



**Ministry of
JUSTICE**

OFFICIAL

**Contract For The Provision Of Electronic Monitoring and
Mapping Services – Lot 2**

**CONTRACT FOR THE PROVISION OF
ELECTRONIC MONITORING AND MAPPING SERVICES
LOT 2**

Electronic Monitoring Equipment and Related Services



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THIS CONTRACT is made on 2018

BETWEEN:

- (1) The Secretary of State for Justice acting through Her Majesty's Prison and Probation Service (the "**Authority**"); and
- (2) Airbus Defence and Space Limited, a company registered in England and Wales whose registered office is at Gunnels Wood Road, Stevenage, Hertfordshire, SG1 2AS with company number 02449259 (the "**Contractor**"),

each one "**a Party**" and together "**the Parties**".

BACKGROUND:

- (A) The Authority has entered into EM Services Contracts with the EM Contractors for the provision of electronic monitoring and related services.
- (B) EM Services Contracts were originally awarded in July and August 2014 to the EM Contractors (other than the EM Hardware Contractor) for the implementation and operation of the EM Services. An Integration Agreement was also entered into on 1 August 2014 between the EM Contractors at that time and the Authority. This has subsequently been superseded and replaced by the Collaboration Agreement (as defined below) entered into between the EM Contractors as at the EM Services Contract Reset. For the avoidance of doubt the Collaboration Agreement will not be applied retrospectively. From 19th December 2016 the EM Programme was suspended following the termination of the original Lot 3 Contract and the re-procurement process to identify a new Lot 3 Contractor. The new Lot 3 Contractor has been identified and a new Lot 3 EM Services Contract was entered into 10 November 2017.
- (C) This EM Services Contract will from the EM Contract Reset date supersede the original EM Services Contract with the Contractor dated 30th July 2014 for the purpose of the provision of monitoring and mapping software and services relating to electronic monitoring and field services.
- (D) The Contractor is required to collaborate with the other EM Contractors appointed by the Authority within the scope of the Authority's operating model for the provision of electronic monitoring and related services. In particular, the Contractor will co-operate with the EM&FS Contractor which will host the monitoring and mapping software within its data centres.
- (E) As part of the consideration for the Authority entering into this Contract, the Contractor shall in conjunction with this Contract also enter into the Collaboration Agreement with the Authority and each of its other EM Contractors _____ as part of the Contractor's commitment to deliver the EM Services (the "**Collaboration Agreement**").

SECTION A: INTERPRETATION

1. INTERPRETATION AND DEFINITIONS



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

2. CONTRACT STRUCTURE

2.1 Schedules

2.1.1 The Schedules to this Contract form part of this Contract.

2.2 Precedence of Documentation

2.2.1 If there is any inconsistency between the provisions of the body of this Contract and the Schedules, the provisions of the body of this Contract shall take precedence over the Schedules. In the event of any inconsistency between Schedule 15 (Authority Policies) and any of the other Schedules, Schedule 15 (Authority Policies) shall take precedence. Any amendments to the Authority Policies and to the Authority's security policies referred to in Clause 13.1 shall be agreed between the Authority and the Contractor as a Necessary Change through the Integrated Contract Change Procedure as set out in Schedule 21 (Integrated Contract Change Procedure).

2.2.2 Not used

2.2.3 The Contractor agrees that nothing contained in Schedule 2 or any Annex to any Schedule will relieve the Contractor from complying with the provisions of the body of the Contract or with Schedule 2.

2.2.4 Not used

2.2.5 If there is any inconsistency between the provisions of this Contract and the Collaboration Agreement, the provisions of this Contract shall take priority over the provisions of the Collaboration Agreement. All of the Contracts for EM Services entered into by the Authority will operate under materially the same terms and conditions.

2.2.6 The Parties acknowledge that the Operating Level Agreements will be entered into by the EM Contractors. The Authority will be a party to the Operating Level Agreements. The Operating Level Agreements are not intended to be legally binding.

2.2.7 The Parties acknowledge that the Operating Manual is not intended to be legally binding.

2.2.8 Not used

2.3 Succession



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

SECTION B: SCOPE

3. SCOPE OF AGREEMENT

3.1 Underpinning Obligations

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

3.1.2 [Not used]

3.1.3 [Not used]

Flexibility and innovation

3.1.4 The provision of the Services by the Contractor shall be responsive to changes in demand for EM, and to developments in EM technology. In particular:

3.1.4.1 the Contractor shall with the support of the Authority enable Services innovations to be piloted promptly and integrated smoothly into the EM Services;

3.1.4.2 the Contractor shall be open to the results of research and development so as to ensure that they remain at the forefront of technological capability in EM,

in each case as further set out in Clause 12.

3.1.5 [Not used]

Transparency

3.1.6 The provision of the Services and the Mobilisation activities by the Contractor shall be subject to a general principle of transparency, pursuant to which the Authority will have full and unfettered access to all of the Contractor's premises, IT systems, data, documentation, records, information and supporting materials relating to the provision of the Services and the Mobilisation activities promptly on request by the Authority subject to compliance with the Contractor's security procedures. In particular, but without limitation to the foregoing, the Contractor shall provide full and unfettered access to the Authority in respect of all data, documentation, records, information and other supporting materials:



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- 3.1.6.1 relating to the calculation of the Charges; and
- 3.1.6.2 relating to all of the Contractor's activities in the provision of the Services and the Mobilisation activities.
- 3.1.7 The Contractor shall only keep one set of accounts relating to the provision of the Services and the Mobilisation activities under the Contract.
- 3.1.8 Whenever there is an obligation on the Contractor to provide "details" to the Authority or a similar expression, this shall require the Contractor to provide data, documentation, records, information and other supporting materials to the Authority as may be available in a particular circumstance.

Charging

- 3.1.9 The Contractor shall calculate the Charges payable by the Authority under this Contract strictly in accordance with the provisions of the Contract.
- 3.1.10 In the event that the Contractor considers at any time that there is any ambiguity in the provisions of the Contract relating to the calculation of the Charges, the Contractor shall promptly notify the Authority of the ambiguity. Until the ambiguity is resolved between the Authority and the Contractor the Contractor must interpret the Contract on the basis of the interpretation of the Contract that is least favourable to the Contractor and calculate the Charge payable by the Authority on this basis. In the event of any default of this clause 3.1.10 by the Contractor the Authority shall be entitled to recover any amounts paid by the Authority in excess of the interpretation of the Contract that is least favourable to the Contractor as an overpayment pursuant to clause 19.8.

3.2 Supply of the Software and Services

- 3.2.1 The Contractor shall:
 - 3.2.1.1 design, develop and provide the Software pursuant to Clauses 4- 8 (Mobilisation);
 - 3.2.1.2 license the Software pursuant to Clause 31.4; and
 - 3.2.1.3 provided the Support Services and other Services pursuant to Clauses 9 - 12 (Operational Services),in accordance with the terms and conditions of this Contract and the Collaboration Agreement.
- 3.2.2 The Contractor shall perform the Services in accordance with the terms and conditions of this Contract (including the provisions of Schedule 7 (Contract Delivery Indicators) regarding the Contract Delivery Indicators).



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- 3.2.3 The Contractor acknowledges that the Authority makes no minimum commitment in respect of the Software and/or Services to be ordered under this Contract and that the Contractor has no exclusivity of supply to the Authority in respect of the Software and Services which form the scope of this Contract.

3.3 Integration

- 3.3.1 The Contractor shall supply the Software and provide the Services in such manner so as to ensure that at all times the EM Services are fully integrated pursuant to the Operating Model (as identified in Table 1). The Contractor shall also comply with the requirements set out in the then current version of the Interface Control Documents.
- 3.3.2 The Contractor shall, with respect to the other EM Contractors, co-operate with the Authority and permit the Software to be integrated with the products and services comprised within the remainder of the EM Services in accordance with Schedule 2 (Specifications) including maintaining common processes applicable to all EM Contractors (including the Contractor).
- 3.3.3 [Not used]

