



Dated: 2020

- (1) THE SECRETARY OF STATE FOR TRANSPORT
- (2) PEARSON PROFESSIONAL ASSESSMENTS LTD

TCN Agreement for Region B (Lot 2)

for the provision of the Test Centre Network for the Theory Test Service Project

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BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** whose address is Great Minster House, 33 Horseferry Rd, Westminster, London SW1P 4DR (the "**Authority**"); and
- (2) **PEARSON PROFESSIONAL ASSESSMENTS LTD** a company registered in England and Wales under company number 04904325 whose registered office is at 80 Strand, London WC2R 0RL (the "**Supplier**"),

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

INTRODUCTION

- (A) The Driver and Vehicle Standards Agency ("**DVSA**") is an executive agency of the Department for Transport. In July 2018 the DVSA received approval from the Authority for the Theory Test Service.
- (B) The development and implementation of the new service delivery model under the Theory Test Service includes the procurement of three capability packages comprising of: (i) the Test Centre Network for three regional lots of equivalent volume and geographical composition ("**Lots**" and each a "**Lot**"); (ii) the test engine and test content management ("**TETCM**") system; and (iii) a digital partner project platform development, and technical support and applications integration for the Theory Test Service.
- (C) The Authority wishes to appoint a supplier for Region B (Lot 2) to deliver, operate and manage TCN in relation to the theory test which covers the provision of the test centre estate, trained invigilators to administer test delivery and prevent cheating and fraud to ensure the integrity of the test and appropriate technology hardware through which to deliver the test.
- (D) On 31 October 2019 the Authority advertised in the Official Journal of the European Union (reference 2019/S 213-523071), inviting prospective suppliers to submit proposals to be appointed to provide the services described in Recital (C) across Great Britain and Northern Ireland, on a per Lot basis.
- (E) The Supplier is a leading provider of test centre network delivery services and has experience in test centre network delivery services.
- (F) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier for Region B (Lot 2).
- (G) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- (H) DVSA will manage the Agreement on behalf of the Authority.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;

- 1.2.2 reference to a gender includes the other gender and the neuter;
- 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.2.5 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
 - 1.2.5.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("EU References") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - 1.2.5.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- 1.2.6 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- 1.2.7 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.9 unless otherwise provided and save for references in the Annexes to Schedule 5 (Software) and in Schedule 10 (Guarantee), references to clauses and Schedules are references to the Clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
- 1.2.10 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 The Authority shall not be deemed to be in Default pursuant to this Agreement to the extent that any such Default is due to the Default of the Supplier.
- 1.4 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.5 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.5.1 the Clauses and Schedule 1 (Definitions);

- 1.5.2 Schedules 2.1 (Services Description) and 2.2 (Performance Levels) and their Annexes;
- 1.5.3 any other Schedules and their Annexes (other than Schedule 4.1 (Supplier Solution) and its Annexes); and
- 1.5.4 Schedule 4.1 (Supplier Solution) and its Annexes (if any).
- 1.6 The Schedules and their Annexes form part of this Agreement.
- 1.7 In entering into this Agreement the Authority is acting as part of the Crown.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
 - 2.1.1 the Authority and the Service Beneficiaries (if applicable) have delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - 2.1.3.1 the Authority Requirements;
 - 2.1.3.2 the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - 2.1.3.3 the operating processes and procedures and the working methods of the Authority and each of the Service Beneficiaries;
 - 2.1.3.4 the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
 - 2.1.3.5 the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
 - 2.1.4 it has advised the Authority in writing of:
 - 2.1.4.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - 2.1.4.2 the actions needed to remedy each such unsuitable aspect; and
 - 2.1.4.3 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description and/or Authority Responsibilities as applicable.

- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- 2.2.1 any unsuitable aspects of the Operating Environment;
 - 2.2.2 any misinterpretation of the Authority Requirements; and/or
 - 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. WARRANTIES

- 3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 3.1.2 this Agreement is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- 3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

- 3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
- 3.2.3 this Agreement is executed by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
- 3.2.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- 3.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- 3.2.9 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;
- 3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority and/or any Service Beneficiary which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority and/or any Service Beneficiary;
- 3.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.14 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 Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4. TERM

4.1 This Agreement shall:

4.1.1 come into force on the Effective Date, save for clauses 1 (Definitions and Interpretation), 3 (Warranties), 4 (Term), 21 (Confidentiality), 22 (Transparency and Freedom of Information), 24 (Publicity and Branding), 25 (Limitations on Liability), 37 (Waiver and Cumulative Remedies), 38 (Relationship of the Parties), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights), 44 (Notices), 45 (Disputes) and 46 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature; and

4.1.2 unless terminated at an earlier date by operation of Law or in accordance with clause 33 (Termination Rights), terminate:

4.1.2.1 at the end of the Initial Term; or

4.1.2.2 if the Authority elects to extend the Initial Term by giving the Supplier at least twelve (12) months' notice before the end of the Initial Term, at the end of the Extension Period; or

4.1.2.3 if the Authority elects to extend any Extension Period by giving the Supplier at least twelve (12) months' notice before the end of an Extension Period, at the end of the final Extension Period,

provided that the aggregate duration of any Extension Periods shall be no longer than two (2) years.

Condition Precedent

4.2 Save for clauses 1 (Definitions and Interpretation), 3 (Warranties), 4 (Term), 21 (Confidentiality), 22 (Transparency and Freedom of Information), 24 (Publicity and Branding), 25 (Limitations on Liability), 37 (Waiver and Cumulative Remedies), 38 (Relationship of the Parties), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights), 44 (Notices), 45 (Disputes) and 46 (Governing Law and Jurisdiction), this Agreement 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 Supplier notice in writing.

4.3 The Supplier 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 twenty (20) Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with clause 4.2:

4.3.1 this Agreement shall automatically cease and shall not come into effect; and

4.3.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in clause 4.2 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 4.3.

5. SERVICES

Standard of Services

5.1 The Supplier shall provide:

- 5.1.1 the Implementation Services from (and including) the Implementation Services Commencement Date; and
- 5.1.2 the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

The Supplier acknowledges that the Services are provided for the benefit of the Authority and the Service Beneficiaries. Notwithstanding whether a specific clause or Paragraph references Service Beneficiaries (or a specific Service Beneficiary) or not, where Services are being provided to or for the benefit of Service Beneficiaries, any applicable references in this Agreement to the Authority shall be construed so as to include also reference to the applicable Service Beneficiaries, save for any that relate to the Charges and payment thereof and Deductions and receipt of the benefit thereof, the making, giving or receipt of notices, requests or instructions and any rights of termination or extension of this Agreement.

5.2 The Supplier shall ensure that:

5.2.1 the Services:

- 5.2.1.1 comply in all respects with the Services Description; and
- 5.2.1.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and

5.2.2 where:

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

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant Operational Service Commencement Date.

5.3 The Supplier shall:

- 5.3.1 perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - 5.3.1.1 all applicable Law;
 - 5.3.1.2 Good Industry Practice;
 - 5.3.1.3 the Standards;
 - 5.3.1.4 the Baseline Security Requirements;

- 5.3.1.5 the Quality Plans;
- 5.3.1.6 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 5.3.1.1 to 5.3.1.5; and
- 5.3.1.7 deliver the Services using efficient business processes and ways of working having regard to the Authority's and each of the Service Beneficiaries' obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of clauses 5.3.1.1 to 5.3.1.5, the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 The Supplier shall:

- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- 5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to clause 13 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 5.5.3 ensure that:
 - 5.5.3.1 it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority and/or any Service Beneficiary which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority and/or any Service Beneficiary;
 - 5.5.3.2 the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (Security Management)) shall notify the Authority three (3) months before the release of any new Software or Upgrade;
 - 5.5.3.3 all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - 5.5.3.4 any products or services recommended or otherwise specified by the Supplier for use by the Authority and/or any Service Beneficiary in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - 5.5.3.5 the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);

- 5.5.4 minimise any disruption to the Services, the IT Environment and/or the Authority's and each of the Service Beneficiaries' operations when carrying out its obligations under this Agreement;
- 5.5.5 ensure that any Documentation and training provided by the Supplier to the Authority and any Service Beneficiary are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.5.6 act in a spirit of mutual trust and cooperation with the Authority and the Service Beneficiaries and the Other Suppliers to the extent reasonably necessary in connection with its obligations under this Agreement;
- 5.5.7 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority, each of the Service Beneficiaries and/or to any Replacement Supplier;
- 5.5.8 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority and each of the Service Beneficiaries, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.5.9 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in clause 5.5.8;
- 5.5.10 provide the Authority and each of the Service Beneficiaries with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.5.11 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- 5.5.12 notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place;
- 5.5.13 notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- 5.5.14 ensure that neither it, nor any of its Affiliates, embarrasses the Authority and/or any Service Beneficiary or otherwise brings the Authority and/or any Service Beneficiary into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority and/or any Service Beneficiary, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and
- 5.5.15 manage closure or termination of Services and end of life of Goods to take account of the Authority's and each of the Service Beneficiaries' disposal requirements, including recycling and scope for re-use, and all applicable Standards.

- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to clauses 19.2 and 19.3 (IPRs Indemnity) and any other rights and remedies of the Authority and/or any Service Beneficiary howsoever arising, the Supplier shall:
- 5.7.1 remedy any breach of its obligations in clauses 5.5.2 to 5.5.4 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - 5.7.2 remedy any breach of its obligations in clause 5.5.1 and clauses 5.5.5 to 5.5.11 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under clause 5.7.1 or clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Software warranty

- 5.8 Without prejudice to clauses 5.5 (Supplier Covenants) and 5.7 (Services) and any other rights and remedies of the Authority and/or any Service Beneficiary howsoever arising, the Supplier warrants to the Authority and each of the Service Beneficiaries that all components of the Software shall:
- 5.8.1 be free from material design and programming errors;
 - 5.8.2 provide the functionality set out in, and perform in all material respects in accordance with the relevant specifications contained in:
 - 5.8.2.1 the Services Description;
 - 5.8.2.2 the Supplier Solution; and
 - 5.8.2.3 the Documentation; and
 - 5.8.3 interface with the Authority System as set out in the Services Description and the Supplier Solution; and
 - 5.8.4 not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

- 5.9 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- 5.9.1 any withholding of the Service Charges by the Authority pursuant to clause 7.2.4.2 (Performance Failures);
 - 5.9.2 the existence of an unresolved Dispute; and/or
 - 5.9.3 any failure by the Authority to pay any Charges,
- unless the Supplier is entitled to terminate this Agreement under clause 33.3.1 (Termination by the Supplier) for failure to pay undisputed Charges.

Cross Step-in Optional Services

- 5.10 If the Authority exercises its rights of step-in or to terminate (in whole or part) in respect of a FTTS Supplier Agreement for one of the Other TCN Regions or a part thereof ("**Defaulting Region**") the Authority may require the Supplier, by giving notice in writing at any time (and from time to time), to provide all or any part of the Services in respect of the Defaulting Region ("**Cross Step-in Optional Services**") from such date as the Authority shall specify in its notice. Where this is as a consequence of the Authority exercising its rights of step-in in respect of the Defaulting Region, the Cross Step-in Optional Services may be required for the period of such step-in. Where this is as a consequence of the Authority terminating the relevant FTTS Supplier Agreement in respect of the Defaulting Region, the Cross Step-in Optional Services may be required for the remaining period of the Term. The Supplier acknowledges that the Authority is not obliged to take any Cross Step-in Optional Services from the Supplier and that nothing shall prevent the Authority and/or any Service Beneficiary from receiving services that are the same as or similar to the Cross Step-in Optional Services from any third party, including another FTTS Supplier. Where another FTTS Supplier is able to provide the required services, the Authority may:
- 5.10.1 select between the Supplier and such FTTS Supplier; or
 - 5.10.2 engage with both the Supplier and such FTTS Supplier and / or invite proposals (which may include a request to provide a draft Cross Step-in Optional Services Implementation Plan and draft Contract Amendment Report and proposed Charges as referred to in clauses 5.12.2 and 5.12.3 below) from both the Supplier and such FTTS Supplier in order to determine who is most appropriate to supply the required services
- on such objective basis as the Authority shall determine prior to giving formal notice to take Cross Step-in Optional Services.
- 5.11 Where the Supplier is providing Cross Step-in Optional Services it shall do so on the same terms and conditions as it provides the Services, save that any additional or altered requirements for the applicable Defaulting Region as specified in the Services Description shall apply and subject to the provisions of clause 5.12.
- 5.12 Following receipt of the Authority's notice pursuant to clause 5.10:
- 5.12.1 the Parties shall document the inclusion of the relevant Cross Step-in Optional Services within the Services in accordance with the Change Control Procedure (the Authority raising the necessary Change Request), modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Cross Step-in Optional Services, save for the Charges and Cross Step-in Optional Services Implementation Plan, have already been agreed;
 - 5.12.2 the Supplier shall develop and the Parties shall agree in accordance with the Change Control Procedure a Cross Step-in Optional Services Implementation Plan (based on any draft that may have been provided as part of any proposal provided pursuant to clause 5.10.2) to implement the relevant Cross Step-in Optional Services within such period (acting reasonably) as the Authority shall specify and taking account of whether the relevant Cross Step-in Optional Services are being provided temporarily as a consequence of the Authority exercising its rights of step-in in respect of the Defaulting Region or permanently as a consequence of the Authority terminating the relevant FTTS Supplier Agreement (in whole or in part) in respect of the Defaulting Region. Once agreed the Supplier shall implement and Test the relevant Cross Step-in Optional Services in accordance with the Cross Step-in Optional Services Implementation Plan;
 - 5.12.3 any additional charges for the Cross Step-in Optional Services shall be agreed between the Parties in accordance with the Change Control Procedure following the same charging mechanism as for the Services and on the principle that the Supplier Profit Margin is no greater than and no worse than that applying to Charges (as set out in the Contract Inception Report or the most recent Annual

Contract Report) and based on any proposals that may have been provided pursuant to clause 5.10.2. The agreed charges for the Cross Step-in Optional Services shall be incorporated into the Charges and the Supplier shall provide a Contract Amendment Report in accordance with the provisions of Schedule 7.5 (Financial Reports and Audit Rights); and

- 5.12.4 the Supplier shall, from the date agreed in the Cross Step-in Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Cross Step-in Optional Services (if any)), provide the relevant Cross Step-in Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators.

Power of attorney

- 5.13 By way of security for the performance of its obligations under clauses 5.5.8 and 5.5.9 (Supplier covenants) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such clauses and to delegate one or more of the powers conferred on it by this clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

- 5.14 The Authority shall comply with its responsibilities set out in Schedule 3 (Authority Responsibilities).

Collaboration

- 5.15 The parties shall comply with the provisions of Schedule 12 (Collaboration and Interface Obligations).

6. IMPLEMENTATION

Quality Plans

- 6.1 The Supplier shall develop, within twenty (20) Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 6.3 Following the approval by the Authority of the Quality Plans:
- 6.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
- 6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 6.1 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.

