

DATED 22nd April 2015

(1) THE DEPARTMENT FOR WORK AND PENSIONS

- and -

(2) WILLIAMS LEA LIMITED

**MANAGED SERVICES
CONTRACT**

UI_DWP_100922
(ECM 2569)

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SCHEDULES:

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THIS CONTRACT is made on

22nd April

2015

BETWEEN:

- (1) **THE DEPARTMENT FOR WORK AND PENSIONS** whose principal place of business is at Caxton House, 6-12 Tothill Street, London SW1H 9NA (the "Authority"); and
- (2) **WILLIAMS LEA LIMITED** which is a company registered in England under company number [redacted] and whose registered office is at 29 St John's Lane, London, EC1M 4NA (the "Supplier").

BACKGROUND:

- A The Authority placed a contract notice 2014/S 12-016990 on 15th January 2014 (the "OJEU Notice") in the Official Journal of the European Union seeking tenders from providers of transaction print services interested in entering into a contract for the supply of such Services to the Authority.
- B On 26th September 2014 the Authority issued an invitation to tender (the "Invitation to Tender") for the provision of transaction print services.
- C In response to the Invitation to Tender, the Supplier submitted the Tender to the Authority on 4th November 2014 through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- D On the basis of the Tender, the Authority selected the Supplier to enter into an agreement to provide the Services to the Authority from time to time in accordance with this Contract.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless 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 Contract, 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 Crown 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 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";
- 1.2.6 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;
- 1.2.7 references to "representations" shall be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under this Contract;
- 1.2.8 references to "clauses" and "schedules" are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the schedule in which these references appear; and
- 1.2.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 In the event of and only to the extent of any conflict between the clauses and the schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.3.1 the clauses;
 - 1.3.2 the schedules (except schedule 16 (*Tender*));
 - 1.3.3 schedule 16 (*Tender*).
- 2. **DUE DILIGENCE**
 - 2.1 The Supplier acknowledges that:
 - 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
 - 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 raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - 2.1.4 has entered into this Contract in reliance on its own due diligence alone.
 - 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract 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 misinterpretation of the requirements of the Authority in this Contract; and/or

- 2.2.2 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. REPRESENTATIONS AND WARRANTIES

3.1 Each Party represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
- 3.1.2 this Contract 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 (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
- 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) 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 all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Contract;
- 3.2.3 its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any Contract by which it is bound;
- 3.2.4 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation 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 Contract;
- 3.2.5 as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Services by the Authority;

- 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
 - 3.2.8 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 Contract;
 - 3.2.9 it is not affected by an Insolvency Event and 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
 - 3.2.10 for the Contract Period and for a period of 12 Months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Authority which have been associated with the provision of the Services without Approval or the prior written consent of the Authority.
- 3.3 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 undertaking in this Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under clauses 3.1 and 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.
- 3.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.
- 4. CONDITIONS**
- 4.1 The award of this Contract shall be conditional upon the Supplier delivering to the Authority:
- 4.1.1 an executed Guarantee from a Guarantor on or prior to the **29th May 2015**;
 - 4.1.2 ISO 27001:2013 accreditations for Supplier Sites used in the provision of the Services by **30th April 2015**;
 - 4.1.3 ISO 22301:2012 accreditations for Supplier Sites used in the provision of the Services by **30th September 2015**; and
 - 4.1.4 a complete and successful end to end test of the Supplier's Business Continuity and Disaster Recovery Plan in accordance with clause 14 and schedule 9 (*Business Continuity and Disaster Recovery*) by **30th June 2015**.
- 4.2 If the Supplier fails to provide any of the documentation required by clause 4.1 by the relevant agreed date then the Authority shall be entitled to terminate this Contract in accordance with clause 43.

- 4.3 The Authority may in its sole discretion at any time agree to waive compliance with the requirements in clause 4.1 by giving the Supplier notice in writing.

5. CONTRACT PERIOD

- 5.1 This Contract shall take effect on the Commencement Date and shall expire either:

5.1.1 at the end of the Initial Period; or

5.1.2 where the Authority elects to extend the Initial Period (or following expiry of the Initial Extension Period) in accordance with clause 5.2 below, at the end of the relevant Extension Period,

unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law.

- 5.2 The Authority may elect to extend the duration of this Contract in respect of any or all of the Services for up to two individual Extension Periods from the expiry of the Initial Period (or if for a second Extension Period, from expiry of the first Extension Period) by giving the Supplier no less than six Months' written notice.

- 5.3 The charges applicable to any Extension Period pursuant to clause 5.2 shall be those applicable during the Year preceding the date when the Extension Period commences unless otherwise agreed by the parties. The Authority shall in addition pay any reasonable additional costs of the Supplier which are incurred as a direct result of the Extension Period, save to the extent such costs are recoverable from a Replacement Supplier in accordance with the provisions of schedule 10 (*Exit*) or schedule 11 (*Staff Transfer*) and provided the Supplier shall use all reasonable endeavours to mitigate such additional costs.

- 5.4 If the Authority elects to exercise its option to extend the Contract pursuant to clause 5.2 in respect of some but not all of the Services, the Services in respect of which it does not exercise its option ("**Expired Services**") shall be treated as though this Contract had expired, as regards those Expired Services, at the end of the then-current Initial Period or Extension Period (as appropriate) and the provisions of clause 47 (*Consequences of Expiry or Termination*) shall apply to the Expired Services.

6. APPOINTMENT

- 6.1 The Authority appoints the Supplier to be, and the Supplier agrees to act as the service provider of the Authority's bulk printing service requirements and to provide the Services during the Contract Period in accordance with this Contract.
- 6.2 The Supplier acknowledges that it is not being appointed as an exclusive supplier of any of the Services and the Authority may, at any time perform any part of the Services itself or procure them from a Third Party. The Supplier will provide such assistance to the Authority or a Third Party as the Authority reasonably requests.
- 6.3 The Supplier acknowledges and agrees that whilst the Authority is its counter party under this Contract, the Services provided by the Supplier may be utilised by other Central Government Bodies on the basis of the terms and Contract Charges outlined in this Contract, in which circumstances the Parties shall comply with clause 22 (*Change*).

