrated High Level Design and the Interface Control Documents in accordance with the Integrated Contract Change Procedure to reflect such changes to the SIM Cards or the Network Design.

**6. INTEGRATION ACTIVITIES**

- 6.1.1 The Contractor shall develop the Services in accordance with the Network Design, the High Level Design, the Integrated High Level Design, the Mobilisation Plan, the Integrated Mobilisation Plan and in compliance with any instructions given by the Authority.
- 6.1.2 The full testing of the Services shall be carried out in accordance with the Mobilisation Plan, the Integrated Mobilisation Plan, the EM Programme Test Strategy, the Contractor's Test Strategy, the Test Plan, the Test Procedures, Schedule 2 (Specifications) and Schedule 4 (EM Testing) to achieve Acceptance at each stage in accordance with the Review Plan (pursuant to Schedule 24 (Acceptance Procedure)) and the Mobilisation Plan.
- 6.1.3 If the full testing of the Services identifies the need for changes to the SIM Cards or the Network Design (subject to any specific limitations on the extent of such changes identified in Schedule 2 (Specification)), the Contractor shall make such changes in consultation with the Authority. If necessary, changes shall be made to the Integrated High Level Design and the Interface Control Documents in accordance with the Integrated Contract Change Procedure to reflect such changes to the SIM Cards or the Network Design.

**7. NOT USED**

**8. NOT USED**

**SECTION D: OPERATIONAL PHASE**

**9. PROVISION OF SERVICES**

- 9.1 On and from the Services Commencement Date, the Contractor shall commence provision of the EM Network Services in cooperation with the other EM Contractors and the Authority and in compliance with:
  - 9.1.1 the Specification, Network Design (approved in accordance with Clause 5), the High Level Design and the Integrated High Level Design;
  - 9.1.2 the Interface Control Documents;
  - 9.1.3 the Contract Delivery Indicators applicable to the Contractor as set out in Schedule 7 (Contract Delivery Indicators);
  - 9.1.4 the requirements set out in Schedule 13 (Security);
  - 9.1.5 reasonable skill and care and Good Industry Practice; and
  - 9.1.6 all other applicable provisions of the Contract.
- 9.2 The Contractor shall on an annual basis, in accordance with the specific timescales notified by the Authority, comply with the sustainability reporting requirements set out in Schedule 19 (Sustainability Reporting Requirements). Without prejudice to the



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Authority's rights and remedies pursuant to this Contract, if the Contractor fails to comply with this Clause 9.2, the Contractor at its own expense co-ordinate fully with the Authority to remedy such non-compliance.

9.3 The Contractor shall comply with the performance management arrangements set out in Part B of Schedule 7 (Contract Delivery Indicators) including, but not limited to, providing the Performance Monitoring Reports and such other data, documentation, information and other supporting material as the Contractor may be required to produce under this Contract.

9.4 Without prejudice to any other information provision obligations set out in this Contract, where requested by the Authority, the Contractor shall agree with the Authority the supply of such Management Information as the Authority might reasonably require.

9.5 The Parties acknowledge and agree that the scope and content of the Management Information shall be agreed by the Parties during Mobilisation, provided that the Contractor shall not be obliged to agree to provide Management Information pursuant to this Clause which would require the Contractor to incur material additional cost that is not already included in the Contract Price.

9.6 Once the Parties have agreed the scope and content of the Management Information pursuant to Clause 9.5, any changes requested by the Authority to the scope and content of such Management Information which would require the Contractor to incur material additional costs shall be subject to agreement in accordance with the Integrated Contract Change Procedure.

**10. SERVICE ORDERS**

10.1 The Authority shall be entitled to submit Service Orders to the Contractor at any time.

10.2 The Contractor shall supply the requested SIM Cards in accordance with the Service Orders.

10.3 Each Service Order shall:

10.3.1 be given in writing;

10.3.2 specify the type and quantity of SIM Cards ordered; and

10.3.3 unless the Parties agree that the Authority may specify the date and location after placing the Service Order, specify the Delivery Date and the Delivery Location for the SIM Cards in respect of the Service Order. If the Delivery Date and/or Delivery Location are to be specified after the placing of a Service Order, the Authority shall give the Contractor reasonable advance notice of the relevant information.

10.4 The Contractor shall assign a Service Order number to each Service Order received from the Authority and notify such Service Order numbers to the Authority. Each Party shall use the relevant Service Order number in all subsequent correspondence relating to the Service Order.

10.5 The Authority may at no additional cost to the Authority amend or cancel a Service Order by written notice to the Contractor at any time before the applicable Delivery Date. The Contractor shall use all reasonable endeavours to mitigate the consequences of the amendment or cancellation of a Service Order.

**11. SIM CARD DELIVERY**

11.1 The Contractor shall deliver the SIM Cards in respect of each Service Order to the



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Delivery Location by the Delivery Date. The Contractor shall not deliver the SIM Cards in respect of a Service Order more than two (2) Business Days in advance of the Delivery Date without the prior written consent of the Authority.

- 11.2 If the SIM Cards in respect of a Service Order are not delivered by the specified Delivery Date or in accordance with Clause 11.1, then, without limiting any other right or remedy the Authority may have, the Authority may:

11.2.1 refuse to take any subsequent attempted delivery of the SIM Cards in respect of that Service Order; or

11.2.2 subject to Clause 42 (Liabilities) and Clause 44 (Indemnities), claim damages for any other costs, expenses or losses resulting from the Contractor's failure to deliver the SIM Cards in respect of that Service Order on the Delivery Date,

provided that the Contractor shall have no liability for any failure or delay in delivering the SIM Cards in respect of a Service Order to the extent that such failure or delay is caused by the Authority's failure to comply with its responsibilities under this Contract.

- 11.3 The delivery of SIM Cards in respect of a Service Order shall be accompanied by a delivery note from the Contractor showing the Service Order number, the date of the Service Order, the type and quantity of Services and SIM Cards included in the Service Order, including the SIM Card ID number and telephone number associated with each SIM Card.

- 11.4 The Contractor shall obtain all legally required licences and/or consents, as applicable, for any imports and/or exports of materials, SIM Cards or any component thereof, whether into or out of the UK or any other fiscal border in the performance of its obligations under this Contract.

- 11.5 The Contractor shall be responsible for any intrastat, customs and import duties compliance (including meeting the costs thereof) relating to the movement of any materials, SIM Cards or any component thereof over a fiscal border in connection with the performance of its obligations under the Contract.

**12. SIM CARD PACKAGING AND LABELLING**

The Contractor shall ensure that the SIM Cards in respect of a Service Order are properly packed, secured and labelled in such manner as to enable them to reach their destination undamaged.

**13. TITLE AND RISK IN THE SIM CARDS**

- 13.1 Title in each of the SIM Cards shall vest in and become the absolute property of the Authority upon the earlier of Delivery or payment in full of the price payable for the relevant SIM Cards.

- 13.2 The risk of loss or damage to any SIM Card shall remain with the Contractor until Delivery of the SIM Cards to the Authority at which point the risk of loss will pass to the Authority.

- 13.3 For the avoidance of doubt, the assumption by the Authority of risk in any SIM Card under Clause 13.2 shall be without prejudice to the Authority's rights and remedies, and the Contractor's obligations, under this Contract with respect to those SIM Cards.

**SECTION E: GENERAL OBLIGATIONS**

**14. SECURITY OBLIGATIONS**

- 14.1 The Contractor shall comply with the Authority's security policies as amended or



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updated by the Authority from time to time and the Authority's security requirements set out in Schedule 13 (Security)

- 14.2 The Contractor shall obtain any applicable Accreditation in accordance with the requirements set out in Schedule 13 (Security) by the relevant date set out in the Mobilisation Plan and shall assist the Authority as required in obtaining overall information assurance accreditation for the EM Services by the relevant date set out in the Integrated Mobilisation Plan.
- 14.3 The Contractor shall ensure that the Contractor's Staff with any involvement in the obligations of the Contractor under this Contract at any time during the term of this Contract have passed the relevant security clearances as required by paragraph 6 of Schedule 13 (Security), prior to that individual commencing any work under this Contract.
- 14.4 Not used
- 14.5 Without prejudice to the personnel security requirements set out in Schedule 13 (Security), the Authority may require the Contractor to procure that relevant members of the Contractor's Staff enter into a confidentiality undertaking in the form set out in Appendix 3 to Schedule 13 (Security), where appropriate.
- 14.6 The Authority reserves the right to refuse admission to any of the Contractor's Staff to any of the Authority's Premises over which the Authority has control, to remove any of the Contractor's Staff from any Authority's Premises over which the Authority has control and/or direct the Contractor in writing to end the involvement in the provision of the Services by any of the Contractor's Staff whom the Authority believes represents a security risk. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.
- 14.7 The Contractor shall provide a list of the names and business addresses of all persons who it is expected may require admission to the Authority's Premises in connection with the performance of this Contract, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Authority may reasonably require.
- 14.8 Failure by the Contractor to comply with the provisions of Clause 14.7 will entitle the Authority to refuse admission to its premises to any person who has not been notified to the Authority in accordance therewith.

**15. CONTRACT STANDARDS**

- 15.1 The Contractor shall provide the Services in accordance with, and at all times ensure that the Services comply with and meet all the requirements of:
- 15.1.1 this Contract;
  - 15.1.2 the Collaboration Agreement;
  - 15.1.3 the Specification;
  - 15.1.4 reasonable skill and care and Good Industry Practice;
  - 15.1.5 Authority Policies if notified to the Contractor in writing; and
  - 15.1.6 all applicable Legislation.
- 15.2 The Contractor shall at all times ensure that the Services are performed in such a manner that it does not knowingly cause, contribute to or otherwise give rise to any material breach by the Authority or any Related Organisation of any of its duties or the exercise of its powers under the Criminal Justice Act 1991, the Powers of Criminal Courts (Sentencing) Act 2000, Criminal Justice and Courts Act 2000, the Criminal Justice Act 2003, the Legal Aid, Sentencing and Punishment of Offenders Act 2012,





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the Crime and Courts Act 2013, the Offender Rehabilitation Act 2014 and other relevant criminal justice legislation.

- 15.3 Whilst Authority Policies described as PSOs/PSIs/PCs/PIs in Schedule 15 may have an expiry date, the Contractor shall comply with them in accordance with Clause 15.1.5 until notified otherwise by the Authority.
- 15.4 In making this Contract the Authority has complied with its duty under Section 149 of the Equality Act 2010 in particular as it relates to female offenders. There is nothing in the provision of the Services that is intended to meet the particular needs of female offenders.

