



Ministry of Justice

Date: [29 JAN 2020]

Contract for the Provision of Approved Enforcement Agency Services

Between

The Lord Chancellor

And

Marston Holdings Ltd

Lot 6 – South West

Volume 1 of 2

PARTIES:

- (1) THE LORD CHANCELLOR of 102 Petty France, London, SW1H 9AJ (the "**Authority**");

AND

- (2) Marston Holdings Ltd a company registered in England and Wales under number 04305487 whose registered office is Rutland House, 8th Floor, 148 Edmund Street, Birmingham, B3 2JR (the "**Service Provider**")

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

BACKGROUND

- A. On 26th June 2019 the Authority advertised in the Official Journal of the European Union (reference 2019/S 125-305670) (the "**OJEU Notice**"), inviting prospective suppliers to submit proposals for the delivery of Approved Enforcement Agency services.
- B. On the basis of the Service Provider's response to the advertisement and a subsequent tender process, the Authority selected the Service Provider as its preferred service provider.
- C. This Contract is for the provision of Services under Lot 6 and the Service Provider shall be providing the Services and discharging its obligations under this Contract in the Region(s) set out for Lot 6 in Annex 2 (Regions and Areas) of Schedule 1 (Specification) as a Primary Service Provider.
- D. The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

TERMS OF CONTRACT

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A GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 Unless the context otherwise requires the following terms shall have the meanings given to them below:

"Accounting Reference Date" means in each year, the date to which the Service Provider prepares its annual audited financial statements;

"Admission Agreement" means an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Service Provider where it agrees to participate in the Schemes in respect of the Services.

"Affected Party" means the Party seeking to claim relief in respect of a Force Majeure Event.

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

"Annual Contract Review Meeting" means the governance body with this name described in Schedule 12 (Governance).

"Annual Revenue" means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Service Provider or, as appropriate, the Service Provider Group in its most recent published accounts, subject to the following methodology:

- (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and
- (b) where the Service Provider, the Service Provider Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date.

"Annual Statement on Internal Control" means the document with this title as further described in the Risks, Issues and Assurance Framework, to be completed by the Service Provider in the form set out in Appendix 4 of the Risks, Issues and Assurance Framework.

"Approval" and **"Approved"** means the prior written consent of the Authority.

"Area" means the locations identified under each Region in Annex 2 of Schedule 1 (Specification).

"Assignee" has the meaning given in clause F7.2.

"Associates" means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles.

"Assurance" means written confirmation from a Relevant Authority to the Service Provider that the CRP Information is approved by the Relevant Authority.

"Authorised Representative" means the Authority representative named in a CCN as authorised to approve agreed Variations.

"Authority Data" means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Service Provider by or on behalf of the Authority; or
 - (ii) which the Service Provider is required to generate, process, store or transmit pursuant to the Contract; and/or
- (b) any Personal Data Processed by (or on behalf of) either Party under, or in connection with, the Contract (as such Personal Data is more particularly described in Schedule 9 (Data Protection) which may include Contract Processor Data).

"Authority Premises" means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Service Provider or its Sub-Contractors for provision of the Services.

"Authority Software" means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Service Provider for the purposes of providing the Services.

"Authority System" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Service Provider in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Service Provider IT System or which is necessary for the Authority to receive the Services.

"Baseline Security Requirements" the security requirements specified in Annex 1 of Schedule 8 (Information Assurance and Security).

"BCDR Plan" means the business continuity and disaster recovery plan to be prepared and maintained by the Service Provider pursuant to paragraph 1 of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).

"BPSS" means the HMG Baseline Personnel Security Standard for Government employees.

"Bravo" means the Authority's electronic procurement and contract management system.

"Breach of Security" means an occurrence of:

- (a) any unauthorised access to or use of the ICT Environment and/or any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract;
- (b) the loss (physical or otherwise) and/or unauthorised disclosure of any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract, including copies; and/or
- (c) any part of the Service Provider IT System ceasing to be compliant with the Certification Requirements.

"Breach Warrant" means a Warrant in respect of which the Service Provider is required to take the steps described in section 4 of Schedule 1 (Specification).

"BU" means a business user to be appointed by the Authority in accordance with paragraph 2.1 of Schedule 12 (Governance).

"**CCM**" means the commercial contract manager to be appointed by the Authority in accordance with paragraph 2.1(a) of Schedule 12 (Governance).

"**Cabinet Office Markets and Suppliers Team**" means the UK Government's team responsible for managing the relationship between Government and its Strategic Suppliers, or any replacement or successor body carrying out the same function.

"**CCN**" means a contract change notice in the form set out in Schedule 5 (Change Control).

"**Certification Requirements**" means the requirements set out in paragraph 5.1 of Schedule 8 (Information Assurance and Security).

"**Change in Law**" means any change in Law which affects the performance of the Services which comes into force after the Commencement Date.

"**Change of Control**" has the meaning given in clause H1.6.

"**Civilian Enforcement Officer**" or "**CEO**" means a person authorised to carry out the execution of Warrants and/or Orders in accordance with Sections 125A and 125B of the Magistrates' Courts Act 1980, as may be amended from time to time.

"**Clamping Order**" means an Order in respect of which the Service Provider is required to take the steps described in section 5 of Schedule 1 (Specification).

"**Class 1 Transaction**" has the meaning set out in the listing rules issued by the UK Listing Authority.

"**CM**" means the contract manager to be appointed by the Service Provider in accordance with paragraph 3.2 of Schedule 12 (Governance).

"**Commencement Date**" means the date set out in clause B1.1.

"**Commercially Sensitive Information**" means the information listed in Schedule 6 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:

(a) the Price; and/or

(b) the Service Provider's business and investment plans,

which the Service Provider has informed the Authority would cause the Service Provider significant commercial disadvantage or material financial loss if it was disclosed.

"**Commitment Warrant**" means a Warrant in respect of which the Service Provider is required to take the steps described in section 7 of Schedule 1 (Specification).

"**Committal to Custody Overnight at Police Station Warrant**" or "**Committal to Custody Warrant**" means a Warrant in respect of which the Service Provider is required to take the steps described in section 8 of Schedule 1 (Specification).

"**Comparable Supply**" means the supply of services to another customer of the Service Provider that are the same or similar to any of the Services.

"**Condition Precedent**" has the meaning given in clause A7.1.

"**Confidential Information**" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would

be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information; or
- (e) relates to the Service Provider's performance under the Contract or failure to pay any Sub-Contractor pursuant to clause F8.19.

"Confiscation Order for Realisation of Specific Assets with Consent" or "Confiscation Order" means an Order in respect of which the Service Provider is required to take the steps described in section 10 of Schedule 1 (Specification).

"Contract" means this contract (including its Schedules) which, for the avoidance of doubt and if the Service Provider is a Primary Service Provider, shall apply to the Regions and Areas in Lot 6 – South West, as further identified in Annex 2 (Regions and Areas) of Schedule 1 (Specification).

"Contracts Finder" means the Government's publishing portals for public sector procurement opportunities.

"Contract Period" means the period from the Commencement Date to:

- (a) the End Date; or
 - (b) following an Extension, the end date of the Extension,
- or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

"Contract Processor Data" means Personal Data which is to be Processed under this Agreement by the Service Provider as a Processor, as more particularly described in Annex 1 (Data Processing Particulars) of Schedule 9 (Data Protection).

"Contract Year" means:

- (a) a period of 12 months commencing on the Commencement Date; or
- (b) thereafter a period of 12 months commencing on each anniversary of the Commencement Date,

provided that the final Contract Year shall end on the expiry or termination of the Contract Period.

"Contracting Authority" means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** are interpreted accordingly.

"Controller" has the meaning set out in, and will be interpreted in accordance with, the Data Protection Laws.

"Copyright" means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

"Corporate Change Event" means:

- (a) any change of Control of the Service Provider or a Parent Undertaking of the Service Provider;
- (b) any change of Control of any member of the Service Provider Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (c) any change to the business of the Service Provider or any member of the Service Provider Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Service Provider or any Parent Undertaking of the Service Provider whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Service Provider or any Parent Undertaking of the Service Provider;
- (f) payment of the dividends by the Service Provider or the ultimate Parent Undertaking of the Service Provider Group exceeding 25% of the Net Asset Value of the Service Provider or the ultimate Parent Undertaking of the Service Provider Group respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Service Provider Group;
- (h) any member of the Service Provider Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Service Provider Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Service Provider Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Service Provider Group; and/or
- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Service Provider Group in a jurisdiction outside England and Wales.
- (k) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Service Provider Group in a jurisdiction outside Scotland.

"**Court**" means any Magistrates' Court or Crown Court, as applicable.

"**Critical Service Contract**" means the overall status of this Contract, as determined by the Authority and specified in paragraph 11.1 of Part 2 to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).

"**Critical Service Failure**" means a Service Failure where the level of service performance is below the relevant Service Threshold set out in the column titled "Critical Service Failure" in the table in Part C of Schedule 4.

"**Crown**" means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and "**Crown Body**" is an emanation of the foregoing.

"**CRP Information**" means the Corporate Planning Information as set out in Part 2 of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).

"**CRTPA**" has the meaning given in clause I5.1.

"**Data Loss Event**" means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

"**Data Protection Impact Assessment**" means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the GDPR.

"**Data Protection Laws**" means:

- (a) all applicable Laws and rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body and any industry code of conduct or guideline, in each case relating to data protection, the processing of personal data and privacy and in force from time to time, including the GDPR and the Data Protection Act 2018;
- (b) Parts 2 and 3 of the Data Protection Act 2018 to the extent that it relates to processing of Personal Data for the Law Enforcement Purposes;
- (c) Article 8 of the Human Rights Act 1998; and
- (d) any code of practice or guidance published by the ICO from time to time.

"Data Protection Particulars" means, in relation to any Processing under the Contract:

- (a) the subject matter and duration of the Processing;
- (b) the nature and purpose of the Processing;
- (c) the type of Personal Data being Processed; and
- (d) the categories of Data Subjects.

"Data Security Requirements" means the requirements regarding the security of the Personal Data, as set out in the Data Protection Laws (including, in particular, the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable.

"Data Subject" has the meaning set out in, and will be interpreted in accordance with, the Data Protection Laws.

"Data Subject Request" means an actual or purported request or notice or complaint from (or on behalf of) a Data Subject in accordance with that Data Subject's rights granted pursuant to the Data Protection Laws.

"Data Transfer Risk Assessment" means a risk assessment which set out details of the following:

- (a) the Authority Data that will be transferred;
- (b) the Restricted Country or Countries to which the Authority Data will be transferred;
- (c) the means by which the Service Provider will ensure an appropriate level of protection and appropriate safeguards in respect of the Authority Data that will be transferred to a Restricted Country so as to ensure the Authority's compliance with Data Protection Laws; and
- (d) in providing and evaluating the risk assessment, the Service Provider shall ensure that it has regard to the Data Protection Laws in connection with transfers of Personal Data to any Restricted Country.

"Database Rights" means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

"DD" means the national delivery director to be appointed by the Authority in accordance with paragraph 2.1 of Schedule 12 (Governance).

"Default" means any breach of the obligations or warranties of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

"Defendant" means a person (individual or corporate) convicted of an offence or liable to pay a sum adjudged to be paid by the conviction or order of a Court.

"Dependent Parent Undertaking" means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Service Provider would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract.

"Detailed Implementation Plan" means the plan developed and revised from time to time in accordance with paragraph 3 of Schedule 2 (Implementation Plan).

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

"Due Diligence Information" has the meaning given in clause A5.1(d).

"EIR" means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

"Eligible Employee" means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement.

"Employee Liabilities" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

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

"End Date" means the date which is 5 years from the Service Commencement Date.

"Enforcement Agent" means a person authorised to carry out the execution of Warrants and/or Orders in accordance with Section 63 and Schedule 12 of the Tribunals, Courts and Enforcement Act 2007, as may be amended from time to time.

"Enforcement Legislation" means

- (a) Sections 125A and 125B of the Magistrates' Courts Act 1980; and
- (b) Section 63 and Schedule 12 of the Tribunals, Courts and Enforcement Act 2007,

each as may be amended from time to time.

"Enhanced Monitoring" has the meaning given in clause F3.2.

"Enhanced Scrutiny Trigger" has the meaning given in clause F3.1.

"Equipment" means the Service Provider's equipment, consumables, plant, materials, vehicles and such other items supplied and used by the Service Provider in the delivery of the Services.

"Execution Extension Period" has the meaning given in clause H12.2.

"Extension" has the meaning given in clause B1.2.

"Fair Deal Employees" means those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule applies, and any Transferring Former Service Provider Employees who originally transferred pursuant to a Relevant Transfer under TUPE (or the predecessor legislation to TUPE), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);

"Fees" means any and all statutory fees which the Service Provider is entitled to recover in connection with the execution of Warrants of Control in accordance with the rates and terms set out in the Warrant of Control Legislation.

"Field Operatives" means Civilian Enforcement Officers and/or Enforcement Agents.

"Final Service Provider Staff List" means a list provided by the Service Provider of all Service Provider Staff who will transfer under TUPE on the Service Transfer Date.

"Financial Arrest Warrant" means a Warrant in respect of which the Service Provider is required to take the steps described in section 13 of Schedule 1 (Specification).

"Financial Distress Event" means the occurrence of one or more of the events listed in paragraph 3.1 of Schedule 14 (Financial Distress).

"Financial Distress Remediation Plan" means a plan setting out how the Service Provider will ensure the continued performance and delivery of the Services in accordance with the Contract in the event that a Financial Distress Event occurs.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"Force Majeure Event" means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding (i) any industrial dispute relating to the Service Provider or the Staff or any other failure in the Service Provider's supply chain and/or (ii) the United Kingdom ceasing to be a member state of the European Union (or any transition arrangements pertaining thereto).

"Force Majeure Notice" has the meaning set out in clause I2.2.

"Former Service Provider" means any third party supplier appointed by the Authority to supply any services that are the same as or substantially similar to the Services before the Relevant Transfer Date and shall include any sub-contractor of any such supplier.

"**GDPR**" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016 and on the United Kingdom's departure from the European Union, the "**UK GDPR**" means the version of the GDPR incorporated into the Laws of England and Wales.

"**General Anti-Abuse Rule**" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

"**General Change in Law**" means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply.

"**Good Industry Practice**" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

"**Government Security Classified (GSC) Data**" means data relating to the Government Security Classification Guidance. The Security Classifications indicate the sensitivity of information (in term of the likely impact resulting from compromise, loss or misuse).