7. IMPLEMENTATION PLAN

7.1 Implementation Overview

- 7.1.1 The Parties shall implement the provisions set out in this clause 7 and schedule 4 (*Implementation Plan and Transformation Plan*) so as to ensure the orderly and seamless transition of the provision of the Services by the Authority's incumbent supplier for bulk print services to the Supplier.
- 7.1.2 The Parties acknowledge that Implementation and delivery of the Services shall, in part, be dependent on the Supplier engaging with third party contractors retained by the Authority. The parties shall use all reasonable endeavours to identify any such third party dependencies and, once identified, both parties shall use reasonable endeavours to ensure that such dependencies are appropriately addressed during Implementation and delivery of the Services.
- 7.1.3 Notwithstanding clause 7.1.2 above the Supplier acknowledges and agrees that the successful implementation of the Services will require the Supplier to engage with the Authority's previous supplier of the Services ("**Previous Supplier**") and that as such the Supplier shall factor into its Implementation Plan such engagement including the potential requirement for the:
 - 7.1.3.1 purchase of certain software licences from such Previous Supplier that are necessary for delivery of the Services as set out in appendix f to annex 2 of schedule 2;
 - 7.1.3.2 novation of certain Third Party contracts held by the Previous Supplier to the Supplier;
 - 7.1.3.3 purchase of Goods and/or stock from the Previous Supplier;
 - 7.1.3.4 the transfer of know-how and knowledge in the delivery of the Services from the Previous Supplier to the Supplier.
- 7.1.4 The Parties acknowledge and agree that the successful implementation of the Services pursuant to this clause 7 and schedule 4 (*Implementation Plan and Transformation Plan*) shall be assessed in accordance with the Test Plan.

7.2 Formation of the Implementation Plan

- 7.2.1 As part of its Tender, the Supplier has provided an outline implementation plan for the transition of the Services, as set out in the Supplier Solution in schedule 16 (*Tender*) which takes into account the Supplier's proposed Implementation Milestones and all relevant dependencies known to, or which should reasonably be known to the Supplier as at the Commencement Date (including the information set out in part A to schedule 4 (*Implementation Plan*)).
- 7.2.2 Within 15 Working Days of the Commencement Date the Supplier shall submit a further updated draft Implementation Plan, which builds on (and unless agreed otherwise is not contrary to) the outline plan referred to at clause 7.2.1 and meets the Authority's requirements set out in schedule 4 (*Implementation Plan and Transformation Plan*), to the Authority for Approval (such decision of the Authority to Approve or not shall not be unreasonably delayed or withheld). The Parties agree that the Approved Implementation Plan shall be the Implementation

Plan for the purposes of paragraph 2.1 of schedule 4 (*Implementation Plan and Transformation Plan*).

- 7.2.3 Subject to clause 7.3.4, the Supplier shall keep the Implementation Plan under review in accordance with the Authority's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

7.3 Compliance with the Implementation Plan

- 7.3.1 The Supplier shall comply with the Implementation Plan set out in schedule 4 (*Implementation Plan and Transformation Plan*).
- 7.3.2 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Implementation Milestone identified in the Implementation Plan is Achieved on or before its Implementation Milestone Date.
- 7.3.3 The Supplier shall monitor its performance against the Implementation Plan and Implementation Milestones (if any) and any other requirements of the Authority as set out in this Contract and report to the Authority on such performance.
- 7.3.4 Changes to the Implementation Plan shall only be made in accordance with the Variation Procedure. The Supplier shall not attempt to postpone any of the Implementation Milestones using the Variation Procedure or otherwise (except in the event of a Authority Cause which affects the Supplier's ability to achieve an Implementation Milestone by the relevant Implementation Milestone Date).
- 7.3.5 Where so specified by the Authority in the Implementation Plan or elsewhere in this Contract, time in relation to compliance with a date, Implementation Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Implementation Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

7.4 Rectification of Delay in Implementation

- 7.4.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract:
- 7.4.1.1 it shall:
- (a) notify the Authority as soon as practically possible and no later than within 2 Working Days from becoming aware of the Delay or anticipated Delay; and
 - (b) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (c) comply with the Authority's instructions in order to address the impact of the Delay or anticipated Delay; and

- (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

7.4.1.2 if the Delay or anticipated Delay relates to an Implementation Milestone in respect of which a Delay Payment has been specified in the Implementation Plan, clause 7.5 (*Delay Payments*) shall apply.

7.5 Delay Payments

7.5.1 Subject to a Grace Period applying to an applicable Implementation Milestone, if the Supplier has failed to Achieve the Completion Implementation Milestone (to which a Delay Payment applies) by the relevant Completion Implementation Milestone Date, the Supplier shall pay to the Authority the relevant Delay Payments (calculated in accordance with part B of schedule 3 (*Delay Payments*)) and the following provisions shall apply:

7.5.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to Achieve the Completion Implementation Milestone;

7.5.1.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve the Completion Implementation Milestone by the Completion Implementation Milestone Date except where:

- (a) the Authority is otherwise entitled to or does terminate this Contract pursuant to clause 43 (*Authority Termination Rights*) except clause 43.6 (*Termination Without Cause*); or
- (b) the delay exceeds the period of 60 days commencing on the Implementation Milestone Date plus any applicable Grace Period;

7.5.1.3 the Delay Payments will accrue on a daily basis from the Completion Implementation Milestone Date and shall continue to accrue until the date when the Completion Implementation Milestone is Achieved (unless otherwise specified by the Authority in the Implementation Plan); and

7.5.1.4 failure by the Supplier to Achieve the Completion Implementation Milestone by the completion Implementation Milestone Date shall follow the same process as set out in paragraph 7.5.1.1 to 7.5.1.3 above.

7.5.2 Both parties acknowledge and agree that whilst Delay Payments will accrue for failure to Achieve a relevant Implementation Milestone, such Delay Payments shall only become payable if the Supplier fails to Achieve the Completion Implementation Milestone by the Completion Implementation Milestone Date in which circumstance all accrued Delay Payments shall immediately become due and payable (notwithstanding that further Delay Payments will continue to accrue until all Implementation Milestones are Achieved). For the avoidance of doubt if the Supplier accrued Delay Payments during Implementation but still Achieves

the Completion Implementation Milestone by the Completion Implementation Milestone Date, no Delay Payments shall be payable.

7.5.3 No payment or concession to the Supplier by the Authority or other act or omission of the Authority shall in any way affect the rights of the Authority to recover the Delay Payments or be deemed to be a waiver of the right of the Authority to recover any such damages unless such waiver complies with clause 50 (*Waiver and Cumulative Remedies*) and refers specifically to a waiver of the Authority's rights to claim Delay Payments; and

7.5.4 The Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause 7.5 and Delay Payments shall not be subject to or count towards any limitation on liability set out in clause 37 (*Liability*).