**16. CONSENTS**

The Contractor shall obtain and maintain in force for the Contract Period all Consents needed to provide the Services in accordance with the terms of this Contract.

**17. PILOTS**

- 17.1 The Contractor will participate in any pilot in connection with the Services requested by the Authority or any Related Organisation.
- 17.2 The Contractor shall notify the Authority where any Related Organisation makes any enquiry or request directly to the Contractor for a pilot in connection with the Services.
- 17.3 Any such pilot shall be agreed between the Authority and the EM Contractors through the Integrated Contract Change Procedure.

**18. SERVICES IMPROVEMENT**

- 18.1 The Contractor shall have an ongoing obligation throughout the term of this Contract to identify new or potential improvements to the Services in accordance with this Clause 18.1. As part of this obligation, the Contractor shall report to the Authority quarterly from the Services Commencement Date on:

- 18.1.1 the emergence of new and evolving relevant technologies which could improve any of the Services, and those technological advances potentially available to the Contractor which the Authority may wish to adopt;
- 18.1.2 new or potential improvements to hardware (including associated firmware) and software relating to the Services and available updates to such hardware and software;
- 18.1.3 new or potential improvements to any of the EM Services including as to design, performance or specification; and/or
- 18.1.4 new or potential improvements to the interfaces or integration of the EM Services which might result in efficiency or productivity gains or in reduction of operational risk.

- 18.2 The Contractor shall ensure that the information and supporting documentation that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information and documentation that the Authority reasonably requests.
- 18.3 The Contractor undertakes to offer to the Authority, any alternative services or improvement to a Service within the scope of this Contract in substitution for any corresponding Service where the substitute service contains, relies on or uses new technology or has better performance characteristics than such existing Service. As part of the offer, the Contractor shall notify the Authority of any change in the Contract Price which would result from such substitution.



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- 18.4 Any offer made pursuant to Clause 18.3 shall be subject to approval by the Authority at its sole discretion. If the Authority wishes to incorporate any improvement or substitution identified by the Contractor under this Clause, the Authority shall implement the process set out in the Integrated Contract Change Procedure.

**SECTION F: WARRANTIES AND DEFECTS**

**19. WARRANTIES**

**19.1 General warranties**

The Contractor warrants and represents to the Authority that on the date of this Contract:

- 19.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted; and
- 19.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and the Sub-Contracts,

and the Authority relies upon such warranties and representations.

**19.2 Contractor Undertakings**

The Contractor undertakes with the Authority that:

- 19.2.1 it shall:
  - 19.2.1.1 upon becoming aware that any Legal Proceedings may be threatened or pending and immediately after the commencement of such Legal Proceedings; or
  - 19.2.1.2 in respect of Legal Proceedings which are against a sub-contractor, within twenty (20) Business Days after becoming aware that such Legal Proceedings may be threatened or pending or within twenty (20) Business Days after the commencement of such Legal Proceedings,give the Authority notice of such Legal Proceedings which would adversely affect, to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract;
- 19.2.2 it shall not, without the prior written consent of the Authority, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract; and
- 19.2.3 it shall not except where otherwise approved in writing by the Authority cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom.

**19.3 Network Design Warranty**

The Contractor warrants to the Authority in relation to this Contract that the Network Design and High Level Design shall meet the Specification and the Integrated High Level Design.

**19.4 Service Warranties**

- 19.4.1 The Contractor warrants that the Services will be performed:



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- 19.4.1.1 with all reasonable skill and care and in accordance with Good Industry Practice;
- 19.4.1.2 using an adequate number of appropriately trained, skilled and experienced personnel; and
- 19.4.1.3 in compliance with its CAS(T) certification.

**19.5 Status of Warranties**

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

**20. DEFECTIVE SERVICES**

- 20.1 If any Services delivered to the Authority are such that the Contractor is in breach of any of the terms of this Contract (such Services being "**Defective Services**"), then, except in relation to Service Credits as provided in Paragraph 2.23 of Schedule 7 (Contract Delivery Indicators), but without otherwise limiting any other right or remedy that the Authority or a Related Organisation may have, the Authority may reject those Services and:

- 20.1.1 notwithstanding the Contractor's obligations under Clause 38, require the Contractor in writing to re-perform the rejected Services or resolve the defect in the rejected Services at the Contractor's risk and expense within five (5) Business Days unless otherwise agreed;
- 20.1.2 require the Contractor to repay the price of the rejected Services in full (whether or not the Authority or Related Organisation has previously required the Contractor to re-perform the rejected Services or resolve the defect in the rejected Services); and
- 20.1.3 subject to Clause 42 (Liabilities) and Clause 44 (Indemnities), claim damages for any other costs, expenses or losses resulting from the Contractor's provision of Defective Services.

- 20.2 The terms of this Contract shall apply to any Services that have been re-performed or any Services in respect of which a defect has been resolved by the Contractor.

- 20.3 If the Contractor fails to promptly re-perform the rejected Services or resolve the defect in the rejected Services in accordance with Clause 20.1 (Defective Services), the Authority or a Related Organisation may, without affecting its rights under Clause 20.1.3 (Defective Services), obtain substitute services from a third party supplier or engage a third party to provide a solution to mitigate the impact of the rejected Services on the EM Services, and the Contractor shall reimburse the Authority for the additional costs it incurs in doing so. The Authority shall use all reasonable endeavours to minimise such costs.

**SECTION G: PAYMENT AND OTHER FINANCIAL MATTERS**

**21. PAYMENT PROVISIONS**

**21.1 Payment of the Contract Price**

The Authority shall pay to the Contractor the Contract Price in respect of each Month, which shall be calculated in accordance with Schedule 6 (Price and Payment Mechanism).

**21.2 Report and Invoice**



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- 21.2.1 Within five (5) Business Days of the end of each Month the Contactor shall submit to the Authority a Monthly Payment Report including:
  - 21.2.1.1 a report showing for that Month the Contract Price and, individually, each item taken into account in calculating the Contract Price for that Month pursuant to Schedule 6 (Price and Payment Mechanism) and separately showing any VAT payable by the Authority on any relevant amount;
  - 21.2.1.2 any credit notes agreed with the Authority; and
  - 21.2.1.3 an invoice for the amount (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.
- 21.2.2 Invoices and the Monthly Payment Report shall be sent electronically.
- 21.2.3 The Authority shall advise the Contractor of acceptable means of electronic submission from time to time by written instruction and with thirty (30) Days' notice of changes to such details that may alter the method of delivery of the invoice without such written notice constituting a Change.
- 21.2.4 The Authority shall advise purchase order numbers to the Contractor which shall be quoted in all Monthly Payment Reports and invoices. Purchase order numbers shall be promptly advised for each period of Service delivery, as determined by the Authority, which by default shall be for each Authority financial year. The Contractor shall not raise invoices without first having been advised of the relevant purchase order number by the Authority.

**21.3 Payment Terms**

- 21.3.1 Subject to Clauses 21.3.2 (Payment Terms) and 21.5 (Disputed Amounts) and paragraph 6.9 of Schedule 6 (Price and Payment Mechanism), the Authority shall pay the amount stated in any invoice submitted under Clause 21.2 (Report and Invoice) on or before the date falling thirty (30) Days after receipt of the invoice.
- 21.3.2 Where a Monthly Payment Report shows an amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority on or before the date falling thirty (30) Days after the date of the invoice, or at the option of the Authority carry forward that amount to the next invoice in reduction of the amount which would otherwise have been owed by the Authority to the Contractor.

**21.4 Interest on Late Payment**

Except where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on or before the due date, it shall bear interest on that amount at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).

**21.5 Disputed Amounts**

- 21.5.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to this Clause 21 (Payment



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Provisions), the Authority shall notify the Contractor in writing within thirty (30) days after receipt by the Authority of the relevant invoice and supporting information of the Disputed Amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) acting in good faith.

- 21.5.2 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount and the provisions set out in Clause 21.4 shall not apply to such Disputed Amount, but the Authority shall pay on the due date any undisputed amounts.

**21.6 Value Added Tax**

The Contractor will include VAT on all invoices at the appropriate rate in force at the time of invoicing and the Authority will pay to the Contractor the gross invoice value.

**21.7 Overpayments**

If it is agreed by the Parties or if the Authority reasonably considers that the Authority has made an overpayment in respect of the Contract Price, the Contractor shall pay to the Authority the amount overpaid within fourteen (14) days of being notified by the Authority of this overpayment. The Authority may deduct the relevant amount from the Contract Price if the Contractor fails to re-pay such overpayment in accordance with this Clause 21.7. In relation to any overpayment, the due date for the purposes of Clause 21.4 shall be the date on which the overpayment occurred.

**21.8 Rights of Set Off**

The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract. Where the Authority intends to retain or set off any such amount, it shall give prior written notice to the Contractor.

**22. NOT USED**

**23. TRANSPARENCY**

- 23.1 The Contractor shall comply with the transparency provisions in Schedule 6 (Price and Payment Mechanism) and Schedule 12 (Audit).

**24. BENCHMARKING**

- 24.1 Subject to Clause 24.2, and no more than once per Contract Year, the Authority may appoint an independent third party reviewer to benchmark the Contractor's charges for the Services against the rates and charges which are typical in the public sector electronic monitoring sector.
- 24.2 The Authority shall consult the Contractor over the appointment of the independent third party reviewer.
- 24.3 The Contractor and the Authority shall share the cost of such benchmarking studies equally. The Contractor shall provide information and assistance to the reviewer as is reasonably required to carry out the benchmarking at no charge to the Authority.
- 24.4 The Parties shall jointly review the findings of each benchmarking study. Where the Contract Price for the Services is found to be more expensive than the rates and charges for substantially comparable services typically available in the public sector electronic monitoring sector, then the Contractor shall revise the Contract Price downward such that it falls within the benchmarked rate.



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- 24.5 If the Authority and the Contractor fail to agree on the outcome of a benchmarking study, then the Dispute Resolution Procedure described in Clause 48 (Dispute Resolution) shall apply.

**25. FINANCIAL DISTRESS**

Schedule 16 (Financial Distress) sets out certain protections for the Authority and Related Organisations in respect of Financial Distress Events.