"**Group Structure Information and Resolution Commentary**" means the information requirements set out in accordance with paragraphs 11 to 13 and Annexure 1 of Part 2 to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).

"**Guarantee**" means the deed of guarantee in favour of the Authority entered into by the Guarantor on or before the date of this Contract (which is in the form set out in Schedule 16 (Guarantee)), or any guarantee acceptable to the Authority that replaces it from time to time.

"**Guarantor**" means Marston Corporate Limited, a company registered in England & Wales with company number 09840186 and whose registered office is at Embassy House, 60 Church Street, Birmingham, UK, B3 2DJ.

"**Halifax Abuse Principle**" means the principle explained in the CJEU Case C-255/02 Halifax and others.

"**HMRC**" means HM Revenue & Customs.

"**ICO**" means the UK Information Commissioner's Office, or any successor or replacement body from time to time.

"**ICO Correspondence**" means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of Personal Data under this Contract.

"**ICT Environment**" means the Authority System and the Service Provider IT System.

"**Impact Assessment**" means an assessment of a Variation Request in accordance with clause F9.7.

"**Implementation Plan**" means the Outline Implementation Plan or (if and when approved by the Authority pursuant to paragraph 3 of Schedule 2 (Implementation Plan)) the Detailed

Implementation Plan as updated from time to time in accordance with Schedule 2 (Implementation Plan);

"Implementation Services" means any mobilisation carried out by the Service Provider to enable the Service Provider to commence the Services on the Service on the Service Commencement Date.

"Information Assets" means definable pieces of information stored in any manner which are determined by the Authority to be valuable and relevant to the Services.

"Information" has the meaning given under section 84 of the FOIA.

"Intellectual Property Rights" means:

- (a) patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), Copyright, Database Rights, domain names, semiconductor topography rights, rights in Internet domain names and website addresses, plant variety rights, Know-How, trade or business names, moral rights, the right to sue for passing off, trade secrets and other rights in Confidential Information, in each whether registrable or not in any country (including but not limited to the United Kingdom); .
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

"IP Materials" means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Service Provider by or on behalf of the Authority, whether created before or after the Commencement Date.

"ISMS" means the Service Provider's information and management system and processes to manage information security as set out in paragraph 2.3 of Schedule 8 (Information Assurance and Security).

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003.

"IT Health Check" means penetration testing of systems under the Service Provider's control on which Information Assets and/or Authority Data are held which are carried out by third parties in accordance with the CHECK scheme operated by CESG or to an equivalent standard.

"Key Performance Indicator" or "KPI" means the key performance indicators set out in Part C of Schedule 4 (Pricing and Performance).

"Key Personnel" means those persons named in Schedule 11 (Key Personnel), as amended from time to time in accordance with clause B7.

"Key Sub-contract" means each Sub-Contract with a Key Sub-contractor.

"Key Sub-contractor" means any Sub-Contractor which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services.

"Know-How" means all information, ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services (not in the public domain or the other Party's possession prior to the Commencement Date) held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials,

computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

"KPI Balanced Scorecard" has the meaning given in paragraph 14.1(a) of Schedule 4 (Pricing and Performance).

"KPI Failure" means a failure to meet the Target Performance Level in respect of a Key Performance Indicator.

"Law" means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Service Provider is bound to comply and/or which apply to the provision of the Services.

"Law Enforcement Purposes" has the meaning set out in the Data Protection Act 2018.

"Losses" means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

"Lot" means each individual lot (as described more fully in Annex 2 (Regions and Areas) of Schedule 1 (Specification)) into which the Authority has split its procurement of the Services for all Regions and Areas under the OJEU Notice and **"Lots"** shall be construed accordingly.

"Malicious Software" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

"Management Information" means the management information specified in paragraph 1.3 of Schedule 19 (Management Information and Reporting).

"Material Breach" means a breach (including an anticipatory breach):

- (a) that has a serious impact on the benefit which the Authority would otherwise derive from a substantial or material portion of the Contract; or
- (b) of any of the obligations on the part of the Service Provider set out in clauses C4, D1, E1, E2, E3, E4, E5, E7, E8, I4 or Schedule 13 (Staff Transfer).

"Minor Service Failure" means a Service Failure where the level of service performance is below the Service Threshold set out in the column titled "Minor Service Failure" in the table in Part C of Schedule 4.

"Moderate Service Failure" means a Service Failure where the level of service performance is below the Service Threshold set out in the column titled "Moderate Service Failure" in the table in Part C of Schedule 4.

"Month" means calendar month.

"National Operational Forum" means the governance body with this name described in Schedule 12 (Governance).

"NCM" means the national contract manager to be appointed by the Authority in accordance with paragraph 2.1 of Schedule 12 (Governance).

"Net Asset Value" the total value of assets less the total value of liabilities.

"New Fair Deal" means the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for staff pensions: staff transfer from central government"* issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date.

"NICs" means National Insurance Contributions.

"Notifiable Default" has the meaning given in clause F2.1.

"Notified Sub-Contractor" means a Sub-Contractor identified in the Annex to Schedule 13 (Staff Transfer) to whom Transferring Authority Employees and/or Transferring Former Service Provider Employees will transfer on a Relevant Transfer Date.

"Occasion of Tax Non-Compliance" means:

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

"OJEU Notice" has the meaning given to it in paragraph A of the Background Section.

"OM" means the operational manager to be appointed by the Authority in accordance with paragraph 2.1 of Schedule 12 (Governance).

"Operational Review Meeting" means the governance body with this name described in Schedule 12 (Governance).

"Open Book Data" means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify:

- (a) the Price already paid or payable and Price forecast to be paid; and
- (b) the amounts recovered or recoverable and the amounts forecast to be recovered by the Service Provider in accordance with Paragraphs 3 and 5 of Schedule 4 (Pricing and Performance); and
- (c) the Remittance Sums,

during the remainder of the Contract Period, including details and all assumptions relating to:

- (d) the Service Provider's costs and manpower resources broken down against each element of the Services, including:

- (i) the cost to the Service Provider of engaging the Staff and Sub-Contractors, including base salary, tax and pension contributions and other contractual employment benefits;
- (ii) operational costs which are not included within (i) above, to the extent that such costs are necessary and properly incurred by the Service Provider in the delivery of the Services;
- (e) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; and
- (f) the profit achieved over the Contract Period and on an annual basis.

"Operational Services" means the Services described in the Specification.

"Optional Services" in respect of a Secondary Service Provider only, means the services described as such in Schedule 1 (Specification) which are to be provided by the Service Provider if required by the Authority in accordance with clause B13 (Optional Services);

"Optional Services Implementation Plan" in respect of a Secondary Service Provider only, the implementation plan to effect the Optional Services agreed between the Parties prior to the Commencement Date (as set out in Annex 2 of Schedule 2 (Implementation Plan) and, if not agreed prior to the Commencement Date, to be developed by the Service Provider and Approved by the Authority;

"Optional Services Period" the period(s) determined in accordance with clause B13.5;

"Order" means an order which the Service Provider is entitled to execute under the Enforcement Legislation.

"Other Warrants and Orders" means

- (a) Breach Warrants;
- (b) Commitment Warrants;
- (c) Committal to Custody Overnight at Police Station Warrants;
- (d) Confiscation Orders for Realisation of Specific Assets with Consent; and/or
- (e) Financial Arrest Warrants.

"Outline Implementation Plan" means the outline implementation plan set out at Annex 1 of Schedule 2 (Implementation Plan).

"Parent Undertaking" has the meaning set out in section 1162 of the Companies Act 2006.

"Performance Measures" means the performance measures set out in Part C of Schedule 4 (Pricing and Performance).

"Permitted Purpose" means the purpose of the Processing as set out in more detail in the Data Protection Particulars.

"Personal Data" has the meaning set out in, and will be interpreted in accordance with, the Data Protection Laws, and for the purposes of this Contract includes Sensitive Data and Special Category Personal Data (both as defined in Schedule 9 (Data Protection)) which is Processed by the Service Provider (or any Sub-Contractor) on behalf of the Authority or a Crown Body pursuant to or in connection with this Contract.

"Personal Data Breach" means:

- (a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
- (b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Personal Data that has previously been subject to a breach within the scope of **paragraph (a)**, which may result in exploitation or exposure of Authority Data; or
- (c) any defect or vulnerability in systems, processes and/or procedures that has the potential to impact the ongoing resilience, security and/or integrity of systems or Personal Data held on such systems,

and, for the avoidance of doubt, includes a breach of paragraph 2.4(c) of Schedule 9 (Data Protection) or of any replacement provision which relates to the security measures put in place to protect the Personal Data by the Service Provider.

"Policies and Standards" means the Authority policies and standards set out in Annex 1 of Schedule 10 (Policies and Standards) as may be amended to or added to by the Authority from time to time.

"Potential Year 1 Service Provider Revenue" means the sum set out in Annex 5 of Schedule 4 (Pricing and Performance) for the Lot or Region(s) for which the Service Provider is providing the Services under this Contract. For avoidance of doubt this includes, in respect of a Secondary Service Provider during any Optional Services Period, the Region(s) in respect of which it is required to provide Optional Services.

"Premises" means the location(s) where the Services are to be supplied as set out in the Specification.

"Price" means the price (excluding any applicable VAT) payable (if any) to the Service Provider by the Authority in consideration of the full and proper performance by the Service Provider of its obligations under the Contract, as set out in Schedule 4 (Pricing and Performance).

"Price Review Request" has the meaning given in paragraph 6.1 of Schedule 4 (Pricing and Performance).

"Priority Key Performance Indicators" means the Key Performance Indicators identified as priority in Part C of Schedule 4 (Pricing and Performance).

"Primary Service Provider" means the providers of services under Lots 1-7.

"Processing" has the meaning set out in, and will be interpreted in accordance with, the Data Protection Laws (and **"Process"** and **"Processed"** shall be construed accordingly).

"Processor" has the meaning set out in, and will be interpreted in accordance with, the Data Protection Laws.

"Prohibited Act" means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

"Property" means the property, other than real property, issued or made available to the Service Provider by the Authority in connection with the Contract.

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures.

"Provisional Service Provider Staff List" means a list prepared and updated by the Service Provider of all Service Provider Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider.

"Public Sector Dependent Supplier" means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;

"Public Sector Equality Duty" means the duty applicable to public authorities and persons exercising public functions under Section 149 of the Equality Act 2010.

"Purchase Order" means the Authority's order for the supply of the Services for the purposes of the invoicing process in Part B (Invoicing) of Schedule 4 (Pricing and Performance).

"Quarterly Statement of Risk on Internal Control" means the document with this title as further described in the Risks, Issues and Assurance Framework, to be completed by the Service Provider in the form set out in Appendix 3 of the Risks, Issues and Assurance Framework.

"Receipt" means the physical or electronic arrival of the invoice at the address specified in paragraph 9.9 of Schedule 4 (Pricing and Performance) or at any other address given by the Authority to the Service Provider for the submission of invoices from time to time.

"Records" has the meaning given in paragraph 2.4 of Schedule 19 (Management Information and Reporting).

"Recovery Point Objective" means the maximum targeted age of data that must be recovered from backup storage for normal operations to resume if a computer, system, or network goes down as a result of a hardware, program, or communications failure.

"Recovery Time Objective" means the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity.

"Rectification Plan" means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default.

"Rectification Plan Failure" means a failure of the Service Provider to comply with the Rectification Plan Process or where the implementation of the Rectification Plan fails to rectify the Notifiable Default.

"Rectification Plan Process" has the meaning given in clause F2.3.

"Region" means the HMCTS regions described in Annex 2 of Schedule 1 (Specification) (and **"Regional"** shall be construed accordingly).

"Regional Contract Management Meeting" means the governance body with this name described in Schedule 12 (Governance).

"Regulations" means the Public Contract Regulations 2015 (SI 2015/102).

"Regulatory Body" means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

"Relevant Authority" means the Authority or, where the Service Provider is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team.

"Relevant Requirements" means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

"Relevant Tax Authority" means HMRC or, if applicable, a tax authority in the jurisdiction in which the Service Provider is established.

"Relevant Transfer" means a transfer of employment to which TUPE applies.

"Relevant Transfer Date" means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.

"Remittance Guarantee" means a bank guarantee or guarantee backed by a surety, in either case provided by a reputable guarantor of good financial standing, covering the liabilities described in clause G3 and substantially in the form set out in Schedule 17 (Remittance Guarantee) or in a form otherwise acceptable to the Authority.

"Remittance Sums" means, of the amounts collected by the Service Provider in the course of executing Warrants and Orders, any and all sums which the Service Provider is required to remit to the Authority under applicable Law and in accordance with Paragraph 9 of Schedule 4 (Pricing and Performance) of this Contract.

"Replacement Services" means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination (or partial termination) of this Contract, whether those services are provided by the Authority internally and/or by any third party.

"Replacement Service Provider" means any third party supplier appointed by the Authority to supply any Replacement Services.

"Replacement Sub-Contractor" means a sub-contractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor).

"Request for Information" means a request for information under the FOIA or the EIR.

"Required Action" has the meaning given in clause F4.2(a).

"Required Insurances" has the meaning given in clause G2.1.

"Restricted Country" means any country, territory or jurisdiction outside the European Economic Area as it is made up from time to time ("**EEA**") (provided always that in the event that the United Kingdom ceases to be a member of the EEA, the United Kingdom will not be deemed to be a Restricted Country).

"Results" means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- (a) prepared by or for the Service Provider for use in relation to the performance of its obligations under the Contract (save for IP Materials); or

- (b) the result of any work done by the Service Provider, any Sub-Contractor or any Staff in relation to the provision of the Services.

"Retention Period" means the period of time during which the Service Provider is entitled to conduct execution activity in relation to a Warrant or Order prior to returning it to the Authority, as set out in Annex 5 of the Specification.

"Return Codes" means the codes to be used by the Service Provider when completing any Warrant or Order on its IT system to return the Warrant or Order to the Authority, as set out in Annex 4 of the Specification. These codes will be in set wording to correspond to the reason why the Warrant or Order was returned.

"Risk and Issues Register" means the register of risks, contingencies and other relevant information to be maintained by the Service Provider in accordance with the Risks, Issues and Assurance Framework, in the form set out in Appendix 2 of the Risks, Issues and Assurance Framework.

"Risk, Issues and Assurance Framework" means the document contained in Annex 2 of Schedule 19 (Management Information and Reporting).

"SBO" means the senior business owner to be appointed by the Authority in accordance with paragraph 2.1 of Schedule 12 (Governance).