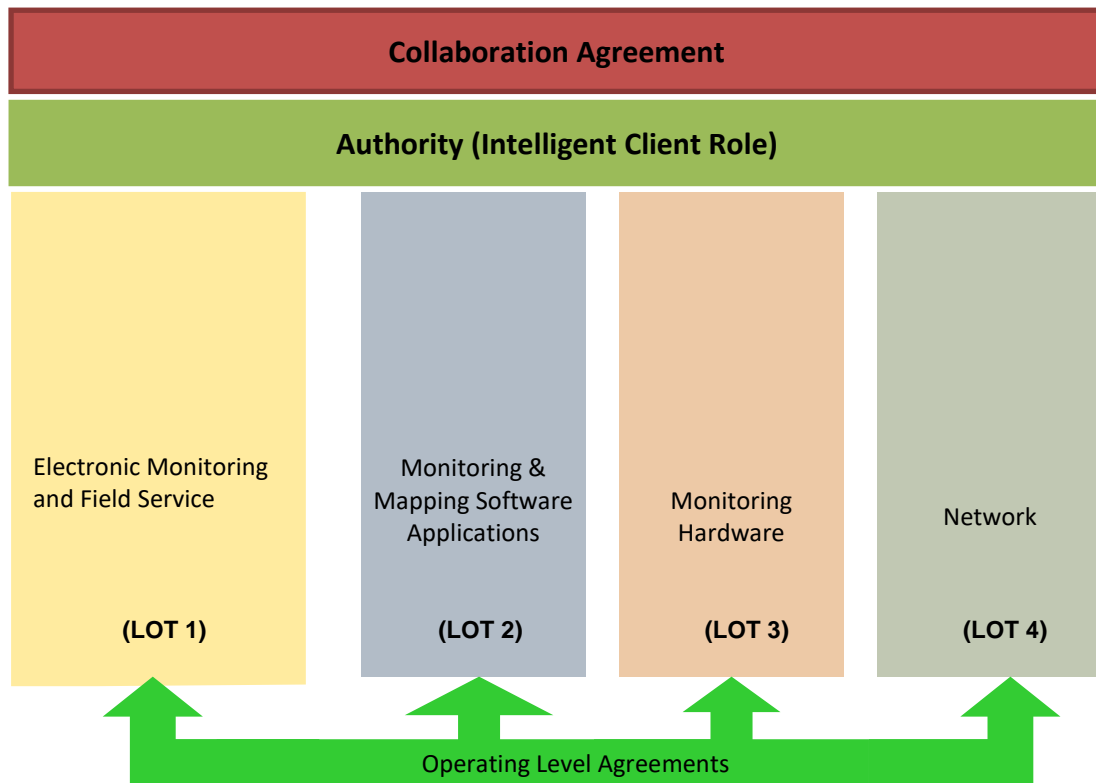


Table 1: The Operating Model

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

3.4 Integrated System Design

3.4.1 Subject to 3.4.2, the Contractor shall provide their Services under this Contract in compliance with the Integrated High Level Design at all times during the term of this Contract and as may be varied by the Authority from time to time.

3.4.2 The Authority shall be entitled to make proposals for changes to the Integrated High Level Design to take account of developments in technology, legislative changes and other matters. Such proposals for changes to the Integrated High Level Design shall become effective within the timescales identified by the Authority for each proposed change unless an EM Contractor considers that a proposed change will result in it incurring undue costs as a result of the proposed change. In such circumstances, the Contractor shall be entitled to initiate the Integrated Contract Change Procedure in order to review the implications of the proposed change in more detail and for the Parties to agree on a solution.



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- 3.4.3 Not used
- 3.4.4 The Contractor shall be responsible for ensuring that the Specification shall be and shall remain consistent with the Integrated High Level Design. Notwithstanding the foregoing obligation, in the event that the Contractor becomes aware that any aspect of the Specification is inconsistent with the Integrated High Level Design the Contractor will not be entitled to alter the Specification without notifying and obtaining the approval of the Authority, which may involve dealing with the issue through the Integrated Contract Change Procedure.
- 3.4.5 The Contractor shall ensure that the elements of their Services which interface with the Services provided by other EM Contractors shall comply with the relevant Interface Control Documents.
- 3.4.6 The Contractor acknowledges and agrees that the Interface Control Documents are intended to be open and non-proprietary. In the event that any proprietary solution or requirement of the Contractor is included within an Interface Control Document or the Application Program Interfaces the Contractor hereby assigns to the Authority, where appropriate by way of present assignment of future rights, all such Intellectual Property Rights in the Interface Control Document with effect from the date on which such rights come into existence.
- 3.5 Fix First/Resolve Later**
- 3.5.1 If any problem arises which prevents or impairs the implementation or performance of the Services in accordance with the Contract (including but not limited to compliance with the CDIs set out in Schedule 7 (Contract Delivery Indicators)) at any point during the term of this Contract and in respect of any and all such problems, the Parties agree that the general principle of 'fix first, resolve later' will apply. This principle requires that the Contractor shall use all reasonable endeavours to solve the issue as expeditiously and cost effectively as possible as directed by the Authority. The Contractor shall defer any disputes concerning responsibility for the issue, and which Party should bear the cost of fixing the issue and any associated legal issues, until resolution of the relevant problem.
- 3.5.2 In such circumstances, if the Contractor considers that the rectification of the problem is outside the scope of its responsibilities under the Contract the Contractor shall be entitled to notify the Authority pursuant to Clause 34 (Notification Procedures) as soon as it considers that a Compensation Event has arisen.
- 3.6 Contractor's Due Diligence**
- 3.6.1 The Contractor shall be deemed to have:
- 3.6.1.1 gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it; and



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

3.7 Specification

The Contractor shall ensure that the Specification (to the extent that such Specification does not rely upon the accuracy and adequacy of the Disclosed Data and any other information supplied by the Authority) does not contain any errors or omissions which would adversely affect the achievement of the objectives of the EM Services.

SECTION C: MOBILISATION

4. MOBILISATION AND TRANSITION

- 4.1 The Contractor shall perform all mobilisation and transition activities during the Mobilisation Phase in accordance with:
 - 4.1.1 the following;
 - 4.1.1.1 the Key Milestones set out in Schedule 5;
 - 4.1.1.2 the EM Programme Test Strategy and the Contractor's Test Strategy;
 - 4.1.1.3 Not Used;
 - 4.1.1.4 Schedules 8 (TUPE, Employees and Pensions) and 13 (Security);
 - 4.1.2 so as to comply with:
 - 4.1.2.1 the Specification;
 - 4.1.2.2 the High Level Design and the Integrated High Level Design; and
 - 4.1.2.3 the Interface Control Documents;
 - 4.1.3 in cooperation with the other EM Contractors and the Authority;
 - 4.1.4 in accordance with reasonable skill and care and Good Industry Practice; and

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- 4.1.5 in accordance with all other applicable provisions of the Contract.
- 4.2 The Contractor shall be responsible for ensuring that at all times:
- 4.2.1 the High Level Design complies with the Integrated High Level Design;
- 4.2.2 the Mobilisation Plan complies with the Integrated Mobilisation Plan;
- and shall as soon as practicable (and in any event within two (2) Business Days of becoming aware of such) notify the Authority of any inconsistency between such documents, and shall in each case rectify the relevant document under this Contract (the High Level Design or the Mobilisation Plan, as applicable) at the Contractor's cost and submit such revised document to the Authority for review in accordance with the Integrated Contract Change Procedure, and shall once revised thereafter comply with the revised document.
- 4.3 In the event that the Contractor wishes to modify any design or document which has previously been submitted for review, the Contractor shall immediately give notice to the Authority to this effect and shall, thereafter, submit at its own cost revised documents to the Authority for review in accordance with the Integrated Contract Change Procedure.

5. PRE-INTEGRATION ACTIVITIES

5.1 High Level Design

- 5.1.1 The Contractor shall be responsible for ensuring that the High Level Design complies with:
- 5.1.1.1 the Integrated High Level Design;
- 5.1.1.2 the Specification;
- 5.1.1.3 the Interface Control Document; and
- 5.1.1.4 Good Industry Practice.
- 5.1.2 Not used.
- 5.1.3 Not used.
- 5.1.4 The approval by the Authority of any design submitted by the Contractor or the failure by the Authority to reject any design submitted by the Contractor shall be without prejudice to the Contractor's obligations to ensure that such design, and the Software to which it relates, complies with the requirements of the Specification and the rest of this Contract.

5.2 Consistency Between Documents and Modifications

- 5.2.1 The Contractor shall be responsible for ensuring that at all times:



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- 5.2.1.1 the Detailed Design complies with the Integrated High Level Design;
- 5.2.1.2 the Mobilisation Plan complies with the Integrated Mobilisation Plan;
- 5.2.1.3 Not used

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

6. INTEGRATION ACTIVITIES

- 6.1 The Contractor shall support Testing in accordance with: (a) the Mobilisation Plan and the Integrated Mobilisation Plan; (b) the EM Programme Test Strategy; and (d) any instructions given by the Authority

so as to achieve Acceptance in respect of the relevant Milestones, Deliverables and Documentary Deliverables by the relevant dates set out in the Mobilisation Plan and comply with the Test Procedures in respect of the Software in accordance with Schedule 2 (Specifications) and Schedule 4 (EM Testing).

Training

- 6.2 The Contractor acknowledges that the provision of appropriate training with respect to delivery of the Software is key to the overall success of the EM Services. The Contractor will provide Training Services and Training Materials in accordance with Good Industry Practice and as required under Schedules 2 (Specifications) and 13 (Security).
- 6.3 At regular intervals and no less than once every six (6) Months, the Contractor shall survey the satisfaction levels of such Contractor's Staff as are specified by the Authority in respect of Training Services and Training Materials and shall make the results of such survey available to the Authority.