**SECTION H: CONTRACT GOVERNANCE**

**26. GOVERNANCE**

- 26.1 The Contractor shall take part in governance arrangements as described in the Governance Structure with the other EM Contractors and the Authority to ensure the successful implementation and operation of the services/products provided by each of the EM Contractors and the provision of the EM Services. Such governance arrangements shall be organised and chaired by the Authority.
- 26.2 Each Party shall ensure that its representatives shall make all reasonable efforts to attend governance meetings at which that representative is required to attend by the Authority. If any representative is not able to attend a meeting, that person shall ensure that:
- 26.2.1 a delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and
  - 26.2.2 that he/she is debriefed by such delegate after the meeting.
- 26.3 A chairperson shall be appointed by the Authority for all the governance meetings. The chairperson shall be accountable and the vice chairperson shall be responsible for:
- 26.3.1 scheduling group meetings;
  - 26.3.2 setting the agenda for the meetings and circulating to all attendees in advance of such meeting;
  - 26.3.3 chairing the meetings;
  - 26.3.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following meetings;
  - 26.3.5 ensuring that minutes for meetings are recorded and disseminated electronically to the appropriate persons and to all meeting participants within ten (10) Business Days after the meeting; and
  - 26.3.6 facilitating the process or procedure by which any decision agreed at any meeting is given effect in the appropriate manner.
- 26.4 Governance meetings shall be quorate as long as at least one (1) representative from each EM Contractor is present (where a representative has been required to attend by the Authority) and the Authority has the majority of representatives.
- 26.5 The Parties shall ensure, as far as reasonably practicable, that all governance meetings shall resolve the issues and achieve the objectives placed before them. Each Party shall ensure that their representatives are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.



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26.6 The Parties intend to reach decisions in each governance group by consensus. Where there is no consensus, the relevant matter shall be dealt with in accordance with the Dispute Resolution Procedure.

26.7 All Parties shall pay their own costs and expenses in relation to attendance at the governance groups save that the Authority shall be responsible for providing accommodation for the meetings. A written record of each of these meetings and agreed actions shall be the responsibility of the Authority who shall also be responsible for the issue of the record to the members of the relevant governance group, not later than ten (10) Business Days after each meeting, or prior to the next meeting, whichever comes first.

**27. CHANGE**

27.1 All changes to this Contract shall be managed in accordance with the Integrated Contract Change Procedure except where expressly provided to the contrary in this Contract.

27.2 No variation of this Contract will be valid unless recorded in writing using the Integrated Contract Change Procedure and signed by or on behalf of both Parties.

**28. SUB-CONTRACTING AND ASSIGNMENT**

**28.1 Transfers of this Contract by the Authority**

The rights and obligations of the Authority, under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract (in respect of the Authority) or acquiring the whole of the relevant Related Organisation's rights (in respect of a Related Organisation) being:

28.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

28.1.2 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having (in the case of an assignment, novation or other transfer of obligations by the Authority) the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

**28.2 Transfers of this Contract by the Contractor**

Without prejudice to Clause 49.2, the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit or burden of this Contract in whole or in part except with the prior written consent of the Authority.

**28.3 Sub-Contracting Obligations**

The Contractor:

28.3.1 shall perform its obligations under and observe all the provisions of any Sub-Contract with a sub-contractor;

28.3.2 shall be directly responsible for the management and supervision of all Sub-Contractors and sub-contractors;



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- 28.3.3 shall not (and shall procure that the sub-contractors shall not) appoint any sub-contractor who is not listed in Schedule 17 (Approved Sub-Contractors); and
- 28.3.4 shall not enter into a proposed sub-contract without the Authority's prior written consent.

**28.4 Required Terms in Sub-Contracts**

Where the Contractor enters into a Sub-Contract with a Sub-Contractor after the date of this Contract, it shall ensure the flow down of all terms in this Contract that are relevant to the scope of the Sub-Contract except where expressly agreed otherwise with the Authority and shall include a provision in such Sub-Contract which:

- 28.4.1 requires payment by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) Days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such Sub-Contract;
- 28.4.2 requires a provision to be included in the contracts between the Sub-Contractor and its contractors which requires payment by the Sub-Contractor to its contractors within a specified period not exceeding thirty (30) Days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such contract;
- 28.4.3 with respect to Key Sub-Contractors only, requires the Key Sub-Contractor to:
  - 28.4.3.1 notify the Authority in writing of a Key Sub-Contractor Financial Distress Event or any fact, circumstance or matter which could cause a Key Sub-Contractor Financial Distress Event (and, in any event, provide such notification within ten (10) Business Days of the date on which the Key Sub-Contractor first becomes aware of the Key Sub-Contractor Financial Distress Event or the fact, circumstance or matter which could cause the Key Sub-Contractor Financial Distress Event);
  - 28.4.3.2 co-operate with the Contractor and the Authority in order to give full effect to the provisions of Schedule 16 (Financial Distress), including meeting with the Contractor and the Authority to discuss and review the effect of the Key Sub-Contractor Financial Distress Event on the continued performance and delivery of the Services and contributing to and complying with the Financial Distress Service Continuity Plan (as specified in Schedule 16);
- 28.4.4 confers the right for the Contractor to terminate the Sub-Contract in whole or in part voluntarily on terms no more onerous than the Authority's right to terminate this Contract voluntarily; and
- 28.4.5 confers a right for the Contractor to assign or novate its rights and obligations under the Sub-Contract to the Authority or any New Contractor free of charge in connection with the termination (in whole or in part) or expiry of this Contract pursuant to an Authority request in accordance with Schedule 11 (Exit Management and Transfer).

**29. AUDIT ACCESS**

**29.1 Provision of Information**





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The Contractor shall provide to the Authority copies of and/or access to review all information, documents, records and the like in the possession of, or available to, the Contractor related to the performance of this Contract as may be reasonably requested by the Authority's Representative, irrespective of any IPR ownership issues, for any purpose in connection with this Contract, the Contract Price and the Services (which shall include information required by the Authority), and to this end the Contractor shall procure that all such items in the possession of the Contractor or any sub-contractor shall be available to it

**29.2 Rights of Inspection and Audit**

- 29.2.1 The Contractor shall audit its performance in the delivery of the Services in accordance with the Specification, Schedule 7 (Contract Delivery Indicators) and Schedule 12 (Audit).
- 29.2.2 The Contractor shall comply with the audit provisions set out in Schedule 12 (Audit).

**29.3 Rights of Inspection**

- 29.3.1 The Authority, the Authority's Representative and any other representative of the Authority may enter upon the Contractor's Premises and any other property (including vehicles) used by the Contractor and/or its Sub-Contractors to perform the Services, to:
  - 29.3.1.1 inspect the operation of the Services and to monitor compliance by the Contractor with its obligations; and
  - 29.3.1.2 inspect the equipment used by the Contractor in the provision of the Services.
- 29.3.2 As and when requested, the Contractor shall procure that satisfactory facilities are made available to the Authority, the Authority's Representative or any other representative of the Authority and that reasonable assistance is given for the purposes of Clause 29.3.1.
- 29.3.3 Inspections carried out pursuant to Clause 29.3.1 shall be carried out during Business Hours on reasonable written notice to the Contractor.
- 29.3.4 If following an inspection the Authority considers that the Services are not or are not likely to be provided as warranted under Clause 19 (Warranties) or are otherwise likely to be Defective Services, the Authority shall inform the Contractor and the Contractor shall immediately take such action as is necessary to ensure that the Services are or will be as warranted under Clause 19 (Warranties) or will otherwise become Defective Services. The Authority shall, without prejudice to its other rights and remedies, have the right to re-conduct inspections after the Contractor has carried out its remedial actions.
- 29.3.5 The Authority shall use its reasonable endeavours to minimise any unnecessary disruption to the Contractor's business operations when undertaking any such inspection pursuant to this Clause 29.3.

**30. MANAGEMENT SUPERVISION**

- 30.1 If the Authority reasonably believes that it needs to take action in connection with the performance of the Services upon the occurrence of a Management Supervision Trigger the Authority or its agents shall be entitled to take action in accordance with the remainder of this Clause 30.
- 30.2 On the occurrence of any Management Supervision Trigger the Authority may by prior written notice to the Contractor appoint such reasonable number of Observers as may



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reasonably be required to observe, monitor, review and/or audit any matter related to:

- 30.2.1 any circumstances that have given rise to a Management Supervision Trigger; and/or
- 30.2.2 the performance (or non-performance) by or on behalf of the Contractor of any obligations under this Contract:
  - 30.2.2.1 in respect of the Services (or relevant part thereof) to which the Management Supervision Trigger relates; and/or
  - 30.2.2.2 to mitigate, remedy or prevent the reoccurrence of the circumstances that have given rise to a Management Supervision Trigger,

until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it shall perform (and is capable of performing) its obligations under this Contract and the circumstances giving rise to the Management Supervision Trigger no longer apply.

- 30.3 The Authority may require that such Observers are granted the rights referred to in Clause 30.2 either through such remote means as the Authority may request (provided such request is reasonably practicable) or at any of the Contractor's Premises or other relevant premise(s).
- 30.4 The Contractor shall notify the Authority within five (5) Business Days of having been informed of the actions the Authority proposes to take or require under this Clause 30 if it believes the Authority's action or proposed actions are excessive or may prejudice the Contractor's performance of its obligations under this Contract, together with such alternative measures that the Contractor may propose. The Authority shall in any event use all reasonable endeavours to minimise any unnecessary disruption to the Contractor's business operations when undertaking any action in respect of any measures and/or the appointment of any Observers pursuant to this Clause 30.
- 30.5 Subject to Clauses 30.6, the Contractor shall bear its own costs and shall reimburse the Authority in respect of any reasonable additional costs that are directly incurred by the Authority in respect of any measures and/or the appointment of any Observers or the taking of any other action under this Clause 30 (including Observers' reasonable incurred expenses in accordance with the Authority's expenses policy and including travel and accommodation).
- 30.6 The Authority shall bear its own costs and shall reimburse the Contractor in respect of any reasonable additional costs that are directly incurred by the Contractor in accordance with this Contract in respect of any action taken under this Clause 30 to the extent arising solely as a result of the circumstances identified as Management Supervision Triggers, provided such circumstances did not arise as a result of any breach or likely future breach of this Contract by the Contractor.

**31. RELATED ORGANISATIONS**

- 31.1 The Contractor acknowledges and agrees that the Authority may, from time to time, wish for Related Organisations to use the Services. In such circumstances, the Authority shall be responsible for managing the process of extending the Services to any such Related Organisation(s) on an identical basis to those as provided by the Contractor to the Authority. The Contractor shall prepare a proposal (including appropriate terms of reference and a mobilisation plan) which shall be agreed between the Authority and the relevant EM Contractors through the Integrated Contract Change Procedure. The schedule of rates set out in Schedule 6 (Price and Payment Mechanism) shall apply to any such agreed use of the identical Services by Related Organisations.