"Schemes" means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

"Secondary Service Provider" means providers of services under Lot 8.

"Security Plan" means the plan prepared by the Service Provider which includes the matters set out in paragraph 3.2 of Schedule 8 (Information Assurance and Security).

"Security Policy Framework" means the HMG Security Policy Framework (available from the Cabinet Office's Government Security Secretariat) as updated from time to time.

"Security Test" means a test carried out by the Service Provider, the Authority or a third party to validate the ISMS and the security of all relevant processes and systems on which Information Assets and/or Authority Data are held.

"Sensitive Personal Data" has the meaning set out in the Data Protection Act 1998 and shall otherwise mean the special categories of Personal Data as are listed in Article 9(1) of the GDPR.

"Service Commencement Date" means the date identified in the Implementation Plan upon which the Operational Services are to commence.

"Service Failure" means a failure by the Service Provider to provide the Services which results in a failure to meet the standards of performance as set out in Schedule 4 (Pricing and Performance) and this Contract generally.

"Service Period" means a calendar month, save that:

- (a) the first service period shall begin on the Service Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and
- (b) the final service period shall commence on the first day of the calendar month in which the Contract Period expires or terminates and shall end on the expiry or termination of the Contract Period.

"Service Provider Group" means the Service Provider, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings.

"Service Provider Revenue" means the sum of:

- (a) the Price paid or payable to the Service Provider by the Authority for the full and proper performance of its obligations under the Contract calculated in accordance with the terms of Schedule 4 (Pricing and Performance); and
- (b) any and all statutory fees which the Service Provider is entitled to recover in connection with the execution of Warrants of Control in accordance with the rates and terms set out in the Warrant of Control Legislation.

"Service Provider Software" means software which is proprietary to the Service Provider, including software which is or will be used by the Service Provider for the purposes of providing the Services.

"Service Provider Solution" means the Service Provider's solution for the Services set out in Schedule 3 (Service Provider Solution).

"Service Provider IT System" means the information and communications technology system used by the Service Provider in performing the Services including the Service Provider Software, Equipment and related cabling (but excluding the Authority System).

"Service Threshold" means in respect of each Key Performance Indicator, the minimum level of performance stated in the "Service Threshold" column of the table set out in Part C of Schedule 4.

"Service Transfer" means any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to a Replacement Service Provider or a Replacement Sub-Contractor.

"Service Transfer Date" means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires.

"Services" means any and all of the services to be provided by the Service Provider under the Contract, including (i) those set out in Schedule 1 (Specification); (ii) the Implementation Services; (iii) the Operational Services; and (iv) where relevant, any Optional Services.

"SME" means an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises.

"SME Management Information Reports" has the meaning given to it in clause F8.9.

"SME MI Reporting Template" means the template set out in Annex C to Crown Commercial Service's Procurement Policy Note 01/18 entitled "Supply Chain Visibility", as may be amended from time to time and notified by the Authority to the Service Provider on not less than thirty (30) days prior written notice.

"Specific Change in Law" means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

"Specification" means the description of the Services to be supplied under the Contract as set out in Schedule 1 (Specification) including, where appropriate, the Premises.

"SSCBA" means the Social Security Contributions and Benefits Act 1992.

"Staff" means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of the Service Provider's obligations under this Contract.

"Staffing Information" means, in relation to all persons identified on the Service Provider's Provisional Service Provider Staff List or Service Provider's Final Service Provider Staff List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of TUPE.

"Standard Key Performance Indicators" means the Key Performance Indicators identified as standard in Part C of Schedule 4 (Pricing and Performance).

"Step-In Notice" has the meaning given in clause F4.2.

"Step-in Trigger" has the meaning given in clause F4.1.

"Step-Out Date" has the meaning given in clause F4.6(b).

"Step-Out Notice" has the meaning given in clause F4.6.

"Step-Out Plan" has the meaning given in clause F4.7.

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

"Sub-Contract" means any contract or agreement (or proposed contract or agreement) between the Service Provider (or a Sub-Contractor) and any third party whereby that third party agrees to provide to the Service Provider (or the Sub-Contractor) all or any part of the Services or facilities or services which are material for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services (or any part thereof).

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

- (a) the Service Provider enters into a Sub-Contract; or
 - (b) a third party under (a) above enters into a Sub-Contract,
- or the servants or agents of that third party;

“Subsidiary Undertaking” has the meaning set out in section 1162 of the Companies Act 2006.

“Supervisory Authority” has the meaning given in, and will be interpreted in accordance with, the Data Protection Laws.

"Target Performance Level" means the level of performance for a KPI which is required by the Authority, as set out against the relevant KPI in the table in Annex 2 of Schedule 4 (Pricing and Performance).

"Tender" means the Service Provider's tender submitted in response to the Authority's invitation to suppliers for formal offers to supply the Services.

"TFEU" means the Treaty on the Functioning of the European Union.

"Third Party IP Claim" has the meaning given to it in clause E8.10 (Intellectual Property Rights).

"Third Party Beneficiary" has the meaning given in clause I5.1.

"Third Party Provisions" has the meaning given in clause I5.1.

"Third Party Request" means a written request from any third party for disclosure of Authority Data where compliance with such request is required or purported to be required by law or regulation.

"Third Party Software" means software which is proprietary to any third party which is or will be used by the Service Provider to provide the Services including the software.

"Threshold Performance Level" means the Target Performance Level minus 10%.

"Transferee" has the meaning given in clause F6.3.

"Transferring Authority Employees" means those employees of the Authority to whom TUPE will apply on the Relevant Transfer Date.

“Transferring Former Service Provider Employees” means those employees of a Former Service Provider to whom TUPE will apply on the Relevant Transfer Date

"Transferring Service Provider Employees" means those employees of the Service Provider and/or the Service Provider's Sub-Contractors to whom TUPE will apply on the Service Transfer Date.

"Treaties" means the TFEU and the Treaty on European Union.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

"UK Public Sector Business" means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations.

"UK Public Service and CNI Contract Information" means the information relating to the Service Provider Group to be provided by the Service Provider in accordance with paragraphs 11-13 and Annexure 2 of Part 2 of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).

"Unit Charge" means the amount set out in Annex 4 of Schedule 4 (Pricing and Performance) applicable to the Warrant or Order to which the calculation set out in paragraph 15.3 of Schedule 4 (Pricing and Performance) relates.

"Valid" in respect of an Assurance, has the meaning given to it in paragraph 11.7 of Schedule 15 (Service Community Plan and Corporate Resolution Planning)

"Valid Invoice" means an invoice containing the information set out in paragraph 9.6 of Schedule 4 (Pricing and Performance).

"Variation" means a variation in the Specification, the Price or any of the terms or conditions of the Contract except a replacement of Schedule 9 (Data Protection) in accordance with paragraph 8 of that Schedule.

"Variation Request" means a written request for a Variation.

"VAT" means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

"VCSE" means a non-governmental organisation that is value driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

"Vulnerability Correction Plan" means a remedial plan prepared by the Service Provider to address vulnerabilities identified in an IT Health Check report.

"Waiver Period" means the period of time, from and including the Services Commencement Date, as set out in Part C of Schedule 4.

"Warrant" means a warrant which the Service Provider is entitled to execute under the Enforcement Legislation.

"Warrant of Control" means a Warrant in respect of which the Service Provider is required to take the steps described in section 19 of Schedule 1 (Specification).

"Warrant of Control Legislation" means:

- (a) Sections 62 and 63 and Schedule 12 of the Tribunals, Courts and Enforcement Act 2007;
- (b) The Taking Control of Goods Regulations 2013;

- (c) The Taking Control of Goods (Fees) Regulations 2014;
- (d) The Tribunals, Courts and Enforcement Act 2007 (Consequential, Transitional and Saving Provision) Order 2014,

as may be amended from time to time.

"Warrants Not Progressed" means, of all of the live Warrants and/or Orders whose Retention Period ended during the relevant Service Period, those Warrants and/or Orders that the Service Provider has failed to progress or execute.

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

"Working Hours" means 9am to 5pm on any Working Day.

A1.2 In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words "other", "in particular", "for example", "including" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) the Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (i) references to re-enactment of any statute or statutory provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland, whether by the European Union (Withdrawal) Act 2018 or any other legislation relating to the withdrawal of the United Kingdom from the European Union; and
- (j) references to the Contract are references to the Contract as amended from time to time in accordance with its terms.

A1.3 If there is any conflict between the clauses and the Schedules forming this Contract, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses;
- (b) Schedule 1 (Specification) and 4 (Pricing and Performance);

- (c) any other Schedules (other than Schedule 3 (Service Provider Solution)); and
- (d) Schedule 3 (Service Provider Solution).

A1.4 The Service Provider will be responsible for providing the Services and performing its other obligations under this Agreement as a Primary Service Provider or a Secondary Service Provider as identified in Recital (C). Where in this Contract there are requirements which apply only to a Primary Service Provider or a Secondary Service Provider, the Service Provider shall only be required to comply with those requirements that relate to the capacity in which the Service Provider is appointed, as identified in Recital (C).

A2 **The Authority's Obligations**

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Service Provider.

A3 **Service Provider's Status**

A3.1 The Service Provider shall be an independent Service Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3.2 The Service Provider shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent or employee of the Authority.

A4 **Mistakes in Information**

A4.1 The Service Provider is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Service Provider in connection with the Services and shall pay the Authority any extra costs occasioned by, or any Losses resulting from, any discrepancies, errors or omissions therein.

A5 **Due Diligence**

A5.1 The Service Provider acknowledges that:

- (a) the Authority has delivered or made available to the Service Provider all of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under the Contract;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any and all information supplied to the Service Provider by or on behalf of the Authority prior to the Commencement Date (the "**Due Diligence Information**"); and
- (c) it has (i) satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the Contract (including the Specification and the requirements for delivery of the Services), the ownership, functionality, capacity, condition and suitability for use in the Services of the Property, the

operating processes and procedures and the working methods of the Authority, and the existing contracts which may be novated to, assigned to or managed by the Service Provider under this Contract and/or which the Service Provider will require the benefit of for the provision of the Services (if any); and (ii) has advised the Authority of the actions needed to remedy any unsuitable aspects and confirms that any such actions are fully reflected and costed in this Contract.

- A5.2 The Service Provider shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Service Provider be entitled to recover any additional costs or charges arising as a result of, any misinterpretation of the Contract or any failure by the Service Provider to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

A6 Execution of the Contract

- A6.1 The Parties acknowledge that the execution of the Contract may be carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000, in which case the Contract shall be deemed to be formed on the date on which both Parties communicate acceptance of its terms on the MoJ eSourcing Portal.

- A6.2 The Service Provider accepts full responsibility for any wrongful act or misdoing arising during the execution of the Contract, and agrees to indemnify the Authority for all Losses in respect of any claim against the Authority arising from any error by the Service Provider.

A7 Condition Precedent

- A7.1 Save for clauses A1 (Definitions and Interpretation), A3 (Service Provider's Status), A7 (Condition Precedent), E4 (Confidential Information), E5 (Freedom of Information), E6 (Publicity, Media and Official Enquiries), G1 (Liability and Indemnities), G4 (Warranties and Representations), I1 (Dispute Resolution), I3 (Notices and Communications), I5 (Rights of Third Parties), I7 (Waiver), I8 (Severability), I9 (Entire Agreement) and I12 (Governing Law and Jurisdiction), the Contract is conditional upon the valid execution and delivery to the Authority of the [Guarantee] (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Service Provider notice in writing.

- A7.2 The Service Provider shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of the Contract then, unless the Condition Precedent is waived by the Authority in accordance with clause A7.1:

- (a) the Contract shall automatically cease and shall not come into effect; and
- (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

- A7.3 The Service Provider shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in clause A7.1 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in clause A7.2.

B THE SERVICES

B1 Term

B1.1 The Contract starts on 27th November 2019 (the "**Commencement Date**") and ends on the End Date unless it is terminated early or extended in accordance with clause B1.2.

B1.2 The Authority may at its sole discretion extend the term of the Contract:

- (a) upon a minimum of 6 Months' written notice, by a period of 12 Months from the End Date (such extension period being the "**First Extension Period**"); and
- (b) upon a minimum of 3 Months' written notice, by a further period of 12 Months from the end of the First Extension Period (such extension period being the "**Second Extension Period**"),

each an ("**Extension**"). The terms of the Contract will apply throughout the period of any Extension.

B2 Service Delivery

B2.1 The Service Provider shall provide:

- (a) the Implementation Services from (and including) the Commencement Date; and
- (b) the Operational Services from (and including) the Service Commencement Date.

B3 Standard of Services

B3.1 The terms and conditions contained in the Contract apply to the exclusion of any other terms that the Service Provider seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

B3.2 The Service Provider shall ensure that the Services:

- (a) comply in all respects with the Specification; and
- (b) subject always, in the event of any conflict or discrepancy between the Specification and the Service Provider Solution, to the primacy of clause B3.2(a), are supplied in accordance with the Service Provider Solution; and

(c) are supplied in accordance with the provisions of this Contract.

B3.3 The Service Provider shall perform its obligations under the Contract, including in relation to the provision of the Services:

(a) with all due skill, care and diligence;

(b) in accordance with:

(i) Good Industry Practice;

(ii) all applicable Laws; and

(iii) the Policies and Standards; and

(iv) the Security Policy Framework.

In the event that the Service Provider becomes aware of any inconsistency between the requirements of clauses B3.3(b)(i) to B3.3(iv), the Service Provider shall immediately notify the Authority in writing of such inconsistency and the Authority shall, as soon as practicable, notify the Service Provider which requirement the Service Provider shall comply with.

B3.4 The Service Provider shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits (in each case statutory, regulatory, contractual or otherwise) that it needs to carry out its obligations under the Contract.

B3.5 The Service Provider acknowledges that the Authority relies on the skill and judgment of the Service Provider in the supply of the Services and the performance of the Service Provider's obligations under the Contract. The Service Provider shall ensure that any documentation and/or training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice.