- 6.5 The Supplier shall:
- 6.5.1 comply with the Implementation Plan; and
 - 6.5.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.6.1 it shall:
 - 6.6.1.1 notify the Authority in accordance with clause 27.1 (Rectification Plan Process); and
 - 6.6.1.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - 6.6.1.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 6.6.2 the provisions of clause 28 (Delay) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 6.2 (Testing Procedures) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7. PERFORMANCE INDICATORS

- 7.1 The Supplier shall:
- 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
 - 7.1.2 comply with the provisions of Schedule 2.2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

- 7.2 If in any Service Period:
- 7.2.1 a KPI Failure occurs, except during the Grace Period, Service Credits shall be payable to the Authority in accordance with Paragraph 3 of Part C of Schedule 7.1 (Charges and Invoicing);
 - 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with clause 7.2.1);
 - 7.2.3 a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
 - 7.2.4 a Material PI Failure occurs:
 - 7.2.4.1 the Supplier shall comply with the Rectification Plan Process; and
 - 7.2.4.2 except during the Grace Period, the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in clause 10.7 (Set Off and Withholding) until

the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

- 7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except:
- 7.3.1 where the Supplier has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap;
 - 7.3.2 where the KPI Failure:
 - 7.3.2.1 breaches the relevant KPI Service Threshold;
 - 7.3.2.2 has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - 7.3.2.3 results in:
 - (a) The corruption or loss of any Authority Data (in which case the remedies under clause 20.7 (Authority Data and Security Requirements) shall also be available); and/or
 - (b) the Authority and/or any Service Beneficiary being required to make a compensation payment to one or more third parties;
 - 7.3.3 where the Supplier has fraudulently misreported its performance against any Performance Indicator;
 - 7.3.4 where the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to clause 33.1.2 (Termination by the Authority); and/or
 - 7.3.5 during the Grace Period.

Unacceptable KPI Failure

- 7.4 If in any Service Period an Unacceptable KPI Failure occurs:
- 7.4.1 the Authority shall (subject to the Service Credit Cap set out in clause 25.4.2 (Financial and other limits)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and
 - 7.4.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

- 7.5 The Supplier:
- 7.5.1 agrees that the application of clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
 - 7.5.2 acknowledges that it has taken legal advice on the application of clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

- 7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to clause 33.1 or 33.2 (Termination by the Authority).

Changes to Performance Indicators and Service Credits

- 7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) months' notice:
- 7.7.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
 - 7.7.2 in addition to the rights set out in paragraph 6 of Part A of Schedule 2.2 (Performance Levels), convert one or more:
 - 7.7.2.1 Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - 7.7.2.2 Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).
- 7.8 The Supplier shall not be entitled to object to any changes made by the Authority under clause 7.7, or increase the Service Charges as a result of such changes provided that:
- 7.8.1 the total number of Key Performance Indicators does not exceed twenty (20);
 - 7.8.2 the principal purpose of the change is to reflect changes in the Authority's and/or any Service Beneficiary's business requirements and/or priorities or to reflect changing industry standards; and
 - 7.8.3 there is no change to the Service Credit Cap.

7A. THIRD PARTY SERVICES

- 7A.1 The Supplier shall not use any Sites used for the provision of the Theory Test for any purpose or activity other than the provision of the Services unless the Authority has given its prior approval in writing in accordance with the provisions of this clause 7A (Third Party Services). The Third Party Services set out in Schedule 4.6 (Third Party Services) shall be deemed to be approved by the Authority as at the Effective Date.
- 7A.2 The Authority shall permit the Supplier to use any Supplier's Site(s) for the provision of Third Party Services, subject to the provisions of this clause 7A.
- 7A.3 The Supplier may deliver Third Party Services from a Supplier's Site subject to the following conditions:
- 7A.3.1 the Supplier shall, by way of written notice to the Authority, seek and attain written consent from the Authority for any Third Party Services **prior to** any contract for such Third Party Services being entered into. Such consent may not be unreasonably withheld by the Authority and may only be withheld where, in the reasonable opinion of the Authority, the relevant Third Party Services will, or are likely to, have an adverse effect on the reputation or statutory duties and responsibilities of Authority, any of the Service Beneficiaries or Ministers of the Crown. The Authority will be deemed to have given consent where the Authority has not indicated that approval will not be given within 10 Working Days of the date of the Supplier's written notification pursuant to this clause;

- 7A.3.2 contracts with third parties for Third Party Services and the provision of any Third Party Services shall be entirely at the Supplier's own risk and the Authority shall bear no risk or responsibility in relation to the same; and
- 7A.3.3 for the avoidance of doubt, the Supplier shall not use any Authority Assets in the provision of any Third Party Services.
- 7A.4 Where, due to confidentiality obligations to a potential new client for Third Party Services, the Supplier is unable to disclose the name and/or other details relating to proposed Third Party Services, the Supplier shall provide the Authority with such information as it is able to disclose without breaching such confidentiality obligations to allow the Authority to make an informed decision pursuant to this clause 7A and the provisions of clauses 7A.1 to 7A.3 shall apply.

8. SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 8. As part of this obligation the Supplier shall identify and report to the Project Board once every twelve (12) months on:
 - 8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
 - 8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority and/or any Service Beneficiary which might result in efficiency or productivity gains or in reduction of operational risk;
 - 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority and/or any Service Beneficiary; and/or
 - 8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

8A. EARLY WARNING

- 8A.1 Without prejudice to any other provisions of this Agreement, the Supplier shall give an early warning by notifying the Authority as soon as possible after it becomes aware of any matter which could:
 - 8A.1.1 increase or reduce the Charges;
 - 8A.1.2 adversely affect the performance of the Services;

- 8A.1.3 impair the Authority's or any Service Beneficiary's ability to use the IT Environment or otherwise adversely affect the Authority's or any Service Beneficiary's operations; or
- 8A.1.4 lead to a Performance Failure or likely Performance Failure.
- 8A.2 If the Authority considers that a matter notified is sufficiently important to require an early warning meeting, an early warning meeting shall be convened and attended by the Supplier Representative, the Authority Representative and such other people as the Parties agree.
- 8A.3 At an early warning meeting those who attend will co-operate in:
- 8A.3.1 making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced;
 - 8A.3.2 seeking solutions that will bring advantage to all those who will be affected; and
 - 8A.3.3 deciding upon actions which they will take and who, in accordance with this Agreement, will take them.
- 8A.4 The Supplier Representative will record the proposals considered and decisions taken at an early warning meeting and will give a copy of his record to the Authority Representative.

9. EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority or any Service Beneficiary.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance

shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Authority:
- 9.7.1 the relevant Goods and their prices shall be as set out in the Supplier Solution or applicable Change Authorisation Notice;
 - 9.7.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - 9.7.3 the Supplier shall ensure that upon delivery the Goods:
 - 9.7.3.1 are free from material defects in design, materials and workmanship;
 - 9.7.3.2 are of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 9.7.3.3 conform with the relevant specification; and
 - 9.7.3.4 provide the functionality set out in the Service Description and the Supplier Solution or the relevant Impact Assessment, as applicable,and shall remain so for twelve (12) months after:
 - (a) the date of installation of the Goods; or
 - (b) where the Goods do not require installation, the date of delivery;
 - 9.7.4 if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
 - 9.7.5 without prejudice to any other rights or remedies of the Authority:
 - 9.7.5.1 risk in the Goods shall pass to the Authority at the time of delivery; and
 - 9.7.5.2 ownership of the Goods shall pass to the Authority at the time of payment.

9A ASSETS

Assets Register

- 9A.1 From the first Operational Service Commencement Date the Supplier shall be responsible for maintaining and updating a register of all Authority Assets in its possession detailing make, model and asset number, condition and physical location and use ("**Authority Assets Register**") and shall:
- 9A.1.1 provide a copy of the Authority Assets Register to the Authority upon reasonable notice; and

9A.1.2 within a reasonable period of time following any changes to the Authority Assets used in the provision of the Services, update the Authority Assets Register and provide the Authority with a copy of such updated version.

Use of Authority Assets by the Supplier

9A.2 From the first Operational Service Commencement Date, the Authority permits the Supplier to use the Authority Assets which the Authority and/or any Service Beneficiary makes available to the Supplier pursuant to this Agreement to deliver the Services or discharge the Supplier's other obligations under this Agreement, on the basis that:

9A.2.1 legal and beneficial ownership of the Authority Assets shall remain with the Authority and / or the Service Beneficiary (if applicable) at all times; and

9A.2.2 the Supplier shall be entitled to use the Authority Assets solely for the purpose of performing the Services and its other obligations pursuant to this Agreement.

9A.3 The right to use the Authority Assets shall extend to the Sub-contractors to the extent necessary for the performance of the Services and compliance with the Supplier's other obligations under this Agreement.

9A.4 The Supplier shall:

9A.4.1 keep the Authority Assets in such a way that they remain readily identifiable as the Authority's or any applicable Service Beneficiary's property;

9A.4.2 maintain and support the Authority Assets so as to meet its obligations under this Agreement;

9A.4.3 not destroy, deface or obscure any identifying mark on or relating to the Authority Assets;

9A.4.4 not damage or destroy the Authority Assets and shall keep them in the condition they were in when provided to the Supplier, fair wear and tear excepted;

9A.4.5 hold to Authority's order and not dispose of or alienate the Authority Assets without the Authority's prior written consent; and

9A.4.6 make its own enquiries as to the condition, fitness for purpose, state and adequacy of any Authority Assets. The Authority give no warranty as to the condition, fitness for purpose or state of the Authority Assets.

9A.5 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of Schedule 8.5 (Exit Management)), as directed by the Authority, either:

9A.5.1 return the Authority Assets to the Authority or the relevant Service Beneficiary (if applicable); or

9A.5.2 dispose of the Authority Assets on behalf of Authority or the relevant Service Beneficiary (if applicable) (at the Supplier's cost and in accordance with all applicable Laws and Good Industry Practice).

Ownership of Assets

9B.1 The Parties agree and acknowledge that the legal and beneficial ownership of the Assets shall remain with the Supplier (or any Sub-contractor (if applicable)) during the Term of this Agreement and following the expiry or termination of this Agreement for any reason.

The Authority shall not incur any costs in relation to such Assets, including the cost of disposing of any such Assets.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10. FINANCIAL AND TAXATION MATTER

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (Charges and Invoicing).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 10.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to:
 - 10.7.1 set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to clause 10.6; or
 - 10.7.2 exercise its right pursuant to clause 7.2.4.2 (Performance Failures) to withhold payment of a proportion of the Service Charges, it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Benchmarking

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

Financial Distress

- 10.9 The Parties shall comply with the provisions of Schedule 7.4 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

- 10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.10.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - 10.10.2 promptly provide to the Authority:
 - 10.10.2.1 details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - 10.10.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

Compensation and Reimbursement Payments

- 10.11 The Supplier shall comply with the provisions of Schedule 7.6 (Compensation) in relation to payment of the Reimbursement Payments and/or provision of assistance and information by the Supplier to the Authority and/or DVA in the event the Authority and/or DVA pays a Compensation Payout.

SECTION D – CONTRACT GOVERNANCE

11. GOVERNANCE

- 11.1 The Parties shall comply with the provisions of Schedule 8.1 (Governance) in relation to the management and governance of this Agreement.

Representatives

- 11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with clause 14 (Supplier Personnel).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.
- 11.5 The Authority Representative may delegate any of his or her actions or functions under this Agreement and may cancel his delegation and will notify the Supplier in writing of such delegation or cancellation.
- 11.6 The Supplier will not act on instructions given by an employee or officer of the Authority (including any instructions to implement a change to the Services) unless the employee or officer is an Authority Representative or has been notified to the Supplier pursuant to clause 11.5 above.

12. RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

- 12.1.1 Schedule 8.4 (Reports and Records Provisions) in relation to the maintenance and retention of Records; and
- 12.1.2 Part A of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

- 12.2.1 Part B of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the provision of the Financial Reports; and
- 12.2.2 Part C of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13. CHANGE

Change Control Procedure

13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:

- 13.2.1 a General Change in Law; or
- 13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 13.2.2), the Supplier shall:

- 13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - 13.3.1.1 whether any Change is required to the Services, the Charges or this Agreement; and
 - 13.3.1.2 whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- 13.3.2 provide the Authority with evidence:
 - 13.3.2.1 that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - 13.3.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 13.3.2.3 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 0 (Services Improvement), has been taken into account in amending the Charges.

- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

Brexit

- 13.5 The occurrence of Brexit or any movement in exchange rates relating to UK pounds sterling will not:
- 13.5.1 affect any obligation under this Agreement;
 - 13.5.2 have the effect of altering or invalidating any term of this Agreement or of discharging or excusing performance under this Agreement;
 - 13.5.3 permit the Supplier to increase any of the Charges or to exercise any right or discretion to do the same; and/or
 - 13.5.4 have the effect of terminating this Agreement or of itself permit either Party to exercise any contractual right of termination or give either Party the right to vary or to terminate this Agreement, other than as provided for in the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14. SUPPLIER PERSONNEL

- 14.1 The Supplier shall:
- 14.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
 - 14.1.2 ensure that all Supplier Personnel:
 - 14.1.2.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - 14.1.2.2 are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (Services Description) and Schedule 2.4 (Security Management); and
 - 14.1.2.3 comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (Security Management);
 - 14.1.3 subject to Schedule 9.1 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority or any Service Beneficiary;
 - 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
 - 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

- 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.
- 14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
 - 14.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or
 - 14.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
 - 14.5.1 requested to do so by the Authority;
 - 14.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 14.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
 - 14.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 14.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 14.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
 - 14.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - 14.6.5 ensure that any replacement for a Key Role:
 - 14.6.5.1 has a level of qualifications and experience appropriate to the relevant Key Role; and

- 14.6.5.2 is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.7 The Parties agree that:

- 14.7.1 the Supplier shall both during and after the Term indemnify the Authority and any Service Beneficiary (if applicable) against all Employee Liabilities that may arise as a result of any claims brought against the Authority and any Service Beneficiary (if applicable) by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
- 14.7.2 the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:

- 14.8.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 14.8.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.9 The Parties agree that:

- 14.9.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (Staff Transfer) shall apply as follows:
- 14.9.1.1 where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9.1 (Staff Transfer) shall apply;
- 14.9.1.2 where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (Staff Transfer) shall apply; and
- 14.9.1.3 where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B and D of Schedule 9.1 (Staff Transfer) shall apply; and
- 14.9.1.4 Part C of Schedule 9.1 (Staff Transfer) shall not apply;
- 14.9.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (Staff Transfer) shall apply, Part D of Schedule 9.1 (Staff Transfer) shall not apply and Parts A and B of Schedule 9.1 (Staff Transfer) shall not apply; and

- 14.9.3 Part E of Schedule 9.1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

15. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

- 15.1 The Supplier shall:
- 15.1.1 subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or works above a minimum threshold of £25,000 that arise during the Term;
 - 15.1.2 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;
 - 15.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - 15.1.4 provide reports on the information at Clause 15.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
 - 15.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 15.2 Each advert referred to in Clause 15.1 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 Supplier.
- 15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

- 15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 15.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 15.5.2 comply with its obligations under this Agreement in the delivery of the Services; and
 - 15.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
- 15.6.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 15.6.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 15.6.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

- 15.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to clause 15.6, the Supplier shall also provide:
- 15.7.1 a copy of the proposed Sub-contract; and
 - 15.7.2 any further information reasonably requested by the Authority.
- 15.8 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to clause 15.6 (or, if later, receipt of any further information requested pursuant to clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:
- 15.8.1 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 or any Service Beneficiary;
 - 15.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 15.8.3 the proposed Sub-contractor employs unfit persons; and/or
 - 15.8.4 the proposed Sub-contractor should be excluded in accordance with clause 15.22,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 15.9 If:
- 15.9.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
 - 15.9.1.1 the Supplier's notice issued pursuant to clause 15.5; and
 - 15.9.1.2 any further information requested by the Authority pursuant to clause 15.7; and
 - 15.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with clause 15.10 (Appointment of Key Sub-contractors),
- the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (Third Party Contracts).

Appointment of Key Sub-contractors

- 15.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- 15.10.1 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 or any Service Beneficiary;
 - 15.10.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 15.10.3 the proposed Key Sub-contractor employs unfit persons; and/or
 - 15.10.4 the proposed Key Sub-contractor should be excluded in accordance with clause 15.22.