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- 31.2 The Contractor acknowledges and agrees that it shall immediately notify the Authority where any Related Organisation makes any enquiry or request directly to the Contractor for use of the Services for the purpose of supporting Electronic Monitoring, and shall not conduct any direct discussions with or make any proposals directly to any Related Organisations.
- 31.3 The Authority shall ensure that the Related Organisations are aware of and comply with the terms of this Contract as they relate to usage of the Services.
- 31.4 The Contractor shall provide all reasonable assistance, information and cooperation to any Related Organisations and also any Agencies or Authority Related Party with whom the Contractor is required to cooperate in delivery of the Services agreed in accordance with Clause 31.1.

**SECTION I: STAFF**

**32. REPRESENTATIVES**

**32.1 Representatives of the Authority**

- 32.1.1 The Authority's Representative(s) shall be as stipulated in Schedule 10 (Notices).
- 32.1.2 The Authority's Representative shall exercise the functions and powers of the Authority in relation to the Contract and as notified by the Authority to the Contractor from time to time. Except as previously notified in writing before such act by the Authority to the Contractor, the Contractor and the Contractor's Representative shall be entitled to treat any act of the Authority's Representative in connection with this Contract as being expressly authorised by the Authority and the Contractor and the Contractor's Representative shall not be required to determine whether any express authority has in fact been given.
- 32.1.3 The Authority may by notice to the Contractor change the Authority's Representative. Such change shall have effect on the date specified in the written notice.

**32.2 Representatives of the Contractor**

- 32.2.1 The Contractor's Representative(s) shall be as stipulated in Schedule 10 (Notices), or such other persons appointed pursuant to this Clause 32.2 (Representatives of the Contractor).
- 32.2.2 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority, and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 32.2.3 The Contractor may with the prior written consent of the Authority (not to be unreasonably withheld or delayed), change the Contractor's Representative. Where the Contractor wishes to do so it shall, by written notice to the Authority, propose a substitute representative, taking account of the need for liaison and continuity in respect of the Contract.



**33. STAFF**

**33.1 Contractor's Key Staff**

- 33.1.1 The Contractor shall appoint the persons named as such in Schedule 18 (Contractor's Key Staff) as the individuals who shall be responsible for the matters allocated to such Contractor's Key Staff. The Contractor acknowledges that the Contractor's Key Staff are essential to the proper provision of the Services to the Authority.
- 33.1.2 The Authority shall be entitled to:
  - 33.1.2.1 review the performance of the Contractor's Key Staff at any time during the Contract Period;
  - 33.1.2.2 reject any of the Contractor's Key Staff assigned to support the performance of the Services if in its sole opinion, acting reasonably, such Contractor's Key Staff are deemed unfit to effectively support the delivery of the Services , or in the event that the Authority reasonably considers the performance, behaviour or attendance of the Contractor's Key Staff is materially unsatisfactory in respect of training, skills and experience as required in accordance with Clause 19.4.1.2;
  - 33.1.2.3 see curricula vitae of any candidates whom the Contractor proposes to appoint as Contractor Key Staff; and
  - 33.1.2.4 interview the proposed candidate before such candidate commences the Services.
- 33.1.3 In the event that the Authority is not satisfied with any Contractor's Key Staff in accordance with Clause 33.1.2.2, the Authority shall advise the Contractor in writing of the exact nature of the problems and the Contractor shall, if requested by the Authority, endeavour to find a suitable replacement.
- 33.1.4 In the event that the Authority exercises any of its rights under Clause 33.1.2, the Contractor shall promptly inform the Authority of any impact such will have on any dates in the Mobilisation Plan. The Parties shall agree any variation to the dates in the Mobilisation Plan necessitated by the Authority exercising its rights under this Clause 33.1.4 (and any consequential changes required to this Contract) in accordance with the Integrated Contract Change Procedure. There shall be no increase in the Charges with respect to any variation to dates arising from Clause 33.1.2.
- 33.1.5 Contractor's Key Staff shall not be replaced by the Contractor without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment and other extenuating circumstances. Such replacements shall be of at least equal status or of equivalent experience and skills to the Contractor's Key Staff being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 33.1.6 Not used



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33.1.7 The Authority shall not unreasonably withhold or delay its agreement under Clause 33.1.5 or Clause 33.1.6. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Contractor's Key Staff.

33.1.8 Any disputes howsoever arising under this Clause 33 shall be handled in accordance with the Dispute Resolution Procedure.

**33.2 Child Labour**

The Contractor shall not, nor directly or indirectly assist any other person to use any child labour in the performance of the Services, and where third parties are used to provide the Services (or part thereof) the Contractor shall procure from those third parties written confirmation that they shall not use any child labour in the provision of the Services (or part thereof). Without prejudice to the materiality of any other provision within this Contract, breach of this Clause 33.2 shall be deemed a material breach of this Contract.

**33.3 Equality and Diversity**

On and from the Commencement Date, the Contractor shall implement and comply with the provisions set out in Schedule 14 (Equality).

**33.4 Health and Safety**

33.4.1 The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of the Contract.

33.4.2 The Contractor shall ensure that it implements and enforces safe systems of work to cover all persons involved in the provision of the Services.

33.4.3 The Contractor shall be liable for the health and safety of all Contractor's Staff and shall ensure that appropriate provisions are included in its contracts with such Contractor's Staff requiring the relevant individuals to be responsible for health and safety risks including carrying out appropriate health and safety risk assessments when providing the Services.

33.4.4 The Contractor shall nominate a Safety Officer reasonably acceptable to the Authority to co-ordinate all matters concerning safety. The Safety Officer shall ensure the co-operation of the Contractor's Staff with respect to matters concerning health and safety and all prevention measures designated against fire or any other hazards. The Safety Officer shall notify the Authority of any change in working practices or other occurrences likely to increase the risks or to cause new hazards. The Safety Officer shall attend all meetings convened by the Authority concerning health and safety if requested by the Authority.

**34. TUPE**

**34.1 Transfer Provisions**

The Parties shall comply with the provisions of Schedule 8 (TUPE, Employees and Pensions) with respect to transfer of employees.

**SECTION J: IP, CONFIDENTIALITY AND DATA**

**35. INTELLECTUAL PROPERTY RIGHTS**



**35.1 Reserved Rights**

Except as expressly set out in this Contract:

- 35.1.1 the Authority and Related Organisations shall not acquire any right, title or interest in or to:
  - 35.1.1.1 the Contractor Background IPR;
  - 35.1.1.2 the Third Party IPR; and
  - 35.1.1.3 the Project Specific IPR;
- 35.1.2 the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its third party licensors, including the Authority Background IPR.

35.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that are inconsistent with the allocation of title set out in Clause 35.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

35.3 The Contractor shall waive or procure a waiver of any moral rights from all of the authors in any copyright works the rights in which are assigned to the Authority under this Contract.

**35.4 Licence to the Authority and the Related Organisations**

- 35.4.1 The Contractor hereby grants to the Authority and its Related Organisations and ,shall to the extent that it has such licence rights itself, grant to the Authority and its Related Organisations a perpetual, non-exclusive, royalty-free and UK licence to use and sub-license the Contractor Background IPR and the Project Specific IPR for the duration of the provision of the Services:
  - 35.4.1.1 to perform the Authority's obligations under the Contract, the other EM Services Contracts and/or the Collaboration Agreement;
  - 35.4.1.2 to receive the benefit of the Services under the Contract, the other EM Services Contracts and/or the Collaboration Agreement and, in particular, the nature of the Services ordered by the Authority or the particular Related Organisation;
  - 35.4.1.3 to receive the services and use and/or deal with the products supplied under the other EM Services Contracts with the other EM Contractors in so far as they are received and/or used and/or dealt with in conjunction with the APIs, the Services and/or SIM Cards;
  - 35.4.1.4 to enable the transfer of responsibility for the Services (or any part of the Services) to the Authority, any Related Organisation and/or any New Contractor in accordance with and for the periods specified in Clause 47.5 and Schedule 11 (Exit Management and Transfer); and
  - 35.4.1.5 Not Used.
- 35.4.2 The Contractor shall be solely responsible for and shall ensure that it has at all times in relation to Intellectual Property Rights, all Consents



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necessary to provide the Services to the Authority and to grant the licences granted to the Authority under the Contract.

**35.5 Third Party IPR**

The Third Party IPR shall be licensed to the Authority and Related Organisations on the terms set out in Clause 35.4 (Licence to the Authority), provided that if in respect of any proposed Third Party IPR the Contractor cannot obtain a licence in accordance with such terms, the Contractor will consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority (in which case it shall grant a licence in respect of such Third Party IPR upon the agreed terms) or whether the Contractor should use an alternative provider.

**35.6 Licence to Contractor**

- 35.6.1 The Authority hereby grants to the Contractor a non-exclusive, non-transferable, licence, with the right to sub-license to its sub-contractors, to Use the Authority Background IPR to the extent strictly necessary to enable the Contractor to provide the Services.

**35.7 Indemnity**

- 35.7.1 The Contractor shall indemnify and keep indemnified and hold harmless the Authority and its Related Organisations and their employees, agents and contractors against all liabilities, costs, expenses, damages and losses (to the extent constituting Direct Losses), and all interest, penalties and legal and professional costs and expenses suffered or incurred arising out of or in connection with any claim, threatened claim and/ or proceedings that:

35.7.1.1 the receipt of and/or Use of the Services, the SIM Cards, the Deliverables, Test Item and/or Contractor Background IPR, Third Party IPR, Project Specific IPR (and/or any materials embodying such IPR) and/or any other materials, plant, machinery or equipment provided by or on behalf of the Contractor, its Affiliates and/or sub-contractors in connection with the Contract and/or Collaboration Agreement by the Authority and/or its Related Organisations in accordance with the terms of this Contract; and/or

35.7.1.2 the Use of the Authority Background IPR or any materials embodying such Authority Background IPR by the Contractor, its Affiliates and/or sub-contractors other than in accordance with the terms of this Contract,

infringes the Intellectual Property Rights of a third party and the provisions of Clause 42 (Liabilities) and Clause 44 (Indemnities) shall apply.