8. SERVICES

8.1 Provision of the Services

8.1.1 The Supplier acknowledges and agrees that the Authority relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Contract.

8.1.2 The Supplier shall ensure that the Services:

8.1.2.1 comply in all respects with the Authority's description and requirement of the Services in schedule 2 (*Services*) or elsewhere in this Contract; and

8.1.2.2 are supplied in accordance with the provisions of this Contract including the Supplier's Solution for the provision of the Services and the Tender.

8.1.3 The Supplier shall be responsible for meeting the Authority's requirements for the Services specified in schedule 2 (*Services*) by providing the Services in accordance with the Supplier Solution. In the event of conflict between the provisions of schedule 2 (*Services*) and the Supplier Solution, the provisions of schedule 2 (*Services*) shall prevail.

8.1.4 The Supplier shall perform its obligations under this Contract in accordance with:

8.1.4.1 all applicable Law;

8.1.4.2 Good Industry Practice;

8.1.4.3 the Standards;

8.1.4.4 the Security Policy; and

8.1.4.5 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 8.1.4.1 to 8.1.4.4.

- 8.1.5 The Supplier shall:
- 8.1.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
 - 8.1.5.2 subject to clause 22 (*Change*), obtain, and maintain throughout the duration of this Contract, 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;
 - 8.1.5.3 ensure that any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Authority;
 - 8.1.5.4 the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority); and
 - 8.1.5.5 the Services are fully compatible with any Authority Property or Authority Assets used by the Supplier in connection with this Contract;
 - 8.1.5.6 minimise any disruption to the Sites and/or the Authority's operations when providing the Services;
 - 8.1.5.7 ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - 8.1.5.8 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 and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
 - 8.1.5.9 assign to the Authority, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
 - 8.1.5.10 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
 - 8.1.5.11 deliver the Services in a proportionate and efficient manner;
 - 8.1.5.12 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by

engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract; and

8.1.5.13 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 Contract.

8.1.6 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.

8.2 Time of Delivery of the Services

The Supplier shall provide the Services from the date(s) specified in the Implementation Plan or elsewhere in this Contract and thereafter for the Contract Period.

8.3 Location and Manner of Delivery of the Services

8.3.1 Except where otherwise provided in this Contract, the Supplier shall provide the Services to the Authority through the Supplier Personnel at the Sites.

8.3.2 The Authority may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Authority Premises, the Authority may carry out such inspection and examination during normal business hours and on reasonable notice.

8.4 Undelivered Services

8.4.1 In the event that any of the Services are not Delivered in accordance with clauses 8.1 (*Provision of the Goods and Services*), 8.2 (*Time of Delivery of the Services*) and 8.3 (*Location and Manner of Delivery of the Services*) ("**Undelivered Services**"), the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

8.4.2 The Authority may, at its discretion and without prejudice to any other rights and remedies of the Authority howsoever arising, deem the failure to comply with clauses 8.1, (*Provision of the Goods and Services*), 8.2 (*Time of Delivery of the Services*) and 8.3 (*Location and Manner of Delivery of the Services*) and meet the relevant Implementation Milestone Date (if any) to be a material Default.

8.5 Obligation to Remedy a Default in the Supply of the Services

Subject to clauses 34.9.2 and 34.9.3 (*IPR Indemnity*) and without prejudice to any other rights and remedies of the Authority howsoever arising (including under clauses 8.4.2 (*Undelivered Services*) and 39 (*Authority Remedies for Default*)), the Supplier shall, where practicable:

8.5.1 remedy any breach of its obligations in this clause within 24 hours of becoming aware of the relevant Default or being notified of the Default by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and

8.5.2 meet all the costs of, and incidental to, the performance of such remedial work.

8.6 Continuing Obligation to Provide the Services

The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services notwithstanding:

- 8.6.1 any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;
- 8.6.2 the existence of an unresolved Dispute; and/or
- 8.6.3 any failure by the Authority to pay any Contract Charges,
- 8.6.4 unless the Supplier is entitled to terminate this Contract under clause 44.1 (*Termination on Authority Cause for Failure to Pay*) for failure by the Authority to pay undisputed Contract Charges.

8.7 Provision of Goods

Where the provision of the Services requires the Supplier to procure specific Goods, the following provisions shall apply:

- 8.7.1 the Supplier shall, in accordance with Good Industry Practice, use its reasonable efforts to procure the best commercial terms (including but best price, lead times and warranties available in the market for the relevant Goods;
- 8.7.2 Goods procured by the Supplier shall meet the requirements set out in schedule 2 (*Services*) or as otherwise agreed between the parties; and
- 8.7.3 the Supplier shall manage the delivery, stock-holding and associated issues relevant to the procurement of the Goods in order that it can provide the Services to the Authority in accordance with the requirements of this Contract.

8.8 Warranty of the Goods

- 8.8.1 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.
- 8.8.2 If the Authority shall within such Warranty Period or within 25 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Authority howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Authority shall elect) free of charge.

8.9 Projects and Services

- 8.9.1 From time to time the Authority may request the Supplier to quote for the implementation and provision of certain Projects.
- 8.9.2 The Parties acknowledge and agree that Projects consist of services that, as at the Commencement Date, are outside the scope of the Authority's requirements as set

out at schedule 2 (*Services*) but which are ancillary to the provision of the Services and/or involve the introduction of New Products into the provision of the Services.

8.9.3 Where the Authority seeks to implement a Project, it will notify the Supplier of its requirements for the Project and require the Supplier to carry out an assessment (including written statement) as to how it would propose to implement the Project into its provision of the Services, such assessment to include:

8.9.3.1 details of how the Supplier would deliver the Project in the context of this Contract;

8.9.3.2 details of the cost (if any) of implementing the Project in accordance with the charging provisions outlined in part A to schedule 3 (*Contract Charges*);

8.9.3.3 details of the ongoing costs associated with the Project in accordance in accordance with the charging provisions outlined in part A to schedule 3 (*Contract Charges*) and its integration into the overall provision of the Services;

8.9.3.4 the Supplier's timetable for implementation of the Project together with any proposals for testing of the Project;

8.9.3.5 such other information as the Authority may reasonably require, either as outlined in its requirements or otherwise notified by the Authority.

8.9.4 All Projects will be incorporated into this Contract via the Variation Procedure.

8.9.5 Projects will be ancillary to the Services until such time as they have been implemented in full, will be subject to a separate requirements and/or specification document and shall only be provided following Authority Approval. Notwithstanding the operational requirements for Projects, all other terms and conditions of this Contract shall apply to the provision of Projects.