B3.6 The Service Provider shall ensure that all Staff are properly managed and supervised. The Service Provider shall ensure that all Staff supplying the Services:

- (a) do so with all due skill, care and diligence;
 - (b) possess such qualifications, skills, training and experience as are necessary for the proper supply of the Services; and
 - (c) where such Staff are engaged in the execution of Warrants and Orders, are fully authorised and certified to act as Civilian Enforcement Officers or Enforcement Agents (as the case may be); and
 - (d) comply with the applicable requirements in Schedule 8 (Information Assurance and Security) and Schedule 9 (Data Protection).
- B3.7 During the Contract Period, the Service Provider shall not, in delivering the Services, in any manner endanger the safety or convenience of the public.
- B3.8 The Authority may inspect the manner in which the Service Provider supplies the Services at the Premises during normal business hours on reasonable notice. The Service Provider shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection. In this clause B3.8, 'Services' include planning or preliminary work in connection with the supply of the Services.
- B3.9 If reasonably requested to do so by the Authority, the Service Provider shall co-ordinate its activities in supplying the Services with those of the Authority and other service providers engaged by the Authority.
- B3.10 If the Authority informs the Service Provider in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time (having due regard to the fact that such failure to meet the requirements of the Contract are not as a result of a default by the Authority) as may be specified by the Authority.
- B3.11 The Service Provider shall ensure that neither it, nor any of its Affiliates or Sub-Contractors, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Service Provider's obligations under this Contract.
- B3.12 The Service Provider shall provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services, including co-operation with other third party suppliers to the Authority.
- B3.13 The Service Provider shall gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Service Provider's compliance with its obligations under this Contract.
- B3.14 The Service Provider shall at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Contract.
- B3.15 The Service Provider shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

- (a) any withholding of or deduction from the Price by the Authority pursuant to clause C2.1(a) (Recovery of Sums Due);
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay the Price,

unless the Service Provider is entitled to terminate this Contract under clause H6.1 (Termination by the Service Provider) for failure to pay undisputed Price.

B4 Performance of Implementation Services

- B4.1 The Parties shall comply with the provisions of Schedule 2 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- B4.2 The Service Provider shall comply with the Implementation Plan.
- B4.3 In the event that there is, or is reasonably likely to be, any delay in the Service Provider's performance of the Implementation Services and/or readiness to deliver the Operational Services from Service Commencement Date, the Service Provider shall (i) comply with the terms of clause F2 (Rectification Plan) and (ii) use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay.
- B4.4 The Service Provider will comply with its obligations under clauses B4.1 to B4.3 regardless of the responsibility or cause of such delay.

B4.5 The Service Provider acknowledges that measurement of the Service Provider's performance against KPIs shall begin from the Service Commencement Date.

B5 Performance Operational Services

B5.1 The Service Provider shall:

- (a) provide the Operational Services in such a manner so as to meet the Target Performance Level for each KPI; and
- (b) comply with the provisions of Schedule 4 (Pricing and Performance) and Schedule 19 (Management Information and Reporting) in relation to the monitoring and reporting on its performance against the KPIs.

B6 Provision and Removal of Equipment

B6.1 The Service Provider shall provide all the Equipment and resources necessary for the supply of the Services.

B6.2 All Equipment brought onto the Premises is at the Service Provider's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Service Provider demonstrates that such loss or damage was caused or contributed to by the Authority's Default. The Service Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

B6.3 Unless otherwise agreed, Equipment brought onto the Premises remains the property of the Service Provider.

B6.4 The Service Provider shall maintain all Equipment in a safe, serviceable and clean condition and the loss or destruction for any reason of any Equipment shall not relieve the Service Provider of its obligation to supply the Services in accordance with this Contract.

B6.5 The Service Provider shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

(a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and

(b) replace such item with a suitable substitute item of Equipment.

B6.6 Within 20 Working Days of the end of the Contract Period, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider shall make good (at its own cost) any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Service Provider or Staff.

B7 Key Personnel

B7.1 The Service Provider acknowledges that Key Personnel are essential to the proper provision of the Services.

B7.2 Key Personnel shall not be released from supplying the Services without Approval except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.

B7.3 The Authority may interview and assess any proposed replacement for Key Personnel and any replacements to Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable in all regards for the responsibilities of that person in relation to the Services.

B7.4 The Authority shall not unreasonably withhold its Approval under clauses B7.2 or B7.3. Such Approval shall be conditional on appropriate arrangements (in the opinion of the Authority) being made by the Service Provider to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B8 Service Provider's Staff

B8.1 The Authority may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Authority Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.

B8.2 The Authority shall maintain the security of the Authority Premises in accordance with its standard security requirements, including Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008 (together the "**Security Requirements**"), available to the Service Provider on request. The Service Provider shall comply with all security requirements of the Authority (including the Security Requirements) while on the Authority Premises, and shall ensure that all Staff comply with such requirements.

B8.3 The Authority may search any persons or vehicles engaged or used by the Service Provider at the Authority Premises.

- B8.4 The Service Provider shall not, and shall procure that all Staff shall not, take photographs on the Authority Premises without Approval.
- B8.5 At the Authority's written request, the Service Provider shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all persons who may require admission to the Authority Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B8.6 The Service Provider shall ensure that all Staff who have access to the Authority Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS before any such access is granted.
- B8.7 The Service Provider shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:
- (a) use reasonable endeavours to make available any Staff requested by the Authority to attend an interview for the purpose of an investigation; and
 - (b) provide documents, records and/or other material in whatever form which the Authority may reasonably request or which may be requested on the Authority's behalf, for the purposes of an investigation.
- B8.8 The Service Provider shall be liable at all times for all acts or omissions of Staff, so that any act or omission of a member of any Staff which results in a Default under this Contract shall be deemed to be a Default by the Service Provider.
- B8.9 The Service Provider shall use all reasonable endeavours to minimise the number of changes in Staff and replace (temporarily or permanently, as appropriate) any Staff as soon as practicable if any Staff have been removed or are unavailable for any reason whatsoever. The Service Provider shall bear the programme familiarisation and other costs associated with any replacement of any Staff.
- B9 Licence to Occupy Premises**
- B9.1 Subject to any restrictions in the relevant title documentation, any land or Premises made available from time to time to the Service Provider by the Authority in connection with the Contract are on a non-exclusive licence basis, free of charge, and are used by the Service Provider solely for the purpose of performing its obligations under the Contract and during Working Hours. The Service Provider has the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.
- B9.2 The Service Provider shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Service Provider shall co-operate (and ensure that its Staff co-operate) with other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B9.3 Should the Service Provider require modifications to the Authority Premises such modifications are subject to Approval and shall be carried out by the Authority at the Service Provider's expense. The Authority shall undertake Approved modification work without undue delay.
- B9.4 The Service Provider shall (and shall ensure that any Staff on the Authority Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Staff when on the Authority Premises as determined by the Authority.
- B9.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Service Provider or its Staff (nor entitle the Service Provider or any Staff to exclusive

occupancy or exclusive possession) and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority may use the Premises owned or occupied by it in any manner it sees fit.

B10 Property

- B10.1 All Property is and remains the property of the Authority and the Service Provider irrevocably licenses the Authority and its agents to enter any Premises of the Service Provider during normal business hours on reasonable notice to recover any such Property. The Service Provider does not have a lien or any other interest on the Property and the Service Provider at all times possesses the Property as fiduciary agent and bailee of the Authority. The Service Provider shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B10.2 The Property is deemed to be in good condition when received by or on behalf of the Service Provider unless the Service Provider notifies the Authority otherwise within 5 Working Days of receipt.
- B10.3 The Service Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B10.4 The Service Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B10.5 The Service Provider is liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Service Provider shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B11 Offers of Employment

- B11.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party who are directly employed or engaged in connection with the provision of the Services while such persons are employed or engaged and for a period of 6 Months thereafter.
- B11.2 If either Party breaches the provisions of clause B11.1, it shall pay the other Party a sum equivalent to 20% (twenty per cent) of the annual base salary payable by the Party in breach in respect of the first year of person's employment.
- B11.3 The Parties agree that the sum specified in clause B11.2 is a reasonable pre-estimate of the loss and damage which the party not in breach would suffer if there was a breach of clause B11.1

B12 Employment Provisions

- B12.1 The Parties agree that:
- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 13 (*Staff Transfer*) shall apply as follows:

- (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 13 (Staff Transfer) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Service Provider Employees, Part B of Schedule 13 (Staff Transfer) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Service Provider Employees, Parts A and B of Schedule 13 (Staff Transfer) shall apply; and
 - (iv) Part C of Schedule 13 (Staff Transfer) shall not apply;
- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 13 (*Staff Transfer*) shall apply and Parts A and B of Schedule 13 (*Staff Transfer*) shall not apply; and
- (c) Part D of Schedule 13 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

B12.2 This clause B12 applies during the Contract Period and indefinitely thereafter.

B13 **Optional Services**

B13.1 This clause B13.1 (Optional Services) only applies to the Service Provider if it is a Secondary Service Provider as specified in clause A1.4.

B13.2 The Authority may require the Service Provider to provide any or all of the Optional Services at any time for such duration as the Authority may specify by giving notice to the Service Provider in writing. The Service Provider acknowledges that the Authority is not obliged to take any Optional Services from the Service Provider and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.

B13.3 If a Variation Request is submitted by the Authority, the Service Provider shall, as part of the Impact Assessment provided by the Service Provider in relation to such Variation Request, provide details of the impact (if any) that the proposed Variation will have on the relevant Optional Services.

B13.4 Following receipt of the Authority's notice pursuant to clause B13.2 above:

(a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Variation procedure set out in clause F9 (Variation), modified to reflect the fact that the terms and conditions on which the Service Provider shall provide the relevant Optional Services have already been agreed and set out in this Contract; and

(b) for the relevant Optional Services Period:

- (i) the Service Provider shall implement the relevant Optional Services in accordance with the Optional Services Implementation Plan and shall provide the relevant Optional Services in accordance with Part 1C of Schedule 1 (Specification) and the related part of Schedule 3 (Service Provider Solution);

- (ii) any charges for the relevant Optional Services as specified in Schedule 4 (Pricing and Performance) shall be incorporated in the Price;
- (iii) any KPIs or Performance Measures for the relevant Optional Services as specified in Annex 4 of Schedule 4 (Pricing and Performance) shall be incorporated in the KPIs and Performance Measures (as applicable); and
- (iv) the Service Provider shall provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all KPIs applicable to the Optional Services as set out in Annex 4 of Schedule 4 (Pricing and Performance).

B13.5 The Optional Services Period starts following receipt of an notice from the Authority pursuant to clause B13.2 on the date agreed in the Optional Services Implementation Plan and ends on the date specified in the Authority's notice, unless the Optional Services Period or the Contract is terminated early or unless the Optional Services Period is extended in accordance with clause B13.6.

B13.6 The Authority may at its sole discretion extend the Optional Services Period by notice in writing to the Service Provider, save that the Optional Services Period may not continue beyond the Contract term specified in clause B1.

C PAYMENT

C1 Price, Payment and VAT

C1.1 The Authority shall pay to the Service Provider the Price in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 4 (Pricing and Performance).

C1.2 The Service Provider shall be entitled to recover Service Provider Revenue in accordance with Schedule 4 (Pricing and Performance).

C2 Recovery of Sums Due

C2.1 If under the Contract any sum of money is recoverable from or payable by the Service Provider to the Authority (including any sum which the Service Provider is liable to pay to the Authority in respect of any breach of the Contract), the Authority may:

(a) unilaterally withhold or deduct that sum from any sum then due, or which at any later time may become due, to the Service Provider from the Authority under the Contract or under any other agreement with the Authority or the Crown; or

(b) if no further sums become due to the Service Provider from the Authority under the Contract or under any other agreement with the Authority or the Crown, recover such sum of money from the Service Provider as a debt.

- C2.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C2.3 The Service Provider shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Service Provider.
- C2.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- C3 **Financial Distress**
- C3.1 The Parties shall comply with the provisions of Schedule 14 (Financial Distress) in relation to the assessment of the financial standing of the Service Provider and the consequences of a change to that financial standing.
- C4 **Tax Compliance**
- C4.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Service Provider shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly give the Authority:
 - (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- C4.2 If the Service Provider or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Service Provider shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
 - (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from, or made in connection with, the provision of the Services by the Service Provider or any Staff.
- C5 **No Suspension**
- C5.1 The Service Provider shall not suspend the Services unless the Service Provider is entitled to terminate the Contract under clause H6.1 for failure to pay undisputed sums of money.
- C5.2 **Costs**
- Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Contract.

D STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

D1.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

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

D1.2 The Service Provider shall not during the Contract Period:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Service Provider shall, during the Contract Period:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

D1.4 The Service Provider shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Service Provider notifies the Authority pursuant to clause D1.4, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

D1.6 If the Service Provider is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

- (a) require the Service Provider to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract.
- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract terminates).
- D2 **Equality**
- D2.1 The Service Provider shall:
 - (a) perform its obligations under the Contract in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity, marriage and civil partnership or otherwise);
 - (ii) the Authority's equality and diversity policy as given to the Service Provider from time to time;
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
 - (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).
- D2.2 The Service Provider acknowledges that the performance of its obligations under the Contract entails the exercising of public functions. The Service Provider acknowledges that it is subject to, and agrees to perform the Services and at all times act in accordance with:
 - (a) the Equality Act 2010, including the Public Sector Equality Duty, which places a continuing legal duty on the Authority and its delivery arms (including contractors) to pay 'due regard' to the need to:
 - (i) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited under the Equality Act 2010;
 - (ii) advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not, and
 - (iii) foster good relations between those who share such a characteristic and those who do not; and
 - (b) Section 6 of the Human Rights Act 1998 (as may be amended from time to time).
- D3 **Health and Safety**
- D3.1 The Service Provider shall perform its obligations under the Contract in accordance with:
 - (a) all applicable Law regarding health and safety; and

- (b) the Authority's health and safety policy while at the Authority Premises.
- D3.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Service Provider shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- D4 **Modern Slavery Act**
- D4.1 The Service Provider shall, and shall ensure that each of its suppliers and Sub-Contractors shall, comply with:
 - (a) all applicable Laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - (b) the Authority's anti-slavery policy as provided to the Service Provider from time to time ("**Anti-slavery Policy**").
- D4.2 The Service Provider shall:
 - (a) implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains;
 - (b) respond promptly to all slavery and human trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - (c) prepare and deliver to the Authority each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
 - (d) maintain a complete set of records to trace the supply chain of all hardware, software and Services provided to the Authority in connection with this Contract; and
 - (e) implement a system of training for its employees to ensure compliance with the Modern Slavery Act 2015.
- D4.3 The Service Provider represents, warrants and undertakes on an ongoing basis throughout the continuance of this Contract that it conducts its business in a manner that is consistent with all applicable laws, regulations, codes including but not limited to the Modern Slavery Act 2015 and all analogous legislation in place in any part of the world.
- D4.4 The Service Provider represents and warrants on an ongoing basis throughout the continuance of this Contract that:
 - (a) its responses to all slavery and human trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
 - (b) neither the Service Provider nor any of its officers, employees, suppliers or sub-contractors or other persons associated with it:
 - (i) has been convicted of any offence involving slavery and human trafficking; and

- (ii) has been or is it the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

D4.5 The Service Provider shall notify the Authority as soon as it becomes aware of:

- (a) any breach, or potential breach, of the Anti-slavery Policy; or
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

D4.6 If the Service Provider makes a notification to the Authority pursuant to clause D4.5, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause E9 (Audit).