- 15.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).
- 15.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- 15.12.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
 - 15.12.2 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;
 - 15.12.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
 - 15.12.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - 15.12.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - 15.12.5.1 data protection requirements set out in clauses 20 (Authority Data and Security Requirements) and 23 (Protection of Personal Data);
 - 15.12.5.2 FOIA requirements set out in clause 22 (Transparency and Freedom of Information);
 - 15.12.5.3 the obligation not to embarrass the Authority and/or any Service Beneficiary or otherwise bring the Authority into disrepute set out in clause 5.5.14 (Services);
 - 15.12.5.4 the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - 15.12.5.5 the conduct of Audits set out in Part C of Schedule 7.5 (Financial Reports and Audit Rights);
 - 15.12.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under clauses 33.1.1 (Termination by the Authority) and 34.4 (Payments by the Authority) and Schedule 7.2 (Payments on Termination) of this Agreement;
 - 15.12.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
 - 15.12.8 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in clause 29 (Remedial Adviser);
 - 15.12.9 a provision enabling the Supplier, 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 30 (Step-in Rights);
 - 15.12.10 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
 - 15.12.11 a provision requiring the Key Sub-contractor to:

- 15.12.11.1 promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (a) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (b) 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 ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
- 15.12.11.2 co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (Financial Distress), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, contributing to and complying with the Financial Distress Remediation Plan and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (Financial Distress).

- 15.13 The Supplier 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.

Supply chain protection

- 15.14 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement, and Sub-contractor shall be construed accordingly) contain provisions:
 - 15.14.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
 - 15.14.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 15.14.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with clause 15.14.2, the invoice shall be regarded as valid and undisputed for the purpose of clause 15.14.4 after a reasonable time has passed;
 - 15.14.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed; and
 - 15.14.5 giving the Authority and/or any Service Beneficiary a right to publish the Supplier's or other party's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 15.14.6 requiring the Sub-contractor to include a clause to the same effect as this clause 15.14 and clause 15.17.1.3 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement;
- 15.15 The Supplier shall:
 - 15.15.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;

- 15.15.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (Performance Levels) a summary of its compliance with clause 15.15.1, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.
- 15.16 Notwithstanding any provision of clauses 21 (Confidentiality) and 24 (Publicity and Branding), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority and/or any Service Beneficiary otherwise discovers the same, the Authority and/or any Service Beneficiary shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 15.17 The Authority may require the Supplier to terminate:
 - 15.17.1 a Sub-contract where:
 - 15.17.1.1 the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to clause 33.1.2 (Termination by the Authority); and/or
 - 15.17.1.2 the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or any Service Beneficiary or otherwise brought the Authority or any Service Beneficiary into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority or any Service Beneficiary, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - 15.17.1.3 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
 - 15.17.1.4 the Authority has found grounds for exclusion of the Sub-contractor in accordance with clause 15.22; and
 - 15.17.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
 - 15.17.2.1 the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - 15.17.2.2 the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Competitive Terms

- 15.18 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
 - 15.18.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

- 15.18.2 subject to clause 15.20, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.19 If the Authority exercises either of its options pursuant to clause 15.18, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.20 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - 15.20.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - 15.20.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 15.21 Notwithstanding the Supplier's right to sub-contract pursuant to this clause 15, the Supplier 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. In respect of any element of the Services delivered by Supplier Personnel and/or which are sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and/or the Sub-contractor (as applicable) also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

- 15.22 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
 - 15.22.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - 15.22.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Relevant Sub-contractors

- 15.23 The Supplier shall:
 - 15.23.1 provide to the Authority details of the name, contact details and legal representatives of the Relevant Sub-Contractors; and/or
 - 15.23.2 procure that any Relevant Sub-Contractors provides the Authority details of the name, contact details and legal representatives of the Relevant Sub-sub-Contractors,

by no later than the Implementation Services Commencement Date.
- 15.24 During the Term the Supplier shall:
 - 15.24.1 notify the Authority in writing within ten (10) Working Days of:
 - 15.24.1.1 any changes to the information required to be notified to the Authority in accordance with clause 15.23.1 above; and/or

- 15.24.1.2 the name, contact details and legal representatives of any Relevant Sub-Contractors appointed following the Implementation Services Commencement Date;
- 15.24.2 procure that any Relevant Sub-Contractors notify the Authority in writing within ten (10) Working Days of:
 - 15.24.2.1 any changes to the information required to be notified to the Authority in accordance with clause 15.23.1 above; and/or
 - 15.24.2.2 the name, contact details and legal representatives of any Relevant Sub-sub-Contractors appointed following the Implementation Services Commencement Date.
- 15.25 Where the Supplier is required to notify the Authority in accordance with clauses 15.23 and 15.24 it must obtain the written consent of the Authority to the appointment or continued use of the Relevant Sub-Contractor(s) or Relevant Sub-sub-Contractor(s).
- 15.26 In considering whether to grant written consent in accordance with clause 15.25, the Supplier shall provide the Authority with a European Single Procurement Document for the Relevant Sub-Contractor and/or Relevant Sub-sub-Contractor(s). Without prejudice to clause 15.22, the Authority may withhold its consent to the appointment or continued use of any Relevant Sub-Contractor and/or Relevant Sub-sub-Contractor(s) where the European Single Procurement Document provided to it in accordance with this clause 15.26 does not meet the Selection Criteria.
- 15.27 Where the Authority withholds its consent in accordance with clause 15.26 the Supplier shall replace the Relevant Sub-Contractor or shall procure the replacement of the Relevant Sub-sub-Contractor(s) and shall propose a new sub-contractor or shall procure the proposal of a new sub-sub-contractor by following the process detailed in clauses 15.24 to 15.26 above and in accordance with the other requirements of this clause 15.

Reporting SME/VCSE Sub-contracts

- 15.28 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority 30 days prior to the end of the of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (Reports and Records Provisions) Annex 4 and in accordance with any guidance issued by the Authority from time to time.
- 15.29 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least 30 days' notice and specifying the date from which it must be used.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Except as expressly set out in this Agreement:
- 16.1.1 neither the Authority nor any Service Beneficiary shall acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - 16.1.1.1 the Supplier Software;
 - 16.1.1.2 the Project Specific IPRs;
 - 16.1.1.3 the Specially Written Software;
 - 16.1.1.4 the Third Party Software;
 - 16.1.1.5 the Third Party IPRs; and
 - 16.1.1.6 the Supplier Background IPRs;
 - 16.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority, any Service Beneficiary or its or their licensors, including:
 - 16.1.2.1 the Authority Software;
 - 16.1.2.2 the Authority Data; and
 - 16.1.2.3 the Authority Background IPRs;
- 16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 16.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 16.4 Unless the Authority otherwise agrees in advance in writing:
- 16.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as Open Source Software; and
 - 16.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as Open Source Software, the Supplier shall also provide the converted format to the Authority.
- 16.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source Software publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source Software under clause 19A (Open Source Publication).

17. TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

- 17.1 Subject to clause 17.17 (Patents) the Supplier hereby grants to the Authority and each of the Service Beneficiaries, or shall procure the direct grant to the Authority and each of the Service Beneficiaries of, a perpetual, worldwide, royalty-free, non-exclusive and, subject to the provisions of clause 34.11.2 (Consequences of expiry or termination), irrevocable licence to use (which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate):
- 17.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software;
 - 17.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "Software Supporting Materials"); and
 - 17.1.3 the Project Specific IPRs including the right to copy, adapt, publish (including on the IT Environment) and distribute the Project Specific IPRs,
- but not including any Know-How, trade secrets or Confidential Information.
- 17.2 The Supplier
- 17.2.1 shall:
 - 17.2.1.1 inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - 17.2.1.2 deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
 - 17.2.1.3 without prejudice to clause 17.11 (Third Party Software and Third Party IPRs) provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs; and
 - 17.2.2 acknowledges and agrees that the ownership of the media referred to in clause 17.2.1.2 shall vest in the Authority upon their receipt by the Authority.

Supplier Software and Supplier Background IPRs

- 17.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 5 (Software) or set to the Contract Management Board for review and approval granted by the Authority.
- 17.4 The Supplier hereby grants to the Authority and each of the Service Beneficiaries:
- 17.4.1 subject to the provisions of clause 17.17 (Patents) and clause 34.11.2 (Consequences of expiry or termination), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- 17.4.1.1 the Supplier Non-COTS Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or the applicable Service Beneficiary's or any other Central Government Body's) business or function; and
 - 17.4.1.2 the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or the applicable Service Beneficiary's or any other Central Government Body's) business or function; and
 - 17.4.2 a licence to use the Supplier COTS Software and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (Software) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority and each of the Service Beneficiaries shall remain entitled to use, to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in clauses 17.4.1, 17.7 and 17.8.2 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
 - 17.4.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 17.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under clause 17.4.1.1 or in respect of the Supplier Non-COTS Background IPRs under clause 17.4.1.2 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any Service Beneficiary or any person to whom the Authority or any Service Beneficiary grants a sub-licence pursuant to clause 17.7 (Right to sub-licence) commits any material breach of the terms of clause 17.4.1.1 or 17.4.1.2 or 17.7.1.2 (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
- 17.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to clause 17.5, the Authority or any Service Beneficiary (as applicable) shall:
- 17.6.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
 - 17.6.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority or any Service Beneficiary (as applicable) may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
 - 17.6.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority or any Service Beneficiary (as applicable) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Right to sub-license

- 17.6 A Subject to clause 17.17 (Patents) the Authority and each of the Service Beneficiaries shall be freely entitled to sub-license the rights granted to the Authority and each of the Service Beneficiaries pursuant to clause 17.1 (Specially Written Software and Project Specific IPRs).
- 17.7 Subject to clause 17.17 (Patents) the Authority or any Service Beneficiary may sub-license:
- 17.7.1 the rights granted under clause 17.4.1 (Supplier Software and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
- 17.7.1.1 the sub-licence is on terms no broader than those granted to the Authority and/or any Service Beneficiary (as applicable);
- 17.7.1.2 the sub-licence authorises the third party to use the rights licensed in clause 17.4.1 (Supplier Software and Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any Service Beneficiary's or any other Central Government Body's) business or function; and
- 17.7.1.3 the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (Software); and
- 17.7.2 the rights granted under clause 17.4.1 (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
- 17.7.2.1 the sub-licence is on terms no broader than those granted to the Authority and/or any Service Beneficiary (as applicable); and
- 17.7.2.2 the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (Software) duly executed by the Approved Sub-Licensee.

Right to assign/novate licences

- 17.8 The Authority and/or any Service Beneficiary:
- 17.8.1 shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to the Authority and each of the Service Beneficiaries pursuant to clause 17.1 (Specially Written Software and Project Specific IPRs); and
- 17.8.2 may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to clause 17.4.1 (Supplier Software and Supplier Background IPRs) to:
- 17.8.2.1 a Central Government Body; or
- 17.8.2.2 any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority or a Service Beneficiary.
- 17.9 Any change in the legal status of the Authority and/or any Service Beneficiary which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in clause 17.1 (Specially Written Software and Project Specific IPRs) and/or clause 17.3 (Supplier Software and Supplier Background IPRs). If the Authority and/or any Service Beneficiary ceases to be a Central Government Body, the successor body to the

Authority and/or any Service Beneficiary shall still be entitled to the benefit of the licences granted in clause 17.1 (Specially Written Software and Project Specific IPRs) and clause 17.3 (Supplier Software and Supplier Background IPRs).

- 17.10 If a licence granted in clause 17.1 (Specially Written Software and Project Specific IPRs) and/or clause 17.3 (Supplier Software and Supplier Background IPRs) is novated under clause 17.8 (Right to assign/novate licences) or there is a change of the Authority's and/or any Service Beneficiary's status pursuant to clause 17.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority and/or any Service Beneficiary.

Third Party Software and Third Party IPRs

- 17.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 5 (Software) or approval is granted by the Authority following a review by the Contract Management Board and has in each case either:

17.11.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority and each of the Service Beneficiaries on a royalty-free basis to the Authority and each of the Service Beneficiaries and on terms no less favourable to the Authority or any Service Beneficiary than those set out in clauses 17.4.1 and 17.5 (Supplier Software and Supplier Background IPRs) and clause 17.8.2 (Right to assign/novate licences); or

17.11.2 complied with the provisions of clause 17.12.

- 17.12 If the Supplier cannot obtain for the Authority and each of the Service Beneficiaries a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in clause 17.11.1, the Supplier shall:

17.12.1 notify the Authority and each of the Service Beneficiaries in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use;

17.12.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party; and

17.12.3 if the Supplier cannot obtain for the Authority and each of the Service Beneficiaries licence terms for the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs acceptable to the Authority, consult with the Authority on alternatives to the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs. Any alternative software approved by the Authority in accordance with this clause 17.12.3 shall be substituted for the relevant Third Party Software originally listed in Schedule 5 (Software) and shall be henceforth Third Party Software for the purposes of this Agreement, to which the provisions of this clauses 17.11 to 17.13 (as applicable) shall apply.

- 17.13 The Supplier shall:

17.13.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and

17.13.2 unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to clause 17.13.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority and each of the Service Beneficiaries on terms no less favourable (including as to indemnification against IPRs Claims) than those

on which such software is usually made commercially available by the relevant third party.

- 17.14 Without prejudice to the provisions of clauses 17.1 and 17.2, should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority or any Service Beneficiary does not have a suitable licence, then, without prejudice to any right or remedy that the Authority or any Service Beneficiary may have as a consequence thereof, the Supplier must:
- 17.14.1 notify the Authority and the Service Beneficiary (if applicable) within 10 days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in; and
- 17.14.2 as soon as reasonably practicable, procure that the Authority and the Service Beneficiaries have all rights in the Specially Written Software and the Project Specific IPRs necessary to satisfy the Service Provider's obligations under this clause 17.

Termination and Replacement Suppliers

- 17.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this clause 17.
- 17.16 Without prejudice to clauses 17.6A and 17.7, the Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (Exit Management) and at no cost to the Authority, any Service Beneficiary or any Replacement Supplier:
- 17.16.1 grant (or procure the grant) to any Replacement Supplier of:
- 17.16.1.1 a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority or each any Service Beneficiary in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (Software) duly executed by the Replacement Supplier; and
- 17.16.1.2 a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and
- 17.16.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

- 17.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority, any Service Beneficiary or any Replacement Supplier, the Supplier hereby grants to the Authority, each of the Service Beneficiaries and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

18. LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- 18.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 21 (Confidentiality); and
 - 18.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority and any Service Beneficiary (if applicable).
- 18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to clause 18.1 and any sub-licence granted by the Supplier in accordance with clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- 18.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - 18.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
 - 18.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background and/or Authority Data.

18A. OPEN SOURCE SOFTWARE

- 18A.1 The Supplier shall ensure that the Software (excluding the OSS):
- 18A.1.1 does not contain any Open Source Software other than the OSS; and
 - 18A.1.2 remains separable from or merely links or binds by name to the interfaces of the OSS.
- 18A.2 The Supplier shall not at any time during the Term without the express written consent of the Authority include in or aggregate with the Software any Open Source Software other than the OSS, or make any changes to the Software which require it to be aggregated with or operated in conjunction with any Open Source Software other than the OSS.
- 18A.3 The Supplier warrants that the OSS is licensed upon terms which permit the use of such Open Source Software by the Supplier, the Authority, each of the Service Beneficiaries and the Authority's and any Service Beneficiary's end users for all purposes contemplated by this Agreement.

19. IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other

Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 19.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - 19.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - 19.2.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - 19.2.2.2 the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - 19.2.2.3 there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - 19.2.2.4 the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 19.3 If the Supplier elects to procure a licence in accordance with clause 19.2.1 or to modify or replace an item pursuant to clause 19.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 19.3.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - 19.3.2 without prejudice to the indemnity set out in clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19A. **OPEN SOURCE PUBLICATION**

- 19A.1 The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.
- 19A.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- 19A.2.1 are suitable for release as Open Source Software and that any release will not allow a third party to use the Open Source Software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
 - 19A.2.2 shall not cause any harm or damage to any party using anything published as Open Source Software and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
 - 19A.2.3 do not contain any material which would bring the Authority and/or any Service Beneficiary into disrepute upon publication as Open Source Software;
 - 19A.2.4 do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("Non-Party IPRs"); and

19A.2.5 will be supplied in a format suitable for publication as Open Source Software (the "Open Source Publication Material") no later than the Operational Service Commencement Date.

19A.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that any Supplier Software or Supplier Background IPRs that the Supplier is willing to allow to be included in any Open Source Software publication. In such a case, the Supplier hereby acknowledges that any such Supplier Background IPRs will become Open Source Software and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source Software licence used by the Authority when publishing as Open Source Software.

19A.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source Software sub-clause 19A.1.

20. AUTHORITY DATA AND SECURITY REQUIREMENTS

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

20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (Services Description).

20.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

20.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).

20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.

20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

20.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or;

20.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning).

20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the

Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

- 20.9 The Supplier shall comply with the requirements of Schedule 2.4 (Security Management).
- 20.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 20.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

21. CONFIDENTIALITY

- 21.1 For the purposes of this clause 21, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information (and shall include the case of the Authority any Service Beneficiary, if applicable) and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information (and shall include in the case of the Authority any Service Beneficiary, if applicable).
- 21.2 Except to the extent set out in this clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
 - 21.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 21.2.2 not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner’s prior written consent;
 - 21.2.3 not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 21.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
 - 21.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - 21.3.2 the need for such disclosure arises out of or in connection with:
 - 21.3.2.1 any legal challenge or potential legal challenge against the Authority and/or any Service Beneficiary (if applicable) arising out of or in connection with this Agreement;
 - 21.3.2.2 the examination and certification of the Authority’s and/or any Service Beneficiary’s (if applicable) accounts (provided that the disclosure is made on a confidential basis) or for any examination

pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority and/or any Service Beneficiary (if applicable) is making use of any Services provided under this Agreement; or

- 21.3.2.3 the conduct of a Central Government Body review in respect of this Agreement; or
 - 21.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
 - 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
 - 21.5 The Supplier may disclose the Confidential Information of the Authority and/or any Service Beneficiary (if applicable) on a confidential basis only to:
 - 21.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - 21.5.2 its auditors; and
 - 21.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- Where the Supplier discloses Confidential Information of the Authority and/or any Service Beneficiary (if applicable) pursuant to this clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 21.6 The Authority and/or any Service Beneficiary (if applicable) may disclose the Confidential Information of the Supplier:
 - 21.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority, any Service Beneficiary (if applicable) or of the relevant Central Government Body;
 - 21.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 21.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 21.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 21.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - 21.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to clause 30 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to clause 29 (Remedial Adviser) and Exit Management rights; or
 - 21.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority and any Service Beneficiary (if applicable) under this clause 21.

- 21.7 Nothing in this clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

22. TRANSPARENCY AND FREEDOM OF INFORMATION

- 22.1 The Parties acknowledge that

22.1.1 the Transparency Reports; and

22.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:

22.1.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

22.1.2.2 Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

- 22.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority and/or any Service Beneficiary (if applicable) to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority and/or any Service Beneficiary (if applicable) shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion

- 22.3 The Supplier shall assist and co-operate with the Authority and/or any Service Beneficiary (if applicable) to enable the Authority and/or any Service Beneficiary (if applicable) to publish the Transparency Information, including preparation of the Transparency Reports in accordance with paragraph 1 of Schedule 8.4 (Reports and Records Provisions).

- 22.4 The Authority and/or any Service Beneficiary (if applicable) believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority and/or any Service Beneficiary (if applicable) shall be entitled to exclude such information from publication. The Authority acknowledges (and shall procure that each of the Service Beneficiaries acknowledges) that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges (and shall procure that each of the Service Beneficiaries acknowledges) that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

- 22.5 The Authority and/or any Service Beneficiary (if applicable) shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

- 22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority and/or any Service Beneficiary (if applicable) on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority and/or any Service Beneficiary (if applicable) may disclose such

information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 21.6.3 and Open Book Data) publish such Information. The Supplier shall provide to the Authority and/or any Service Beneficiary (if applicable) within five (5) Working Days (or such other period as the Authority and/or any Service Beneficiary (if applicable) may reasonably specify) any such Information requested by the Authority and/or any Service Beneficiary (if applicable).

- 22.7 The Supplier acknowledges that the Authority and each of the Service Beneficiaries (if applicable) is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 22.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority and/or any Service Beneficiary (if applicable) to enable the Authority and/or any Service Beneficiary (if applicable) to comply with its obligations under the FOIA and EIRs;
 - 22.7.2 transfer to the Authority and/or any Service Beneficiary (if applicable) all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 22.7.3 provide the Authority and/or any Service Beneficiary (if applicable) with a copy of all Information held on behalf of the Authority and/or any Service Beneficiary (if applicable) which is requested in a Request For Information and which is in its possession or control in the form that the Authority and/or any Service Beneficiary (if applicable) requires within five (5) Working Days (or such other period as the Authority and/or any Service Beneficiary (if applicable) may reasonably specify) of the Authority's and/or any Service Beneficiary's (if applicable) request for such Information; and
 - 22.7.4 not respond directly to a Request For Information addressed to the Authority and/or any Service Beneficiary (if applicable) unless authorised in writing to do so by the Authority and/or any Service Beneficiary (if applicable).
- 22.8 The Supplier acknowledges that the Authority and/or any Service Beneficiary (if applicable) may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority and/or any Service Beneficiary (if applicable) shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Freedom of Information Code of Practice issued under section 45 of Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority and/or any Service Beneficiary (if applicable) shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

23. PROTECTION OF PERSONAL DATA

Status of the Controller

- 23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- 23.1.1 "Controller" (where the other Party acts as the "Processor");
 - 23.1.2 "Processor" (where the other Party acts as the "Controller");
 - 23.1.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);

- 23.1.4 "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 11 (Processing Personal Data) which scenario or scenarios are intended to apply under this Agreement.

- 23.2 In accordance with clause 43 (Third Party Rights), the DVA is a Service Beneficiary and is the Controller of the Personal Data that it processes in relation to its receipt of the Services.

Where one Party is Controller and the other Party its Processor

- 23.3 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 11 (Processing Personal Data) by the Controller.
- 23.4 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 23.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 23.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 23.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 23.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 23.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 23.6.1 process that Personal Data only in accordance with Schedule 11 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 23.6.2 ensure that it has in place Protective Measures, including the measures set out in clause 20 (Authority Data and Security Requirements), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - 23.6.2.1 nature of the data to be protected;
 - 23.6.2.2 harm that might result from a Data Loss Event;
 - 23.6.2.3 state of technological development; and
 - 23.6.2.4 cost of implementing any measures;
 - 23.6.3 ensure that :
 - 23.6.3.1 the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (Processing Personal Data));

- 23.6.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Processor's duties under this clause, clauses 21 (Confidentiality) and 20 (Authority Data and Security Requirements);
 - (b) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 23.6.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 23.6.4.1 the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
 - 23.6.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 23.6.4.3 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - 23.6.4.4 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- 23.6.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 23.7 Subject to clause 23.8, the Processor shall notify the Controller immediately if it:
 - 23.7.1 receives a Data Subject Request(or purported Data Subject Request);
 - 23.7.2 receives a request to rectify, block or erase any Personal Data;
 - 23.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 23.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 23.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 23.7.6 becomes aware of a Data Loss Event.

- 23.8 The Processor's obligation to notify under clause 23.7 shall include the provision of further information to the Controller in phases, as details become available.
- 23.9 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 23.7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 23.9.1 the Controller with full details and copies of the complaint, communication or request;
 - 23.9.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 23.9.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 23.9.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 23.9.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 23.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 23.10.1 the Controller determines that the processing is not occasional;
 - 23.10.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 23.10.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 23.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 23.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 23.13.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 23.13.2 obtain the written consent of the Controller;
 - 23.13.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 23 such that they apply to the Sub-processor; and
 - 23.13.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 23.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 23.15 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms

forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 23.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 23.17 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 1 to Schedule 11 (Processing Personal Data).

Where the Parties are Independent Controllers of Personal Data

- 23.18 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 23.19 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 23.20 Where a Party has provided Personal Data to the other Party in accordance with clause 23.18, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 23.21 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
- 23.22 The Parties shall only provide Personal Data to each other:
- 23.22.1 to the extent necessary to perform the respective obligations under this Agreement;
 - 23.22.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - 23.22.3 where it has recorded it in Schedule 11 (Processing Personal Data).
- 23.23 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 23.24 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 23.25 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (**"Request Recipient"**):

- 23.25.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- 23.25.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - 23.25.2.1 promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - 23.25.2.2 provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 23.26 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:
 - 23.26.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 23.26.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 23.26.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 23.26.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 23.27 Personal Data provided by one Party to the other Party shall be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (*Processing Personal Data*).
- 23.28 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (*Processing Personal Data*).
- 23.29 Notwithstanding the general application of clauses 23.3 to 23.16 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with clause 23.18 to 23.28.

24. PUBLICITY AND BRANDING

- 24.1 The Supplier shall not:
 - 24.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
 - 24.1.2 use the Authority's and/or any Service Beneficiary's (if applicable) name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 24.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party

(including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

25. LIMITATIONS ON LIABILITY

Unlimited liability

- 25.1 Neither Party (nor any of the Service Beneficiaries) limits its or their (as applicable) liability for:
- 25.1.1 death or personal injury caused by its negligence, or that of its or their (as applicable) employees, agents or Sub-contractors (as applicable);
 - 25.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 25.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 25.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 25.2 The Supplier's liability in respect of the indemnities in clause 10.5 (VAT), clause 14.7 (Employment Indemnity), clause 14.8 (Income Tax and National Insurance Contributions), clause 19 (IPRs Indemnity), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited and not subject to any exclusions.
- 25.3 The Authority's liability in respect of the indemnities in clause 14.7 (Employment Indemnity), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited and not subject to any exclusions.

Financial and other limits

- 25.4 Subject to clauses 25.1 and 25.2 (Unlimited Liability) and clauses 25.8 and 25.9 (Consequential losses):
- 25.4.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority or any Service Beneficiary (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 Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
 - 25.4.2 the Supplier's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £20 million;
 - 25.4.3 the Supplier's aggregate liability in respect of all:
 - 25.4.3.1 Service Credits; and
 - 25.4.3.2 Compensation for Unacceptable KPI Failure;incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap; and
 - 25.4.4 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority or any Service Beneficiary under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

- 25.4.4.1 in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
- 25.4.4.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- 25.4.4.3 in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term,

provided that where any Losses referred to in clause 25.4.4 have been incurred by the Authority and/or any Service Beneficiary as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such clause to 150% shall be deemed to be references to 200%.

- 25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under clause 25.4.4.
- 25.6 Subject to clauses 25.1 and 25.3 (Unlimited Liability) and clause 25.8 (Consequential Losses) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
 - 25.6.1 the Authority's (and the Service Beneficiaries') total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to clause 33.1.1 (Termination by the Authority) or by the Supplier pursuant to clause 33.3.1 (Termination by the Supplier) shall in no event exceed the following amounts:
 - 25.6.1.1 in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (Payments on Termination);
 - 25.6.1.2 in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (Payments on Termination); and
 - 25.6.1.3 in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (Payments on Termination); and
 - 25.6.2 subject to clause 25.7A, the Authority's (and the Service Beneficiaries') aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority (or any action and/or omission on the part of any Service Beneficiary) shall in no event exceed:
 - 25.6.2.1 in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
 - 25.6.2.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - 25.6.2.3 in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

25.7 For the avoidance of doubt:

- 25.7.1 any liability of a Party or any Service Beneficiary which falls within clause 25.1 or of the Supplier which falls within clause 25.2 or of the Authority which falls within clause 25.3 will not be taken into account in assessing whether the financial limits in clauses 25.4 and 25.6 have been reached;
- 25.7.2 the financial limits in clauses 25.4.1, 25.4.2, 25.4.3, 25.4.4.1, 25.4.4.2 and 25.4.4.3 are separate not cumulative and any liability of the Supplier which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached; and
- 25.7.3 the financial limits in clauses 25.6.1.1, 25.6.1.2, 25.6.1.3, 25.6.2.1, 25.6.2.2 and 25.6.2.3 are separate not cumulative and any liability of the Authority (or any Service Beneficiary (if applicable)) which falls within one sub-clause in clause 25.6 shall not be taken into account in assessing whether the financial limits in any of the other sub-clauses in clause 25.6 have been reached.

25.7 A The Supplier shall only be entitled to make a claim against the Authority (including in relation to a Service Beneficiary) for Losses covered by the limit on liability set out in clause 25.6.2 if the Supplier has provided the Authority with written notification of the Authority's Default (or any action and/or omission on the part of any Service Beneficiary), specifying the nature of the Default and where applicable the provision of this Agreement that has been breached and the estimated consequences and Losses associated with such Default, such notice to be provided as soon as reasonably practicable following the occurrence of such Default.

Consequential Losses

25.8 Subject to clauses 25.1, 25.2 and 25.3 (Unlimited Liability) and clause 25.9, neither Party (nor any of the Service Beneficiaries) shall be liable to the other Party for:

- 25.8.1 any indirect, special or consequential Loss; or
- 25.8.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.9 Notwithstanding clause 25.8 but subject to clause 25.4, the Supplier acknowledges that the Authority and/or any Service Beneficiary may, amongst other things, recover from the Supplier the following Losses incurred by the Authority and/or any Service Beneficiary to the extent that they arise as a result of a Default by the Supplier:

- 25.9.1 any additional operational and/or administrative costs and expenses incurred by the Authority and/or any Service Beneficiary, including costs relating to time spent by or on behalf of the Authority and/or any Service Beneficiary in dealing with the consequences of the Default;
- 25.9.2 any wasted expenditure or charges;
- 25.9.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- 25.9.4 any compensation or interest paid to a third party by the Authority and/or any Service Beneficiary;
- 25.9.5 any fine or penalty incurred by the Authority and/or any Service Beneficiary pursuant to Law and any costs incurred by the Authority and/or any Service Beneficiary in defending any proceedings which result in such fine or penalty; and

25.9.6 any Reimbursement Payment payable under Schedule 7.6 (Compensation).

25.9A Subject to clauses 25.1 and 25.3 (Unlimited Liability), the Authority and/or any Service Beneficiary shall not be liable to the Supplier (whether in contract, tort (including, without limitation, negligence) or otherwise) in relation to:

25.9A.1 any Delay; or

25.9 A.2 any costs or expenses incurred by the Supplier in complying with its obligations pursuant to clauses 6.4 to 6.6 (Implementation Plan and Delays),

except where and to the extent the provisions of clause 31 (Authority Cause) apply to any such Delay, costs or expenses.

Conduct of indemnity claims

25.10 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

25.11 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

Recovery as a debt

25.12 Subject to clause 25.11, any amounts properly due from one Party to the other Party in respect of an indemnity set out in this Agreement shall be deemed to be, and shall be recoverable as, a debt.