7. NOT USED

8. SOFTWARE HOSTING

- 8.1 The Contractor has provided to the Authority and the EM&FS Contractor its detailed hardware, software and space requirements for the hosting of the Software within EM&FS Contractor's the hosting environment The EM&FS Contractor has completed a review of the Contractor's EM Services and shall provide Managed Hosting Services as described below and in Schedule 30 (Managed Hosting Services).



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- 8.2 For the avoidance of doubt Schedule 30 (Managed Hosting Services) will be relevant for all EM Contractors that will provide or require Managed Hosting Services.
- 8.3 The EM&FS Contractor shall be responsible for the purchase of all of the hardware and software identified in the notification made pursuant to Clause 8.1 and for the installation and testing of such hardware and software together with the Software within the EM&FS Contractor's hosting environment.
- 8.4 The Contractor shall co-operate and provide assistance to the Authority during the testing process for the Software within the EM&FS Contractor's hosting environment pursuant to Clause 6 above. During such testing processes the Contractor shall make any changes to the Software that may be necessary in order for the Software to operate in accordance with the relevant Contract Delivery Indicators. In the event that additional hardware and/or software is required in order for the Software to operate in accordance with the relevant Contract Delivery Indicators within the EM&FS Contractor's hosting environment, the Contractor shall be responsible for purchasing such hardware and software at its own expense and providing such hardware and software to the EM&FS Contractor for inclusion in its Managed Hosting Service integrating the change in accordance with Integrated Change Control Procedure.
- 8.5 The Contractor warrants that following Acceptance of the Software, the Software operating within the EM&FS Contractor's hosting environment will meet the relevant Contract Delivery Indicators during the term of this Contract. The Contractor shall provide Technical Design Authority Services for the Software and Support Services to the EM&FS Contractor and the Authority in order to ensure that the relevant Contract Delivery Indicators are achieved during the term of this Contract. In the event that additional hardware and/or software is required during the term of this Contract in order for the Software to operate in accordance with the relevant Contract Delivery Indicators the Contractor shall be responsible for the purchase of such hardware and software except where the need for additional hardware or software arises from: (i) the fair wear and tear of the such hardware and software during the term of the Contract; or (ii) increases in the subject volumes requiring additional capacity within the hosting environment.

SECTION D: OPERATIONAL PHASE

9. SERVICE PROVISION

- 9.1 The Contractor shall provide:
- 9.1.1 the Support Services from the Services Commencement Date;
 - 9.1.2 any Training Services that may be ordered by the Authority for the benefit of personnel of the EM&FS Contractor; and
 - 9.1.3 such other Services as may be ordered by the Authority from the Contractor from time to time during the term of the Contract.

10. CONTRACT DELIVERY INDICATORS



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- 10.1 The Contractor shall provide the Support Services in order to achieve the Contract Delivery Indicators applicable to the Contractor in accordance with Schedule 7 (Contract Delivery Indicators).
- 10.2 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, the Contractor shall notify the EM&FS Reporting Desk promptly of the Service Failure or likely Service Failure.
- 10.3 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, the Contractor shall comply with the directions of the Authority pursuant to paragraph 2.14 of the Schedule 7 (Contract Delivery Indicators).
- 10.4 The Contractor shall automatically credit the Authority with Service Credits on a Monthly basis in accordance with Schedule 6 (Price and Payment Mechanism). Unless otherwise agreed by the parties pursuant to Schedule 6 (Price and Payment Mechanism), Service Credits shall be shown as a deduction from the amount due from the Authority to the Contractor in the next invoice then due to be issued under this Contract.
- 10.5 Where Service Credits are provided as a remedy for Service Failure in respect of the relevant Services it shall be the Authority's exclusive financial remedy except where:
- 10.5.1 any Service Failure exceeds the Service Notification Threshold; or
 - 10.5.2 the failure to perform the Services in accordance with the Contract Delivery Indicators has arisen due to theft, gross negligence, fraud, or wilful default; or
 - 10.5.3 the Service Failure results in:
 - (a) corruption or loss of data exceeding the level of data loss defined in Schedule 7 Contract Delivery Indicators; or
 - (b) the release of Personal Data relating to subjects and/or persons connected with or related to the Subjects; or
 - 10.5.4 the Authority is otherwise entitled to or does terminate this Contract for the Contractor's Default pursuant to Clause 42.2.
- 10.6 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Authority, then without prejudice to any other right or remedy the Authority may, on written notice to the Contractor, withhold a proportionate amount of the Contract Price for those Services until such time as the relevant Services are restored. The Authority shall resume payment of the relevant part of the Contract Price, including payment of the amount retained following the restoration of the relevant Services.
- 10.7 The Authority and the Contractor shall review the Contract Delivery Indicators every twelve (12) Months throughout the term of this Contract and make any changes in

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accordance with the Integrated Contract Change Procedure to reflect changes in the Authority's requirements.

11. QUALITY ASSURANCE AND PERFORMANCE MONITORING***Quality Plans***

- 11.1 The Contractor shall develop, at least ten (10) Days before the Services Commencement Date, Quality Plans that, as a minimum:
- 11.1.1 ensure that all aspects of the Services are the subject of quality management systems; and
 - 11.1.2 are consistent with ISO 9000:2008 or any equivalent standard which is generally recognised as having replaced it.
- 11.2 The Contractor shall obtain the Authority's written approval of the Quality Plans developed pursuant to Clause 11.1 before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Contractor acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 11.3 The Contractor shall procure that the Services are carried out in compliance with the Quality Plans.
- 11.4 Any Changes to the Quality Plans shall be agreed in accordance with the Integrated Contract Change Procedure.

Quality Monitoring

- 11.5 The Authority may carry out audits of the Contractor's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) on one occasion every twelve (12) Months save where the Contractor is in default of its obligations hereunder in which case the Authority shall be entitled to carry out such audits as it sees fit. In each case, the Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority, including by providing the Authority with all information and documentation, and access to any relevant member of the Contractor's Staff and/or to any relevant Contractor's Premises, which he reasonably requires in connection with his rights under this Clause 11.5 at no additional charge to the Authority.

Performance Management

- 11.6 The Contractor shall deliver the Services so as to meet the:
- 11.6.1 Contract Delivery Indicators in accordance with Schedule 7 (Contract Delivery Indicators); and
 - 11.6.2 Not Used



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- 11.7 The Contractor shall comply with the performance management arrangements set out in Schedule 7 (Contract Delivery Indicators) including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.
- 11.8 Notwithstanding the provisions of Schedule 7 (Contract Delivery Indicators), where requested by the Authority, the Contractor shall supply the Management Information to the Authority during the term of the Contract.
- 11.9 The Authority may, acting reasonably, make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) Month's written notice of any changes.
- 11.10 The Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority in carrying out the monitoring referred to in this Clause 11 at no additional charge to the Authority.
- 11.11 If the Contractor believes that the Authority's monitoring of the Services is unreasonable the Contractor may escalate the issue using the Escalation Process.

12. SERVICES IMPROVEMENT

- 12.1 The Contractor shall have an ongoing obligation throughout the term of the Contract to identify new or potential improvements to the Services in accordance with this Clause 12. As part of this obligation the Contractor shall identify and report to the Authority once every six (6) Months (unless otherwise agreed by the Authority) for the duration of the term of the Contract on:
- 12.1.1 the emergence of new and evolving relevant technologies which could improve the Software and/or the Support Services, and those technological advances potentially available to the Contractor and the Authority which the parties may wish to adopt; and/or
 - 12.1.2 new or potential improvements to the Software and/or the Support Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services in relation to the Support Services; and/or
 - 12.1.3 new or potential improvements to the interfaces or integration of the EM Services which might result in efficiency or productivity gains or in reduction of operational risk; and/or
 - 12.1.4 changes in business processes and ways of working that would enable the Support Services to be delivered at lower costs and/or at greater benefits to the Authority.
- 12.2 The Contractor 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 Contractor shall provide any further information that the Authority reasonably requests.



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- 12.3 The Authority shall at all times be responsible for determining its own ICT strategy. The Authority may notify the Contractor of any changes to the Authority's ICT strategy and request the Contractor to consider, review and respond to that strategy. If, in the Contractor's opinion, any notified change to the Authority ICT strategy would impact upon the provision of the Services, the Contractor shall refer the matter to the Authority.
- 12.4 The Contractor undertakes to offer to the Authority any alternative software or improvements to software within the scope of this Contract in substitution for any corresponding software where the substitute software contains, relies on or uses new technology or has better performance characteristics than such existing software. As part of the offer, the Contractor shall notify the Authority of any change in the Contract Price which would result from such substitution. Any such offer made pursuant to this Clause 12.4 shall be subject to approval by the Authority at its sole discretion.
- 12.5 If the Authority wishes to incorporate any improvement identified by the Contractor the Authority shall send the Contractor a Change Notice and the parties shall:
- 12.5.1 develop a plan for the implementation of the improvement within twenty (20) Business Days of the Authority's Change Notice pursuant to the Integrated Contract Change Procedure for the approval of the Authority;
 - 12.5.2 implement the improvement in accordance with the provisions of an implementation plan approved by the Authority; and
 - 12.5.3 submit the improvements to testing in accordance with the provisions of Clauses 6.1 and 7.