D4.7 If the Service Provider is in Default under clause D4.5, the Authority may by notice:

- (a) require the Service Provider to remove from performance of this Contract any officers, employees, suppliers or sub-contractors or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate this Contract.

E PROTECTION OF INFORMATION

E1 Authority Data

E1.1 The Service Provider shall (subject to Schedule 9 (Data Protection)):

- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Service Provider of its obligations under the Contract or as otherwise Approved;
- (b) preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
- (c) not delete or remove any proprietary notices contained within or relating to the Authority Data;
- (d) to the extent that Authority Data is held and/or Processed by the Service Provider, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
- (e) perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Service Provider shall ensure that such back-ups are made available to the Authority immediately upon request;
- (f) ensure that any system on which the Service Provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework;
- (g) NOT USED;
- (h) without prejudice to Schedule 9 (Data Protection) and the Service Provider's obligation to implement Protective Measures and protect against a Data Loss Event on request, give the Authority details of its policy for reporting, managing

and recovering from information risk incidents, including losses of Personal Data, and its procedures for reducing risk;

- (i) without prejudice to Schedule 9 (Data Protection) and the Service Provider's obligation to notify the Authority immediately or at least within 12 hours of becoming aware of any Data Loss Event, notify the Authority immediately and inform the Authority of the remedial action the Service Provider proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason; and

E1.2 Subject to Schedule 9 (Data Protection) and specifically the terms relating to notification and handling a Personal Data Breach, if Authority Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Authority may:

- (a) require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Authority Data and the Service Provider shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so.

E1.3 Subject to Schedule 9 (Data Protection) and specifically the terms relating to notification and handling a Personal Data Breach and liability in relation thereto, if, through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

E2 Data Protection

E2.1 The Parties shall comply with the provisions of Schedule 9 (Data Protection) in relation to the handling by the Service Provider of Personal Data under or in connection with this Contract.

E3 Official Secrets Acts and Finance Act

E3.1 The Service Provider shall comply with the provisions of:

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

E4 Confidential Information

E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E4.2 The Service Provider hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

- E4.3 If required by the Authority, the Service Provider shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Service Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.
- E4.4 If requested by the Authority, the Service Provider shall give the Authority a copy of the list referred to in clause E4.3 and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Service Provider shall ensure that its Staff, professional advisors and consultants are aware of the Service Provider's confidentiality obligations under the Contract.
- E4.5 The Service Provider may disclose the Authority's Confidential Information only to the Staff who are directly involved in providing the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with the obligations in clause E4 as to confidentiality.
- E4.6 The Service Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- E4.7 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract (or any other contract between the Authority and the Service Provider); or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- E4.8 Nothing in clause E4.1 prevents the Authority disclosing any Confidential Information obtained from the Service Provider:
- (a) for the purpose of the examination and certification of the Authority's accounts;
 - (b) for the purpose of 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;
 - (c) to Parliament and Parliamentary committees;
 - (d) to any Crown Body or any Contracting Authority and the Service Provider hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

(e) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E4.8(d) and E4.8(e) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.
- E4.11 If the Service Provider does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on notice to the Service Provider and/or seek injunctive relief in a court of competent jurisdiction.
- E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Service Provider shall maintain adequate security arrangements that meet the requirements of professional standards and best practice. The Service Provider shall treat the Authority's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials). The Service Provider shall immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Service Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Service Provider will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.13 The Service Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Service Provider has failed to comply with clause E4.12.

E5 Freedom of Information

- E5.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E5.2 The Service Provider shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:
- (a) give the Authority a copy of all Information requested in the Request for Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
 - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
 - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

E5.3 The Service Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E6 Publicity, Media and Official Enquiries

E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations or any policy requirements as to transparency, the Service Provider shall not make any press announcement or publicise the Contract or any part thereof in any way, without Approval.

E6.2 The Service Provider shall use all reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with E6.1.

E7 Security

E7.1 The Service Provider shall comply with the terms of Schedule 8 (Information Assurance and Security) and Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).

E7.2 The Service Provider shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus programs available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E7.3 Subject to Schedule 9 (Data Protection) and notwithstanding clause E7.2, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

E7.4 Any cost arising out of the actions of the Parties taken in compliance with clause E7.3 shall be borne by the Parties as follows:

- (a) by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Service Provider); and
- (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

E8 Intellectual Property Rights

E8.1 Except as expressly stated in this clause, no Intellectual Property Rights of either party are transferred or licensed as a result of the Contract.

E8.2 As between the Parties all Intellectual Property Rights in the IP Materials shall vest or remain vested (as the case may be) in the Authority (save for Copyright and Database Rights in the IP Materials which shall vest in Her Majesty the Queen) and the Service Provider shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Service Provider of its obligations under the Contract.

- E8.3 The Authority grants the Service Provider a non-exclusive, non-transferable and royalty-free licence for the duration of the Contract Period to use the IP Materials to the extent necessary to enable the Service Provider to deliver the Services and otherwise perform its obligations under the Contract
- E8.4 As between the Parties all Intellectual Property Rights in the Results:
- (a) shall vest in the Authority to the extent that the relevant Results relate specifically to the Contract and/or the Services (including any continuation or re-procurement thereof following expiry or termination of the Contract) and not to the general business or operations of the Service Provider, and to the extent that such Intellectual Property Rights do not vest in the Authority, by virtue of this clause or by operation of law or otherwise, the Service Provider hereby assigns such Intellectual Property Rights to the Authority including by way of present assignment of future rights. In respect of any such Intellectual Property Rights prepared for the Service Provider and/or by any Sub-Contractor or Staff then the Service Provider will procure either (i) that such Intellectual Property Rights are assigned to it so that it can assign the same to the Authority in accordance with this clause or that (ii) such Intellectual Property Rights are assigned directly to the Authority by all such Sub-Contractor(s) and/or Staff as applicable; and
 - (b) shall in all other cases vest in the Service Provider.
- E8.5 In relation to the Results:
- (a) The Service Provider grants the Authority a non-exclusive, perpetual, royalty-free, worldwide and irrevocable licence to use, reproduce, modify and develop the Results owned by the Service Provider (to the extent that the relevant rights are not already held by the Authority) to the extent necessary to enable the Authority to make use of the Services and/or otherwise perform its obligations under the Contract and/or to provide or make use of any Replacement Services. Such licence shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Service Provider or to any other third party supplying goods and/or services to the Authority.
 - (b) The Authority grants the Service Provider a non-exclusive, non-transferable and royalty-free licence for the duration of the Contract Period to use, reproduce, modify and develop the Results owned by the Authority (to the extent that the relevant rights are not already held by the Service Provider) to the extent necessary to enable the Service Provider to deliver the Services and otherwise perform its obligations under the Contract.
 - (c) In respect of any Results owned by any third party (including Sub-Contractors and/or Staff) the Service Provider will procure the grant to the Authority by all such third parties of a non-exclusive, perpetual, royalty-free, worldwide and irrevocable licence to use, reproduce, modify and develop such Results to the extent necessary to enable the Authority to make use of the Services and/or otherwise perform its obligations under the Contract and/or to provide or make use of any Replacement Services. Such licence shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Service Provider or to any other third party supplying goods and/or services to the Authority.
- E8.6 The Service Provider shall:
- (a) waive and/or procure a waiver of any and all moral rights held by it and/or any third party in copyright material arising as a result of the Contract or the

performance of its obligations under the Contract, including in relation to the Intellectual Property Rights in Results that vest in the Authority under the Contract;

- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Service Provider or to any other third party supplying goods and/or services to the Authority ("**Indemnified Persons**");
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
- (d) during and after the Contract Period, indemnify and keep indemnified the Authority and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E8.6, except to the extent that any such claim results directly from:
 - (i) designs supplied by the Authority; or
 - (ii) data supplied by the Authority which is not required to be verified by the Service Provider under any provision of the Contract.

E8.7 The Authority shall notify the Service Provider in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Service Provider to the Authority.

E8.8 The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Service Provider or Indemnified Person) arising from the performance of the Service Provider's obligations under the Contract ("**Third Party IP Claim**"), provided that the Service Provider shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E8.9 The Authority shall, at the request of the Service Provider, afford to the Service Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Service Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Service Provider shall not be required to indemnify the Authority under this clause E8.9 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.6(d)(i) and E8.6(d)(ii).

E8.10 The Authority shall not, without the Service Provider's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.11 If any Third Party IP Claim is made or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.5(b) and G4.1(g)) use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

(b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and if the Service Provider is unable to comply with clauses E8.11(a) or E8.11(b) within 20 Working Days of receipt by the Authority of the Service Provider's notification the Authority may terminate the Contract immediately by notice to the Service Provider.

E8.12 The Service Provider hereby grants to the Authority and, if requested by the Authority, will grant to a Replacement Service Provider, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Service Provider owned or developed prior to the Commencement Date, or owns or develops after the Commencement Date but that are not Results, and which the Authority (or the Replacement Service Provider) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E8.13 The Service Provider agrees to execute all documents and do all acts as are necessary to give effect to the provisions of this clause E8.

E9 Audit

E9.1 The Service Provider shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of its compliance with, and discharge of its obligations under, the Contract (including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority). The Service Provider shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E9.2 The Service Provider agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Service Provider in relation to the Services.

E9.3 The Authority, acting by itself or through its duly authorised representatives and/or the National Audit Office and/or any Regulatory Body, shall have the right during the Contract Period and for a period of 18 Months thereafter, to assess compliance by the Service Provider of the Service Provider's obligations under this Contract, including for the following purposes:

(a) to verify the accuracy of the Price and any other amounts payable by the Authority under this Contract;

- (b) to verify the Open Book Data;
- (c) to verify the Service Provider's compliance with this Contract and applicable Law;
- (d) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Service Provider of the purpose or objective of its investigations;
- (e) to identify or investigate any circumstances which may impact upon the financial stability of the Service Provider and/or the Guarantor or their ability to perform the Services;
- (f) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes;
- (g) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (h) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (i) to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
- (j) to review the Service Provider's compliance with the Policies and Standards; and/or
- (k) to review the integrity, confidentiality and security of the Authority Data,

and the Service Provider (and its agents) shall permit access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Authority (or those acting on its behalf) may reasonably require for the purposes of conducting such an audit.

- E9.4 The Service Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of conducting a financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Service Provider shall provide such explanations as are reasonably required for these purposes.
- E9.5 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Service Provider that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services. The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- E9.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause E9, unless the audit identifies a material Default by the Service Provider in which case the

Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

F CONTROL OF THE CONTRACT

F1 Contract Governance

F1.1 The Parties shall comply with the provisions of:

- (a) Schedules 12 (Governance) in relation to the management and governance of the Contract; and
- (b) Schedule 19 (Management Information and Reporting) in relation to the:
 - (i) provision of the Management Information and the Open Book Data; and
 - (ii) retention of records in connection with the Contract.

F2 Rectification Plan

F2.1 If:

- (a) there is, or is reasonably likely to be, any delay in:
 - (i) the Service Provider's performance of the Implementation Services or in discharging its obligations under the Implementation Plan; and/or
 - (ii) the Service Provider's readiness to deliver the Operational Services from Service Commencement Date;
- (b) in any Service Period there has been a KPI Failure;
- (c) the Service Provider has committed any breach of its obligations under any of:
 - (i) clause B3 (Standard of Services);
 - (ii) clause E1 (Authority Data);
 - (iii) clause E2 (Data Protection) and/or Schedule 9 (Data Protection);
 - (iv) clause E4 (Confidential Information);
 - (v) clause E5 (Freedom of Information); or
 - (vi) clause E7 (Security) and/or Schedule 8 (Information Assurance and Security); and/or
- (d) the Service Provider commits a material Default that is capable of remedy (and for these purposes a 'material Default' may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a **"Notifiable Default"**), then the Service Provider shall notify the Authority of the Notifiable Default as soon as practicable (and, without prejudice to the foregoing provision, in any event within two Working Days), detailing the actual or anticipated effect of the Notifiable Default.

F2.2 If:

- (a) the Service Provider notifies the Authority pursuant to clause F2.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Service Provider that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Service Provider has to rectify),

then the Authority may, by written notice to the Service Provider at any time following the Notifiable Default, require the Service Provider to comply with the Rectification Plan Process.

F2.3 The **"Rectification Plan Process"** shall be as set out in clauses F2.4 to F2.5.

F2.4 Even if the Service Provider disputes it is responsible for the Notifiable Default, the Service Provider shall, within 5 Working Days of receipt of the Authority's notice pursuant to clause F2.2, submit a draft Rectification Plan to the Authority for review, along with any further documentation that the Authority reasonably requires in order to assess the draft Rectification Plan. The draft Rectification Plan shall set out:

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

F2.5 The Authority shall, acting reasonably, accept or reject the draft Rectification Plan and shall notify the Service Provider of its decision as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Service Provider shall take the reasons into account in the preparation of a revised Rectification Plan. The Service Provider shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft (and this process may be repeated as many times as the Authority requires). If the Authority consents to the Rectification Plan, the Service Provider shall immediately start work on the actions set out in the Rectification Plan.