26. INSURANCE

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

SECTION H – REMEDIES AND RELIEF

27. RECTIFICATION PLAN PROCESS

27.1 In the event that:

27.1.1 there is, or is reasonably likely to be, a Delay;

27.1.2 in any Service Period there has been:

27.1.2.1 a Material KPI Failure; and/or

27.1.2.2 a Material PI Failure; and/or

27.1.3 the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone as specified under paragraph 12.2(c) of Schedule 6.2 (Testing Procedures); and/or

27.1.4 paragraph 13.5 of Schedule 6.2 (Testing Procedures) is triggered; and/or

27.1.5 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

27.2 If:

27.2.1 the Supplier notifies the Authority pursuant to clause 27.1 that a Notifiable Default has occurred; or

27.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

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

Submission of the draft Rectification Plan

27.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to clause 27.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.5 The draft Rectification Plan shall set out:

- 27.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
 - 27.5.2 the actual or anticipated effect of the Notifiable Default; and
 - 27.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 27.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (Dispute Resolution Procedure).

Agreement of the Rectification Plan

- 27.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 27.7.1 is insufficiently detailed to be capable of proper evaluation;
 - 27.7.2 will take too long to complete;
 - 27.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 27.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 27.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 27.9 If the Authority consents to the Rectification Plan:
- 27.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 27.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

28. DELAY

- 28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, without prejudice to any other right or remedy that the Authority may have, the Supplier shall reimburse the Authority for any Losses that the Authority can demonstrate it (or any Service Beneficiary) has suffered as a consequence of the Supplier's failure to Achieve such Key Milestone by its relevant Milestone Date.

29. REMEDIAL ADVISER

- 29.1 If:
- 29.1.1 any of the Intervention Trigger Events occur; or

- 29.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,
- (each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:
- 29.1.2.1 a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- 29.1.2.2 the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this clause 29.
- For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this clause 29.1 prior to or instead of exercising its right to terminate this Agreement.
- 29.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:
- 29.2.1 the Remedial Adviser shall be:
- 29.2.1.1 a suitably qualified person selected by the Supplier (having regard to the nature of the Intervention Cause and the affected Services) and approved by the Authority (having been provided with such information in respect of such proposed Remedial Adviser(s) by the Supplier as the Authority may reasonably require); or
- 29.2.1.2 if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- 29.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- 29.2.3 any right of the Authority to terminate this Agreement pursuant to clause 33.1.2 (Termination by the Authority) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").
- 29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one (1) or more of the following actions:
- 29.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- 29.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- 29.3.3 write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- 29.3.4 make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or

- 29.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 29.4 The Supplier shall:
- 29.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- 29.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- 29.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- 29.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- 29.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).
- 29.5 The Supplier shall be responsible for:
- 29.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
- 29.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this clause 29.
- 29.6 If:
- 29.6.1 the Supplier:
- 29.6.1.1 fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
- 29.6.1.2 is in Default of any of its obligations under clause 29.4; and/or
- 29.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to clause 33.1.2 (Termination by the Authority).

30. STEP-IN RIGHTS

- 30.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this clause 30 (Step-in Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 21 (Confidentiality)). The Step-In Notice shall set out the following:
- 30.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (or appoint a third party to control) (the "**Required Action**");
- 30.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
- 30.1.3 the date on which it wishes to commence the Required Action;

- 30.1.4 the time period which it believes will be necessary for the Required Action;
 - 30.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - 30.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 30.2 Following service of a Step-In Notice, the Authority shall:
- 30.2.1 take the Required Action, or procure that a third party takes the action, set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 30.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 30.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
 - 30.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this clause 30.
- 30.3 For so long as and to the extent that the Required Action is continuing, then:
- 30.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 30.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of clause 30.4 shall apply to Deductions from Charges in respect of other Services;
 - 30.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action;
 - 30.3.4 the Supplier shall cooperate fully with the Authority and any third party appointed by the Authority under clause 30.2.1 to facilitate the steps taken;
 - 30.3.5 the Supplier shall grant and procure that any Sub-contractor or relevant third party grants such licences and permissions as are reasonably required provided that these result in no additional cost to either the Authority or the Supplier; and
 - 30.3.6 the Supplier shall afford (and procure that its Sub-contractors afford as applicable) to the Authority such cooperation, access to and use of (as applicable):
 - 30.3.6.1 such equipment, goods, services, premises, personnel, documents, information and other items as are reasonably required to provide the Services;
 - 30.3.6.2 the Supplier's Intellectual Property Rights used in relation to the Services (excluding any Source Code); and
 - 30.3.6.3 premises, equipment, personnel, documents, information or other items as are reasonably required.
- 30.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 30.4.1 the degradation of any Services not subject to the Required Action; or

30.4.2 the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

30.5 Before ceasing to exercise its step in rights under this clause 30 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

30.5.1 the Required Action it has actually taken; and

30.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with clause 30.6.

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

30.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall 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.

30.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this clause 30, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

30.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

30.8.2 limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

31. AUTHORITY CAUSE

31.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

31.1.1 Achieve a Milestone by its Milestone Date;

31.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

31.1.3 comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this clause 31):

31.1.3.1 the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

31.1.3.2 the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(a) to terminate this Agreement pursuant to clause 33.1.2 (Termination by the Authority); or

(b) to take action pursuant clauses 29 (Remedial Adviser) or 30 (Step-In);

31.1.3.3 where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(a) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

(b) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;

(c) the Supplier shall have no liability to reimburse the Authority for Losses under clause 28.1 to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and

(d) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (Charges and Invoicing); and/or

31.1.3.4 where the Supplier Non-Performance constitutes a Performance Failure:

(a) the Supplier shall not be liable to accrue Service Credits;

(b) the Authority shall not be entitled to withhold any of the Service Charges pursuant to clause 7.2.4.2 (Performance Failures);

(c) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to clause 7.4.1 (Unacceptable KPI Failure); and

(d) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

31.2 In order to claim any of the rights and/or relief referred to in clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

31.2.1 the Supplier Non-Performance;

31.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

31.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

31.2.4 the relief and/or compensation claimed by the Supplier.

The Authority shall only be obliged to pay any compensation to which the Supplier is entitled (pursuant to this clause 31) following the point at which a Relief Notice is provided by the Supplier to the Authority and, for the avoidance of doubt, any losses and/or costs suffered or incurred by the Supplier in relation to an Authority Cause prior to the receipt of a Relief Notice by the Authority shall not be recoverable by the Supplier from the Authority under this Agreement.

31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary. Where the Supplier is claiming compensation from the Authority pursuant to this clause 31 and the Authority Cause is capable of remedy, the Authority shall be entitled to a period of no more than ten (10) Working days within which to remedy the Authority Cause giving rise to the claim for compensation. To the extent that such Authority Cause is remedied by the Authority pursuant to this clause 31.3, the Authority shall not be liable to pay compensation to the Supplier.

31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

31.5 Without prejudice to clause 5.9 (Continuing obligation to provide the Services), if a Dispute arises as to:

31.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

31.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

31.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this clause 31 shall be implemented in accordance with the Change Control Procedure.

32. FORCE MAJEURE

32.1 Subject to the remaining provisions of this clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under clauses 32 and/or 33.3.2 to the extent that consequences of the relevant Force Majeure Event:

32.3.1 are capable of being mitigated by any of the Services including the Service Continuity Services, but the Supplier has failed to do so;

- 32.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; and/or
- 32.3.3 relate to the COVID-19 (the official designation of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)) pandemic (the "**COVID-19 Pandemic**") and/or any response of the UK government, any other foreign government and/or any international organisation to the COVID-19 Pandemic.
- 32.4 Subject to clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.6 Where, as a result of a Force Majeure Event:
 - 32.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - 32.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to clause 33.1.3 (Termination by the Authority) or clause 33.3.2 (Termination by the Supplier); and
 - 32.6.1.2 neither Party shall be liable for any Default arising as a result of such failure;
 - 32.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
 - 32.6.2.1 the Authority shall not be entitled:
 - (a) during the continuance of the Force Majeure Event to exercise its rights under clause 29 (Remedial Adviser) and/or clause 30 (Step-in Rights) as a result of such failure;
 - (b) to reimbursement for any Losses pursuant to clause 28 (Delay) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (c) to receive Service Credits, to withhold any of the Service Charges pursuant to clause 7.2.4.2 (Performance Failures) or withhold and retain any of the Service Charges as compensation pursuant to clause 7.4.1 (Unacceptable KPI Failure) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - 32.6.2.2 the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

32.8 Relief from liability for the Affected Party under this clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 32.7.

32A SUSPENSION OF THE AGREEMENT BY THE AUTHORITY

32A.1 At any point in time prior to the Milestone Date for the final Operational Service Commencement Date, the Authority may suspend in whole or part the performance of the Services by the Supplier (including any Sub-contractor (if applicable)) and related obligations under this Agreement (including any obligation of the Authority to make payment in respect of any Services not yet provided or Milestones not yet Achieved) by giving as much notice in writing to the Supplier as is reasonably practicable in the circumstances (having due regard to the cause of such suspension). The period of suspension shall be such period of time as the Authority shall determine, acting reasonably, and notify to the Supplier in writing.

32A.2 For the avoidance of doubt, any suspension of the Services and related obligations pursuant to clause 32A.1 shall be deemed not to be an Authority Cause.

32A.3 If the Supplier receives a written notice from the Authority pursuant to clause 32A.1, it may issue to the Authority a Change Request in accordance with the Change Control Procedure in relation to any Change made necessary as a result of the suspension of the Services and related obligations pursuant to clause 32A.1.

32A.4 If the Supplier issues a Change Request to the Authority pursuant to clause 32A.3, any Changes shall be agreed by the Parties in accordance with the Change Control Procedure.

32A.5 Each Party shall exercise its (and in the case of the Supplier procure that that all Sub-contractors, and in the case of the Authority procure that the Service Beneficiaries, exercise their) reasonable endeavours to mitigate any Losses (directly or indirectly) suffered or incurred by either Party (and the Service Beneficiaries) in respect of the suspension of the Services and related obligations pursuant to clause 32A.1.

32A.6 Performance of the Services and related obligations shall recommence upon such date as the Authority shall specify by notice in writing to the Supplier.

SECTION I – TERMINATION AND EXIT MANAGEMENT

33. TERMINATION RIGHTS

Termination by the Authority

- 33.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:
- 33.1.1 in whole or part for convenience at any time, including where:
 - 33.1.1.1 the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 33.1.1.2 where the Theory Test is no longer required by Law;
 - 33.1.2 if a Supplier Termination Event occurs;
 - 33.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
 - 33.1.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Agreement shall terminate on the date specified in the Termination Notice.
- 33.2 Where the Authority:
- 33.2.1 is terminating this Agreement under clause 33.1.2 due to the occurrence of any of limbs (b), (g), (h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
 - 33.2.2 has the right to terminate this Agreement under clause 33.1.2 or clause 33.1.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

- 33.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:
- 33.3.1 this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds **£Redacted** by giving the Authority sixty (60) Working Days written notice specifying the breach and requiring its remedy (with a copy of the notice to be sent to the Authority's finance director. The Supplier's right of termination under this clause shall only arise if the Authority has failed to remedy the breach specified in the written notice within the sixty (60) Working Days' notice period. The Supplier's right of termination under this clause 33.3.1 shall not apply to non-payment of the Charges by the Authority where such non-payment is due to the Authority exercising its rights under clause 10.7 (Set-off and Withholding); or
 - 33.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of clause 33.3.2 would result in a Partial Termination, the provisions of clause 33.4 (Partial Termination) shall apply.

Partial Termination

- 33.4 If the Supplier notifies the Authority pursuant to clause 33.3.2 (Termination by the Supplier) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this clause 33.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 33.5 Where the Authority wishes to exercise its right to Partial Termination as set out at clauses 33.1.1 and 33.2.2 above, the Parties shall agree the effect of any Change made necessary to the Agreement by the Partial Termination, including the effect the Partial Termination may have on the remaining Services and the Charges, in accordance with the Change Control Procedure, provided that:
- 33.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises as a result of a Supplier Termination Event;
- 33.5.2 subject to clause 33.5.1, any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be fair and reasonable; and
- 33.5.3 the Supplier shall not be entitled to reject the Change.

34. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 34.1 The provisions of clauses 5.8 (Specially Written Software warranty), 10.4 and 10.5 (VAT), 10.6 and 10.7 (Set-off and Withholding), 12 (Records, Reports, Audits and Open Book Data), 14.7 (Employment Indemnity), 14.8 (Income Tax and National Insurance Contributions), 16 (Intellectual Property Rights), 17 (Licences Granted by the Supplier), 19.1 (IPRs Indemnity), 21 (Confidentiality), 22.5 (Freedom of Information), 23 (Protection of Personal Data), 25 (Limitations on Liability), 34 (Consequences of Expiry or Termination), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights), 45 (Disputes) and 46 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Charges and Invoicing), 7.2 (Payments on Termination), 7.5 (Financial Reports and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Records Provisions), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination (however arising), suspension or expiry of this Agreement.

Exit Management

- 34.2 The Parties shall comply with the provisions of Schedule 8.5 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier. For the avoidance of doubt, Schedule 8.5 (Exit Management) shall apply to full and partial termination of the Agreement and where the Agreement is terminated and/or expires on a partial or phased basis, the provisions of Schedule 8.5 (Exit Management) shall apply to each and every termination and expiry.

Payments by the Authority

- 34.3 If this Agreement is terminated by the Authority pursuant to clause 33.1.1 (Termination by the Authority) or by the Supplier pursuant to clause 33.3.1 (Termination by the Supplier), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):
- 34.3.1 the Termination Payment; and
 - 34.3.2 the Compensation Payment, if either of the following periods is less than 365 days:
 - 34.3.2.1 the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1.4 of Part D of Schedule 7.1 (Charges and Invoicing) applies, deemed given) by the Authority pursuant to clause 33.1.1 (Termination by the Authority)) to (and including) the Termination Date; or
 - 34.3.2.2 the period from (and including) the date of the non-payment by the Authority referred to in clause 33.3.1 (Termination by the Supplier) to (and including) the Termination Date.
- 34.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to clauses 33.1.2, 33.1.3 and/or 33.2 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make to the Supplier as a result of such termination of this Agreement or expiry of the Term (whether by way of compensation or otherwise) are:
- 34.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (Exit Management); and
 - 34.4.2 payments in respect of unpaid and undisputed Charges for Services (to the extent the same are due and payable) received up until the Termination Date.
- For the avoidance of doubt, nothing in this clause 34.4 shall lead to the double recovery of loss/outstanding sums by the Supplier from the Authority.
- 34.5 The costs of termination incurred by the Parties shall lie where they fall if:
- 34.5.1 either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to clauses 33.1.3 or 33.2.2 (Termination by the Authority) or 33.3.2 (Termination by the Supplier); or
 - 34.5.2 the Authority terminates this Agreement under clause 33.1.4.