SECTION E: GENERAL OBLIGATIONS

13. SECURITY OBLIGATIONS

- 13.1 The Contractor shall comply with the Authority's security policies as amended or updated by the Authority from time to time and the Authority's security requirements set out in Schedule 13 (Security) together with all other Authority Policies, regulations and requirements as may be in force from time to time for the conduct of personnel when outside the Authority's Premises, while on the Authority's Premises or when accessing or using the Authority's systems and information and/or at all times during its performance of its obligations under this Contract, and shall procure that all of the Contractor's Staff shall likewise comply with such requirements. All such activity will be subject to general monitoring by the Authority's security department.
- 13.2 The Authority shall ensure that all Authority staff and Authority Representatives required to access the Contractor's Premises ;
- 12.5.4 satisfy any reasonable clearance requirements of the Contractor; and
 - 12.5.5 comply with the Contractor's policy for escorting visitors.
- 13.3 The Contractor shall ensure that it obtains Accreditation in accordance with the requirements set out in Schedule 2, part 2 (Technical Specification) and Schedule 13



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- (Security) by the relevant date set out in the Mobilisation Plan and shall assist the Authority as required in obtaining overall information assurance Accreditation for the EM Services by the relevant date set out in the Integrated Mobilisation Plan.
- 13.4 The Contractor shall ensure that all of the Contractor's Staff with any involvement in the obligations of the Contractor under this Contract at any time during the term of this Contract have passed security clearance at a minimum of:
- 13.4.1 Baseline Personnel Security Standard (BPSS) level; and
 - 13.4.2 the level required by the National Offender Management Service (NOMS), or any other higher level stipulated in the Security Aspects Letter ("**SAL**").
- 13.5 In addition to the requirements of Clause 13.4, the Contractor shall also ensure that all of the Contractor's Staff who:
- 13.5.1 are involved with, or are reasonably likely to be involved with, the processing or administration of any Authority Data under this Contract at any time during the term of this Contract; or
 - 13.5.2 will, or are reasonably likely to be unescorted at the Authority's Premises, shall have passed security clearance to a minimum of Security Check (SC) level, or any other higher level stipulated in the SAL, in each case prior to that individual engaging in activities falling under Clauses 13.5.1 and/or 13.5.2 above.
- 13.6 The Contractor shall:
- 13.6.1 at the Authority's request, carry out a check of the most extensive available kind with the Criminal Records Bureau (or other relevant body) in respect of any member of the Contractor's Staff; and
 - 13.6.2 notify the Authority's Representative of the results of such check.
- 13.7 The Contractor shall ensure that no person who is found to have any Convictions following the results of a Criminal Records Bureau or other relevant check, is employed or engaged as a member of the Contractor's Staff in the performance of any work under this Contract without the Authority's Representative's Approval.
- 13.8 Without prejudice to the personnel security requirements set out in Schedule 13 (Security), the Authority may require the Contractor to procure that relevant members of the Contractor's Staff enter into a confidentiality undertaking in the form set out in Appendix 3 to Schedule 13 (Security), where appropriate.
- 13.9 The Authority reserves the right to refuse admission to any of the Contractor's Staff to any Authority's Premises over which the Authority has control, to remove any of the Contractor's Staff from any Authority's Premises over which the Authority has control and/or direct the Contractor to end the involvement in the provision of the Services by



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any of the Contractor's Staff whom the Authority believes represents a security risk. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.

- 13.10 The Contractor shall provide a list of the names and business addresses of all persons who it is expected may require admission to the Authority's Premises in connection with the performance of this Contract, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Authority may reasonably require.
- 13.11 Failure by the Contractor to comply with the provisions of Clause 13.8 will entitle the Authority to refuse admission to its premises to any person who has not been notified to the Authority in accordance therewith.

14. INSPECTION OF CONTRACTOR'S PREMISES

- 14.1 The Contractor's Premises will require approval by the Authority prior to the commencement of the performance of the Services. Any change to the Contractor's Premises which has the potential to impact on the performance of the Contract shall be subject to the prior written approval of the Authority using the Integrated Contract Change Procedure.
- 14.2 Subject to compliance with the Contractor's security requirements, the Authority, the Authority's Representative and any other representative of the Authority may enter upon the Contractor's Premises and any other property (including vehicles) used by the Contractor and/or its Sub-Contractors to perform the Services, to:
- 14.2.1 inspect the operation of the Services and to monitor compliance by the Contractor with its obligations; and
- 14.2.2 inspect the equipment used by the Contractor in the provision of the Services.
- 14.3 As and when requested by the Authority, the Contractor shall procure that satisfactory facilities are made available to the Authority, the Authority's Representative or any other representative of the Authority and that reasonable assistance is given for the purposes of Clause 14.2.
- 14.4 Inspections carried out pursuant to Clause 14.2 shall be carried out on reasonable notice to the Contractor, provided that, in the event of an emergency, the Contractor shall grant the Authority immediate access to its premises.
- 14.5 If following an inspection the Authority, acting reasonably, considers that the Software or Services are not or are not likely to be as warranted under Clause 18 (Warranties), the Authority shall inform the Contractor and the Contractor shall immediately take such action as is necessary to ensure that the Software or Services are or will be as warranted under Clause 18 (Warranties). The Authority shall, without prejudice to its other rights and remedies, have the right to re-conduct inspections after the Contractor has carried out its remedial actions.

15. CONTRACT STANDARDS



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- 15.1 The Contractor shall provide the Services in accordance with, and at all times ensure that the Services comply with and meet all the requirements of:
- 15.1.1 this Contract;
 - 15.1.2 the Collaboration Agreement;
 - 15.1.3 the Specification;
 - 15.1.4 reasonable skill and care and Good Industry Practice;
 - 15.1.5 all Authority Policies; and
 - 15.1.6 all applicable Legislation.
- 15.2 The Contractor shall at all times ensure that the Services are performed in such a manner that it does not cause, contribute to or otherwise give rise to any breach by the Authority or any Related Organisation of any of its duties or the exercise of its powers under the Criminal Justice Act 1991, the Powers of Criminal Courts (Sentencing) Act 2000, Criminal Justice and Courts Act 2000, Criminal Justice Act 2003, Legal Aid, Sentencing and Punishment of Offenders Act 2012 the Crime and Courts Act 2013 or the Offender Rehabilitation Act 2014 and other relevant criminal justice legislation.
- 15.3 The Contractor shall perform the Services in cooperation with the other EM Contractors and the Authority.
- 15.4 The Contractor acknowledges and agrees that in making this Contract, the Authority has complied with its duty under Section 149 of the Equality Act 2010 in particular as it relates to female offenders pursuant to section 3(6A) of the Offender Management Act 2007.

16. CONSENTS

The Contractor shall obtain and maintain in force for the Contract Period all Consents needed for the design, development, provision, licensing and support of the Software and provision of the Services in accordance with the terms of this Contract.

17. PILOTS

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

SECTION F: WARRANTIES AND DEFECTS

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18. WARRANTIES**18.1 General warranties**

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

18.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted; and

18.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and the Sub-Contracts,

and the Authority relies upon such warranties and representations.

18.2 Contractor Undertakings

The Contractor undertakes with the Authority that:

18.2.1 it shall:

(a) upon becoming aware that any Legal Proceedings may be threatened or pending and immediately after the commencement of such Legal Proceedings; or

(b) in respect of Legal Proceedings which are against a sub-contractor, within twenty (20) Business Days after becoming aware that such Legal Proceedings may be threatened or pending or within twenty (20) Business Days after the commencement of such Legal Proceedings,

give the Authority notice of such Legal Proceedings which would adversely affect, to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract;

18.2.2 it shall not, without the prior written consent of the Authority, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract; and

18.2.3 it shall not except where otherwise approved in writing by the Authority cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom.

18.3 High Level Design Warranty

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

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18.4 Software Warranties

18.4.1 The Contractor warrants and undertakes to the Authority that the Software shall throughout the term of the Contract:

- (a) conform in all respects with the High Level Design, the Specification, the Interface Control Document and the other requirements set out in this Contract;
- (b) be of good design and workmanship and in accordance with Good Industry Practice;
- (c) satisfactorily fulfil the performance requirements set out in Schedule 2 Specifications;
- (d) integrate and remain compatible with the hardware, software and operating system configuration of the other EM Contractors as specified in the Interface Control Document and the Specification including all integration points;
- (e) conform with all appropriate international standards and specifications applicable to the Software (including the design, quality and safety standards set out in the Specification);
- (f) comply with all applicable Legislation and any other applicable legislative and regulatory requirements; and
- (g) operate as required by this Contract (when operated in accordance with the Specification) in accordance with the Contract Delivery Indicators of the time in any Month.