F3 **Enhanced Scrutiny**

F3.1 The occurrence of any of the following during the Contract Period shall in each case be an **"Enhanced Scrutiny Trigger"**:

- (a) one of the circumstances set out in clause H2 (Termination on Default) has occurred (regardless of whether the Authority's right to terminate in connection with the same are subject to compliance with the Rectification Plan Process, service of a notice or any other condition);
- (b) the Service Provider has committed any breach of its obligations under any of:

- (i) clause B3 (Standard of Services);
 - (ii) clause E1 (Authority Data);
 - (iii) clause E2 (Data Protection) and/or Schedule 9 (Data Protection);
 - (iv) clause E4 (Confidential Information);
 - (v) clause E5 (Freedom of Information); or
 - (vi) clause E7 (Security) and/or Schedule 8 (Information Assurance and Security)
- (c) the circumstances are considered by the Authority, acting reasonably, to constitute an emergency;
- (d) on the occurrence of any of the events set out in clause H1.1 in respect of the Service Provider; and/or
- (e) if there is, in the reasonable opinion of the Authority, a material risk of any of the circumstances listed in this paragraph F3.1 occurring.
- (f) on occurrence of the event set out in 3.1 (g) of Schedule 14 – Financial Distress
- F3.2 On the occurrence of any Enhanced Scrutiny Trigger the Authority may by written notice to the Service Provider increase the level of its monitoring of the Service Provider or require the Service Provider to increase the level of its monitoring and reporting of its own performance of its obligations under the Contract ("**Enhanced Monitoring**") in respect of the Services (or relevant part thereof) to which the Enhanced Scrutiny Trigger relates until such time as the circumstances giving rise to the Enhanced Scrutiny Trigger no longer apply but in any event for not more than a period of six (6) Months after the giving of such notice, unless the Service Provider has failed to satisfy the requirements of this paragraph during that six Month period, in which case the Authority may, at its sole discretion and without prejudice to its other rights, elect to extend the period of Enhanced Monitoring by, at most, a further six (6) Months.
- F3.3 Enhanced Monitoring that the Authority may require under clause F3.2 may include:
- (a) increasing the frequency, depth or type(s) of any existing monitoring or reporting;
 - (b) adding new reporting and/or monitoring requirements;
 - (c) requiring the Service Provider to provide a reasonable number of appropriately qualified and senior staff to participate in an existing or dedicated governance board or other focus group established by the Authority; and/or
 - (d) the provision of Open Book Data
- in relation to the obligations which gave rise to the Enhanced Monitoring.
- F3.4 Any such notice to the Service Provider (as referred to in clause F3.2) shall specify in reasonable detail the additional measures to be taken by the Authority or by the Service Provider (as the case may be) in monitoring or reporting on the performance of the Service Provider.
- F3.5 The Service Provider shall notify the Authority within five (5) Working Days of receipt of the notice referred to in clause F3.2 of any measures specified in such notice that

the Service Provider (acting reasonably) believes are excessive or may prejudice the Service Provider's performance of its obligations under the Contract, together with such alternative measures that the Service Provider may propose.

- F3.6 The Service Provider shall bear its own costs and shall reimburse the Authority in respect of any additional costs that are directly incurred by the Authority in the taking of any action under this clause F3.

F4 **Step-in**

- F4.1 The occurrence of any of the following during the Contract Period shall in each case be a "**Step-in Trigger**":

- (a) one of the circumstances set out in clause H2 (Termination on Default) has occurred (regardless of whether the Authority's right to terminate in connection with the same are subject to compliance with the Rectification Plan Process, service of a notice or any other condition);
- (b) the circumstances are considered by the Authority, acting reasonably, to constitute an emergency;
- (c) the Authority being advised by a Regulatory Body that the exercise by the Authority of its rights under this clause F4 is necessary or required;
- (d) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services;
- (e) a need by the Authority to take action to discharge a statutory duty;
- (f) a Rectification Plan Failure occurs; and/or
- (g) the Authority has given notice to invoke Enhanced Monitoring pursuant to clause F3.2 and the circumstances giving rise to the Enhanced Scrutiny Trigger continue to apply six (6) Months after the giving of such notice.

- F4.2 On the occurrence of a Step-In Trigger, the Authority may serve notice on the Service Provider (a "**Step-In Notice**") that it will be taking action under this clause F4, either itself or with the assistance (either fully or partially) of any third party (provided that the Service Provider may require any third parties to comply with a confidentiality undertaking equivalent to clause E4). For the avoidance of doubt, where the Service Provider is a Primary Service Provider the Authority may use the Secondary Service Provider to discharge its obligations (either fully or partially) under this clause F4. The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services (or part thereof) that it wishes to control (the "**Required Action**");
- (b) the Step-In Trigger that has occurred and whether the Authority believes that the Required Action is due to a Default by the Service Provider;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to any Premises of the Service Provider; and

- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Service Provider's obligations to provide the Services during the period that the Required Action is being taken.
- F4.3 Following service of a Step-In Notice, the Authority shall:
- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Service Provider;
 - (c) co-operate wherever reasonable with the Service Provider in order to enable the Service Provider to continue to provide the Services in relation to which the Authority is not assuming control; and
 - (d) act reasonably in mitigating the cost that the Service Provider will incur as a result of the exercise of the Authority's rights under this clause F4.
- F4.4 For so long as and to the extent that the Required Action is continuing, then:
- (a) the Service Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - (b) the Authority shall pay to the Service Provider the Price after subtracting the Authority's costs of taking the Required Action; and
 - (c) without prejudice to its rights under clause C2 (Recovery of Sums Due), the Authority may charge the Service Provider for any costs reasonably incurred and any reasonable administration costs in respect of the Required Action to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for delivery of such part of the Services.
- F4.5 If the Service Provider demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the Authority not taken the Required Action, then the Service Provider shall be entitled to an agreed adjustment of the Price.
- F4.6 Before ceasing to exercise its step in rights under this clause F4 the Authority shall deliver a written notice to the Service Provider (a "**Step-Out Notice**"), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Service Provider's ability to resume the provision of the Services and the Service Provider's plan developed in accordance with clause F4.7.
- F4.7 The Service Provider shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's Approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Service Provider of the Services, including any action the Service Provider proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- F4.8 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Service Provider of its reasons for not approving it. The Service Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit

the revised plan to the Authority for the Authority's Approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

F4.9 The Service Provider shall bear its own costs in connection with any step-in by the Authority under this clause F4, provided that the Authority shall reimburse the Service Provider's reasonable and proven additional expenses incurred directly as a result of any step-in action taken by the Authority under clause F4.1(b), F4.1(d) or (e) insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Service Provider's Default.

F5 Material Breach

F5.1 If the Authority reasonably believes the Service Provider has committed a Material Breach it may:

- (a) without terminating the whole of the Contract, terminate or suspend the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (b) withhold or reduce payments to the Service Provider in such amount as the Authority reasonably deems appropriate in each particular case;
- (c) exercise its rights to require a Rectification Plan pursuant to clause F2.2; and/or
- (d) terminate the Contract in accordance with clause H2 (Termination on Default).

F6 Transfer by the Authority

F6.1 Subject to clause F6.2, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not materially increase the burden of the Service Provider's obligations under the Contract.

F6.2 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F6.3, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

F6.3 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F6.1 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in clauses F6.3 and F6.4 both such bodies being referred to as the "**Transferee**"):

- (a) the rights of termination of the Authority in clause H1 shall be available to the Service Provider in respect of the Transferee; and

- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Service Provider (such consent not to be unreasonably withheld).
- F6.4 The Authority may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the receipt of the Services and the discharge of the Transferee's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F6.5 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.
- F7 **Transfer by the Service Provider**
- F7.1 Except where both clauses F7.2 and F7.3 apply, the Service Provider shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. Sub-contracting any part of the Contract shall not relieve the Service Provider of any of its obligations or duties under the Contract.
- F7.2 Notwithstanding clause F7.1, the Service Provider may assign to a third party (the "**Assignee**") the right to receive payment of the Price or any part thereof due to the Service Provider (including any interest which the Authority incurs under paragraph 9.10 of Schedule 4 (Pricing and Performance)). Any assignment under this clause F7.2 shall be subject to:
 - (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C2 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F7.3 and F7.4.
- F7.3 If the Service Provider assigns the right to receive the Price under clause F7.2, the Service Provider or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F7.4 The Service Provider shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- F7.5 The provisions of paragraph 9 of Schedule 4 (Pricing and Performance) shall continue to apply in all other respects after an assignment under clause F7.2 and shall not be amended without Approval.
- F8 **Sub-Contracting**
- F8.1 The remainder of this clause F8 is subject to the provisions of Schedule 9 (Data Protection) and specifically the terms relating to the appointment by the Service Provider of a Sub-Contractor with which Authority Data shall be shared and who shall Process the Authority Data as part of its performance of any services.

- F8.2 The Service Provider shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Service Provider is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under the Contract in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- F8.3 The Parties agree that any Field Operative engaged in the delivery of the Services who is not employed directly by the Service Provider shall be deemed to be a Sub-Contractor.
- F8.4 Prior to sub-contracting any of its obligations under this Contract, the Service Provider shall notify the Authority in writing of:
- (a) in the case of all Sub-Contractors, the proposed Sub-Contractor's name, registered office, company registration number and the scope of any Services to be provided by the proposed Sub-Contractor; and
 - (b) in the case of Field Operatives (in addition to the information in (a) above), full details of the certification held by the Field Operative and of any security vetting that has been carried out by the Service Provider.
- F8.5 The Service Provider shall provide copies of all Sub-Contracts to the Authority immediately following execution of each Sub-Contract and on request thereafter.
- F8.6 The Service Provider shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If appropriate, the Service Provider shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F8.7 The Service Provider shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Service Provider on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F8.8 The Service Provider shall ensure that all Sub-Contracts contain:
- (a) a right for the Service Provider to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
 - (b) a provision having the same effect as set out in clause F8.8(a) in any Sub-Contract which it awards; and
 - (c) a provision which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- F8.9 In addition to any other management information requirements set out in this Contract, the Service Provider agrees and acknowledges that it shall provide in a timely, full, accurate and complete reports incorporating the following data:

- (a) the total revenue (including the Price) received pursuant to this Contract;
- (b) the total amount paid to Sub-Contractors pursuant to this Contract (including revenues for non-SMEs/non-VCSEs); and
- (c) the total amount paid to Sub-Contractors who are either SMEs or VCSEs

("SME Management Information Reports").

- F8.10 The SME Management Information Reports shall be provided in the format of the SME MI Reporting Template and any guidance issued by the Authority from time to time. The Service Provider acknowledges that it may not make any amendment to the current MI Reporting Template with the Approval of the Authority.
- F8.11 Except where otherwise Approved by the Authority, the Service Provider shall from the Commencement Date:
- (a) advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Contract Period;
 - (b) within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
 - (c) monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - (d) provide reports on the information at clause F8.11(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- F8.12 Each advert referred to in clause F8.11(a) above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Service Provider.

F8.13 If the Authority believes:

- (a) there are compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Service Provider shall replace or not appoint the Sub-Contractor; or
- (b) there are non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations,
- (c) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (d) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (e) the proposed Sub-Contractor employs unfit persons,

the Authority may require the Service Provider to replace or not appoint the Sub-Contractor and the Service Provider shall comply with such requirement.

Key Sub-contractors

F8.14 Where the Service Provider wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the Authority's Approval, such Approval not to be unreasonably withheld or delayed. For these purposes, the Authority may (without limitation) withhold its Approval to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should (or may) be excluded in accordance with clause F8.13.

F8.15 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 18 (Notified Key Sub-contractors).

F8.16 Except where the Authority has given its Approval, the Service Provider shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Service Provider to discharge its obligations under this Contract;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Service Provider;
- (d) a provision enabling the Service Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Service Provider without restriction (including any need to obtain any consent or approval) or payment by the Authority;

- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Service Provider under this Contract in respect of:
 - (i) data protection requirements set out in clause E1 (Authority Data) and Schedule 9 (Data Protection);
 - (ii) confidentiality requirements set out in clause E4 (Confidential Information);
 - (iii) FOIA/EIR requirements set out in clause E5 (Freedom of Information);
 - (iv) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in clause B3.11 (Standard of Services);
 - (v) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data;
 - (vi) the conduct of Audits set out in clause E9 (Audit); and
 - (vii) provisions enabling the Service Provider to terminate the Key Sub-contract on notice on terms no more onerous on the Service Provider than those imposed on the Authority under clause H3 (Termination on Notice);
- (f) a provision restricting the ability of the Key Sub-contractor to sub contract all or any part of the services provided to the Service Provider under the Key Sub-contract without first seeking the written consent of the Authority;
- (g) a provision enabling the Service Provider, the Authority or any other person on behalf of the Authority to step in on substantially the same terms as are set out in clause F4 (Step-in);
- (h) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Service Provider and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (1) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (2) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within 5 Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
 - (ii) co-operate with the Service Provider and the Authority in order to give full effect to the provisions of Schedule 14 (Financial Distress), including meeting with the Service Provider and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan.

F8.17 The Service Provider shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

- F8.18 The Authority may require the Service Provider to terminate a Key Sub-contract where:
- (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to clause H3 (Termination on Notice);
 - (b) the relevant Sub-Contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise;
 - (c) the relevant Sub-Contractor has failed to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (d) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with clause F8.9; and
 - (e) where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.
- F8.19 The Service Provider shall pay any undisputed sums which are due from it to a Sub-Contractor contractor within thirty (30) days from the receipt of a valid invoice
- F8.20 Notwithstanding the Service Provider's right to sub-contract pursuant to this clause F8, the Service Provider shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. Furthermore, the Service Provider shall not be relieved from its obligations under this Contract by virtue of entering into any Sub-Contract.
- F9 Variation**
- F9.1 The provisions of this clause F9 and Schedule 5 (Change Protocol) shall have effect in respect of any Variation, except as otherwise expressly provided in this Contract.
- F9.2 During the Contract Period, the Parties acknowledge that the Authority's operational and other requirements in respect of the Services may change from time to time, necessitating amendments to this Contract. Without limitation, the following is a non-exhaustive list of the circumstances in which those operational and other requirements may change:

- (a) any changes to the Specification (including those resulting from changes from within HMCTS or their business requirements and/or any change to the way in which Warrants and/or Orders are executed);
- (b) a change arising from the mobilisation and transition approach and the associated activities to be performed under this Contract, including under Schedule 2 (Implementation Plan);
- (c) a change to the consents, approval, permissions and/or licences required to perform the Services;
- (d) a change to the performance mechanism (including applicable performance measures and associated performance measurement regime) as anticipated by Schedule 4 (Pricing and Performance);
- (e) a change to the security requirements of the Authority;
- (f) a change to the governance structure/arrangements set out in Schedule 12 (Governance);
- (g) change to the reporting requirements set out in Schedule 19 (Management Information and Reporting);
- (h) a change to the nature or scope of any ICT, or their associated infrastructure, including where driven by changes in the technology markets;
- (i) a change arising from any audits conducted by (or on behalf of) the Authority pursuant to this Contract
- (j) a change to the Policies and Standards or Good Industry Practice;
- (k) a change arising from a Change in Law;
- (l) a change to reflect the agreed arrangements in respect of any staff transfers as referred to in Schedule 13 (Staff Transfer);
- (m) giving effect to any Extension;
- (n) any implications of the introduction of an independent regulator (including additional obligations relating to complaints handling reporting, etc);
- (o) any changes to the Service Provider's ways of working resulting from the introduction of innovations and/or new technology;
- (p) if the Service Provider is a Secondary Service Provider, any changes required as a result of the Authority requiring any Optional Services in accordance with clause B13.