9. TRANSFORMATION

9.1 Service Transformation Overview

Following transition of the Services to the Supplier in accordance with clause 7 (*Implementation Plan*), the Parties shall further seek to implement a transformation of the Services in accordance with the provisions of this clause 9 in order that the Authority can seek to meet the challenges of the changing landscape for print services and the digital era.

9.2 Formation of the Transformation Plan

9.2.1 As part of its Tender, the Supplier has provided an outline plan for the transformation of the Services as set out in its Tender, which takes into account the Supplier's proposed Transformation Milestones and all relevant dependencies known, or which should reasonably be known to the Supplier as at the Commencement Date.

- 9.2.2 Within 15 Working Days following Achievement of Implementation the Supplier shall submit a further updated draft Transformation Plan to the Authority for Approval (such decision of the Authority to Approve or not shall be unreasonably delayed or withheld). The Parties agree that the Approved Plan shall be the Transformation Plan for the purposes of part B to schedule 4 (*Transformation Plan*).
- 9.2.3 Subject to clause 9.3.4, the Supplier shall keep the Implementation Plan under review in accordance with the Authority's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the proviso of the Services. The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Transformation Plan.

9.3 Compliance with the Transformation Plan

- 9.3.1 The Supplier shall comply with the Transformation Plan and its obligations set out in part B to schedule 4 (*Transformation Plan*).
- 9.3.2 The Supplier shall perform each of the Transformation Deliverables identified in the Transformation Plan by the applicable date assigned to that Deliverable in the Transformation Plan so as to ensure that each Transformation Milestone identified in the Transformation Plan is Achieved on or before its Transformation Milestone Date.
- 9.3.3 The Supplier shall monitor its performance against the Transformation Plan and Transformation Milestones (if any) and any other requirements of the Authority as set out in this Contract and report to the Authority on such performance.
- 9.3.4 Changes to the Transformation Plan shall only be made in accordance with the Variation Procedure. The Supplier shall not attempt to postpone any of the Transformation Milestones using the Variation Procedure or otherwise (except in the event of a Authority Cause which affects the Supplier's ability to achieve a Transformation Milestone by the relevant Transformation Milestone Date).
- 9.3.5 Where so specified by the Authority in the Transformation Plan or elsewhere in this Contract, time in relation to compliance with a date, Transformation Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Transformation Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

9.4 Rectification of Delay in Transformation

- 9.4.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract in relation to Transformation:
- 9.4.1.1 it shall:
- (a) notify the Authority as soon as practically possible and no later than within 2 Working Days from becoming aware of the Delay or anticipated Delay; and
 - (b) include in its notification an explanation of the actual or anticipated impact of the Delay; and

- (c) comply with the Authority's instructions in order to address the impact of the Delay or anticipated Delay; and
- (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Transformation Delay or anticipated Transformation Delay; and

9.4.1.2 if the Delay or anticipated Delay relates to the Completion Transformation Milestone in respect of which a Transformation Delay Payment has been specified in the Transformation Plan, clause 9.5 (*Transformation Delay Payments*) shall apply.

9.5 Transformation Delay Payments

9.5.1 Subject to a Grace Period applying to an applicable Transformation Milestone, if the Supplier has failed to Achieve a Transformation Milestone (to which a Transformation Delay Payment applies) by the relevant Transformation Milestone Date, the Supplier shall pay to the Authority such Transformation Delay Payments (calculated as set out in part B to schedule 3 (*Delay Payments*)) and the following provisions shall apply:

9.5.1.1 the Supplier acknowledges and agrees that any Transformation Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to Achieve the Transformation Milestone;

9.5.1.2 Transformation Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve the Transformation Milestone by the Transformation Milestone Date except where:

- (a) the Authority is otherwise entitled to or does terminate this Contract pursuant to clause 43 (*Authority Termination Rights*) except clause 43.6 (*Termination Without Cause*); or
- (b) the Delay exceeds the period of 60 days commencing on the Transformation Milestone Date;

9.5.1.3 the Transformation Delay Payments will accrue on a daily basis from the Transformation Milestone Date and shall continue to accrue until the date when the Transformation Milestone is Achieved (unless otherwise specified by the Authority in the Transformation Plan);

9.5.2 Both parties acknowledge and agree that whilst Transformation Delay Payments will accrue for failure to Achieve the relevant Transformation Milestone, such Transformation Delay Payments shall only become payable if the Supplier fails to Achieve the Completion Transformation Milestone by the Completion Transformation Milestone Date in which circumstance all accrued Transformation Delay Payments shall immediately become due and payable (notwithstanding that further Transformation Delay Payments will continue to accrue until all Transformation Milestones are Achieved). For the avoidance of doubt if the Supplier accrues Transformation Delay Payments during Transformation but still Achieves the Completion Transformation Milestone by

the Completion Transformation Milestone Date, no Transformation Delay Payments shall be payable.

9.5.3 No payment or concession to the Supplier by the Authority or other act or omission of the Authority shall in any way affect the rights of the Authority to recover the Transformation Delay Payments or be deemed to be a waiver of the right of the Authority to recover any such damages unless such waiver complies with clause 50 (*Waiver and Cumulative Remedies*) and refers specifically to a waiver of the Authority's rights to claim Transformation Delay Payments.

9.5.4 The Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause 9.5 and Transformation Delay Payments shall not be subject to or count towards any limitation on liability set out in clause 37 (*Liability*).

10. STANDARDS AND QUALITY

10.1 The Supplier shall at all times during the Contract Period comply with the Standards and schedule 7 (*Standards*) and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

10.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Authority, of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with clause 22 (*Change*). Any change to an existing Standard which is included in schedule 7 (*Standards*) shall, in addition, require the Approval of the Authority.

10.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt of the Services is explained to the Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

10.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval and shall be implemented within an agreed timescale.

10.5 Where a standard, policy or document is referred to in schedule 7 (*Standards*) 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 agree the impact of such change.

11. TESTING

11.1 In relation to Implementation the Parties shall comply with any provisions set out in the Test Plan (as specific to Implementation).

11.2 In relation to Transformation, the Parties shall comply with any provisions set out in the Test Plan (as specific to Transformation).