Payments by the Supplier

- 34.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 34.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to clause 33.1.2 (Termination by the Authority) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each Milestone to which the Milestone Adjustment Payment Notice relates.
- 34.8 A Milestone Adjustment Payment Notice shall specify:
- 34.8.1 each Milestone to which it relates;

- 34.8.2 in relation to each such Milestone, each Deliverable relating to that Milestone that the Authority wishes to retain, if any (each such Deliverable being a **"Retained Deliverable"**); and
 - 34.8.3 those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an **"Allowable Price Adjustment"**),
- and may form part of a Termination Notice.
- 34.9 The Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:
- 34.9.1 notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
 - 34.9.2 in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;
 - 34.9.3 provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - 34.9.3.1 all relevant Milestone Payments; and
 - 34.9.3.2 the Allowable Price of each Retained Deliverable; and
 - 34.9.4 provide the Authority with such supporting information as the Authority may require.
- 34.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within twenty (20) Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.
- 34.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to clause 34.7:
- 34.11.1 the Authority shall:
 - 34.11.1.1 securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
 - 34.11.1.2 ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and
 - 34.11.2 all licences granted pursuant to clause 17 (Licences granted by the Supplier) in respect of Specially Written Software and Project Specific IPRs and any Supplier

Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

35. COMPLIANCE

Health and Safety

35.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

35.1.1 all applicable Law regarding health and safety; and

35.1.2 the Health and Safety Policy whilst at the Authority Premises.

35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

35.3 The Supplier shall:

35.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

35.3.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

35.3.1.2 the Authority's equality and diversity policy as provided to the Supplier from time to time; and

35.3.1.3 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

35.3.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

35.4 To the extent relevant to this Agreement, the Supplier shall comply with the provisions of:

35.4.1 the Official Secrets Acts 1911 to 1989; and

35.4.2 section 182 of the Finance Act 1989.

36. ASSIGNMENT AND NOVATION

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

36.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

36.2.1 any Central Government Body; or

36.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall (at its own expense), at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this clause 36.2.

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

36.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body (should an Insolvency Event arise) identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

37. WAIVER AND CUMULATIVE REMEDIES

37.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

38. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

39. PREVENTION OF FRAUD AND BRIBERY

39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge (having made all reasonable enquiries) any Supplier Personnel, have at any time prior to the Effective Date:

39.1.1 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

39.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

39.2 The Supplier shall not, and shall procure that the Supplier Personnel, shall not during the term of this Agreement:

39.2.1 commit a Prohibited Act; and/or

- 39.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 39.3 The Supplier shall during the term of this Agreement:
- 39.3.1 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;
 - 39.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - 39.3.3 keep appropriate records of its compliance with its obligations under clause 39.3.1 and make such records available to the Authority on request;
 - 39.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
 - 39.3.5 conduct reasonable and proportionate due diligence on any person or Sub-contractor who is to perform services or provide goods in connection with this Agreement, before engaging with such person, to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 39.3.6 ensure that any person or Sub-contractor associated with the Supplier who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such persons terms at least equivalent to those imposed on the Supplier in this clause 39. The Supplier shall be responsible for the observance and performance, by such persons or Sub-contractors, of this clause 39, and shall be directly liable to the Authority for any breach by such persons of this clause 39; and
 - 39.3.7 keep appropriate records of any gifts or hospitality, whether directly or indirectly given or received in connection with this Agreement, and make such records available to the Authority on request. The Supplier shall be responsible for notifying the Authority of any gift or hospitality, whether directly or indirectly given or received in connection with this Agreement, which has a value of more than £50.
- 39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 39.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 39.4.2 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
 - 39.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

- 39.5 If the Supplier makes a notification to the Authority pursuant to clause 39.4, the Supplier, and shall procure that the Supplier Personnel, shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with clause 12 (Records, Reports, Audits and Open Book Data).
- 39.6 If the Supplier, or the Supplier's Personnel (whether acting in the Supplier's knowledge or otherwise), is in Default under clauses 39.1 and/or 39.2, and/or 39.3 the Authority may (at its absolute discretion) by notice:
- 39.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
- 39.6.2 immediately terminate this Agreement.
- 39.7 Any termination under clause 39.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.
- 39.8 Any notice served by the Authority under clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

40. SEVERANCE

- 40.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 40.2 In the event that any deemed deletion under clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 8.3 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 40.3.

41. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

42. ENTIRE AGREEMENT

- 42.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

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

43. THIRD PARTY RIGHTS

- 43.1 The provisions of clause 19.1 (IPRs Indemnity), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 43.2 Without prejudice to clause 43.1, the Supplier acknowledges that the Services and the provisions of this Agreement are for the benefit not only of the Customer, but also of the Service Beneficiaries. Where the Supplier is to deliver a service (including the Services) or confer a benefit on the Service Beneficiaries (including the provisions of clause 23 (Protection of Personal Data)), any of the Service Beneficiaries may by virtue of the CRTPA enforce such provision directly against the Supplier. The Authority may, in its discretion, conduct such claim on behalf of any Service Beneficiary.
- 43.3 Subject to clauses 43.1 and 43.2, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 43.4 No Third Party Beneficiary or Service Beneficiary may enforce, or take any step to enforce, any Third Party Provision or other provision of this Agreement (as applicable) without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 43.5 Any amendments or modifications to this Agreement may be made, and any rights created under clause 43.1 and 43.2 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary or Service Beneficiary.

44. NOTICES

- 44.1 Any notices sent under this Agreement must be in writing.
- 44.2 Subject to clause 44.3, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an email to the correct email address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed for 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

	Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	
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- 44.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Redacted
Contact	Redacted	
Address	80 Strand London WC2R 0RL	The Axis Building 3rd Floor 112 Upper Parliament Street Nottingham NG1 6LP United Kingdom
Email	Redacted	Redacted

- 44.4 Where any information or documentation is to be provided or submitted to the Representatives it shall be provided signed by or on behalf of the party giving it and shall be served by sending it to the addresses set out below:

	Supplier Representative	Authority Representative
Contact	Redacted	Redacted
Address	80 Strand London WC2R 0RL	The Axis Building 3rd Floor 112 Upper Parliament Street Nottingham NG1 6LP United Kingdom
Email	Redacted	Redacted

- 44.5 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in clause 44.2:

- 44.5.1 Step-In Notices;
- 44.5.2 Force Majeure Notices;
- 44.5.3 notices issued by the Supplier pursuant to clause 33.3 (Termination by the Supplier);
- 44.5.4 Termination Notices; and
- 44.5.5 Dispute Notices.

- 44.6 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 44.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice

sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 44.7 This clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

45. DISPUTES

- 45.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

46. GOVERNING LAW AND JURISDICTION

- 46.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 46.2 Subject to clause 45 (Disputes) and Schedule 8.3 (Dispute Resolution Procedure) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

47. COUNTERPARTS/DUPLICATES

- 47.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement. This Agreement shall not be effective until each Party has executed at least one counterpart.
- 47.2 This Agreement may be executed in duplicate, each of which shall constitute an original.

IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

EXECUTED AS A DEED, but not delivered)
until the date specified on this deed, by)
PEARSON PROFESSIONAL)
ASSESSMENTS LTD)
by a director in the presence of a witness:)

Signature:

Name (block capitals):

Director

Witness signature:

Witness name (block capitals):

Witness address:

EXECUTED AS A DEED by)
THE CHIEF EXECUTIVE of the DRIVER)
AND VEHICLE STANDARDS AGENCY)
for and on behalf of)
THE SECRETARY OF STATE FOR)
TRANSPORT)

Witness signature:

Name:

Address:

Occupation:

SCHEDULE 1

Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

"Accounting Reference Date"	the dates to which the Supplier prepares its audited financial statements;
"Achieve"	<p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (TestingProcedures),</p> <p>and "Achieved" and "Achievement" shall be construed accordingly;</p>
"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Active Directory ("AD")"	Active Directory (AD) is a Microsoft product that consists of several services that run on Windows Server to manage permissions and access to networked resources. Active Directory stores data as objects. An object is a single element, such as a user, group, application or device, such as a printer;
"Administration Portal"	the digital platform used for the registration of Candidates and visitors into the Test Centre;
"Admission"	the part of the process that validates the identity of a Candidate at a Test Centre, confirms the details of a specific Test Type and ensures that the requisite security checks have been carried out;
"Affected Party"	the Party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	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;
"Allowable Price"	<p>in relation to the Retained Deliverables relating to a Milestone, if any, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant</p>

Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and

B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that Milestone;

"Allowable Price Adjustment"

has the meaning given in clause 34.8.3 (Payments by the Supplier);

"Annual Contract Report"

has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);

"Annual Revenue"

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 Supplier or, as appropriate, the Supplier 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 Supplier, the Supplier 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;

"Anticipated Contract Life Profit Margin"

has the meaning given in Schedule 7.1 (Charges and Invoicing);

"Application Programming Interface ("API")"

a set of functions and procedures that allow the creation of applications which access the features or data of an operating system, application, or other service;

"Approved Sub-Licensee"

any of the following:

- (a) a Central Government Body;
- (b) any third party providing services to a Central Government Body; and/or
- (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or

	carried on by the Authority and/or any Service Beneficiary;
"Assets"	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
"Assisted Digital"	digital services that meet the Digital Service Standards must provide Assisted Digital support for Candidates who do not have the skills or access to do so on their own;
"Associated Person"	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
"Associates"	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"	written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
"ATP Milestone"	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
"Audit"	any exercise by the Authority of its Audit Rights pursuant to clause 12 (Records, Reports, Audit and Open Book Data) and Schedule 7.5 (Financial Reports and Audit Rights);
"Audit Agents"	<ul style="list-style-type: none"> (a) the Authority's internal and external auditors; (b) the Authority's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Audit Rights"	the audit and access rights referred to in Schedule 7.5 (Financial Reports and Audit Rights);
"Authorised Users"	those directors, officers, employees, agents, consultants and contractors of the Authority and/or any Service Beneficiary who are authorised by the

	Authority or any Service Beneficiary (as applicable) to use the Software, Services and Documentation;
"Authority Assets"	the Authority Materials, the Authority (and Service Beneficiary) infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority (or Service Beneficiary) and which is or may be used in connection with the provision or receipt of the Services;
"Authority Assets Register"	has the meaning given in clause 9A.1 (Authority Assets);
"Authority Background IPRs"	<p>(a) IPRs owned by the Authority (or any Service Beneficiary) before the Effective Date, including IPRs contained in any of the Authority's or any Service Beneficiary's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Authority (or any Service Beneficiary) independently of this Agreement;</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;</p> <p>but excluding IPRs owned by the Authority (or any Service Beneficiary) subsisting in the Authority Software;</p>
"Authority Cause"	<p>any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:</p> <p>(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or</p> <p>(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;</p>
"Authority Data"	<p>(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:</p> <p>(i) supplied to the Supplier by or on behalf of the Authority (or any Service Beneficiary); and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p>

	(b) any Personal Data for which the Authority (or any Service Beneficiary) is the Controller;
"Authority IT Strategy"	the Authority's and/or any Service Beneficiary's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;
"Authority Materials"	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority (and/or Service Beneficiary) to the Supplier, the IPRs in which:</p> <p>(a) are owned or used by or on behalf of the Authority (or any Service Beneficiary); and</p> <p>(b) are or may be used in connection with the provision or receipt of the Services,</p> <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
"Authority Premises"	premises owned, controlled or occupied by the Authority, any Service Beneficiary, and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
"Authority Representative"	the representative appointed by the Authority pursuant to clause 11.4 (Representatives);
"Authority Requirements"	the requirements of the Authority set out in Schedules 2.1 (Services Description), 2.2 (Performance Indicators), 2.3 (Standards), 2.4 (Security Management), 2.5 (Insurance Requirements), 6.1 (Implementation Plan), 8.4 (Records Provisions), 8.5 (Exit Management) and 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Authority Responsibilities"	the responsibilities of the Authority specified in Schedule 3 (Authority Responsibilities);
"Authority Software"	software which is owned by or licensed to the Authority (or, as applicable, a Service Beneficiary) (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
"Authority System"	the Authority's computing environment (and any applicable Service Beneficiary) (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority (and Service Beneficiary) or the Supplier in connection with this Agreement which is owned by the Authority (or applicable Service Beneficiary) or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority (and

	any applicable Service Beneficiary) to receive the Services;
"Authority to Proceed" or "ATP"	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
"Balanced Scorecard Report"	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 2.2 (Performance Levels);
"Baseline Security Requirements"	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (Security Management), as updated from time to time by the Authority and notified to the Supplier;
"Booking"	the part of the process whereby a Candidate or Customer to select and purchase a test Slot at a place and time of their choosing;
"Booking Application"	the software used by the Authority to enable End Users to book Theory Test appointments;
"Booking Information"	Candidate, test and Slot details;
"Breakage Costs Payment"	has the meaning given in Schedule 7.2 (Payments on Termination);
"Brexit"	any change, event or occurrence arising out of, related to or connected with the decision of the UK to withdraw from the EU, including any modification of law, irrespective of whether a transition period or similar agreement or arrangement is agreed between the UK and the EU;
"Business Hours"	Monday to Friday 8.00am to 5.00pm, excluding English bank holidays;
"Cabinet Office Markets and Suppliers Team"	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;
"Candidate"	the person in whose name the Theory Test is booked for and who takes the Theory Test;
"Central Government Body"	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or

	(d) Executive Agency;
"Certificate of Costs"	has the meaning given in Schedule 7.1 (Charges and Invoicing);
"Change"	any change to this Agreement;
"Change Authorisation Note"	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (Change Control Procedure);
"Change Control Procedure"	the procedure for changing this Agreement set out in Schedule 8.2 (Change Control Procedure);
"Change in Law"	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
"Change Request"	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (Change Control Procedure);
"Charges"	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (Charges and Invoicing), including any Milestone Payment or Service Charge;
"Class 1 Transaction"	has the meaning set out in the listing rules issued by the UK Listing Authority;
"CNI"	Critical National Infrastructure;
"Commercially Sensitive Information"	the information listed in Schedule 4.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to: <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier's IPRs; and (c) the Supplier's business and investment plans which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
"Compensation for Unacceptable KPI Failure"	has the meaning given in clause 7.4.1 (Unacceptable KPI Failure);
"Compensation Payment"	has the meaning given in Schedule 7.2 (Payments on Termination);
"Compensation Payout"	has the meaning given in Schedule 7.6 (Compensation);

“Condition Precedent”

has the meaning given in clause 4.2 (Condition Precedent);

“Confidential Information”

(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:

(i) (the Disclosing Party Group; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;

(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;

(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and

(d) Information derived from any of the above,

but not including any Information which:

(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or

	breach of a duty of confidentiality;
	(iv) was independently developed without access to the Confidential Information; or
	(v) relates to the Supplier's:
	(a) performance under this Agreement; or
	(b) failure to pay any Sub-contractor as required pursuant to clause 15.15.1 (Supply Chain Protection);
"Confirmed Booking"	Entitlement Check passed and payment made by the Candidate;
"Contract Amendment Report"	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B of Schedule 7.5 (Financial Reports and Audit Rights);
"Contract Change"	any change to this Agreement other than an Operational Change;
"Contract Inception Report"	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
"Contract Finder"	the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;
"Contract Management Board"	has the meaning given to it in Schedule 8.1 (Governance);
"Contract Year"	<p>(a) a period of twelve (12) months commencing on the Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
"Control"	the possession by person, directly or indirectly, of 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" shall be interpreted accordingly;
"Controller"	has the meaning given in the GDPR;
"Costs"	has the meaning given in Schedule 7.1 (Charges and Invoicing);

"Corporate Change Event"

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
 - (b) any change of Control of any member of the Supplier 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 Supplier or any member of the Supplier 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 Supplier or any Parent Undertaking of the Supplier 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 Supplier or any Parent Undertaking of the Supplier;
 - (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier 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 Supplier Group;
 - (h) any member of the Supplier 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 Supplier 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 Supplier 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 Supplier Group; and/or
- any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

"Corporate Resolution Planning Information" together, the:

- (a) Group Structure Information and Resolution Commentary; and
- (b) UK Public Sector and CNI Contract Information;