18.5 Service Warranties

The Contractor warrants and undertakes that the Services will be performed:

- 18.5.1 with all reasonable skill and care and in accordance with Good Industry Practice; and
- 18.5.2 using an adequate number of appropriately trained, skilled and experienced personnel.

18.6 Status of Warranties

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

18.7 Defective Services



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- 18.7.1 If any Services delivered to the Authority are such that the Contractor is in breach of any of the terms of this Contract (such Services being "**Defective Services**"), then except in relation to Service Credits as provided in Paragraph 1.22 of Schedule 7 (Contract Delivery Indicators), but, without otherwise limiting any other right or remedy that the Authority or a Related Organisation may have, the Authority may reject those Services and:
- (a) notwithstanding the Contractor's obligations under Clause 34, require the Contractor in writing to reperform the rejected Services or resolve the defect in the rejected Services at the Contractor's risk and expense in accordance with the priority levels detailed in the Remediation Plan and in any event within five (5) Business Days of being requested to do so or in such timescale as is otherwise agreed; or
 - (b) require the Contractor to repay the price of the rejected Services in full (whether or not the Authority or Related Organisation has previously required the Contractor to reperform the rejected Services or resolve the defect in the rejected Services); and
 - (c) subject to Clause 38 (Liabilities) and Clause 40 (Indemnities), claim damages for any other costs, expenses or losses resulting from the Contractor's provision of Defective Services.
- 18.7.2 The terms of this Contract shall apply to any Services that have been reperformed or any Services in respect of which a defect has been resolved by the Contractor.
- 18.7.3 If the Contractor fails to promptly reperform the rejected Services or resolve the defect in the rejected Services in accordance with Clause 18.7.1, the Authority or a Related Organisation may, without affecting its rights under Clause 18.7.1(c), obtain substitute services from a third party supplier, or have the rejected Services repaired by a third party, and the Contractor shall reimburse the Authority for the additional costs it incurs in doing so. The Authority shall take reasonable steps to minimise such costs.

SECTION G: PAYMENT AND OTHER FINANCIAL MATTERS

19. PAYMENT PROVISIONS

19.1 Payment of the Contract Price

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

19.2 Report and Invoice

- 19.2.1 Within five (5) Business Days of the end of each Month the Contractor shall submit to the Authority a report (the "**Monthly Payment Report**") including:



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- (a) a report showing for that Month the Contract Price and, individually, each item taken into account in calculating the Contract Price for that Month pursuant to Schedule 6 (Price and Payment Mechanism) and separately showing any VAT payable by the Authority on any relevant amount;
- (b) any credit notes agreed with the Authority; and
- (c) an invoice for the amount (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

19.2.2 Invoices and the Monthly Payment Report shall be sent electronically.

19.2.3 The Authority shall advise the Contractor of acceptable means of electronic submission from time to time by written instruction and with thirty (30) Days' notice of changes to such details that may alter the method of delivery of the invoice without such written notice constituting a Change.

19.2.4 The Authority shall advise purchase order numbers to the Contractor which shall be quoted in all Monthly Payment Reports and invoices. Purchase order numbers shall be advised for each period of Service delivery, as determined by the Authority, which by default shall be for each Authority financial year. The Contractor shall not raise invoices without first having been advised of the relevant purchase order number by the Authority.

19.3 Payment Terms

19.3.1 Subject to Clauses 19.3 (Payment Terms) and 19.5 (Disputed Amounts) and paragraph 6 of Schedule 6 (Price and Payment Mechanism), the Authority shall pay the amount stated in any invoice submitted under Clause 19.2 (Report and Invoice) on or before the date falling thirty (30) Days after receipt of the invoice.

19.3.2 Where a Monthly Payment Report shows an amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority on or before the date falling thirty (30) Days after the date of the invoice, or at the option of the Authority carry forward that amount to the next invoice in reduction of the amount which would otherwise have been owed by the Authority to the Contractor.

19.4 Interest on Late Payment

Except where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on or before the due date, it shall bear interest on that amount at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract provide the Contractor with a substantial



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remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

19.5 Disputed Amounts

19.5.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to this Clause 19 (Payment Provisions), the Authority shall notify the Contractor in writing within ten (10) Business Days after receipt by the Authority of the relevant invoice and supporting information of the Disputed Amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) acting in good faith.

19.5.2 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount and the provisions set out in Clause 19.4 shall not apply to such Disputed Amount, but the Authority shall pay on the due date any undisputed amounts.

19.6 Value Added Tax

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

19.7 Rights of Set Off

The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract. Where the Authority intends to retain or set off any such amount it shall give to the Contractor written notice a minimum of one (1) month prior to the payment date of the invoice that will include the off-set.

19.8 Overpayments

If it is agreed by the Parties or if the Authority reasonably considers that the Authority has made an overpayment in respect of the Contract Price, the Contractor shall pay to the Authority the amount overpaid within fourteen (14) Days of being notified by the Authority of this overpayment together with supporting evidence of such overpayment. The Authority may deduct the relevant amount from the Contract Price if the Contractor fails to re-pay such overpayment in accordance with this Clause 19.8. In relation to any overpayment, the due date for the purposes of Clause 19.4 shall be the date on which the overpayment occurred.

20. NOT USED

21. FINANCIAL TRANSPARENCY

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



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22. FINANCIAL DISTRESS

- 22.1 Schedule 16 (Financial Distress) sets out certain protections for the Authority and Related Organisations in respect of Financial Distress Events.
- 22.2 The Contractor acknowledges and agrees that the Authority shall have the right to access and/or receive promptly upon request by the Authority all data, documentation, information and other supporting material to enable the Authority to monitor and review the compliance or otherwise of the Contractor with the Contract.

SECTION H: CONTRACT GOVERNANCE

23. GOVERNANCE

- 23.1 The Contractor shall take part in governance arrangements with the other EM Contractors and the Authority as set out in the Governance Structure to ensure the successful implementation and operation of the services/products provided by each of the EM Contractors and the provision of the EM Services. Such governance arrangements shall be organised and chaired by the Authority.
- 23.2 Each Party shall ensure that its representatives shall make all reasonable efforts to attend governance meetings at which that representative is required to attend by the Authority. If any representative is not able to attend a meeting, that person shall ensure that:
- 23.2.1 a delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - 23.2.2 that he/she is debriefed by such delegate after the meeting.
- 23.3 A chairperson and vice chairperson shall be appointed by the Authority for all the governance meetings. The chairperson shall be accountable and the vice chairperson shall be responsible for:
- 23.3.1 scheduling group meetings;
 - 23.3.2 setting the agenda for the meetings and circulating to all attendees in advance of such meeting;
 - 23.3.3 chairing the meetings;
 - 23.3.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following meetings;
 - 23.3.5 ensuring that minutes for meetings are recorded and disseminated electronically to the appropriate persons and to all meeting participants within ten (10) Business Days after the meeting; and
 - 23.3.6 facilitating the process or procedure by which any decision agreed at any meeting is given effect in the appropriate manner.



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- 23.4 Governance meetings shall be quorate as long as at least one (1) representative from each EM Contractor is present (where a representative has been required to attend by the Authority) and the Authority has the majority of representatives.
- 23.5 The Parties shall ensure, as far as reasonably practicable, that all governance meetings shall resolve the issues and achieve the objectives placed before them. Each Party shall ensure that their representatives are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.
- 23.6 The Parties intend to reach decisions in each governance group by consensus. Where there is no consensus, the relevant matter shall be dealt with in accordance with the Dispute Resolution Procedure
- 23.7 Except as provided for within the Contract Price, all Parties shall pay their own costs and expenses in relation to attendance at the governance groups save that the Authority shall be responsible for providing accommodation for the meetings. A written record of each of these meetings and agreed actions shall be the responsibility of the Authority who shall also be responsible for the issue of the record to the members of the relevant governance group, not later than ten (10) Business Days after each meeting, or a minimum of two days prior to the next meeting, whichever comes first.
- 23.8 In the event that the Contractor wishes to replace any representative, the Contractor shall notify the Authority in writing of such proposed change for agreement by the Authority (such agreement not to be unreasonably withheld or delayed).

24. CHANGE

- 24.1 All changes to this Contract shall be managed in accordance with the Integrated Contract Change Procedure except where expressly provided to the contrary in this Contract.
- 24.2 No variation of this Contract will be valid unless recorded in writing using the Integrated Contract Change Procedure and signed by or on behalf of both Parties.