- 35.7.2 The Parties acknowledge that the Authority has the benefit of indemnities under the other EM Services Contracts that correspond to the indemnity set out in Clause 35.7.1. In the event of any claim, threatened claim and/or proceedings as to infringement of Intellectual Property Rights being brought directly against the Contractor by a third party that relates to the use by the Contractor (in connection with performance of the Services) of the Intellectual Property Rights or any materials embodying those Intellectual Property Rights licensed to the Authority by another EM Contractor, then to the extent that the Authority can recover under the corresponding indemnity in respect of the Contractor's losses, the Authority shall pass on to the Contractor any such sums recovered. The



Authority may where appropriate consider giving the Contractor conduct of any claim against the other EM Contractor under the corresponding indemnity.

**35.8 EM Competitions Model**

- 35.8.1 The Contractor acknowledges and agrees that the EM Competitions Model is confidential to the Authority and the Authority owns all Intellectual Property Rights therein, excluding any Contractor Background IPR, Third Party IPR and Project Specific IPR. The Contractor shall not disclose the EM Competitions Model to any third party and shall not use or permit any third party to use the EM Competitions Model for any purpose at any time. Nothing in this clause shall prevent the Contractor from disclosing its services to a third party.

**36. INFORMATION AND CONFIDENTIALITY**

**36.1 Confidentiality**

- 36.1.1 The Parties agree that the provisions of this Contract shall not be treated as Confidential Information and may be disclosed without restriction, provided that prior to such disclosure the Authority may, at its sole discretion, in whole or in part, redact information as it deems appropriate.
- 36.1.2 Clause 36.1.1 shall not apply to the provisions of this Contract designated as Commercially Sensitive Information and listed in Part 1 of Schedule 25 (Commercially Sensitive Information) which shall, subject to Clause 36.2 (Permitted Disclosure), be kept confidential for the periods specified in that Part.
- 36.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information for six years after the end of the Contract Period.

**36.2 Permitted Disclosure**

Clause 36.1 (Confidentiality) shall not apply to:

- 36.2.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;
- 36.2.2 any matter which a Party can demonstrate is already or becomes widely available in the public domain otherwise than as a result of a breach of this Clause 36 (Information and Confidentiality);
- 36.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its sub-contractors;
- 36.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority





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- having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 36.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 36.2.6 any provision of information to the Parties' own legal, financial or insurance advisers;
- 36.2.7 any disclosure by the Authority of information relating to the operation of this Contract and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any shortlisted bidder in a re-tendering process and the proposed New Contractor and their advisers, should the Authority decide to retender this Contract (in whole or in part) subject to the shortlisted bidders and the proposed New Contractor entering into a confidentiality undertaking with the Authority on terms similar in all material respects to those set out in this Clause 36 (Information and Confidentiality);
- 36.2.8 any disclosure of information by the Authority to any other department, office or agency of the United Kingdom Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract or to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 36.2.9 any disclosure that the Authority (acting reasonably) deems necessary or appropriate in the course of carrying out its public functions;
- 36.2.10 any disclosure on a confidential basis for the purpose of the exercise of its rights under this Contract, including the audit rights pursuant to Clause 29 (Audit Access), the management supervision rights pursuant to Clause 30 (Management Supervision), and Exit Management rights pursuant to Clause 46.5.4 (Exit Management), or to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 36;
- 36.2.11 any disclosure for the purpose of:
- 36.2.11.1 the examination and certification of the Authority's or the Contractor's accounts;
- 36.2.11.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 36.2.11.3 (without prejudice to the generality of Clause 36.2.4 (Permitted Disclosure)) compliance with the FOIA and/or the Environmental Information Regulations,
- provided that neither Clauses 36.2.11.3 (Permitted Disclosure) nor 36.2.4 (Permitted Disclosure) shall permit disclosure of Confidential Information otherwise prohibited by Clause 36.1 (Confidentiality) where that information is exempt from disclosure under section 41 of the FOIA.



**36.3 Obligations Preserved**

Where disclosure is permitted under Clause 36.2 (Permitted Disclosure), other than Clauses 36.2.2, 36.2.4, 36.2.5 and 36.2.11 (Permitted Disclosure), the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

**36.4 Freedom of Information**

36.4.1 The Contractor acknowledges that the Authority and Related Organisations are subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority and the Related Organisations to enable the Authority and Related Organisations to comply with their respective Information disclosure obligations including applicable timescales for compliance.

36.4.2 The Contractor shall and shall procure that its sub-contractors shall:

36.4.2.1 transfer to the Authority or, as applicable, the relevant Related Organisation all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;

36.4.2.2 provide the Authority or, as applicable, the relevant Related Organisation with a copy of all Information in its possession, or power in the form that the Authority or, as applicable, the relevant Related Organisation requires within five (5) Business Days (or such other period as the Authority may specify) of the Authority's request; and

36.4.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority or, as applicable, the relevant Related Organisation to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

36.4.3 The Authority or, as applicable, the relevant Related Organisation shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

36.4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority or, as applicable, the relevant Related Organisation.

36.4.5 The Contractor acknowledges that (notwithstanding the provisions of this Clause 36.4 (Freedom of Information)) the Authority or, as applicable, the relevant Related Organisation may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

36.4.5.1 in certain circumstances without consulting the Contractor; or

36.4.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where Clause 36.4.5.1 (Freedom of Information)



applies the Authority shall (or, as applicable, shall ensure the relevant Related Organisation shall) 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.

### **37. PROTECTION OF INFORMATION**

#### **37.1 Authority Data**

37.1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

37.1.2 The Contractor shall:

37.1.2.1 not store, copy, disclose, alter or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing in advance by the Authority;

37.1.2.2 ensure that only those of Contractor's Staff who have a specific need to access Authority Data shall have such access and that their access will in all cases be directly and proportionately related to the Services being performed or obligations being complied with by the member of Contractor's Staff concerned;

37.1.2.3 comply with the Security Policies of the Authority regarding the handling and storage of the Authority Data as set out in Schedule 13, as updated from time to time; and

37.1.2.4 maintain records of all Sub-Contractors that Process categories of Authority Data, including the type of data that is Processed by each Sub-Contractor, the identity of the Sub-Contractor, and any special instructions given to such Sub-Contractors in respect of the Processing of the data and any other information prescribed in applicable Data Protection Legislation. The Contractor shall make available such records to the Authority on reasonable written notice.

37.1.3 To the extent that Authority Data is held and/or Processed by the Contractor, any Sub-Contractor or any Contractor Related Party, the Contractor shall promptly supply that Authority Data to the Authority whenever requested by the Authority.

37.1.4 From the date of receipt of (or of being given access to) Authority Data and throughout the period whilst such Authority Data is in the possession or control of the Contractor, any Sub-Contractor or any Contractor Related Party, the Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption, loss, unauthorised use, theft or unauthorised disclosure of Authority Data.

37.1.5 Not Used.



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- 37.1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the requirements of Schedule 13 (Security).
- 37.1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's breach of its obligations so as to be unusable, the Authority may:
- 37.1.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data to the extent and in accordance with Schedule 2 (Specifications) and the Contractor shall do so as soon as practicable.
  - 37.1.7.2 if the Contractor does not comply with Clause 37.1.7.1 the Authority may restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 37.1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or significantly degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action that the Contractor proposes to take.

**37.2 Protection of Personal Data**

- 37.2.1 The Contractor shall not process any Personal Data for which the Authority is the Data Controller.
- 37.2.2 If the Authority requires or may require the Contractor to process Personal Data, the Contractor shall, at the Authority's cost, provide reasonable assistance to the Authority in the Authority's preparation of any Data Protection Impact Assessment required by Data Protection Legislation. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 37.2.3 If the Authority requires the Contractor to process Personal Data, the Parties shall amend the Contract in accordance with Clause 27 (Change) so that the Contract contains provisions which allow both Parties to comply with their obligations under Data Protection Legislation.
- 37.2.4 Taking into account the nature of the processing, the Contractor shall provide the Authority, with reasonable co-operation and assistance in



relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made (and insofar as possible).

- 37.2.5 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor in accordance with clause 29.3.

## **SECTION K: LIABILITIES**

### **38. NOTIFICATION REQUIREMENTS**

- 38.1 Whenever the Contractor becomes aware of the occurrence or imminent occurrence of any Relief Event, Compensation Event or Service Failure or the non-occurrence or imminent non-occurrence of a Dependency by it or another EM Contractor then the Contractor shall notify the Authority as soon as reasonably practicable and in any event within two (2) Business Days.
- 38.2 In such notification made under Clause 38.1 the Contractor shall summarise the reasons for the likely Relief Event, Compensation Event, Service Failure or non-occurrence of a Dependency.
- 38.3 Where the Contractor makes a notification under Clause 38.1, it shall, as soon as reasonably practicable and in any event not later than five (5) Business Days after the initial notification under Clause 38.1, give the Authority:
- 38.3.1 full details in writing of the reasons for and possible consequences of the likely Relief Event, Compensation Event, Service Failure or non-occurrence of a Dependency;
  - 38.3.2 any claim for relief from its obligations under this Contract ; and
  - 38.3.3 whether the likely Relief Event, Compensation Event, Service Failure or non-occurrence of a Dependency will result in a Delay.
- 38.4 For the purposes of Clause 38.3, "full details" shall mean such details as are available to the Contractor at that time (to be promptly updated as and when further details become available) and as are necessary for the Authority to understand and assess the reasons for the default.
- 38.5 Whenever the circumstances outlined in Clause 38.1 arise the Parties shall work together to minimise the effect of any such Relief Event, Compensation Event, Service Failure or non-occurrence of a Dependency and shall perform any unaffected obligations in accordance with the terms of this Contract . In all such circumstances, the "fix first, resolve later" principle set out in Clause 3.5 (Fix First/Resolve Later) shall apply.