"CPP Milestone"	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (Testing Procedures);
"Critical Infrastructure"	<p>National those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:</p> <ul style="list-style-type: none"> (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or (b) significant impact on national security, national defence, or the functioning of the UK;
"Critical Performance Failure"	<ul style="list-style-type: none"> (a) the Supplier accruing in aggregate 200 or more Service Points (in terms of the number of points allocated) in any period of six (6) months; or (b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;
"Critical Service Contract"	the overall status of this Agreement as determined by the Authority and specified in paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Cross Step-in Optional Services"	the services described as such in clause 5.10 (Cross Step-in Optional Services);
"Cross Step-in Optional Services Implementation Plan"	the implementation plan to effect the Cross Step-in Optional Services to be developed by the Supplier and agreed by the Parties in accordance with the Change Control Procedure, as referred to in clause 5.12.2 (Cross Step-in Optional Services);
"CRP Information"	the Corporate Resolution Planning Information;
"CRTPA"	the Contracts (Rights of Third Parties) Act 1999;
"Customer Contact Centre/Contact Centre"	the Authority's customer contact centre which provides the ability for Candidates to speak to the Authority about the Theory Test Service;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in

	breach of this Agreement, including any Personal Data Breach;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	<ul style="list-style-type: none"> (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy;
"Data Protection Officer"	has the meaning given in the GDPR;
"Data Subject"	has the meaning given in the GDPR;
"Data Subject Access Request"	a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her Personal Data;
"Deductions"	all Service Credits, Compensation for Unacceptable KPI Failure or any other deduction which is paid or payable to the Authority under this Agreement;
"Default"	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Authority, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;</p>
"Defaulting Region"	has the meaning given in clause 5.10;
"Defect"	<ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant

	Deliverable from meeting its associated Test Success Criteria; or
	(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
"Delay"	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
"Deliverable"	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
"Dependent Undertaking"	<p>Parent 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 Supplier 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 Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;</p>
"Detailed Implementation Plan"	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 (Implementation Plan);
"Disclosing Party"	has the meaning given in clause 21.1 (Confidentiality);
"Disclosing Party Group"	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(b) where the Disclosing Party is the Authority, the Authority, the Service Beneficiaries and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;</p>
"Dispute"	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties

	to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Schedule 8.3 (Dispute Resolution Procedure);
"Documentation"	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none"> (a) is required to be supplied by the Supplier to the Authority under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter 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 2004 and as extended to national insurance contributions by the National Insurance Contributions (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;
"DPA 2018"	the Data Protection Act 2018;
"Driving Licence Number"	the unique number on a driving licence;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Authority and/or any Service Beneficiary prior to the Effective Date;

"DVA"	the Driver and Vehicle Agency, a government agency of the Northern Ireland Department for Infrastructure;
"DVSA"	has the meaning given in background Recital (A);
"Effective Date"	the later of: <ul style="list-style-type: none"> (a) the date on which this Agreement is signed by both Parties; and (b) the date on which the Condition Precedent has been satisfied or waived in accordance with clause 4.2 (Condition Precedent);
"EIRs"	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where: <ul style="list-style-type: none"> (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault;
"Employee Liabilities"	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: <ul style="list-style-type: none"> (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;

	<p>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</p> <p>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise;</p> <p>(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;</p>
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"Entitlement Checks"	checks carried out against records held by the appropriate driver Licencing Authority or other registers to identity which tests a Candidate is eligible to take;
"Estimated Year 1 Charges"	the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
"Estimated Initial Service Charges"	the estimated Service Charges payable by the Authority during the period of twelve (12) months from the first Operational Service Commencement Date, as set out in the Financial Model;
"European Single Procurement Document"	a European Single Procurement Document as detailed in Article 80(3) of Directive 2014/25/EU consisting of an updated self-declaration confirming that the Relevant Sub-Contractor fulfils the Selection Criteria;
"Exit Management"	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority, the Service Beneficiaries and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (Exit Management);
"Exit Day"	shall have the meaning in the European Union (Withdrawal) Act 2018;
"Exit Plan"	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (Exit Management);
"Expedited Dispute Timetable"	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (Dispute Resolution Procedure);

"Expert"	has the meaning given in Schedule 8.3 (Dispute Resolution Procedure);
"Expert Determination"	the process described in Paragraph 6 of Schedule 8.3 (Dispute Resolution Procedure);
"Extension Period"	a period of one (1) year from the end of the Initial Term or any subsequent Extension Period, as applicable;
"Financial Distress Event"	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (Financial Distress);
"Financial Distress Remediation Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
"Financial Model"	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
"Financial Reports"	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
"Financial Transparency Objectives"	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
"FOIA"	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 any relevant Central Government Body in relation to such Act;
"Force Majeure Event"	<p>any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement 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, fire, flood, storm or earthquake, or disaster but excluding:</p> <ul style="list-style-type: none"> (a) any industrial dispute relating to the Supplier or the Supplier Personnel; (b) any other failure in the Supplier's or a Sub-contractor's supply chain; and (c) Brexit;
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	has the meaning given in Schedule 9.1 (Staff Transfer);

"Fraud Incident"	an occurrence where a Candidate has been detected or reasonably suspected of carrying out or assisting fraud and/or cheating while on the Test Centre premises;
"Fraud Incident Pack"	an evidence pack that must be sent when a Fraud Incident is reported. This must include the following, as long as they are available: all CCTV footage of the Candidate at the reported test, scanned copies of Candidate ID and signature, and signed witness statements from any Supplier Personnel who downloaded and transferred the CCTV footage to the Authority, describing these actions and introducing the CCTV footage as evidence. This pack must be provided to the Authority within ten (10) working days of a Fraud Incident;
"FTTS Go-live"	the point at which the new Theory Test Service will activate its full service to Customers;
"FTTS Supplier"	<p>(a) a supplier (other than the Supplier) that has entered into a FTTS Supplier Agreement with the Authority; and</p> <p>(b) for the purposes of Schedule 12 only, the Outgoing Supplier;</p>
"FTTS Supplier Agreement"	any contract between the Authority and a supplier to provide premises, software, hardware, goods and/or services to the Authority and/or Service Beneficiaries which forms part of the Theory Test Service;
"General Anti-Abuse Rule"	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
"GDPR"	The General Data Protection Regulation (EU) 2016/679;
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority and/or any Service Beneficiary, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
"Goods"	has the meaning given in clause 9.7 (Supply of Goods);

"Grace Period"	the period from and including the first Operational Service Commencement Date to and including the final Operational Service Commencement Date;
"Group Structure Information and Resolution Commentary"	the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Guarantee"	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 11 (Guarantee)), or any guarantee acceptable to the Authority that replaces it from time to time;
"Guarantor"	Pearson PLC, a company registered in England and Wales with company number 00053723 and whose registered office is at 80 Strand, London, WC2R 0RL;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"Health and Safety Policy"	the health and safety policy of the Authority, any Service Beneficiary and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
"Help Desk"	the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
"HMRC"	HM Revenue & Customs;
"Home Test"	Non-Standard Accommodation enabling a Candidate to take their Theory Test at an agreed location other than a Test Centre;
"Impact Assessment"	has the meaning given in Schedule 8.2 (Change Control Procedure);
"Implementation Plan"	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 6.1 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6.1 (Implementation Plan) from time to time;
"Implementation Services"	the implementation services described as such in the Services Description;
"Implementation Services Commencement Date"	the date on which the Supplier is to commence provision of the first of the Services, being the Effective Date;

"In House Theory Test Centre ("IHTTC")"	location where an organisation with delegated authority from the Authority conducts Theory Tests for its employees "in-house" (i.e. on their premises);
"Incident Management"	the process established by the Authority which enables Suppliers to notify the Authority of incidents that impact the delivery of the Service or threatens the integrity of the Service;
"Indemnified Person"	the Authority, each of the Service Beneficiaries and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority and/or any Service Beneficiary) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
"Independent Controller"	where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;
"Information"	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
"Initial Term"	the period from and including the Effective Date to and including the date that is five (5) years after the Milestone Date for the final Operational Service Commencement Date;
"Initial Upload Date"	the occurrence of an event detailed in Schedule 8.4 (Reports and Records Provisions) Annex 3 (Virtual Library) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;
"Insolvency Event"	<p>with respect to any person means:</p> <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of

arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

	(iv)	(being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
	(g)	any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
"Intellectual Property Rights" or "IPRs"	(a)	copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
	(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;
"Intervention Cause"		has the meaning given in clause 29.1 (Remedial Adviser);
"Intervention Notice"		has the meaning given in clause 29.1 (Remedial Adviser);
"Intervention Period"		has the meaning given in clause 29.2.3 (Remedial Adviser);
"Intervention Trigger Event"	(a)	any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;
	(b)	a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
	(c)	the Supplier accruing in aggregate 100 or more Service Points (in terms of the number of points allocated) in any period of three (3) months;
	(d)	the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or
	(e)	the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date;

"IPRs Claim"	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
"IT"	information and communications technology;
"IT Environment"	the Authority System and the Supplier System;
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of processing;
"Key Milestone"	the Milestones identified in the Implementation Plan as key milestones;
"Key Performance Indicator"	the key performance indicators set out in Table 1 of Part I of Annex 1 of Schedule 2.2 (Performance Levels);
"Key Personnel"	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (Key Personnel) against each Key Role as at the Effective Date or as amended from time to time in accordance with clauses 14.5 and 14.6 (Key Personnel);
"Key Roles"	a role described as a Key Role in Schedule 9.2 (Key Personnel) and any additional roles added from time to time in accordance with clause 14.4 (Key Personnel);
"Key Sub-contract"	each Sub-contract with a Key Sub-contractor;
"Key Sub-contractor"	any Sub-contractor: <ul style="list-style-type: none"> (a) 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; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;

"KPI Failure"	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
"KPI Service Threshold"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 (Performance Levels);
"Law"	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 Supplier is bound to comply;
"LED"	the Law Enforcement Directive (EU) 2016/680;
"Letter of Authority"	a letter provided by the Authority confirming a prior arrangements or accommodation;
"Letter of Entitlement"	a temporary letter confirming driving licence details issued by DVA;
"Licencing Authority"	DVLA and DVA;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority and/or any Service Beneficiary for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Local Bank Holidays"	England, Wales, Scotland and Northern Ireland national bank holidays;
"Losses"	losses, liabilities, damages, costs 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"	has the meaning given in background clause (B);
"Maintenance Schedule"	shall have the meaning set out in clause 9.4 (Maintenance);
"Malicious Software"	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"	the management information specified in Schedule 2.2 (Performance Levels), Schedule 7.1 (Charges and Invoicing) and Schedule 8.1 (Governance) to be provided by the Supplier to the Authority;

"Material KPI Failure"	<ul style="list-style-type: none"> (a) a Serious K PI Failure; (b) a Severe KPI Failure; or (c) a failure by the Supplier to meet a KPI Service Threshold;
"Material PI Failure"	<ul style="list-style-type: none"> (a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or (b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;
"Measurement Period"	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually);
"Milestone"	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
"Milestone Achievement Certificate"	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (Testing Procedures);
"Milestone Adjustment Payment Amount"	in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula: <p style="margin-left: 40px;">A – B</p> <p>where:</p> <ul style="list-style-type: none"> (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Service terminated) relating to that CPP Milestone; and (b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;
"Milestone Adjustment Payment Notice"	has the meaning given in clause 34.7 (Payments by the Supplier);

"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	a payment identified in Schedule 7.1 (Charges and Invoicing) to be made following the issue of a Milestone Achievement Certificate;
"Milestone Retention"	has the meaning given in Schedule 7.1 (Charges and Invoicing);
"Minor KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 (Performance Levels);
"Model Office"	a testing environment (described in further detail in Schedule 6.2 (Testing)) hosted on the Authority's premises used to conduct unit, system and integration testing. TCN Suppliers will be required to provide software and hardware (equivalent to that outlined in Annex C of Schedule 2.1 (Services Description)) to support this environment. Software components from designated FTTS Suppliers will be required to be integrated into a common test environment (hosted by the Authority) at this stage;
"month"	a calendar month and "monthly" shall be interpreted accordingly;
"Multi-Party Dispute Resolution Procedure"	has the meaning given in Paragraph 9.1 of Schedule 8.3 (Dispute Resolution Procedure);
"Multi-Party Procedure Initiation Notice"	has the meaning given in Paragraph 9.2 of Schedule 8.3 (Dispute Resolution Procedure);
"New Releases"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Non-trivial Customer Base"	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
"Non-retained Deliverables"	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;
"Non-Standard Accommodations"	additional support that can be provided to Candidates who have a reading difficulty, disability or health condition that cannot be booked online;
"Notifiable Default"	shall have the meaning given in clause 27.1 (Rectification Plan Process);

"Object Code"	software and/or data in machine-readable, compiled object code form;
"Occasion of Tax Non-Compliance"	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier 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;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier 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 Effective Date or to a civil penalty for fraud or evasion;</p>
"Offline Test"	Theory Tests conducted offline (not including as a result of Internet outages) at permanent Test Centres;
"Open Book Data"	has the meaning given in Schedule 7.5 (Financial Reports and Audit Rights);
"OSS"	the Open Source Software listed in Schedule 5 (Software);
"Open Source Software"	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating Environment"	the Authority System and the Sites;
"Operational Change"	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <p>(a) will not affect the Charges and will not result in any other costs to the Authority and/or any Service Beneficiary;</p> <p>(b) may change the way in which the Services are delivered but will not adversely affect</p>

	the output of the Services or increase the risks in performing or receiving the Services;
	(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's and/or any Service Beneficiary's IT infrastructure; and
	(d) will not require a change to this Agreement;
"Operational Hours"	in relation to any Service, the hours for which that Service is to be operational as set out in Schedule 2.1 (<i>Services Description</i>);
"Operational Service Commencement Date"	in relation to an Operational Service, the later of: <ul style="list-style-type: none"> (a) the date identified in the Implementation Plan upon which the Operational Service is to commence; and (b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
"Operational Services"	the operational services described as such in the Services Description;
"Oral Language Modifier ("OLM")"	a person who provides reasonable adjustment in tests for Candidates who require a level of language support beyond that provided by a reader;
"Oral Language Modification"	the support to provide reasonable adjustment in tests for Candidates who require a level of language support beyond that provided by a reader;
"Other TCN Regions"	Region A (Lot 1) and Region C (Lot 3) forming the other Lots for TCN;
"Other Supplier"	any supplier to the Authority and/or any Service Beneficiary (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Outgoing Supplier"	Pearson Professional Assessments Limited, company number 04904325;
"Outline Implementation Plan"	the outline plan set out at Annex 1 of Schedule 6.1 (Implementation Plan);
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Partial Termination"	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in clauses 33.1.1 and 33.2.2 (Termination by the Authority) or 33.3.2

	(Termination by the Supplier) or otherwise by mutual agreement by the Parties;
"Parties" and "Party"	have the meanings respectively given on page 1 of this Agreement;
"Performance Failure"	a KPI Failure or a PI Failure;
"Performance Indicators"	the Key Performance Indicators and the Subsidiary Performance Indicators;
"Permitted Maintenance"	has the meaning given in clause 9.4 (Maintenance);
"Performance Monitoring Report"	has the meaning given in Schedule 2.2 (Performance Levels);
"Personal Data"	has the meaning given in the GDPR;
"Personal Data Breach"	has the meaning given in the GDPR;
"PI Failure"	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
"PI Service Threshold"	shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part I of Annex 1 of Schedule 2.2 (Performance Levels);
"Pilot Office"	a nominated Test Centre Site which will allow the Authority to approve physical, technical and procedural readiness of a Test Centre, in line with the requirements outlined in Schedule 2.1. A Pilot Office will be provided for each Theory Test delivery method, and the Pilot Office site will be agreed between the Parties prior to Testing commencing;
"Preceding Services"	has the meaning given in clause 5.2.2 (Standard of Services);
"Preferred Date"	the date a Candidate provides at the time of Booking that is their preferred date to take their Theory Test;
"Preferred Test Centre"	the Test Centre first chosen by a Candidate at the time of Booking;
"Processor"	has the meaning given to it under the GDPR;
"Processor Personnel"	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
"Prohibited Act"	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority and/or any Service Beneficiary a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p>