- F9.3 Either Party may issue a Variation Request to the other Party at any time during the Contract Period.
- F9.4 If the Service Provider issues the Variation Request, it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Variation Request.
- F9.5 If the Authority issues the Variation Request, the Service Provider shall (i) with two Working Days provide the Authority with the estimated costs of producing an Impact Assessment and (ii) (if the Authority approves the cost estimate) as soon as

reasonably practical and in any event within 10 Working Days of the date of receiving the Variation Request provide an Impact Assessment.

- F9.6 If the Service Provider requires any clarification in relation to the Variation Request issued by the Authority before it can deliver the Impact Assessment, it shall promptly make a request for clarification to the Authority and the time periods in clause F9.5 shall be extended accordingly.
- F9.7 Each Impact Assessment shall be completed in good faith and shall include such information as is required to enable the Authority to evaluate the impact of the proposed Variation, including:
- (a) details of the proposed Variation including the reason for the Variation;
 - (b) details of the impact (if any) of the proposed Variation on the Services and/or the Key Performance Indicators;
 - (c) any changes to the terms of the Contract that will be required as a result of the Variation;
 - (d) any change to the Price that will be required as a result of the Variation;
 - (e) a timetable for the implementation of the Variation; and
 - (f) such other information as the Authority may reasonably request.
- F9.8 Within 15 Working Days of receiving the Impact Assessment from the Service Provider, the Authority shall evaluate the Variation Request and the Impact Assessment and shall at its sole discretion approve or reject the proposed Variation.
- F9.9 The Authority shall not reject any proposed Variation to the extent that the Variation is necessary for the Service Provider or the Services to comply with any Changes in Law.
- F9.10 The Service Provider shall be entitled to reject a proposed Variation if it reasonably believes that the Variation would:
- (a) materially and adversely affect the risks to the health and safety of any person; or
 - (b) require the Services to be performed in a way that infringes any Law.
- F9.11 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CNN may be made via electronic signature as described in clause A6.1.
- F9.12 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo and, on the date it communicates its acceptance of the CCN in this way, the Service Provider shall be deemed to warrant and represent that the CNN has been executed by a duly authorised representative of the Service Provider in addition to the warranties and representations set out in clause G3.
- F9.13 The provisions of clauses F9.11 and F9.12 may be varied by the Authority in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

- F9.14 The costs of preparing each Variation Request shall be borne by the Party making the Variation Request.
- F9.15 The reasonable and demonstrable costs incurred by the Service Provider in undertaking an Impact Assessment shall be borne by the Party making the Variation Request, provided that the Services Provider shall use reasonable endeavours to minimise its costs and the Authority shall not be required to pay any such costs if (i) the Service Provider is able (acting reasonably and in good faith) to undertake the Impact Assessment by using resources already deployed in the provision of the Services and/or (ii) such costs exceed the estimated costs for producing the Impact Assessment as communicated by the Service Provider to the Authority pursuant to clause F9.5.

G LIABILITIES

G1 Liability and Indemnities

- G1.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (d) any liability to the extent it cannot be limited or excluded by Law.
- G1.2 The Service Provider's liability shall be unlimited in respect of:
- (a) any breach of:
 - (i) clause D1 (Prevention of Fraud and Bribery);
 - (ii) clause E1 (Authority Data) or Schedule 8 (Information Assurance and Security);
 - (iii) clause E2 (Personal Data) or Schedule 9 (Data Protection);
 - (iv) clause E4 (Confidential Information); and
 - (b) the indemnities referred to in:
 - (i) clause C4.2(b) (Tax Compliance);
 - (ii) clauses E8.5(d) and E8.9 (Intellectual Property Rights);
 - (iii) paragraph 11 of Schedule 4 (Pricing and Performance);
 - (iv) paragraph 7 of Schedule 9 (Data Protection) or any replacement provision which provides for the indemnification by the Service Provider to the Authority for breaches of Data Protection Laws;
 - (v) paragraph 3 of Part A of Schedule 13 (Staff Transfer);
 - (vi) paragraphs 3.2, 5 and 8(d) of the Annex to Part A of Schedule 13 (Staff Transfer);

- (vii) paragraphs 3.2, 5 and 8(d) of the Annex to Part B of Schedule 13 (Staff Transfer);
 - (viii) paragraph 3 of Part B of Schedule 13 (Staff Transfer); and
 - (ix) paragraphs 2.3 and 2.8 of Part D of Schedule 13 (Staff Transfer).
- G1.3 The Authority's liability shall be unlimited in respect of the indemnity referred to in paragraph 2 of Part A of Schedule 13 (Staff Transfer).
- G1.4 Subject to clauses G1.1, G1.2 and G1.6, the Service Provider's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority Data or any other data) that is caused by Defaults of the Service Provider occurring in each and any Contract Year shall in no event exceed £10,000,000.00 (ten million pounds);
- G1.5 Subject to clauses G1.1, G1.2 and G1.6, the Service Provider's aggregate liability in respect of Losses incurred by the Authority under or in connection with the Contract as a result of Defaults by the Service Provider in no event exceed:
- (a) in relation to Defaults in the first Contract Year, an amount equal to the greater of (i) £2,000,000.00 (two million pounds) and (ii) one hundred and fifty per cent (150%) of the Potential Year 1 Service Provider Revenue;
 - (b) in relation to any Defaults occurring during any subsequent Contract Year, an amount equal to the greater of (i) £2,000,000.00 (two million pounds) and (ii) one hundred and fifty per cent (150%) of the Service Provider Revenue in the Contract Year immediately preceding the occurrence of the Default; and
 - (c) in relation to Defaults occurring after the end of the Contract Period, an amount equal to the greater of (i) £2,000,000.00 (two million pounds) and (ii) 150% of the Service Provider Revenue in the 12 month period immediately prior to the last day of the Contract Period,
- provided that where any Losses referred to in clause G1.5 have been incurred by the Authority as a result of the Service Provider's abandonment of this Contract or the Service Provider's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such clause to 150% shall be deemed to be references to 200%.
- G1.6 Any amounts which are, or should be, covered by the Required Insurances the Service Provider is obligated to take out pursuant to clause G2 shall not be taken into consideration when calculating the Service Provider's liability under clauses G1.4 or G1.5.
- G1.7 Subject to clauses G1.1, G1.3 and G1.8, the Authority's aggregate liability in respect of all Losses incurred by the Service Provider under or in connection with this Contract as a result of Defaults of the Authority shall in no event exceed:

- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to the Potential Year 1 Service Provider Revenue;
 - (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the Service Provider Revenue in the Contract Year immediately preceding the occurrence of the Default; and
 - (c) in relation to Defaults occurring after the end of the Contract Period, an amount equal to the Service Provider Revenue in the 12 month period immediately prior to the last day of the Contract Period.
- G1.8 The Service Provider shall only be entitled to make a claim against the Authority for Losses covered by the limit on liability set out in clause G1.8 if the Service Provider has provided the Authority with written notification of the Authority's breach of contract, specifying the provision of this Contract that has been breached and the estimated consequences and Losses associated with such breach, such notice to be provided as soon as reasonably practicable following the occurrence of such breach.
- G1.9 Notwithstanding clause G1.10 but subject to clause G1.5, the Authority may, amongst other things, recover from the Service Provider the following Losses incurred by the Authority to the extent they arise as a result of a Default by the Service Provider:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional costs of procuring a Replacement Service Provider for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Service Provider and/or replacement deliverables above those which would have been payable under the Contract;
 - (d) any compensation or interest paid to a third party by the Authority; and
 - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- G1.10 Subject to clauses G1.1, G1.2, G1.3, G1.8 and G1.9, neither Party shall be liable to the other for any:
- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
 - (b) indirect, special or consequential loss.
- G1.11 Subject to clause G1.1, the Authority shall not be liable for any costs and/or expenses incurred by the Service Provider in relation to any Warrant or Order in the event that such Warrant or Order is withdrawn by the Authority prior to the completion of its execution by the Service Provider.
- G1.12 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

G1.13 Subject to clause G1.12, any amounts properly due from one Party to the other Party in respect of an indemnity set out in this Contract shall be deemed to be, and shall be recoverable as, a debt.

G2 Insurance

- G2.1 Without prejudice to any liability it may have to the Authority under this Contract or otherwise, the Service Provider shall for the periods specified in Schedule 7 (Insurance) take out and maintain or procure the taking out and maintenance of the insurances as set out in Schedule 7 (Insurance) and any other insurances as may be required by Law (together the "**Required Insurances**"). The Service Provider shall ensure that each of the Required Insurances is effective not later than the date on which the relevant risk commences.
- G2.2 The Required Insurances shall be taken out and maintained with insurers who (in the reasonable opinion of the Authority) are of good financial standing and of good repute in the United Kingdom insurance market.
- G2.3 The Service Provider shall ensure in respect of the public and products liability and employer's liability insurances that the policies of insurance shall contain an indemnity to principals clause (or additional insureds equivalent) under which the Authority shall be indemnified in respect of claims, made against the Authority arising from death or bodily injury or property damage and for which the Service Provider is legally liable in respect of this Contract.
- G2.4 Without limiting the other provisions of this Contract, the Service Provider shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the performance of this Contract as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice including the investigation and reports of relevant claims to insurers; and
 - (b) hold all policies in respect of the Required Insurances and cause any insurance broker effecting the Required Insurances to hold any insurance slips and other evidence of placing cover representing any of the Required Insurances to which it is a part and for which it is responsible under this Contract.
- G2.5 The Service Provider shall not (and the Service Provider shall procure that no Sub-Contractor will) take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- G2.6 The Service Provider shall provide, on request to the Authority, and within twenty (20) days of the renewal of each of the Required Insurances, evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet in full the requirements in Schedule 7 (Insurance). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Service Provider of its liabilities and obligations under this Contract.
- G2.7 The Authority may elect (but shall not be obliged), where notice has been provided to the Service Provider, to purchase any insurance which the Service Provider is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Service Provider.
- G2.8 The Service Provider shall notify the Authority at least five (5) days before the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- G2.9 The Service Provider shall promptly notify to insurers any matter arising from, or in relation to, this Contract for which it may be entitled to claim under any of the Required

Insurances. In the event that the Authority receives a claim relating to this Contract, the Service Provider shall cooperate with the Authority and assist it in dealing with such claims including providing information and documentation in a timely manner.

- G2.10 Except where the Authority is the claimant party, the Service Provider shall give the Authority notice within twenty (20) days after any insurance claim relating to this Contract or any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- G2.11 Where any Required Insurances requires payment of a premium, the Service Provider shall be liable for such premium.
- G2.12 Where any Required Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Service Provider shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under such Required Insurance.
- G2.13 The Service Provider shall discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by this Contract including complying with the duty of fair presentation to insurers and taking the actions needed to protect the Authority's separate interests.

G3 **Not Used**

G4 **Warranties and Representations**

- G4.1 The Service Provider warrants and represents on the Commencement Date and for the Contract Period (including at the point of any Extension) that:
- (a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Service Provider;
 - (b) in entering the Contract it has not committed any fraud and it has full capacity and authority to enter into and to perform this Contract;
 - (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Service Provider to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
 - (d) it has notified the Authority in writing of any claim being asserted and any litigation, arbitration or administrative proceeding that is in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an effect on its ability to perform its obligations under the Contract;
 - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (f) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Service Provider shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence if the Service Provider has not been in existence for 3 years) prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract;
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance; and
- (l) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event.

G4.2 If at any time the Service Provider becomes aware that a representation or warranty given by it under clause G4.1 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

- G4.3 The Service Provider confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Service Provider hereby waives and releases the Authority in respect thereof absolutely.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency, Guarantee Enforceability/Validity and Change of Control

Insolvency

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Service Provider if the Service Provider is a company and in respect of the Service Provider:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or has a decision sought from its creditors on the nomination of a liquidator;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Service Provider if the Service Provider is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors;

- (b) an application is submitted by the Service Provider or an order is made for the Service Provider's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) he is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to H1.2(g) occurs under the law of any other jurisdiction.

H1.3 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Service Provider if the Service Provider is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (c) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (d) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (e) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) an application is submitted for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (f) any event similar to those listed in clauses H1.3(a) to H1.3(e) occurs under the law of any other jurisdiction.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Service Provider if the Service Provider is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 (and references to the Insolvency Act 1986 in this clause H1.4(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation) or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (c) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (d) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (e) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (f) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (g) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clauses H1.4(a) to H1.4(g) occurs under the law of any other jurisdiction.

Guarantee Enforceability/Validity

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Service Provider if the Guarantee ceases to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority).

Change of Control

H1.6 The Service Provider shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Service Provider undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Service Provider within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H2 Termination on Default

H2.1 Without prejudice to any other right of the Authority to terminate the Contract, the Authority may terminate the Contract with immediate effect by notice if the Service Provider commits a Default and:

- (a) the Service Provider has not remedied the Default to the satisfaction of the Authority within 20 Working Days (or such other period as may be specified by the Authority in writing) after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy;
- (c) the Default is a Material Breach; or
- (d) where a right of termination is expressly reserved in this Contract, including
 - (i) paragraph 5 of Schedule 2 (Implementation Plan); and
 - (ii) paragraph 6 of Schedule 14 (Financial Distress).

H3 Termination on Notice for Convenience

H3.1 The Authority may terminate the Contract for convenience at any time by giving 90 days' notice in writing to the Service Provider.

H4 Other Termination Grounds

H4.1 The Authority may terminate the Contract by notice and without compensation to the Service Provider if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Service Provider was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
- (c) the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;
- (d) the Service Provider has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law;

and this Contract shall terminate on the date specified in the Authority's notice.

H5 Partial Termination

H5.1 Where the Authority has the right to terminate this Contract pursuant to clause H2 or H3, it may, prior to, or instead of, terminating the whole of this Contract, serve a termination notice requiring the partial termination of this Contract and, where the termination is pursuant to clause H2 only, this shall to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

H6 Termination by the Service Provider

H6.1 If the Authority fails to pay the Service Provider any material undisputed sums of money when due, the Service Provider shall give written notice to the Authority of its failure to pay with a copy of such notice to be simultaneously sent to the Authority's Contract Manager. If the Authority fails to pay such material undisputed sums within 90 days of the date of such written notices to the Authority as required pursuant to this clause H6.1, the Service Provider may terminate the Contract with immediate effect, save that such right of termination shall not apply where the failure to pay is due to (i) the Authority exercising its rights under clause C2.1 or (ii) to a Force Majeure Event.