### **39. NOT USED**

### **40. NOT USED**

### **41. NOT USED**

### **42. LIABILITIES**

#### ***Operating Model Liability Structures***



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- 42.1 The Contractor agrees that, as a consequence of the Operating Model for the provision of the EM Services, it shall be liable to the Authority for the Direct Losses incurred by the other EM Contractors for which the Authority becomes liable through the Dispute Resolution Procedure, where such liability arises as a result of a successful claim against the Contractor.
- 42.2 If the Authority does not comply with any Dependency the Contractor may, subject to Clause 42.3, as its sole financial remedy, claim compensation from the Authority for the Direct Losses (excluding legal costs).
- 42.3 If another EM Contractor does not achieve any Dependency which results in the Contractor not meeting its obligations under this Contract, the Contractor may, subject to Clause 42.2, as its sole financial remedy, claim compensation from the Authority for the Direct Losses (excluding legal costs) of the Contractor that the Authority may recover from the defaulting EM Contractor pursuant to an Integration Claim.
- 42.4 The Authority may, in specific circumstances after the relevant parties have submitted an Integration Claim give:
- 42.4.1 the Contractor the right to take legal action against another EM Contractor under the Third Party Rights provision in the EM Services Contract with that other EM Contractor; and/or
  - 42.4.2 another EM Contractor the right to take legal action against the Contractor under Clause 42.4.1
- in respect of a specific claim or series of connected claims.
- 42.5 The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure or liability is caused by a Relief Event provided that the Contractor complies with the notification requirements set out in Clause 38 above and its obligations as set out in the BCDR Plan.
- 42.6 If another EM Contractor can claim relief from liability for failing to comply with its obligations under its EM Services Contract due to a Relief Event as set out in its EM Services Contract, then the Contractor:
- 42.6.1 shall not make any claim or recover any Direct Losses or Indirect Losses that it incurs as a consequence of that Relief Event from the Authority or from the other EM Contractor which is the subject of the Relief Event; and
  - 42.6.2 may raise its own Relief Event for the same incident if so affected.
- 42.7 The Contractor shall obtain insurance as required by Clause 43 and Schedule 22 (Insurance Requirements).
- 42.8 In no circumstances shall the Authority be liable to make any payment to the Contractor of any sum (or be liable in any other respect to any person) under this Contract, the Collaboration Agreement or otherwise in respect of any Integration Claim unless it has received such sum by way of an agreement, settlement or determination under the EM Services Contract of another EM Contractor specifically as a result of the Authority's processing of the relevant claim against such EM Contractor and in any regard via the Dispute Resolution Procedure.



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- 42.9 Save as expressly stated in this Clause 42, the Contractor acknowledges that nothing in this Contract shall relieve the Contractor from any obligation or liability under the Collaboration Agreement.

***Financial Limits of Liability***

- 42.10 Unless otherwise expressly provided, the maximum amount for which the Contractor shall be liable to the Authority in any Year with respect to this Contract and the Collaboration Agreement (for all claims whether arising in contract, tort (including negligence) or otherwise) shall be limited to an aggregate amount for that Year as follows:

- 42.10.1 [REDACTED] for all claims arising from any liability of the Contractor pursuant to Clause 35.7.1; and  
42.10.2 in all other cases the equivalent to [REDACTED] of the aggregate of the Monthly Contract Price for all Months of that Year or, if greater, [REDACTED] for all other claims.

- 42.11 Unless otherwise expressly provided, the maximum amount for which the Authority shall be liable to the Contractor in the aggregate in any Year (excluding with respect to all Integration Claims, the Contract Price and any sums recovered under Clause 35.7.2, but including under any indemnity) with respect to this Contract and the Collaboration Agreement (for all claims whether arising in contract, tort (including negligence) or otherwise) shall be limited to [REDACTED] of the Monthly Contract Price or [REDACTED] whichever is the greater.

- 42.12 The amounts specified in Clauses 42.10 and 42.11 shall not include the recovery of any overpayments by the Authority under this Contract, which shall be recoverable by the Authority in accordance with Clause 21.7.

***Exclusion of Indirect Loss***

- 42.13 Subject to Clause 42.15, neither Party shall be liable to the other Party for any Indirect Losses.

- 42.14 The following losses shall be recoverable by the Authority as Direct Losses and shall not constitute Indirect Loss:

- 42.14.1 any losses incurred by any Related Organisation within the permitted categories of loss set out in this Clause;  
42.14.2 any additional operational and/or administrative cost and expenses (including the costs in connection with undertaking a new procurement) arising from the Contractor's default;  
42.14.3 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority or the Related Organisations arising from the Contractor's default;  
42.14.4 any regulatory fines and penalties; and  
42.14.5 any amount payable or paid to another EM Contractor by the Authority or a Related Organisation arising from the Contractor's default (including compensation payments relating to additional costs incurred by another EM Contractor as a result of the Contractor's default) and any amount claimed from the Authority or the Contractor by another EM Contractor by way of an Integration Claim and any legal expenses incurred by the Authority in administering any such claims arising from the Contractor's default.



**General Exclusions**

42.15 Nothing in this Contract shall operate to limit or exclude:

- 42.15.1 any Party's liability to the other for death or personal injury caused by that Party's negligence;
- 42.15.2 any Party's liability to the other for fraudulent misrepresentation or fraudulent concealment;
- 42.15.3 any Party's liability to the other for any liability which cannot be limited or excluded by law;
- 42.15.4 Not Used;
- 42.15.5 Not Used; or
- 42.15.6 Not Used.

42.16 The exclusions set out in Clause 42.15 above shall apply to liability under indemnity as well as to contractual claims.

**43. INSURANCE**

43.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 22 (Insurance Requirements) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 43 (Insurance) and Schedule 22 (Insurance Requirements) and any other insurances as may be required by Legislation, together the Insurances. The Contractor shall ensure that each of these Insurances are effective in each case not later than the date on which the relevant risk commences.

43.2 The Insurances shall be maintained from time to time (as far as is reasonably practicable) on terms no less favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

43.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

**44. INDEMNITIES**

**44.1 Contractor's Indemnity**

The Contractor shall, subject to Clause 42 (Liabilities), be responsible for, and shall indemnify and keep indemnified in full and on demand the Authority from and against:

- 44.1.1 all liability for:
  - 44.1.1.1 death or personal injury;
  - 44.1.1.2 loss of or damage to property (including property belonging to the Authority or any Related Organisation or for which it is responsible);
  - 44.1.1.3 breach of statutory duty;
  - 44.1.1.4 failure to exercise its duty of care under the Occupiers Liability





Act 1957 (as amended);

44.1.1.5 third party (other than other EM Contractors) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) arising in connection with any tort committed by the Contractor (including negligence or breach of statutory duty), misrepresentation by the Contractor or the Contractor's breach of its obligations under this Contract; and

44.1.1.6 loss, corruption or destruction of, or damage to, any Authority Data,

44.1.2 which relate to the provision of any Services under this Contract to the Authority, an Authority Related Party or any Related Organisation; and

44.1.3 which arise out of, or in consequence of, or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's Premises of the Contractor or any Contractor Related Party.

#### 44.2 **Contractor not Responsible**

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

44.2.1 any of the matters referred to in Clause 44.1 (Contractor's Indemnity) which arises as a direct result of the Contractor acting on the written or oral instruction of the Authority's Representative, provided that the Contractor has implemented the instruction in a manner which is not negligent, with all reasonable skill and care, is in accordance with Good Industry Practice and using appropriately trained, skilled and experienced personnel; and

44.2.2 any injury, loss, damage, cost and expense to the extent caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Contract) or by the breach by the Authority of its obligations under this Contract.

44.2A The Authority shall confirm oral instructions in writing to the Contractor as soon as reasonably possible.

#### 44.3 **Limitation of Indemnity**

An indemnity by either Party under any provision of this Contract shall be without limitation to:

44.3.1 any indemnity by that Party under any other provision of this Contract; or

44.3.2 any other liability of that Party under this Contract.

#### 44.4 **Notification of Claims**

Where either Party or a Related Organisation (the "**Indemnified Party**") wishes to make a claim under this Contract or the Collaboration Agreement against a Party providing an indemnity under this Contract or the Collaboration Agreement (the "**Indemnifying Party**") in relation to a claim made against it by a third party (a "**Third Party Claim**"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

#### 44.5 **Conduct of Claims**



- 44.5.1 The Contractor shall give notice to the Authority, or, where applicable, to the relevant Related Organisation as soon as reasonably practicable of any court proceedings in relation to any Third Party Claim (including any claim by employees of the Parties) relating to the Services to which the Authority or relevant Related Organisation is or is likely to be a party, regardless of whether the Contractor (or any sub-contractor) is also a party to such proceedings, and such notice shall set out full particulars of the claim. The Contractor shall provide the Authority or, where applicable, the relevant Related Organisation with copies of any such claim form and statement of claim.
- 44.5.2 The Contractor shall have conduct of proceedings in relation to any Third Party Claim, provided that the Authority or, where applicable, the relevant Related Organisation may, on giving written notice to such effect to the Contractor, at any time take control of and where appropriate conduct any proceedings in relation to any Third Party Claim where the Authority is the Indemnifying Party in relation to the Third Party Claim (including any claim by employees of the Parties, to which the Authority or, where applicable, the relevant Related Organisation is a party, regardless of whether the Contractor (or any sub-contractor) is also a party to such proceedings). The Contractor shall procure compliance by its sub-contractors with the provisions of this Clause 44.5 (Conduct of Claims).
- 44.5.3 Where the Authority or, where applicable, the relevant Related Organisation does not exercise its right pursuant to Clause 44.5.2 (Conduct of Claims), the Contractor shall at all times keep the Authority or, where applicable, the relevant Related Organisation informed as to the progress of any such Third Party Claim until such Third Party Claim is finally determined, settled or withdrawn, and shall at the Authority's request or, where applicable, that of the relevant Related Organisation, provide the Authority or, where applicable, the relevant Related Organisation with copies of all documentation relating to such claim and shall where so required by the Authority or, where applicable, the relevant Related Organisation, liaise and work with the Authority or, where applicable, the relevant Related Organisation in the conduct of the claim.
- 44.5.4 Where the Authority or, where applicable, the relevant Related Organisation exercises its right pursuant to Clause 44.5.2, the Authority shall keep the Contractor informed as to the progress of any such Third Party Claim until such Third Party Claim is finally determined, settled or withdrawn.
- 44.5.5 The Authority agrees that it and, where applicable, the relevant Related Organisation shall not settle or compromise any Third Party Claim for which the Contractor is liable to indemnify the Authority or Related Organisation under Clause 44.1 (Contractor's Indemnity) without prior consultation with the Contractor. The Authority shall, and shall ensure that any relevant Related Organisation shall, keep the Contractor reasonably informed as to the progress and status of any such Third Party Claim until such Third Party Claim is settled or withdrawn.
- 44.5.6 The Contractor undertakes that:
- 44.5.6.1 it shall not, without the prior written consent of the Authority or, where applicable, the relevant Related Organisation, settle or compromise any claim (whether insured or uninsured) for



which the Contractor is liable to indemnify the Authority under this Contract or to which the Authority or, where applicable, the relevant Related Organisation is, or is likely to become a party; and

- 44.5.6.2 it shall ensure that its sub-contractors give undertakings identical to those given by the Contractor to the Authority or, where applicable, the relevant Related Organisation under this Clause 44.5 (Conduct of Claims).