12. SERVICE LEVELS, KPI'S AND SERVICE CREDITS

- 12.1 The Parties shall comply with the provisions of part A of schedule 6 (*Service Levels, Service Credits, KPI's and Performance Monitoring*).
- 12.2 The Supplier shall at all times during the Contract Period provide the Services to meet or exceed the Service Level Performance Criterion.
- 12.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and that it shall entitle the Authority to the rights set out in the provisions of part A of schedule 6 (*Service Levels, Service Credits, KPI's and Performance Monitoring*) including the right to any Service Credits.
- 12.4 In addition to the Service Levels (which potentially attract Service Credits) the Supplier's performance of the Services shall also be measured against the KPI's.
- 12.5 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 12.6 If due to a Default of the Supplier the Services fail to meet the Service Levels contained in schedule 6 (*Service Levels, Service Credits, KPI's and Performance Monitoring*), the Supplier shall promptly notify the Authority of such failure and shall incur Service Credits calculated in accordance with the relevant provisions of schedule 6.
- 12.7 A Service Credit shall be the Authority's exclusive financial remedy for a Service Level Failure except where:
- 12.7.1 the Service Level Failure:
- 12.7.1.1 has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel;
- 12.7.1.2 results in:
- (a) the corruption or loss of any Authority Data (in which case the remedies under clause 35.2.8 (*Protection of Authority Data*) shall also be available); and/or
- (b) the Authority being required to make a compensation payment to one or more third parties; and/or
- 12.7.2 the Authority is otherwise entitled to or does terminate this Contract pursuant to clause 43 (*Authority Termination Rights*) except clause 43.6 (*Termination Without Cause*).
- 12.8 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Contract Charges as a result of such changes, provided that:
- 12.8.1 the total number of Service Levels (which attract Service Credits) does not exceed ten (10);

12.8.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and

12.8.3 there is no change to the At Risk Amount.

13. CRITICAL SERVICE LEVEL FAILURE

13.1 On the occurrence of a Critical Service Level Failure:

13.1.1 any Service Credits that would otherwise have accrued during the relevant SMP shall not accrue; and

13.1.2 the Authority shall (subject to clause 37.2 (*Financial Limits*)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this clause 13.1 shall be without prejudice to the right of the Authority to terminate this Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

13.2 The Supplier:

13.2.1 agrees that the application of clause 13.1 is commercially justifiable where a Critical Service Level Failure occurs; and

13.2.2 acknowledges that it has taken legal advice on the application of clause 13.1 and has had the opportunity to price for that risk when calculating the Contract Charges.

14. BUSINESS CONTINUITY AND DISASTER RECOVERY

The Parties shall comply with the provisions of schedule 9 (*Business Continuity and Disaster Recovery*).

15. DISRUPTION

15.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

15.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.

15.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Contract.

15.4 If the Supplier's proposals referred to in clause 15.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may terminate this Contract for material Default.

- 15.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely caused by the Authority, an appropriate allowance by way of an extension of time will be Approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

16. SUPPLIER NOTIFICATION OF AUTHORITY CAUSE

- 16.1 Without prejudice to any other obligations of the Supplier in this Contract to notify the Authority in respect of a specific Authority Cause (including the notice requirements under clause 44.1.1 (*Termination on Authority Cause for Failure to Pay*)), the Supplier shall notify the Authority as soon as reasonably practicable (and in any event within 2 Working Days of the Supplier becoming aware) that a Authority Cause has occurred or is reasonably likely to occur, giving details of:

- 16.1.1 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract; and
- 16.1.2 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 16.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

17. CONTINUOUS IMPROVEMENT

- 17.1 The Supplier shall have an on-going obligation throughout the Contract Period to identify improvements to the provision of the Services in accordance with this clause 17 with a view to reducing the Authority's costs (including the Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority. As part of this obligation the Supplier shall identify and report to the Authority:

- 17.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- 17.1.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- 17.1.3 changes to the Sites, business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Authority; and/or
- 17.1.4 business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.

- 17.2 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.

- 17.3 The Authority's requirements for the Supplier to identify, report and/or implement is set out in schedule 2 (*Services*) and its performance against such requirements shall be monitored and assessed against the Supplier Performance Management provisions set out in part C to schedule 6 (*Service Levels, Service Credits, KPI's and Performance Monitoring*).
- 17.4 If the Authority wishes to incorporate any improvement identified by the Supplier, the Parties shall comply with, and the improvement shall be implemented in accordance with clause 22 (*Change*).
- 17.5 Where any improvement is implemented in accordance with this clause 17, the improvement may also qualify as a Gainshare Initiative to which Gainshare Payments may apply. The criteria for Gainshare Initiatives and Gainshare Payments is as set out in paragraph 11 to part A of schedule 3 (*Contract Charges*) and the parties hereby agree to comply with the provisions of such paragraph 11 to part A of schedule 3 (*Contract Charges*).

18. CONTRACT GOVERNANCE AND STRUCTURE

The Parties shall comply with their respective obligations set out in schedule 21 (*Governance*).

19. PERFORMANCE MONITORING

- 19.1 Unless otherwise Approved or notified by the Authority, the Supplier shall comply with the monitoring requirements set out in part B of schedule 6 (*Service Levels, KPI's Service Credits and Performance Monitoring*).
- 19.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. Unless the Authority specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 19.3 Notwithstanding the foregoing, the Parties shall comply with the provisions of part C of schedule 6 (*Service Levels, Service Credits and KPI's Performance Monitoring*) in relation to the overall assessment of the Supplier's performance under this Contract.

20. REPRESENTATIVES

- 20.1 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 20.2 The initial Supplier Representative shall be the person identified in schedule 21 (*Governance*) or notified to the Authority in writing by the Supplier within 5 Working Days of the Commencement Date. Any change to the Supplier Representative shall be agreed in accordance with clause 28 (*Supplier Personnel*).
- 20.3 The Authority Representative shall be as otherwise notified by the Authority Representative within 5 Working Days of the Commencement 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.

21. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

21.1 The Supplier shall keep and maintain for 7 years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority.

21.2 The Supplier shall:

21.2.1 keep the records and accounts referred to in clause 21.1 in accordance with Good Industry Practice and Law; and

21.2.2 afford any Auditor access to the records and accounts referred to in clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in clause 21.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including for the following purposes to:

21.2.2.1 verify the accuracy of the Contract Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract);

21.2.2.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

21.2.2.3 verify the Open Book Data;

21.2.2.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;

21.2.2.5 identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

21.2.2.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or the Guarantor and/or any Sub-Contractors or their ability to perform the Services;

21.2.2.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

21.2.2.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;

21.2.2.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;

- 21.2.2.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 21.2.2.11 review any Performance Monitoring Reports provided under part B of schedule 6 (*Service Levels, Service Credits KPI's and Performance Monitoring*) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 21.2.2.12 verify the accuracy and completeness of any information delivered or required by this Contract;
 - 21.2.2.13 review the Supplier's quality management systems (including any quality manuals and procedures);
 - 21.2.2.14 review the Supplier's compliance with the Standards;
 - 21.2.2.15 inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
 - 21.2.2.16 review the integrity, confidentiality and security of the Authority Data.
- 21.3 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.
- 21.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 21.4.1 all reasonable information requested by the Authority within the scope of the audit;
 - 21.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 21.4.3 access to the Supplier Personnel.
- 21.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 21, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.
- 22. CHANGE**
- 22.1 Variations and Operational Change**
- 22.1.1 The Parties acknowledge and agree that due to the nature of the Services, the Transformation Plan and continuous improvement obligations of the Supplier in

its performance of the Services, the way in which the Services will be provided during the Contract Period is likely to be dynamic and subject to operational change.