25. SUB-CONTRACTING AND ASSIGNMENT

25.1 Transfers of this Contract by the Authority

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

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



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

25.2 Transfers of this Contract by the Contractor

Without prejudice to Clause (45.3) (Change of Ownership), the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit or burden of this Contract in whole or in part except with the prior written consent of the Authority.

25.3 Sub-Contracting Obligations

The Contractor:

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

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

25.3.3 shall not (and shall procure that the sub-contractors shall not) appoint any sub-contractor who is not listed in Schedule 17 (Approved Sub-Contractors); and

25.3.4 shall not enter into a proposed sub-contract without the Authority's prior written consent of the terms of the proposed sub-contract.

25.4 Required Terms in Sub-Contracts

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

25.4.1 requires payment by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) Days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such Sub-Contract;

25.4.2 requires a provision to be included in the contracts between the Sub-Contractor and its contractors which requires payment by the Sub-Contractor to its contractors within a specified period not exceeding thirty (30) Days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such contract;



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- 25.4.3 with respect to Key Sub-Contractors only, requires the Key Sub-Contractor to:
- (a) notify the Authority in writing of a Key Sub-Contractor Financial Distress Event or any fact, circumstance or matter which could cause a Key Sub-Contractor Financial Distress Event (and, in any event, provide such notification within ten (10) Business Days of the date on which the Key Sub-Contractor first becomes aware of the Key Sub-Contractor Financial Distress Event or the fact, circumstance or matter which could cause the Key Sub-Contractor Financial Distress Event);
 - (b) co-operate with the Contractor and the Authority in order to give full effect to the provisions of paragraph 7.2 of Schedule 16 (Financial Distress), including meeting with the Contractor and the Authority to discuss and review the effect of the Key Sub-Contractor Financial Distress Event on the continued performance and delivery of the Services and contributing to and complying with the Financial Distress Service Continuity Plan;
- 25.4.4 confers the right for the Contractor to terminate the Sub-Contract in whole or in part voluntarily on terms no more onerous than the Authority's right to terminate this Contract voluntarily; and
- 25.4.5 confers a right for the Contractor to assign or novate its rights and obligations under the Sub-Contract to the Authority or any New Contractor free of charge in connection with the termination (in whole or in part) or expiry of this Contract pursuant to an Authority request in accordance with Schedule 11 (Exit Management and Transfer).

26. AUDIT ACCESS

26.1 Provision of Information

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

26.2 Rights of Audit

- 26.2.1 The Contractor shall audit its performance in the delivery of the Services in accordance with the Specification and Schedule 7 (Contract Delivery Indicators) and Schedule 12 (Audit).

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26.2.2 The Contractor shall comply with the audit provisions set out in Schedule 12 (Audit).

27. MANAGEMENT SUPERVISION

27.1 If the Authority reasonably believes that it needs to take action in connection with the performance of the Services upon the occurrence of a Management Supervision Trigger

27.1.1

then the Authority or its agents shall be entitled to take action in accordance with the remainder of this Clause 27. The Authority shall ensure that such agents do not have sufficient share in any one or more of the Contractor's primary lines of business in the UK so as to constitute a significant competitive threat to the Contractor.

27.2 On the occurrence of any Management Supervision Trigger the Authority may by written notice to the Contractor appoint such reasonable number of Observers as may reasonably be required to observe, monitor, review and/or audit any matter related to:

27.2.1 any circumstances that have given rise to a Management Supervision Trigger; and/or

27.2.2 the performance (or non-performance) by or on behalf of the Contractor of any obligations under this Contract:

(a) in respect of the Services (or relevant part thereof) to which the Management Supervision Trigger relates; and/or

(b) to mitigate, remedy or prevent the reoccurrence of the circumstances that have given rise to a Management Supervision Trigger,

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

27.3 The Authority may require that such Observers are granted the rights referred to in Clause 27.2 either through such remote means as the Authority may request (provided such request is reasonably practicable) or at any Contractor Premises or other relevant premise(s).

27.4 The Contractor shall notify the Authority within five (5) Business Days of having been informed of the actions the Authority proposes to take or require under this Clause 27 if it believes the Authority's action or proposed actions are excessive or may prejudice the Contractor's performance of its obligations under this Contract, together with such alternative measures that the Contractor may propose.

27.5 Subject to Clause 27.6, the Contractor shall bear its own costs and shall reimburse the Authority in respect of any additional proper costs that are directly incurred by the Authority in respect of any measures and/or the appointment of any Observers or the



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taking of any other action under this Clause 27 (including Observers' reasonably and properly incurred expenses, including travel and accommodation).

- 27.6 The Authority shall bear its own costs and shall reimburse the Contractor in respect of any reasonable additional costs that are directly incurred by the Contractor in accordance with this Contract in respect of any action taken under this Clause 27 to the extent arising solely as a result of the circumstances identified as Management Supervision Triggers, provided such circumstances did not arise as a result of any breach (or likely future breach) of this Contract by the Contractor.

Related Organisations

- 27.7 The Contractor acknowledges and agrees that the Authority may, from time to time, wish for Related Organisations to use the Software. In such circumstances, the Authority shall be responsible for managing the process of extending the Services to any such Related Organisation(s) which shall be agreed between the Authority and the relevant EM Contractors through the Integrated Contract Change Procedure. The schedule of rates set out in Schedule 6 (Price and Payment Mechanism) shall apply to any such agreed use of the Software by Related Organisations.
- 27.8 The Contractor acknowledges and agrees that it shall immediately notify the Authority where any Related Organisation makes any enquiry or request directly to the Contractor for use of the Software, and shall not conduct any direct discussions with or make any proposals directly to any Related Organisations.
- 27.9 The Authority shall ensure that the Related Organisations are aware of and comply with the terms of this Contract as they relate to usage of the Software.
- 27.10 The Contractor shall provide all reasonable assistance, information and cooperation to any Related Organisations and also any Agencies, Authority Related Party or any other third party with which the Contractor is required to cooperate in delivery of the Software and the Services.

SECTION I: STAFF

28. REPRESENTATIVES

28.1 Representatives of the Authority

- 28.1.1 The Authority's Representative(s) shall be as stipulated in Schedule 10 (Notices).
- 28.1.2 The Authority's Representative shall exercise the functions and powers of the Authority in relation to the Contract as notified by the Authority to the Contractor from time to time.
- 28.1.3 The Authority may by notice to the Contractor change the Authority's Representative. Such change shall have effect on the date specified in the written notice.



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28.2 Representatives of the Contractor

- 28.2.1 The Contractor's Representative(s) shall be as stipulated in Schedule 10 (Notices), or such other persons appointed pursuant to this Clause 28.2 (Representatives of the Contractor).
- 28.2.2 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 28.2.3 The Contractor may with the prior written consent of the Authority (not to be unreasonably withheld or delayed), change the Contractor's Representative. Where the Contractor wishes to do so it shall, by written notice to the Authority, propose a substitute representative, taking account of the need for liaison and continuity in respect of the Contract.

29. STAFF

29.1 Contractor's Key Staff

- 29.1.1 The Contractor shall appoint the persons named as such in Schedule 18 (Contractor's Key Staff) as the individuals who shall be responsible for the matters allocated to such Contractor's Key Staff. The Contractor acknowledges that the Contractor's Key Staff are essential to the proper provision of the Services to the Authority.
- 29.1.2 The Authority shall be entitled to:
- 29.1.2.1 review the performance of the Services by the Contractor and the Contractor's Key Staff at any time during the Contract Period;
 - 29.1.2.2 reject any of the Contractor's Key Staff assigned to perform the Services if in its sole opinion, acting reasonably, such Contractor's Key Staff do not meet the standards established by the Authority as necessary for the performance of the Services or in the event that the Authority reasonably considers the performance, behaviour or attendance of the Contractor's Key Staff is or are unsatisfactory;
 - 29.1.2.3 see curricula vitae of any candidates whom the Contractor proposes to appoint to perform the Services; and
 - 29.1.2.4 interview the proposed candidate before such candidate commences the Services.



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- 29.1.3 In the event that the Authority is not satisfied with any Contractor's Key Staff assigned or put forward to perform the Services, the Authority shall advise the Contractor in writing of the exact nature of the problems and the Contractor shall, if requested by the Authority, endeavour to find a suitable replacement.
- 29.1.4 In the event that the Authority exercises its rights under Clause 29.1.2, the Contractor shall promptly inform the Authority of any impact such will have on any dates in the Mobilisation Plan. The Parties shall agree any variation to the dates in the Mobilisation Plan necessitated by the Authority exercising its rights under this Clause 29.1.4 (and any consequential changes required to this Contract) in accordance with the Integrated Contract Change Procedure. There shall be no increase in the Charges.
- 29.1.5 Contractor's Key Staff shall not be replaced by the Contractor without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment and other extenuating circumstances.
- 29.1.6 Any replacements to the Contractor's Key Staff shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Contractor's Key Staff being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 29.1.7 The Authority shall not unreasonably withhold its agreement under Clause 29.1.5 or Clause 29.1.6. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Contractor's Key Staff.