**44.6 Mitigation**

- 44.6.1 Where the Authority or a Related Organisation is the Indemnified Party it shall at all times take reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the Contractor pursuant to this Contract or the Collaboration Agreement.
- 44.6.2 Where the Contractor is the Indemnified Party, it shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the Authority pursuant to this Contract or the Collaboration Agreement.

**SECTION L: TERM, TERMINATION AND EXIT**

**45. TERM**

- 45.1 This Contract and the rights and obligations of the Parties shall take effect on the date of this Contract and (subject to the provisions for early termination set out in this Contract) shall continue until the Expiry Date.
- 45.2 The Term of this Contract may, at the Authority's sole discretion, be extended for further Notified Extension Periods up to a maximum of three (3) years in the aggregate, any such extension to be implemented in accordance with the procedure set out in Clause 45.3. For the avoidance of doubt, any initial Notified Extension Period shall commence on the date three (3) years after the Services Commencement Date and any subsequent Notified Extension Period shall commence on the relevant anniversary thereof.
- 45.3 Not more than twelve (12) Months and not less than six (6) Months prior to the Expiry Date, the Authority may serve a written notice upon the Contractor the effect of which shall be to extend the term of this Contract by the term of the relevant Notified Extension Period and to amend the Expiry Date accordingly.

**46. TERMINATION**

**46.1 Voluntary Termination by the Authority**

- 46.1.1 The Authority may terminate this Contract in whole or in part at any time on or before the Expiry Date for convenience by serving not less than three (3) Months' written notice upon the Contractor.
- 46.1.2 If the Authority wishes to terminate this Contract under this Clause 46.1 (Voluntary Termination by the Authority) in whole or in part, it must give a Termination Notice to the Contractor stating:
- 46.1.2.1 that the Authority is terminating this Contract in whole or in part under this Clause 46.1 (Voluntary Termination by the Authority);
- 46.1.2.2 that this Contract will terminate on the date specified in the Termination Notice in whole or in respect of the relevant part,



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which must be a minimum of three (3) Months after the date of receipt of the Termination Notice.

- 46.1.3 This Contract will terminate in whole or in part as specified by the Authority on the date specified in the Termination Notice referred to in Clause 46.1.2 (Voluntary Termination by the Authority).

**46.2 Termination by the Authority for Contractor Default**

Without prejudice to any of its rights or remedies, the Authority may terminate this Contract with immediate effect in whole or in part by giving a Termination Notice to the Contractor in any of the following circumstances:

- 46.2.1 the Contractor commits a material breach of this Contract and (if such breach is remediable) fails to remedy that breach within twenty (20) Business Days of being notified in writing to do so;
- 46.2.2 the Contractor commits a Persistent Breach;
- 46.2.3 any of the following occur:
- 46.2.3.1 material breach of the Collaboration Agreement by the Contractor;
  - 46.2.3.2 the Contractor is in breach of Clause 14 (Security Obligations), Clause 35 (Intellectual Property Rights) or Clause 37 (Protection of Information);
  - 46.2.3.3 the Contractor fails to maintain its CAS(T) certification for the Services;
  - 46.2.3.4 the Authority is entitled to terminate the Contract in accordance with Paragraph 3.28 (Rectification) of Schedule 7 (Contract Delivery Indicators) for failure to meet the terms of a Rectification Notice;
  - 46.2.3.5 the Contractor makes any public announcement or a director of the board of directors of the Contractor advises an officer of the Authority that the Contractor is no longer to continue to develop or to offer the provision of the Services or services similar to the Services;
  - 46.2.3.6 the circumstances described in paragraph 6.1 of Schedule 16 (Financial Distress) in respect of a Financial Distress Event arise;<sup>1</sup>
  - 46.2.3.7 any Payment Milestone identified within Schedule 6 (Price and Payment Mechanism) is not Accepted by the adjusted Acceptance Date following not less than one (1) repeat testing cycle under the Repeat Acceptance Procedure as described in Schedule 24 (Acceptance Procedure);
  - 46.2.3.8 the Authority is entitled to terminate the Contract in accordance with Clause 49.2.2 (Change of Ownership);
  - 46.2.3.9 failure to achieve the Services Commencement Date within fifty (50) Days of the planned Services Commencement Date;
  - 46.2.3.10 the Authority is entitled to terminate the Contract in accordance with paragraph 3.12.1(b) of Schedule 24

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<sup>1</sup> As amended by CR166



(Acceptance);

46.2.3.11 a Prohibited Act is committed by the Contractor or a sub-contractor (or anyone employed by or acting on behalf of any of them); or

46.2.3.12 Not used

46.2.4 the Contractor has a petition presented for its winding up (which is not dismissed within fourteen (14) days of its service) or has an application made for the appointment of a provisional liquidator or has a creditors' meeting convened pursuant to section 98 of the Insolvency Act 1986;

46.2.5 the Contractor goes into liquidation or passes a resolution for voluntary winding up, or its directors convene a meeting of shareholders to consider passing such a resolution (except for the exclusive purpose of a bona fide reconstruction or amalgamation);

46.2.6 the Contractor has an administrator appointed (by court order or otherwise (including without limitation by its directors or by a floating charge holder)) or has an application made either for the appointment of an administrator or for an administration order or has a notice of intention to appoint an administrator given;

46.2.7 the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or it has proposed in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition or scheme or arrangement with or assignment for the benefit of any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or its solvent reconstruction);

46.2.8 an administrative receiver or receiver or similar officer is appointed over substantially all of the Contractor's assets or undertaking;

46.2.9 the Contractor is the subject of any judgment or order made against it in relation to or in connection with any of the events described in Clause 46.2.4 to Clause 46.2.13 (Termination by the Authority for Contractor Default) (inclusive) which is not complied with or discharged within thirty (30) days;

46.2.10 the Contractor has an encumbrancer or creditor attach or take possession of, or is the subject of any execution, distress, sequestration or other process levied upon or enforced against all or substantially all of its assets;

46.2.11 the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

46.2.12 the Contractor has a moratorium come into force in respect of it pursuant to Schedule A1 of the Insolvency Act 1986;

46.2.13 any event occurs with respect to the Contractor in any relevant jurisdiction that has a similar or analogous effect to any of the events in Clause 46.2.4 to Clause 46.2.12 (Termination by the Authority for Contractor Default) (inclusive).

#### **46.3 Termination on Force Majeure Event**

46.3.1 No Party shall be entitled to bring a claim for a breach of obligations



under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

**46.3.2 On the occurrence of a Force Majeure Event:**

46.3.2.1 the Affected Party shall notify the other Party as soon as practicable, including details of the Force Majeure Event, evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect;

46.3.2.2 use all reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event and, where the Contractor is the Affected Party, the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice and the BCDR Plan to overcome or minimise the consequences of the Force Majeure Event;

46.3.2.3 as soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract;

46.3.2.4 if no such terms are agreed on or before the date falling twenty (20) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than sixty (60) Business Days, then, subject to Clause 46.3.3 (Termination on Force Majeure Event), the Authority may terminate this Contract by giving not less than twenty (20) Business Days' written notice to the Contractor (and the Authority may instead elect to terminate this Contract in part by terminating the affected Services only); and

46.3.2.5 the Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall, subject to Clause 46.3.2.4 (Termination on Force Majeure Event) continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

46.3.3 If this Contract is terminated under Clause 46.3.2.4 (Termination on Force Majeure Event) (in whole or in part) the Authority shall pay to the Contractor the "Force Majeure Termination Sum". The Force Majeure Termination Sum shall be an amount equivalent to [REDACTED] of the applicable Contractor Breakage Costs provided that for the purposes of the Force Majeure Termination Sum, no loss of profits shall be compensated.

46.3.4 The amount payable under Clause 46.3.3 (Termination on Force Majeure Event) shall be reduced or extinguished to the extent that the Contractor has already received such amount through the Contract Price or through



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the financial benefit of any other remedy given under the Contract (or, in the case of a termination of this Contract in part, will receive through future payments of the Contract Price) so that there is no double counting in calculating the relevant payment.

**46.4 Termination for Prolonged Relief Event**

The Authority may terminate this Contract (in whole or in respect of the affected part) by giving not less than twenty (20) Business Days written notice to the Contractor if an Relief Event subsists such that for a period of sixty (60) or more Business Days the Contractor is unable materially to comply with its obligations under this Contract.

**46.5 Termination by the Contractor**

46.5.1 If an Authority Default occurs and the Contractor wishes to terminate this Contract, the Contractor must serve a Termination Notice on the Authority within thirty (30) Business Days of the Authority Default.

46.5.2 This Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the Termination Notice unless the Authority rectifies the Authority Default within thirty (30) Business Days of such receipt.

46.5.3 The Contractor may terminate the Legacy Services and [REDACTED] Services set out in Schedule 26 (Legacy Services) due to;

46.5.3.1 Commercial unviability;

46.5.3.2 Technological obsolescence

46.5.4 The Schedule 26 (Legacy Services) will terminate on the day falling one hundred and eighty (180) Days after the date the Authority receives the Termination Notice for the reasons set out in clause 46.5.3.

**47. EXIT MANAGEMENT**

**47.1 Application of Schedule 11 (Exit Management and Transfer)**

The provisions of Schedule 11 (Exit Management and Transfer) shall apply in connection with the expiry or early termination (howsoever caused) of this Contract, in whole or in part, and upon the EM Services Contract of any EM Contractor expiring or being terminated.

**47.2 Compensation on Voluntary Termination**

47.2.1 On termination of this Contract (in whole or in part) under Clause 46.1 (Voluntary Termination by the Authority), the Authority shall pay the Contractor the applicable Contractor Breakage Costs.

47.2.2 The amount payable under this Clause 47.2 (Compensation on Voluntary Termination) shall be reduced or extinguished to the extent that the Contractor has already received such amount through the Contract Price or through the financial benefit of any other remedy given under the Contract (or, in the case of a termination of this Contract in part, will receive through future payments of the Contract Price) so that there is no double counting in calculating the relevant payment.

**47.3 Compensation on Termination for Authority Default**

47.3.1 On termination of this Contract under Clause 46.5 (Termination by the Contractor), the Authority shall pay the Contractor the applicable



Contractor Breakage Costs.