H6.2 In determining whether a sum is material for the purposes of clause H6.1, the Parties shall take into account all of the circumstances including the amount of the undisputed sum and the aggregate Service Provider Revenue that has accrued under the Contract.

H7 Consequences of Expiry or Termination

H7.1 If the Authority terminates the Contract under clause H2 and makes other arrangements for the supply of the Services (or part thereof) the Authority may recover from the Service Provider all costs and charges reasonably incurred in making those other arrangements and any additional or incremental costs and expenditure incurred by the Authority throughout the remainder of the Contract Period.

H7.2 If Contract is terminated under clause H2 the Authority shall make no further payments to the Service Provider other than (where applicable) for Services supplied by the Service Provider prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority. The Authority shall not be obliged to make such payments until the Authority has established the final cost, charges and/or expenditure of making alternative arrangements envisaged under clause H7.1.

H7.3 If the Authority terminates the Contract under clause H3.1, the Authority shall indemnify the Service Provider against any commercially reasonable commitments, liabilities or expenditure which the Authority agrees (i) relate directly to the discharge of the Service Provider's obligations under this Contract and (ii) represent an unavoidable direct loss to the Service Provider by reason of the termination of the Contract (or part thereof), provided that the Service Provider shall take all reasonable steps to mitigate such loss (excluding any compensation payment payable to a third party pursuant to any contract between the Service Provider and such third party). Where the Service Provider holds insurance (and/or is obliged to take out insurance pursuant to this Contract), the Authority shall only indemnify the Service Provider for those unavoidable direct costs that are not covered by the insurance available (or wouldn't be covered if the Required Insurances had been taken out by the Service Provider). The Service Provider shall submit a fully itemised and costed list, with supporting evidence, of any unavoidable direct losses reasonably and actually incurred by the Service Provider as a result of termination under clause H3.1, which it is seeking to recover from the Authority.

H7.4 The Authority shall not be liable under clause H7.3 to pay any sum which:

- (a) is claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) should have been claimable under any Required Insurances that the Service Provider has failed to take out in accordance with this Contract;

- (c) when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider by the Authority if the Contract had not been terminated prior to the expiry of the Contract Period; or
 - (d) is a claim by the Service Provider for any losses falling under the heads of loss set out in clause G1.10.
- H7.5 Save as otherwise expressly provided in this clause H7, the Authority shall have no liability to make further payments and/or compensation to the Service Provider as a result of the exercise of any right of termination by the Authority, other than for Services supplied by the Service Provider prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- H7.6 Save as otherwise expressly provided in the Contract:
 - (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Service Provider under clauses A1 (Definitions and Interpretation), C1 (Payment and VAT), C2 (Recovery of Sums Due), C4 (Tax Compliance), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts and Finance Act), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), G1 (Liability and Indemnities), G2 (Insurance), H7 (Consequences of Expiry or Termination), H9 (Recovery upon Termination), H11 (Exit Management), I5 (Rights of Third Parties), I6 (Remedies Cumulative), I8 (Severability), I9 (Entire Agreement) and I12 (Governing Law and Jurisdiction), and the provisions of Schedules 4 (Pricing and Performance), 9 (Data Protection), 12 (Governance) and 13 (Staff Transfer).

H8 Disruption

- H8.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other service provider or third party employed by the Authority.
- H8.2 The Service Provider shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H8.3 If there is industrial action by Staff, the Service Provider shall seek Approval for its proposals to continue to perform its obligations under the Contract.
- H8.4 If the Service Provider's proposals referred to in clause H8.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.
- H8.5 If the Service Provider is unable to deliver the Services owing to disruption of the Authority's normal business, the Service Provider may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

H9 Recovery upon Termination

H9.1 On termination (including any partial termination(s)) or expiry of the Contract for any reason, the Service Provider shall, at its cost:

- (a) cease to use the Authority Data;
- (b) immediately return to the Authority all Authority Data, Confidential Information of the Authority, subject to paragraph 2.8 of Schedule 9 (Data Protection) Personal Data, and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (c) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Service Provider in good working order and fit for purpose (fair wear and tear excepted);
- (d) immediately vacate any Authority Premises occupied by the Service Provider;
- (e) (unless required otherwise in writing by the Authority) erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the Contract Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (f) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to any Replacement Service Provider(s) and the completion of any work in progress; and
- (g) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Service Provider to conduct due diligence.

H9.2 Except where the Contract provides otherwise, all licences and authorisations granted by the Authority to the Service Provider in relation to the Services (including any licences to use the Authority Premises) shall be terminated with effect from the end of the Contract Period.

H9.3 If the Service Provider does not comply with clauses H9.1(a) and H9.1(c), the Authority may recover possession thereof and the Service Provider grants a licence to the Authority and its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its suppliers or Sub-Contractors where any such items may be held.

H10 **Retendering and Handover**

H10.1 Within 21 days of being requested by the Authority, the Service Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services, including:

- (a) full and comprehensive details of the Services and how they are provided to the Authority;
- (b) an inventory of the Authority Data and Property in the Service Provider's possession or control;
- (c) a list of any ongoing and/or threatened disputes in relation to the Services;

- (d) to the extent permitted by applicable Law, all information relating to Transferring Service Provider Employees required to be provided by the Service Provider under the Contract; and
 - (e) such other material and information as the Authority shall reasonably require.
- H10.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H10.1 is given only to potential providers who have qualified to tender for the future provision of Replacement Services.
- H10.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H10.4 The Service Provider indemnifies the Authority against any claim made against and Losses incurred by the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Service Provider is required to provide under clause H10.1.
- H11 **Exit Management**
 - H11.1 Upon termination (including any partial termination(s)) or expiry of the Contract for any reason, the Service Provider shall render all reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by the Authority or a Replacement Service Provider in accordance with the procedure set out in this clause H11.
 - H11.2 Where the Authority requires Replacement Services on expiry or termination of the Contract, either by performing them itself or by engaging a Replacement Service Provider to perform them, the Service Provider shall co-operate fully with the Authority and/or any Replacement Service Provider and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
 - H11.3 The Service Provider shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Service Provider to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Service Provider shall provide the Authority free of charge with access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Service Provider shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.
 - H11.4 If, in the performance of its obligations under this clause H11, the Service Provider does not have to use resources which are in addition to those normally and properly used to deliver the Services prior to termination or expiry, there shall be no change to the Price. If the Service Provider (acting reasonable and in good faith) believes it will incur additional costs in the performance of such obligations, the Parties shall seek to agree a Variation to the Price based on the Service Provider's rates either set out in Schedule 4 (Pricing and Performance) or forming the basis for the Price. The Service Provider shall not incur any additional costs without Approval from the Authority.
- H12 **Warrants and Orders on Expiry or Termination**

- H12.1 The Service Provider shall:
- (a) not less than 30 days prior to expiry or termination (including any partial termination(s)) of the Contract, provide a list to the Authority and to the issuing Courts of all Warrants and Orders in its possession (at any stage of execution); and
 - (b) subject to clause H12.2, upon expiry or termination of the Contract, return all Warrants and Orders in its possession to the issuing Courts.
- H12.2 If the Service Provider has any unexpired Warrants and/or Orders in its possession as at the date of expiry or termination of the Contract, the Service Provider shall be entitled to request the consent of the issuing Court to continue to undertake execution activity in relation to such Warrants and/or Orders (an "**Execution Extension Period**").
- H12.3 Notwithstanding the expiry or termination of the Contract, the Service Provider may undertake execution activity against any Warrants or Orders in respect of which an Execution Extension Period has been granted and such execution activity shall be subject to the terms of this Contract.
- H12.4 Subject to clauses H12.6, H12.7 and H12.8, any Execution Extension Period granted pursuant to the Service Provider's request under clause H12.2 shall expire on the earlier of:
- (a) 180 days following the date of issue of the relevant Warrant or Order; or
 - (b) the successful execution of the Warrant or Order by the Service Provider.
- H12.5 On expiry of the Execution Extension Period in accordance with H12.4, the Service Provider shall return the relevant Warrant or Order to the issuing Court, regardless of whether or not it has been executed.
- H12.6 In relation to any Warrant or Order that is the subject of an agreed payment arrangement between the Service Provider and a debtor, if such payment arrangement will not be completed by the date referred to in clause H12.4(a), the Service Provider shall inform the issuing Court when providing the list referred to in clause H12.1(a) and the Court may, at its discretion, grant an Execution Extension Period with a duration of its choosing (in which case the expiry of the Warrant or Order shall be as directed by the Court and not in accordance with clause H12.4).
- H12.7 If the Service Provider is appointed by the Authority as a Replacement Service Provider, clause H12.4 shall not apply to any Warrants or Orders in the possession of the Service Provider as at the date of such appointment.
- H12.8 If the Service Provider fails to execute any Warrant or Order which is subject to an Execution Extension Period in accordance with the terms of the Contract, the Authority may require the Service Provider to return the Warrant or Order to the issuing court immediately, regardless of whether or not it has been executed.
- H12.9 If a Warrant or Order is sent to the Service Provider in error following expiry or termination of the Contract, the Contractor shall immediately return it to the issuing Court and shall not undertake any enforcement activities or other work in relation to the Warrant or Order.

I GENERAL

I1 Dispute Resolution

- I1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Chief Operating Office of the Service Provider and the HMCTS Director of Operations on behalf of the Authority.
- I1.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.
- I1.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- I1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator (or if the chosen Mediator is unable or unwilling to act) either Party may within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act (as relevant), apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
 - (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties in writing, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I1.6.
- I1.6 Subject to clause I1.2, the Parties shall not institute court proceedings until the procedures set out in clauses I1.1 and I1.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Service Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7;
- (b) if the Service Provider intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Service Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7; and
- (c) the Service Provider may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I1.7, to which the Authority may consent as it sees fit.

I1.7 If any arbitration proceedings are commenced pursuant to clause I1.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Service Provider (the "**Arbitration Notice**") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I1.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I1.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

I2 **Force Majeure**

- I2.1 Subject to this clause I2 (and, in relation to the Service Provider, subject to its compliance with Schedule 15 (Service Continuity Plan and Corporate Resolution Planning), a Party may claim relief under this clause I2 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Service Provider in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Service Provider.
- I2.2 The Affected Party shall as soon as reasonably practicable issue a notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected

Party and any action the Affected Party proposes to take to mitigate its effect (a **"Force Majeure Notice"**).

12.3 If the Service Provider is the Affected Party, it shall not be entitled to claim relief under this clause 12 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the Services, but the Service Provider has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.

12.4 Subject to clause 12.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

12.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Service Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

12.6 If, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H6.1; and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Service Provider fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

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

12.8 Relief from liability for the Affected Party under this clause 12 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause 12.7.

13 **Notices and Communications**

13.1 Subject to clause 13.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email.

13.2 If it is not returned as undelivered a notice served in:

(a) a letter is deemed to have been received 2 Working Days after the day it was sent; and

(b) an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day (and, if sent on a day other than a Working Day, is deemed to have been received at 9am on the next Working Day after the day it was sent),

or when the other Party acknowledges receipt, whichever is the earlier.

13.3 Notices pursuant to clauses I2 (Force Majeure), I1 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

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

■ [REDACTED]
[REDACTED]
[REDACTED] ■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14 **Conflicts of Interest**

14.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Authority under the provisions of the Contract. The Service Provider will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.

14.2 The Authority may terminate the Contract immediately by notice and/or take or require the Service Provider to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause 14 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

15 **Rights of Third Parties**

15.1 The provisions of:

(a) clauses E8 (Intellectual Property Rights) and F7.2 (Transfer by the Service Provider); and

- (b) paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6 and 3.1 of Part B, paragraphs 2.1(a), 2.1(b) and 2.3 of Part C, and paragraphs 2.3 and 2.8 of Part D of Schedule 13 (Staff Transfer),

confer benefits on persons named in such provisions (together "**Third Party Provisions**" and each person a "**Third Party Beneficiary**") other than the Parties and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").

- I5.2 Subject to clause I5.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

- I5.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.

- I5.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

I6 Remedies Cumulative

- I6.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

I7 Waiver

- I7.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

- I7.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause I3 (Notices and Communications).

- I7.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

I8 Severability

- I8.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

- I8.2 In the event that any deemed deletion under clause I8.1 is so fundamental as to prevent the accomplishment of the purpose of the Contract or materially alters the balance of risks and rewards in the Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend the Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in the Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention. If the Parties are unable to agree

on the revisions to the Contract within 10 Working Days of the date of the notice given pursuant to clause I8.1, the matter shall be dealt with in accordance with clause I1 (Dispute Resolution).

I9 Entire Agreement

I9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

I10 Change in Law

I10.1 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of the Contract nor be entitled to an increase in the Price as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

I10.2 If a Specific Change in Law occurs or will occur during the term of the Contract (other than as referred to in clause I10.1(b)), the Service Provider shall (acting reasonably at all times):

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Price or the Contract; and
 - (ii) whether any relief from compliance with the Service Provider's obligations is required; and
- (b) provide the Authority with evidence:
 - (i) that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

I10.3 Any variation in the Price or relief from the Service Provider's obligations resulting from a Specific Change in Law (other than as referred to in clause I10.1(b)) shall be implemented in accordance with clause F9.

I11 Counterparts

I11.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

I12 Governing Law and Jurisdiction

112.1 This Contract and any issues, disputes or claims (whether contractual or non contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

112.2 Subject to the provisions of clause 11, the Parties agree that the Courts of England and Wales shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation. Notwithstanding the preceding provisions of this clause 112.2, the submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Service Provider in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

This document is executed as a deed and delivered on the date stated at the beginning of this document.

Signed as a deed by
Marston Holdings Ltd
acting by one director
in the presence of:

) 
)
)
)

Signature of director

Witness Signature:

Witness Name:

Witness Address:

EXECUTED (but not delivered until the date hereof) **AS A DEED** by **THE SECRETARY OF STATE FOR JUSTICE** by affixing hereto its common seal in the presence of a witness:




B. Hooper
C.C.O
24.01.2020

Witness (signature):

Witness (printed name):

Witness address:

Witness occupation:

SIGNED as a **DEED** (but not delivered until the date hereof) by [_____]

acting by _____, a director in the presence of:

Director (signature): _____

Witness (signature): _____

Witness (printed name): _____

Witness address: _____

Witness occupation: _____