29.2 Child Labour

The Contractor shall not, nor directly or indirectly assist any other person to use any child labour in the provision of the Software or Services (or any part thereof), and where third parties are used to provide the Software or Services (or any part thereof) the Contractor shall procure from those third parties written confirmation that they shall not use any child labour in the provision of the Software or Services (or any part thereof), in accordance with the Ethical Trading Initiative (ETI) Base Code. Without prejudice to the materiality of any other provision within this Contract, breach of this Clause 29.2 shall be deemed a material breach of this Contract.

29.3 Equality and Diversity

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

29.4 Health and Safety

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- 29.4.1 The Contractor shall notify the Authority upon becoming aware of the same of any health and safety hazards which may arise in connection with the performance of the Contract.
- 29.4.2 The Contractor shall ensure that it implements and enforces safe systems of work to cover all persons involved in the provision of the Services.
- 29.4.3 The Contractor shall be liable for the health and safety of all Contractor's Staff and shall ensure that appropriate provisions are included in its contracts with such Contractor's Staff requiring the relevant individuals to be responsible for health and safety risks including carrying out appropriate health and safety risk assessments when providing the Services.
- 29.4.4 The Contractor shall appoint a suitably qualified Safety Officer to co-ordinate all matters concerning safety. The Safety Officer shall ensure the co-operation of the Contractor's Staff with respect to matters concerning health and safety and all prevention measures designated against fire or any other hazards. The Safety Officer shall notify the Authority of any change in working practices or other occurrences likely to increase the risks or to cause new hazards. The Safety Officer shall attend all meetings convened by the Authority concerning health and safety if requested by the Authority.

30. TUPE

30.1 Transfer Provisions

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

SECTION J: IP, CONFIDENTIALITY AND DATA

31. INTELLECTUAL PROPERTY RIGHTS

31.1 Reserved Rights

Except as expressly set out in this Contract:

- 31.1.1 the Authority and Related Organisations shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its third party licensors, including:
- (a) the Contractor Background IPR; and
 - (b) the Third Party IPR;
- 31.1.2 the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its third party licensors, including:
- (a) the Project Specific IPR; and



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(b) the Authority Background IPR.

31.1.3 Where either Party acquires, by operation of law, title to Intellectual Property Rights that are inconsistent with the allocation of title set out in Clause 31.1 (Reserved Rights), it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

31.2 Software

31.2.1 The Parties acknowledge that the Software will be made up of elements of Contractor Background IPR, Third Party IPR and Project Specific IPR. As a result, the Contractor and the Authority shall cross-licence the Software on the following basis:

(a) the Contractor shall licence the Authority for the EM&FS Contractor to use within its hosting environment the elements of the Software made up from the Contractor Background IPR on the terms set out in Clause 31.4(Licence to the Authority);

(b) the Authority shall licence the Contractor to use the elements of the Software made up from the Project Specific IPR on the terms set out in Clause 31.6(Licence to the Contractor); and

(c) the Contractor shall obtain a licence or a sub-licence in the name of the Authority for the EM&FS Contractor to use within its hosting environment the elements of the Software made up from the Third Party IPR on the terms set out in Schedule 3 (Third Party Software Licences).

31.3 Project Specific IPR

31.3.1 The Project Specific IPR shall vest in the Authority on creation. The Contractor hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPR and/or shall procure that the first owner of the Project Specific IPR assigns them to the Authority on the same basis.

31.3.2 The assignment under Clause 31.3.1(Project Specific IPR) shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPR, as appropriate.

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

31.3.4 If requested to do so by the Authority, the Contractor shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under Clause 31.3 (Project



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Specific IPR) or shall procure that the owner of the Project Specific IPR does so on the same basis.

31.3.5 The Contractor shall ensure that contracts with sub-contractors include provisions expressly assigning with full title guarantee all rights in or to Project Specific IPR created by or on behalf of that sub-contractor to the Contractor.

31.3.6 The Authority shall have the exclusive right to and shall take all such actions as it considers appropriate in its sole discretion to secure protection for the Project Specific IPR by registration or otherwise in its own name or such other name as it may choose and the Contractor shall provide all reasonable assistance with the application for and prosecution of such protection at the Authority's expense, including without limitation, assisting with the drafting of any patent applications.

31.3.7 The Contractor shall notify the Authority in the event that it becomes aware of any actual or suspected third party infringement of or any challenge to the validity or ownership of any of the Project Specific IPR. The Authority shall be entitled to take all such action as it in its sole discretion deems necessary to enforce its rights in and to defend any challenge to the validity or ownership of the Project Specific IPR and the Contractor shall and shall procure that its sub-contractors shall give the Authority all assistance as the Authority reasonably requires at the Authority's cost (save where within the scope of the indemnity set out in Clause 31.8.1(Indemnity), in enforcing or defending the Project Specific IPR.

31.4 Licence to the Authority and the Related Organisations

31.4.1 Subject to Clause 31.4.3, the Contractor hereby grants to the Authority and its Related Organisations and shall procure that any relevant third party licensor shall grant to the Authority and its Related Organisations a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use and sub-license the Contractor Background IPR and any other Intellectual Property Rights (including those owned by a third party) that are embedded in and/ or which are an integral part of and/ or are required to be used in connection with the Software, the Project Specific IPR, the Test Items the Deliverables, the APIs, the EM Competitions Model and/or any other materials (including components) made available to the Authority under this Contract:

- (a) to perform the Authority's obligations under the Contract, the other EM Service Contracts and/or the Collaboration Agreement, including the use of the Software by the EM&FS Contractor within its hosting environment;
- (b) to receive the benefit of the Services under the Contract, the other EM Service Contracts and/or the Collaboration Agreement and, in particular, the nature of the Services ordered by the Authority or the particular Related Organisation;



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- (c) to use and keep the Software, other Deliverables and APIs;
 - (d) to receive the services and use and/or deal with the products supplied under the other EM Service Contracts with the other EM Contractors in so far as they are received and/or used and/ or dealt with in conjunction with the Software, other Deliverables and APIs;
 - (e) to commercially exploit the Project Specific IPR pursuant to Clause 31.10(Commercial Exploitation of Project Specific IPR);
 - (f) subject to Clause 31.7 (Escrow) on the occurrence of a Trigger Event to receive the source code of the Software from the NCC; and
 - (g) to enable the transfer of responsibility for the Services (or any part of the Services) to the Authority, any Related Organisation and/or any New Contractor in accordance with and for the periods specified in Clause 43; and
 - (h) to use the EM Competitions Model for other competitions and/or tender processes.
- 31.4.2 The Contractor shall be solely responsible for and shall ensure that it has at all times in relation to Intellectual Property Rights, all Consents necessary to provide the Services to the Authority and to grant the licences granted to the Authority under the Contract.
- 31.4.3 Insofar as the licence granted in Clause 31.4.1 relates to Contractor Software:
- (a) the licence granted by the Contractor to the Authority and its Related Organisations is contingent upon the payment by the Authority of the Monthly Software Service Payment;
 - (b) the Authority and its Related Organisations will not assign or sub-licence any of their rights and/or obligations under the licence granted in clause 31.4.1 or sub-licence the Use (in whole or in part) without prior notification to the Contractor;
 - (c) the Authority and its Related Organisations will not (subject to section 50A of the Copyright Designs and Patents Act 1988) copy the whole or any part of the Contractor Software, save that the Authority shall be entitled to make such back up copies of the software programs as necessary for security reasons;
 - (d) the Authority and its Related Organisations will not (subject to section 50A of the Copyright Designs and Patents Act 1988) decompile, reverse engineer, translate, adapt, arrange or alter the whole or any part of the Contractor Software; and
 - (e) the licence granted in clause 31.4.1 will terminate if the Authority ceases to pay the Monthly Software Service Payment. For the avoidance of



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doubt, the Authority may elect to continue to licence the Contractor Software on the terms set out in this Contract after the expiry or termination of this Contract subject to payment of the Monthly Software Service Payment.

31.5 Third Party IPR

The Third Party IPR contained in the Software shall be licensed or sub-licensed to the Authority and Related Organisations on the relevant licensing terms set out in Schedule 3 (Third Party Software Licences). The Contractor shall ensure as a minimum that it obtains at no additional cost to the Authority a licence for the Authority and Related Organisations to Use the Third Party IPR for the Contract Period in order to receive the benefit of the Services under the Contract, the other EM Services Contracts and/or the Collaboration Agreement, and shall ensure that such licences or sub-licences entitle the EM&FS Contractor to use the Third Party Software within its hosting environment. Other Third Party IPR shall be licensed on the terms set out in Clause 31.4(Licence to the Authority), provided that if in respect of any proposed Third Party IPR the Contractor cannot obtain a licence in accordance with such terms, the Contractor will consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority (in which case it shall grant a licence in respect of such Third Party IPR upon the agreed terms) or whether the Contractor should use an alternative provider.