- 47.3.2 The amount payable under this Clause 47.3 (Compensation on Termination for Authority Default) shall be reduced or extinguished to the extent that the Contractor has already received such amount through the Contract Price or through the financial benefit of any other remedy given under the Contract so that there is no double counting in calculating the relevant payment.

**47.4 Exclusivity of Remedy**

Save as provided in and subject to Clause 47.8 (Continuing Obligations), any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to the termination of this Contract (in whole or in part). The payment of compensation under Clause 47.2 (Compensation on Voluntary Termination), Clause 46.3 (Termination on Force Majeure Event) and/or Clause 47.3 (Compensation on Termination for Authority Default) shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract (in whole or in part).

**47.5 Duty to Co-operate**

Without prejudice to its obligations under Schedule 11 (Exit Management and Transfer), during the eighteen (18) Months immediately preceding the Expiry Date and during the period of any Termination Notice, and in either case for the period subsequently as specified in Schedule 11 (Exit Management and Transfer), the Contractor shall co-operate fully in any re-tendering process and in the transfer of responsibility for the Services (or any part of the Services) to the Authority and/or any New Contractor and for the purposes of this Clause 47 (Exit Management) the meaning of the term "**co-operate**" shall include:

- 47.5.1 liaising with the Authority, the bidders in a re-tendering process and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such New Contractor;
- 47.5.2 allowing the bidders in a re-tendering process and any New Contractor the opportunity to attend the Contractor's Premises to understand the Services process (at reasonable times and on reasonable notice) but not so as to interfere with or impede the provision of the Services, provided that in the event that a bidder in a re-tendering process or a New Contractor is a direct competitor of the Contractor and such access is, in the Contractor's reasonable opinion likely to result in the disclosure of Commercially Sensitive Information, then instead of allowing such bidder or New Contractor to attend the Contractor's Premises, the Contractor shall provide a demonstration of or a presentation in respect of the relevant part of the Services process in question at an alternative location to be specified by the Authority; and
- 47.5.3 providing to the Authority, the bidders in a re-tendering process and/or to any New Contractor, all and any information concerning the Services which is reasonably required for the submission of tenders and the efficient transfer of responsibility to a New Contractor.

**47.6 Assistance with Exit of other EM Contractors**

- 47.6.1 The Contractor shall during the Contract Period provide reasonable assistance to the Authority and the other EM Contractors in respect of the exit of such EM Contractors under their respective EM Services Contracts.





**47.7 Post Expiry and Termination Warranty and Services Obligations**

Without prejudice to the Contractor's obligations under Schedule 11 (Exit Management and Transfer) and Clauses 47.5 and 47.6, the Contractor shall, following the expiry or any early termination of this Contract:

- 47.7.1 continue to honour the warranty obligations for each Service as set out in Clause 19; and
- 47.7.2 continue to provide service and support in accordance with the support and service descriptions contained in Schedule 2 (Specifications) upon the terms and charges set out in Schedule 11 (Exit Management and Transfer).

**47.8 Continuing Obligations**

- 47.8.1 Except as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Contractor Breakage Costs or other payment of compensation on termination pursuant to this Contract, and notwithstanding the provisions of Clause 47.4 (Exclusivity of Remedy):
  - 47.8.1.1 termination of this Contract, in whole or in part, shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date; and
  - 47.8.1.2 termination, in whole or in part, (howsoever arising) or expiry of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under Clauses 2, 3, 13, 14, 21, 28, 29, 35, 36, 37, 42, 44, 46.5.4, 48, 49 and 50 and Schedules 11, 12 and 13 or under any other provision of this Contract which is expressed or implied to survive termination (howsoever arising) or expiry or which is required to give effect to such termination or expiry or the consequences of such termination.

**SECTION M: DISPUTES**

**48. DISPUTE RESOLUTION**

**48.1 Disputes**

- 48.1.1 The Parties shall attempt to resolve any Dispute arising in relation to any aspect of this Contract through application of the Governance Structures set out in Clause 26 (Governance). Any Dispute which has not been resolved through application of the Governance Structures set out in Clause 26 (Governance) shall be resolved in accordance with the Dispute Resolution Procedure is set out in Schedule 23 (Dispute Resolution).
- 48.1.2 Notwithstanding Clause 48.1.1, either Party may refer a Dispute to the Dispute Resolution Procedure, and issue an Issue Resolution Request or Notice of Dispute in accordance with such procedure, at any time.
- 48.1.3 The "fix first, resolve later" principle set out in Clause 3.5 (Scope of Agreement) of this Contract shall continue to apply in respect of the subject matter of any Dispute, notwithstanding the referral of that Dispute to the Dispute Resolution Procedure.

**SECTION N: MISCELLANEOUS AND GOVERNING LAW**



**49. MISCELLANEOUS**

**49.1 Public Relations and Publicity**

The Contractor shall not by itself, its employees or agents and shall procure that its sub-contractors shall not communicate with any person including representatives of the press, television, radio, social media including the internet or other communications media on any matter concerning this Contract without the prior written approval of the Authority (which may be withheld at the Authority's absolute discretion and which may be given conditional upon agreement of a fee to be paid in connection with the proposed communication).

**49.2 Change of Ownership**

49.2.1 The Contractor shall provide written notice to the Authority as soon as is reasonably practicable and at least twenty (20) Business Days prior to any Change of Ownership occurring with respect to the Contractor, any sub-contractor or any Affiliate of the Contractor or any sub-contractor. If the giving of such notice within such timescale would be contrary to any restriction imposed by law, then the Contractor shall provide notice immediately upon the restriction ceasing to apply.

49.2.2 Subject to Clause 49.2.3 (Change of Ownership), the Authority shall be entitled to terminate this Contract in accordance with Clause 46.2.3.8 (Termination by the Authority for Contractor Default) where there is a Change of Ownership with respect to the Contractor or a Change of Ownership to a Restricted Third Party with respect to any Affiliate of the Contractor or any sub-contractor, to which the Authority objects for any reason, except where the Authority has given its prior written consent to the particular Change of Ownership, which subsequently takes place as notified under Clause 49.2 (Change of Ownership).

49.2.3 The Authority's right to terminate this Contract under Clause 49.2.2 (Change of Ownership) shall expire if not exercised within six (6) months of the particular Change of Ownership or, if later, of the date on which notification was provided pursuant to this Clause 49.2 (Change of Ownership).

**49.3 No Agency**

49.3.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority or a Related Organisation and the Contractor.

49.3.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority or a Related Organisation and the Contractor shall not hold itself out as having authority or power to bind the Authority or a Related Organisation in any way.

49.3.3 Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

**49.4 Entire Agreement**

**49.4.1 Prior Representations Superseded**

Except where expressly provided in this Contract (which, for the avoidance of doubt shall not include the ITN), this Contract constitutes the entire



agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

**49.4.2 Acknowledgements**

Each of the Parties acknowledges that:

49.4.3 subject to Clause 19 (Warranties), it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy under this Contract; and

49.4.4 this Clause 49.4 (Entire Agreement) shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

**49.5 Contracts (Rights of Third Parties)**

49.5.1 Save as expressly stated in this Clause 49.5 (Contracts (Rights of Third Parties)) and Clause 42.4 or otherwise in this Contract, no term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

49.5.2 The Contractor acknowledges that, as a consequence of the Authority's Operating Model, there may be circumstances where certain other EM Contractor(s) wish the Authority to enforce certain provisions of this Contract against the Contractor. In such circumstances, the Authority may at its option elect to give such other EM Contractor(s) the right to enforce the relevant provisions of this Contract on the Authority's behalf directly against the Contractor, provided that in such circumstances the Contractor shall remain liable to the Authority under this Contract.

**49.6 Notices**

All notices required to be issued under this Contract shall be served in accordance with the provisions of Schedule 10 (Notices).

**49.7 Severability**

If any term, condition, clause or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition, clause or provision shall, to that extent be omitted from this Contract and not affect the validity, legality or enforceability of the remaining parts of this Contract.

**49.8 Waiver**

49.8.1 No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

49.8.2 No waiver under Clause 49.8.1 (Waiver) shall be a waiver of a past or future default or breach nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.



**49.9 Sole Remedy**

- 49.9.1 Without prejudice to any entitlement of the Contractor:
- 49.9.1.1 to specific performance of any obligation under this Contract;
  - 49.9.1.2 to injunctive relief; or
  - 49.9.1.3 to any other express right of the Contractor pursuant to this Contract,
- the Contractor's sole remedy in relation to any Compensation Event shall be to make an Integration Claim.
- 49.9.2 The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is a result of the Authority's breach of its obligations under this Contract.
- 49.9.3 Save where stated to the contrary, there shall be no right to claim damages for breach of this Contract or the Collaboration Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party or a Related Organisation is for Indirect Losses.
- 49.9.4 Save as expressly stated in this Contract, but subject to Clause 49.9.5 (Sole Remedy), the rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law, or otherwise.
- 49.9.5 The rights, powers and remedies provided to the Authority and Related Organisations in this Contract are in addition to the statutory conditions relating to description, quality, fitness of purpose and correspondence with sample implied into this Contract by the Sale of Goods and Services Act 1982.

**49.10 No Double Recovery**

Notwithstanding any other provision of this Contract, neither Party, nor a Related Organisation, shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or the Collaboration Agreement.

**49.11 Counterparts**

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**49.12 Capacity**

- 49.12.1 Without prejudice to the remedies and contractual rights of the Contractor in respect of a risk or liability or obligation expressly provided in this Contract as being a risk, liability or obligation of the Authority:
- 49.12.1.1 nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Authority in any capacity other than in its capacity as a contracting counterparty; and
  - 49.12.1.2 the exercise by the Authority of its duties powers and functions in any capacity other than in its capacity as a contracting counterparty shall not lead to any liability under this Contract on the part of the Authority to the Contractor.

**49.13 Further Assurance**



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Each Party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Contract.

**49.14 Costs**

Each Party shall bear its own costs and expenses in connection with the preparation, negotiation and execution of this Contract.

**50. GOVERNING LAW AND JURISDICTION**

This Contract and any contractual or non-contractual obligations arising from or connected with it shall be governed by English law and this Contract shall be construed in accordance with English law. In relation to any Proceedings , each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

**SIGNED** for and on behalf of The Secretary of State for Justice

by

.....

Name:

Title:

Date:

**SIGNED** for and on behalf of Telefonica UK Limited

by

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