22.1.2 Subject to the provisions of this clause 22 and schedule 3 (*Contract Charges, Delay Payments And Payment And Invoicing*) either Party may request a change to this Contract or the way in which the Services are provided ("Change") provided that such Change does not amount to a material change of this Contract within the meaning of the Regulations and the Law.

22.1.3 Some Changes may be subject to a formal Variation as more specifically detailed in clause 22.2, however the Parties agree that Minor Changes, Changes to the way in which the Services are provided that do not have a financial impact on the Supplier, temporary changes, the introduction of new document types, benefit types or similar need not necessarily be subject to the formal Variation Procedure, but rather to the Operational Change Protocol as set out at part B to schedule 13 (*Change, Variations and Operational Change Protocol*). Notwithstanding the foregoing, the parties acknowledge and agree that Projects and Major Changes will be subject to the Variation Procedure.

22.1.4 In deciding whether a Change is subject to the Variation Procedure or the Operational Change Protocol on receipt or on giving notice of a Change, the Authority may require the Supplier to carry out an impact assessment of the proposed Change on the Services (the "Impact Assessment"). The Impact Assessment shall be completed in good faith, at the Supplier's own cost, and shall include:

22.1.4.1 details of the impact of the proposed Change on the Services and the Supplier's ability to meet its obligations under this Contract;

22.1.4.2 details of the cost (if any) of implementing the proposed Change;

22.1.4.3 details of the ongoing costs required by the proposed Change when implemented, including any increase or decrease in the Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

22.1.4.4 a timetable for implementation of the Change, together with any proposals for the testing of the Change (if applicable); and

22.1.4.5 such other information as the Authority may reasonably request in (or in response to) the Change request.

22.1.5 On receipt of the Impact Assessment the Authority shall, within 10 Working Days, notify the Supplier if it considers the proposed Change should or should not be implemented and if it should be implemented, whether it should be implemented in accordance with:

22.1.5.1 the formal Variation Procedure as detailed in clause 22.2; or

22.1.5.2 the Operational Change Protocol pursuant to clause 22.3.

- 22.1.6 Unless the Supplier disputes the Authority's notification pursuant to clause 22.1.5 it shall implement the Change in accordance with such notification. If the Supplier does dispute the notification, the Parties shall use every effort to resolve the issue, failing which the matter shall be referred to the Dispute Resolution Procedure.
- 22.1.7 Regardless of whether the Change is implemented via the Variation Procedure or via the Operational Change Protocol, the costs and expenses of the Supplier in instigating the Change shall be for the account of the Supplier.

22.2 Variation Procedure

- 22.2.1 If pursuant to clause 22.1.5, the Authority considers the Change should be made by a formal variation to the Contract (a "**Variation**"), the Party requesting the Change shall complete and send the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred, it being acknowledged and agreed that much of this information should already have been provided in the Impact Assessment.
- 22.2.2 In the event that:
- 22.2.2.1 the Supplier is unable to agree to or provide the Variation; and/or
- 22.2.2.2 the Parties are unable to agree a change to the Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,
- the Authority may:
- 22.2.2.3 agree to continue to perform its obligations under this Contract without the Variation; or
- 22.2.2.4 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services ordered in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 22.2.3 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.

22.3 Operational Change Protocol

If pursuant to clause 22.1.4 the Authority considers that a proposed Change should be implemented via the Operational Change Protocol, the Parties shall comply with the provisions set out in such Operational Change Protocol to implement the relevant Change.

22.4 Legislative Change

22.4.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a:

22.4.1.1 General Change in Law;

22.4.1.2 Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

22.4.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause 22.4.1.2), the Supplier shall:

22.4.2.1 notify the Authority as soon as reasonably practicable of the likely effects of that change including:

- (a) whether any Variation is required to the provision of the Services, the Contract Charges or this Contract; and
- (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve an Implementation Milestone and/or to meet the Service Level Performance Measures; and

22.4.2.2 provide to the Authority with evidence:

- (a) 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;
- (b) as to how the Specific Change in Law has affected the cost of providing the Services; and
- (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 17 (*Continuous Improvement*), has been taken into account in amending the Contract Charges.

22.4.3 Any change in the Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause 22.4.1.2) shall be implemented in accordance with the Variation Procedure.

23. CONTRACT CHARGES AND PAYMENT

23.1 Contract Charges

23.1.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the undisputed Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in schedule 3 (*Contract Charges, Delay Payments and Payment and Invoicing*).

23.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under clauses 11 (*Testing*), 21 (*Records, Audit Access and Open Book Data*), 35.5 (*Freedom of Information*), 35.6 (*Protection of Personal Data*).

23.1.3 If the Authority fails to pay any undisputed Contract Charges properly invoiced under this Contract, 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.

23.2 VAT

23.2.1 The Contract 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 Invoice.

23.2.2 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this clause 23.2 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

23.3 Retention and Set Off

23.3.1 The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other Contract between the Supplier and the Authority.

23.3.2 If the Authority wishes to exercise its right pursuant to clause 23.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Contract Charges.

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

23.4 Foreign Currency

23.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Authority.

23.4.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause 23.4.1 by the Supplier.

23.5 Income Tax and National Insurance Contributions

23.5.1 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 Contract, the Supplier shall:

23.5.1.1 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

23.5.1.2 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 (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.