- (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 this Agreement;
- (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 (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority and/or any Service Beneficiary; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Project Board”

has the meaning given to it in Schedule 8.1 (Governance);

“Project Specific IPRs”

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;

but shall not include the Supplier Background IPRs or the Specially Written Software;

“Protective Measures”

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 adopted by it;

"Public Sector Dependent Supplier"	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 and CNI Contract Information"	the information requirements set out in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Quality Plans"	has the meaning given in clause 6.1 (Quality Plans);
"Quarter"	the first three (3) Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
"Recipient"	has the meaning given in clause 21.1 (Confidentiality);
"Records"	has the meaning given in Schedule 8.4 (Reports and Records Provisions);
"Rectification Plan"	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
"Rectification Plan Failure"	<ul style="list-style-type: none"> (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in clauses 27.4 (Submission of the draft Rectification Plan) or 27.8 (Agreement of the Rectification Plan); (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to clause 27.7 (Agreement of the Rectification Plan); (c) the Supplier failing to rectify a material Default within the later of: <ul style="list-style-type: none"> (i) thirty (30) Working Days of a notification made pursuant to clause 27.2 (Notification); and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in

	which the initial Material KPI Failure occurred;
	(e) the Supplier not Achieving a Key Milestone by the expiry of a period of 100 days from the applicable Milestone Date; and/or
	(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;
"Rectification Plan Process"	the process set out in clauses 27.4 (Submission of the Rectification Plan) to 27.9 (Agreement of the Rectification Plan);
"Registers"	has the meaning given in Schedule 8.5 (Exit Management);
"Reimbursable Expenses"	has the meaning given in Schedule 7.1 (Charges and Invoicing);
"Reimbursement Payment"	has the meaning given in Schedule 7.6 (Compensation);
"Relevant Authority"	the Authority or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
"Relevant IPRs"	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority, any Service Beneficiary or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the Specially Written Software, the Project Specific IPR, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software, the Third Party Non-COTS IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and the Third Party COTS IPRs, but excluding any IPRs in the Authority Software and the Authority Background IPRs;
"Relevant Preceding Services"	has the meaning given in clause 5.2.2 (Standard of Services);
"Relevant Requirements"	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 Sub-Contractor(s)"	any sub-contractors engaged or to be engaged by the Supplier in relation to the delivery of its obligations under this Agreement where the sub-contractors are engaged or will be engaged for the provision of works or in relation to the provision of services at a facility under the direct oversight of the Authority and/or any Service Beneficiary;

"Relevant Sub-sub-Contractor(s)"	any sub-contractors engaged or to be engaged by a Relevant Sub-Contractor in relation to the delivery of its obligations under its Sub-contract where the sub-sub-contractors are engaged or will be engaged for the provision of works or in relation to the provision of services at a facility under the direct oversight of the Authority and/or any Service Beneficiary;
"Relevant Tax Authority"	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relief Notice"	has the meaning given in clause 31.2 (Authority Cause);
"Remedial Adviser"	the person appointed pursuant to clause 29.2 (Remedial Adviser);
"Remedial Adviser Failure"	has the meaning given in clause 29.6 (Remedial Adviser);
"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which the Authority and/or any Service Beneficiary receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority and/or any Service Beneficiary internally and/or by any third party;
"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Authority and/or any Service Beneficiary from time to time (or where the Authority and/or any Service Beneficiary is providing replacement Services for its own account, the Authority and/or any Service Beneficiary);
"Request For Information"	a Request for Information under the FOIA or the EIRs;
"Required Action"	has the meaning given in clause 30.1.1 (Step-In Rights);
"Retained Deliverables"	has the meaning given in clause 34.8.2 (Payments by the Supplier);
"Risk Register"	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 (Charges and Invoicing);
"Scheduling Service"	the service provided by the Supplier for supporting the Booking Application by providing appointment availability, reserving appointments and Booking appointments as set out in Schedule 2.1 (<i>Services Description</i>);
"Scheduling System"	the software provided by the Authority that supports the Booking Application by providing Slot availability, reserving Slots and Booking Slots;

"Security Management Plan"	the Supplier's security plan as attached as Annex 2 of Schedule 2.4 (Security Management) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 2.4 (Security Management);
"Selection Criteria"	the Authority's selection criteria which the Supplier was required to meet as part of its tender, as set out in the Authority's pre-qualification questionnaire issued as part of the procurement process for this Agreement;
"Serious KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of (Schedule 2.2 (Performance Levels);
"Service Beneficiaries"	DVA and any other persons as may be specified as such by the Authority from time to time by notice in writing to the Supplier;
"Service Charges"	the periodic payments made in accordance with Schedule 7.1 (Charges and Invoicing) in respect of the supply of the Operational Services;
"Service Continuity Plan"	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning), as may be amended from time to time;
"Service Continuity Services"	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Service Credit Cap"	<p>(a) in the period of twelve (12) months from the first Operational Service Commencement Date to occur after the Effective Date, 15% of the Estimated Initial Service Charges; and</p> <p>(b) during the remainder of the Term, 15% of the Service Charges paid and/or due to be paid to the Supplier under this Agreement in the period of twelve (12) months immediately preceding the Service Period in respect of which Service Credits are accrued;</p>
"Service Credits"	credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 7.1 (Charges and Invoicing);
"Service Incident"	an occurrence of a failure to deliver any part of the Services, in accordance with the Authority Requirements and/or the Performance Indicators;
"Service Manager"	the individuals appointed as such by the Authority and the Supplier through whom the Services shall be managed day-to-day;

"Service Period"	<p>a calendar month, save that:</p> <p>(a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and</p> <p>(b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;</p>
"Service Points"	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 2.2 (Performance Levels);
"Services"	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (Services Description);
"Service Transfer Date"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Services Description"	the services description set out in Schedule 2.1 (Services Description);
"Session"	a Weekday, evening or Saturday scheduled opening period at a Test Centre;
"Severe KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of Annex 1 of Schedule 2.2 (Performance Levels);
"Sites"	<p>any premises (including the Authority Premises, the Supplier's premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
"Slot"	the period of time made available for an appointment to be booked;
"SME"	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;

"Software"	Specially Written Software, Supplier Software and Third Party Software;
"Software as a Service"	Software which is provided to the market as a service rather than as a tangible good and usually made available over the internet;
"Software Supporting Materials"	has the meaning given in clause 17.1.2 (Specially Written Software and Project Specific IPRs);
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Standard Accommodations"	additional support that can be provided to Candidates who have a reading difficulty, disability or health condition which can be booked online and facilitated through the Test Engine;
"Standards"	the standards, policies and/or procedures identified in Schedule 2.3 (Standards);
"Step-In Notice"	has the meaning given in clause 30.1 (Step-In Rights);
"Step-In Trigger Event"	<ul style="list-style-type: none">(a) any event falling within the definition of a Supplier Termination Event;(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;(c) a Force Majeure Event that is materially preventing or materially delaying the

	performance of the Services or any material part of the Services;
	(d) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
	(e) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under clause 30 (Step-In Rights) is necessary;
	(f) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
	(g) a need by the Authority to take action to discharge a statutory duty;
"Step-Out Date"	has the meaning given in clause 30.5.2 (Step-In Rights);
"Step-Out Notice"	has the meaning given in clause 30.5 (Step-In Rights);
"Step-Out Plan"	has the meaning given in clause 30.6 (Step-In Rights);
"Strategic Supplier"	those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
"Sub-contract"	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (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"	any third party with whom: <ul style="list-style-type: none"> (a) the Supplier 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;
"Sub-processor"	any third party appointed to process Personal Data on behalf of the Processor related to this Agreement;
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;

"Subsidiary Performance Indicator"	the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2.2 (Performance Levels);
"Successor Body"	has the meaning given in clause 36.4 (Assignment and Novation);
"Supply Chain Transparency Report"	the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.4 (Reports and Records Provisions);
"Supplier Background IPRs"	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
"Supplier COTS Background IPRs"	<p>Any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
"Supplier COTS Software"	<p>Supplier Software (including Open Source Software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
"Supplier Dependency"	any dependency identified in paragraph 1 (Supplier Dependencies) of Appendix 1 of Schedule 12 (Collaboration and Interface Obligations) and "Supplier Dependencies" shall be interpreted accordingly;
"Supplier Equipment"	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the

	Authority and/or any Service Beneficiary) for the provision of the Services (including the Model Office);
"Supplier Group"	the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier Non-COTS Background IPRs"	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority (and/or any Service Beneficiary) and that are not Supplier COTS Background IPRs;
"Supplier Non-COTS Software"	Supplier Software that is not Supplier COTS Software;
"Supplier Non-Performance"	has the meaning given in clause 31.1 (Authority Cause);
"Supplier Personnel"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
"Supplier Profit"	has the meaning given in Schedule 7.1 (Charges and Invoicing);
"Supplier Profit Margin"	has the meaning given in Schedule 7.1 (Charges and Invoicing);
"Supplier Representative"	the representative appointed by the Supplier pursuant to clause 11.3 (Representatives);
"Supplier Software"	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (Software);
"Supplier Solution"	the Supplier's solution for the Services set out in Schedule 4.1 (Supplier Solution) including any Annexes of that Schedule;
"Supplier System"	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
"Supplier Termination Event"	<p>(a) the Supplier's level of performance constituting a Critical Performance Failure;</p> <p>(b) the Supplier committing a material Default which is irremediable;</p> <p>(c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in clause 25.4.4 (Financial Limits);</p>

- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) clause 19 (IPRs Indemnity);
 - (ii) clause 39.6.2 (Prevention of Fraud and Bribery);
 - (iii) Paragraph 6 of Schedule 7.4 (Financial Distress); and/or
 - (iv) Paragraphs 6.9, 6.15.2, 8.12, 9.8 and 11.4 of Schedule 2.4 (Security Management);
 - (v) Paragraph 12 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
- (g) the representation and warranty given by the Supplier pursuant to clauses 3.2.8 and/or 3.2.9 (Warranties) being materially untrue or misleading;
- (h) the Supplier committing a material Default under clauses 10.10 (Promoting Tax Compliance) or failing to provide details of steps being taken and mitigating factors pursuant to clause 10.10 (Promoting Tax Compliance) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following clauses:
 - (i) clause 5.5.11 (Services);
 - (ii) clause 23 (Protection of Personal Data);
 - (iii) clause 22 (Freedom of Information);
 - (iv) clause 21 (Confidentiality); and
 - (v) clause 35 (Compliance); and/or
 - (vi) in respect of any security requirements set out in Schedule 2.1 (Services Description), Schedule 2.4 (Security Management) or the Baseline Security Requirements; and/or

- (vii) in respect of any requirements set out in Schedule 9.1 (Staff Transfer);
- (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (Benchmarking);
- (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (l) the Guarantee ceasing 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);
- (m) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control; or
- (n) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to clause 15.10 (Appointment of Key Sub-contractors); or
- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (Staff Transfer);
- (p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
- (q) a failure by the Supplier to comply in the performance of the Services with legal

	obligations in the fields of environmental, social or labour law;
"Target Performance Level"	the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 2.2 (Performance Levels);
"TCN Regions"	three geographical compositions for the delivery of the Test Centre Network;
"Term"	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
"Termination Assistance Notice"	has the meaning given in Paragraph 5.1 of Schedule 8.5 (Exit Management);
"Termination Assistance Period"	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (Exit Management);
"Termination Date"	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
"Termination Payment"	the payment determined in accordance with Schedule 7.2 (Payments on Termination);
"Termination Services"	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (Exit Management), and any other services required pursuant to the Termination Assistance Notice;
"Test Centre"	any Site (or part thereof) where Theory Tests are delivered in a secure invigilated space. The facility may be permanent or temporary and includes shared accommodation;
"Test Centre Network ("TCN")"	the Test Centre estate and facilities services to the Theory Test Service;
"Test Delivery Assistants"	a person who supports the delivery of Non-Standard Accommodations for the Theory Test, e.g.interpreter, OLMs;
Test Engine	the software and service enabling the delivery of tests to Candidates and management of tests through

admissions and invigilation provided by the Test Engine Supplier;

Test Engine Supplier	the supplier of Test Engine pursuant to a FTTS Supplier Agreement with the Authority;
"Test Issues"	has the meaning given in Schedule 6.2 (Testing Procedures);
"Test Lab"	the area of the Test Centre dedicated to Candidates completing their Theory Test only;
"Tests" and "Testing"	any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (Testing Procedure) and "Tested" shall be construed accordingly;
"Test Success Criteria"	has the meaning given in Schedule 6.2 (Testing Procedures);
"Test Type"	a description of which category of vehicle or driver/rider the Theory Test relates to;
"Theory Test"	a test of driving, riding or instructing theoretical knowledge, skills and understanding;
"Theory Test Service"	the provision of premises, hardware, software and/or any related functions and activities in relation to the end to end Theory Test service;
"Third Party Auditor"	an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 8.4 (Reports and Records Provisions);
"Third Party Beneficiary"	has the meaning given in clause 43.1 (Third Party Rights);
"Third Party Contract"	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.4 (Third Party Contracts);
"Third Party COTS IPRs"	Third Party IPRs that: (a) the Supplier or relevant third party makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base;
"Third Party COTS Software"	Third Party Software (including Open Source Software) that:

	(a) the Supplier or relevant third party makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
	(b) has a Non-trivial Customer base;
"Third Party IPRs"	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Non-COTS IPRs"	Third Party IPRs that are not Third Party COTS IPRs;
"Third Party Non-COTS Software"	Third Party Software that is not Third Party COTS Software;
"Third Party Provisions"	has the meaning given in clause 43.1 (Third Party Rights);
"Third Party Services"	any services (other than the Services provided to the Authority and/or the Service Beneficiaries pursuant to this Agreement) that the Supplier, any Sub-contractor or any third party provides to any person(s) from any Supplier Site(s) as approved by the Authority in accordance with clause 7A;
"Third Party Software"	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (Software) and including OSS;
"Trainer Booker"	a driving instructor or trainer, who uses the Service to book and manage driving and motorcycle Theory Tests on behalf of their pupils and who can name the Candidate shortly before the test Slot;
"Transferring Assets"	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (Exit Management);
"Transferring Authority Employees"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Transferring Former Supplier Employees"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Transferring Supplier Employees"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Transparency Information"	has the meaning given to it in clause 22.1 (Transparency and Freedom of Information);
"Transparency Reports"	has the meaning given to it in Schedule 8.4 (Reports and Records Provisions);
"UK"	the United Kingdom;

"UK Public Sector Business"	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 Sector / CNI Contract Information"	the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Unacceptable KPI Failure"	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
"Unrecovered Payment"	has the meaning given in Schedule 7.2 (Payments on Termination);
"Update Requirement"	the occurrence of an event detailed in Schedule 8.4 (Reports and Records Provisions) Annex 3 (Virtual Library) which requires the Supplier to update the relevant information hosted on the Virtual Library;
"Updates"	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrades"	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
"Valid"	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"VAT"	value added tax as provided for in the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Virtual Library"	the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 8.4 (Reports and Records Provisions);
"Weekday"	Monday – Friday, 8:30am-6:00pm, excluding bank holidays applicable to the country in which the Test Centre is located; and
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