23.5.2 In the event that any one of the Supplier Personnel is a Worker, and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:

23.5.2.1 that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;

23.5.2.2 that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;

23.5.2.3 that the Authority may, at any time during the Contract Period, request that the Worker provide information which demonstrates how the Worker complies with the above requirements of paragraphs 23.5.2.1 and 23.5.2.2, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;

23.5.2.4 that the Worker's contract may be terminated at the Authority's request if:

(a) the Worker fails to provide information requested by the Authority within the time specified by the Authority; and/or

(b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with requirements of 23.5.2.1 and 23.5.2.2 or confirms that the Worker is not complying with those requirements; and

- (c) that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

24. PROMOTING TAX COMPLIANCE

- 24.1 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 24.1.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - 24.1.2 promptly provide to the Authority:
 - 24.1.2.1 details of the steps that 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
 - 24.1.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
 - 24.1.3 In the event that the Supplier fails to comply with this clause 24 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.

25. BENCHMARKING

Notwithstanding the Supplier's obligations under clause 17 (*Continuous Improvement*), the Authority shall be entitled to regularly benchmark the Contract Charges and level of performance by the Supplier of the supply of the Services, in accordance with the provisions outlined in schedule 20 (*Benchmarking*).

26. FINANCIAL INFORMATION REQUIRED ON AN ONGOING OR ANNUAL BASIS

- 26.1 The Supplier is required to disclose material changes to the Supplier's organisation that impact on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.
- 26.2 The Supplier is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Supplier's financial viability.
- 26.3 The Supplier shall complete and return the Annual Assurance Declaration (as set out in part B to schedule 19 (*Financial Information Disclosure*)) to:

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together with the following documents within one Month of submitting annual returns and accounts for the organisation to Companies House:

- 26.3.1 **Annual Accounts** - A copy of the final audited financial statements including Balance Sheets and Profit and Loss Accounts with associated accounting policies and notes to the accounts within the 10 Months of the end of the accounting period, as per the deadline imposed by Companies House, for Suppliers registered in the UK. If Supplier is not registered with Companies House, it must forward the information detailed in part A to schedule 19 (*Financial Information Disclosure*). Where Annual Accounts are not signed off, the Authority may request a copy of the latest Financial Year draft accounts prior to Annual Accounts being signed off. The draft accounts should include Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the accounts.
 - 26.3.2 **Annual Return** - A copy of the Annual Return form AR01 submitted to Companies House if Supplier is registered in the UK. If Supplier is not registered with Companies House, it must forward the information detailed in schedule 19 (*Financial Information Disclosure*).
 - 26.3.3 **Forecast Accounts** - A copy of the latest Forecast Accounts including Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the accounts for the year following the accounts submitted in clause 26.3.1 above.
 - 26.3.4 **Current Borrowing** - A statement of current borrowing against lending limits and terms including review and renewal dates (including overdrafts, loans and mortgages). Disclosure of any material changes to the borrowing potential of the organisation, bank overdraft facility etc.
 - 26.3.5 **Supply Chain Monitoring** - A copy of the supply chain monitoring process, which should include details of the process for monitoring the financial viability of the supply chain (including timing), together with any known risks to supply chain stability and material changes to the supply chain. This should include extracts from Board level meetings, risk registers etc where any of the above items have been discussed.
- 26.4 In addition, where a Parent Company Guarantee has been provided, the Supplier is required to provide the documents detailed in clause 26.3 for the Parent Company within one Month of submission to the relevant body, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into £GB if necessary, stating the conversion rate used.
27. **KEY PERSONNEL**
- 27.1 The Parties have agreed to the appointment of the Key Personnel. Paragraph 6 of schedule 21 (*Governance*) lists the key roles ("Key Roles") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Commencement Date.
 - 27.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period.

- 27.3 The Authority may identify any further roles as being Key Roles and, following Contract to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 27.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under schedule 10 (*Exit*)) unless:
- 27.4.1 requested to do so by the Authority;
 - 27.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 27.4.3 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
 - 27.4.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 27.5 The Supplier shall:
- 27.5.1 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);
 - 27.5.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - 27.5.3 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 three (3) Months' notice;
 - 27.5.4 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 provision of the Services; and
 - 27.5.5 ensure that any replacement for a Key Role:
 - 27.5.5.1 has a level of qualifications and experience appropriate to the relevant Key Role; and
 - 27.5.5.2 is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
 - 27.5.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Contract Period without Approval.
- 27.6 The Authority may require the Supplier to remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

28. SUPPLIER PERSONNEL

28.1 Supplier Personnel

28.1.1 The Supplier shall:

28.1.1.1 provide a list of the names of all Supplier Personnel requiring admission to Authority Premises, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

28.1.1.2 ensure that all Supplier Personnel:

- (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
- (b) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
- (c) obey all lawful instructions and reasonable directions of the Authority and provide the Services to the reasonable satisfaction of the Authority; and
- (d) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements set out in schedule 8 (*Security*);

28.1.1.3 subject to schedule 11 (*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;

28.1.1.4 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

28.1.1.5 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;

28.1.1.6 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

28.1.1.7 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the Expiry Date.

28.1.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:

28.1.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or

28.1.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

- 28.1.3 The decision of the Authority as to whether any person is to be refused access to the Authority Premises shall be final and conclusive.

28.2 Relevant Convictions

- 28.2.1 For each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

28.2.1.1 carry out a check with the records held by the Department for Education (DfE);

28.2.1.2 conduct thorough questioning regarding any Relevant Convictions; and

28.2.1.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

28.2.1.4 and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

29. STAFF TRANSFER

- 29.1 The Parties agree that:

29.1.1 on the commencement of the provision of the Services or each part of the Services, there will be a Relevant Transfer for the purposes of the Employment Regulations, and the provisions of part A of schedule 11 (*Staff Transfer*) will apply; and

29.1.2 on the Expiry Date there may be a relevant transfer for the purposes of the Employment Regulations and part B of schedule 11 (*Staff Transfer*) will apply.

- 29.2 The Supplier shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

30. SUPPLY CHAIN RIGHTS AND PROTECTION

30.1 Appointment of Sub-Contractors

- 30.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

30.1.1.1 manage any Sub-Contractors in accordance with Good Industry Practice;

30.1.1.2 comply with its obligations under this Contract in the delivery of the Services; and

- 30.1.1.3 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 Contract.
- 30.1.2 The Supplier acknowledges the Authority's requirement to support Crown targets in respect of the nature of organisations, and in particular the number of SME's, to whom services are sub-contracted under the Authority's service agreements with third party suppliers. As at the Commencement Date, such Crown Targets account for at least 25% of total contract revenue being sub-contracted, and with SME's being utilised as sub-contractors wherever practicable. In order to support such requirements, the Supplier shall use its best endeavours to procure that:
 - 30.1.2.1 at least 25% of the total revenue pursuant to this Contract relates to services which are provided by Sub-Contractors; and
 - 30.1.2.2 wherever practicable Sub-Contractors are SME's.
- 30.1.3 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall notify the Authority and provide the Authority with:
 - 30.1.3.1 the proposed Sub-Contractor's name, registered office and company registration number;
 - 30.1.3.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 30.1.3.3 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.
- 30.1.4 On the Commencement Date and on each anniversary thereof during the Contract Period, the Supplier shall deliver a report to the Authority ("**Sub-Contracting Report**") setting out how, and to what extent, it has complied with the targets set out in clause 30.1.2.1 and 30.1.2.2 above.
- 30.1.5 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to clause 30.1.4, the Supplier shall also provide:
 - 30.1.5.1 a copy of the proposed Sub-Contract; and
 - 30.1.5.2 any further information reasonably requested by the Authority.
- 30.1.6 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to clause 30.1.3 (or, if later, receipt of any further information requested pursuant to clause 30.1.5), object to the appointment of the relevant Sub-Contractor if they consider that:
 - 30.1.6.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under this Contract;
 - 30.1.6.2 the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

- 30.1.6.3 the proposed Sub-Contractor employs unfit persons,
- 30.1.6.4 in which case, the Supplier shall not proceed with the proposed appointment.

30.1.7 If:

- 30.1.7.1 the Authority has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of 10 Working Days of receipt of:
 - (a) the Supplier's notice issued pursuant to clause 30.1.4; and
 - (b) any further information requested by the Authority pursuant to clause 30.1.5; and
- 30.1.7.2 the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority in accordance with clause 30.1.4 (*Appointment of Key Sub-Contractors*),

the Supplier may proceed with the proposed appointment.

30.2 Appointment of Key Sub-Contractors

- 30.2.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in schedule 17 (*Key Sub-Contractors*).
- 30.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority (the decision to consent or not will to be unreasonably withheld or delayed). The Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:
 - 30.2.2.1 the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
 - 30.2.2.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 30.2.2.3 the proposed Key Sub-Contractor employs unfit persons.
- 30.2.3 The Supplier shall provide the Authority with the following information in respect of the proposed Key Sub-Contractor:
 - 30.2.3.1 the Key Sub-Contract price expressed as a percentage of the total projected Contract Charges over the Contract Period; and
 - 30.2.3.2 the credit rating of the Key Sub-Contractor as provided by Dun and Bradstreet.
- 30.2.4 The Supplier shall ensure that each Key Sub-Contract shall include:
 - 30.2.4.1 provisions which will enable the Supplier to discharge its obligations under this Contract;

- 30.2.4.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
- 30.2.4.3 a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;
- 30.2.4.4 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;
- 30.2.4.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
 - (a) data protection requirements set out in clauses 35.1 (*Security Requirements*), 35.2 (*Protection of Authority Data*) and 35.6 (*Protection of Personal Data*);
 - (b) FOIA requirements set out in clause 35.5 (*Freedom of Information*);
 - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in clause 8.1.5.1 (*Provision of Services*);
 - (d) the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (e) the conduct of audits set out in clause 21 (*Records, Audit Access & Open Book Data*);
- 30.2.4.6 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 43 (*Authority Termination Rights*), 45 (*Termination by Either Party*) and 47 (*Consequences of Expiry or Termination*) of this Contract;
- 30.2.4.7 a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;
- 30.2.4.8 a provision, where a provision in schedule 11 (*Staff Transfer*) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Authority, Former Supplier or the Replacement Supplier as the case may be.

30.3 Supply Chain Protection

- 30.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:
 - 30.3.1.1 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice; and
 - 30.3.1.2 a right for the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 30.3.2 The Supplier shall:
 - 30.3.2.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
 - 30.3.2.2 include within the Performance Monitoring Reports required under part B of schedule 6 (*Service Levels, Service Credits, KPI's and Performance Monitoring*) a summary of its compliance with this clause 30.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
- 30.3.3 Notwithstanding any provision of clauses 35.3 (*Confidentiality*) and 36 (*Publicity and Branding*) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

30.4 Termination of Sub-Contracts

- 30.4.1 The Authority may require the Supplier to terminate:
 - 30.4.1.1 a Sub-Contract where:
 - (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in clause 43 (*Authority Termination Rights*) except clause 43.6 (*Termination Without Cause*); and/or
 - (b) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or

30.4.1.2 a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:

- (a) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (b) 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.

30.5 Competitive Terms

30.5.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

30.5.1.1 require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

30.5.1.2 subject to clause 30.4 (*Termination of Sub-Contracts*), enter into a direct Contract with that Sub-Contractor or third party in respect of the relevant item.

30.5.2 If the Authority exercises the option pursuant to clause 30.5.1, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

30.5.3 The Authority's right to enter into a direct Contract for the supply of the relevant items is subject to:

30.5.3.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and

30.5.3.2 any reduction in the Contract 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.

30.6 Retention of Legal Obligations

Notwithstanding the Supplier's right to sub-contract pursuant to this clause 30 (*Supply Chain Rights and Protection*), 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.

31. AUTHORITY PREMISES

31.1 Authority Premises and Transition

- 31.1.1 During Implementation the Supplier shall be required to utilise the Authority Premises located at Norcross and Durham House for the provision of the Services for the period defined in the Implementation Plan in accordance with licence to occupy requirements detailed in clause 31.2 below.
- 31.1.2 In its provision of the Data Format and Stock Control Services (the nature of which are as stated in schedule 2 (*Services*) and in the Supplier's tender at schedule 16 (*Tender*)) the Supplier has agreed to utilise the Authority Premises located at Durham House and will enter a Sub-Lease Agreement for the purposes thereof on or before 1st September 2015.
- 31.1.3 To assist the Supplier with the provision of the Services, the Authority has agreed to allow the Supplier access to the Authority Premises at Doxford and Wynyard in accordance with clause 31.2 below.

31.2 Licence to occupy Authority Premises

- 31.2.1 Subject to clause 31.1.2, Authority Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Authority Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract and in accordance with schedule 10 (*Exit*).
- 31.2.2 The Supplier shall limit access to the Authority Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Authority Premises as the Authority may reasonably request.
- 31.2.3 Save in relation to such actions identified by the Supplier in accordance with clause 2 (*Due Diligence*), should the Supplier require modifications to the Authority Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake any modification work which it approves pursuant to this clause 31.2.3 without undue delay. Ownership of such modifications shall rest with the Authority.
- 31.2.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Authority Premises and conduct of personnel at the Authority Premises as determined by the Authority, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 31.2.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and,