31.6 Licence to Contractor

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

31.6.2 The Authority hereby grants to the Contractor a non-exclusive, non-transferable, sub-licensable licence to Use the Project Specific IPR but not the Authority Background IPR, for the duration and for the extent strictly necessary to enable the Contractor to deliver services and/or products for other customers that are adapted or derived from the Project Specific IPR subject to the commercial exploitation arrangements specified in Clause 31.10(Commercial Exploitation of Project Specific IPR).

31.7 Escrow

31.7.1 Notwithstanding any obligations under the Contract on the Contractor to disclose and/or provide Deposited Software and Contractor Proprietary Information to the Authority, the Contractor shall document and deposit the Source Code of the Deposited Software and the Contractor Proprietary Information in escrow with NCC on the basis of the appropriate standard agreement or on such other terms as the Authority, the Contractor and NCC shall agree. The Contractor shall ensure that the Deposited Software and Contractor Proprietary Information is the current version of the Software and Contractor Proprietary Information and that the Deposited Software and Contractor Proprietary Information is kept up-to-date as the Software and Contractor Proprietary Information is modified or upgraded. The Contractor



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shall pay the storage fees under the escrow agreement and the Authority shall pay the release fees. Such escrow agreement shall, without limitation, include a failure of the Guarantor to perform any obligation under this Contract in accordance with Schedule 9 (Parent Company Guarantee) as a trigger event for the release of the Deposited Software and Contractor Proprietary Information to the Authority.

31.7.2 Where the Contractor is unable to procure compliance with the provisions of Clause 31.7.1 (Escrow) in respect of any part of the Deposited Software or Contractor Proprietary Information belonging to a third party other than an Affiliate, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall agree with the Authority a suitable alternative to escrow that affords the Authority the nearest equivalent protection. The Contractor shall be excused from its obligations under Clause 31.7.1 (Escrow) only to the extent that the Parties have agreed on a suitable alternative.

31.7.3 In circumstances where the Authority obtains the release of the Source Code of the Deposited Software and/or Contractor Proprietary Information from escrow, the Contractor hereby grants to the Authority and Related Organisations a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Deposited Software and Contractor Proprietary Information upon the applicable terms set out in this Contract and, in addition, to the extent necessary:

- (a) to Use and exploit the Project Specific IPR;
- (b) to receive the benefit of the Services under the Contract and/or the Collaboration Agreement;
- (c) to receive the benefit of any replacement Services;
- (d) to receive the services and use and/or deal with the products supplied under the EM Services Contracts with the other EM Contractors in so far as they are received and/or used and/or dealt with in conjunction with the APIs, the Services and/or other Deliverables; and/or
- (e) to manufacture, maintain, repair, use, upgrade, keep and otherwise deal in the Software, Services, and APIs and/or to permit New Contractors to do so on behalf of the Authority.

31.8 Indemnity

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



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

infringes the Intellectual Property Rights of a third party and the provisions of Clause 38 (Liabilities) and Clause 40 (Indemnities) shall apply.

31.9 The Parties acknowledge that the Authority has the benefit of indemnities under the other EM Services Contracts that correspond to the indemnity set out in Clause 31.8.1(a). In the event of any claim, threatened claim and/or proceedings as to infringement of Intellectual Property Rights being brought directly against the Contractor by a third party that relates to the use by the Contractor (in connection with performance of the Services) of the Intellectual Property Rights or any materials embodying those Intellectual Property Rights licensed to the Authority by another EM Contractor, then to the extent that the Authority can recover under the corresponding indemnity in respect of the Contractor's losses, the Authority shall pass on to the Contractor any such sums recovered. The Authority may where appropriate consider giving the Contractor conduct of any claim against the other EM Contractor under the corresponding indemnity.

31.10 Commercial Exploitation of Project Specific IPR

31.10.1 Where the Contractor identifies an opportunity for exploitation of any of the Project Specific IPR, the Contractor shall, prior to taking steps to exploit the Project Specific IPR, develop and submit to the Authority a proposal for such commercial exploitation.

31.10.2 Each proposal for commercial exploitation shall include as a minimum:

- (a) a business case which describes the opportunity and includes the heads of terms and proposed duration of the commercial exploitation, a detailed cashflow forecast and forecast financial statements for the commercial exploitation covering the proposed scope and duration and details of any additional requirements;
- (b) the Contractor's proposed basis for the sharing of the revenues arising from the commercial exploitation with the Authority and payment of the revenues, which shall take into account amounts paid or payable to the Contractor by the Authority under this Contract and to other EM Contractors under the other EM Services Contracts; and



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- (c) the changes required to this Contract (if any) to implement the commercial exploitation.
- 31.10.3 The Contractor shall in a timely manner provide such additional information as the Authority may reasonably request to enable it to evaluate the proposal for commercial exploitation. The approval of any proposal for commercial exploitation shall be subject to any Authority approval processes that the Authority may specify and to Clause 31.10.4.
- 31.10.4 Any commercial exploitation proposals that are approved by the Authority shall be set out in appropriate contractual documentation to be agreed at the relevant time.
- 31.10.5 The Authority retains the right at its absolute discretion (and without having to explain the exercise of its discretion to the Contractor) to refuse approval of a proposal for commercial exploitation of Project Specific IPR, or commercial exploitation which involves a particular organisation, group of organisations, country or individual, in which circumstances the Contractor acknowledges and agrees that it shall not seek to take the proposal forward itself. In the event that the Contractor commercially exploits any Project Specific IPR without obtaining the written approval of the Authority, without prejudice to any rights of the Authority to bring a claim against the Contractor (and any third party licensee) for damages and/or infringement of its Intellectual Property Rights, the Authority may elect to require the Contractor to pay to the Authority REDACTED of its gross revenues in respect of such commercial exploitation.
- 31.11 EM Competitions Model**
- 31.11.1 The Contractor acknowledges and agrees that the EM Competitions Model is confidential to the Authority and the Authority owns all Intellectual Property Rights therein, including any Project Specific IPR in or to the EM Competitions Model but excluding any Contractor Background IPR. The Contractor shall not disclose the EM Competitions Model to any third party and shall not use or permit any third party to use the EM Competitions Model for any purpose at any time. For the avoidance of doubt, Clause 31.10 (Commercial Exploitation of Project Specific IPR) shall not apply to Project Specific IPR or any other Intellectual Property Rights in or to the EM Competitions Model.

32. INFORMATION AND CONFIDENTIALITY

32.1 Confidentiality

- 32.1.1 The Parties agree that the provisions of this Contract shall not be treated as Confidential Information and may be disclosed without restriction, provided that prior to such disclosure the Authority may, at its sole discretion, in whole or in part, redact information as it deems appropriate.
- 32.1.2 Clause 32.1.1 shall not apply to the provisions of this Contract designated



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as Commercially Sensitive Information and listed in Part 1 of Schedule 25 (Commercially Sensitive Information) which shall, subject to Clause 32.2 (Permitted Disclosure), be kept confidential for the periods specified in that Part.

32.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

32.2 Permitted Disclosure

Clause 32.1 (Confidentiality) shall not apply to:

- 32.2.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;
- 32.2.2 any matter which a Party can demonstrate is already or becomes widely available in the public domain otherwise than as a result of a breach of this Clause 32 (Information and Confidentiality);
- 32.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its sub-contractors;
- 32.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 32.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 32.2.6 any provision of information to the Parties' own legal, financial or insurance advisers;
- 32.2.7 any disclosure by the Authority of information relating to the operation of this Contract and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any shortlisted bidder in a re-tendering process, and the proposed New Contractor and its advisers, should the Authority decide to retender this Contract (in whole or in part) subject to the shortlisted bidders and the proposed New Contractor entering into a confidentiality undertaking with the Authority on terms similar in all material respects to those set out in this Clause 32 (Information and Confidentiality);

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- 32.2.8 any disclosure of information by the Authority to any other department, office or agency of the United Kingdom Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 32.2.9 the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 32.2.10 any disclosure on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the audit rights pursuant to Clause 26 (Audit Access), the management supervision rights pursuant to Clause 27 (Management Supervision), and Exit Management rights pursuant to Clause 43 (Exit Management), or to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 32; or
- 32.2.11 any disclosure for the purpose of:
- (a) the examination and certification of the Authority's or the Contractor's accounts;
 - (b) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (c) (without prejudice to the generality of Clause 32.2.4 (Permitted Disclosure)) compliance with the FOIA and/or the Environmental Information Regulations,
- provided that neither Clauses 32.2.9(c) (Permitted Disclosure) nor 32.2.4 (Permitted Disclosure) shall permit disclosure of Confidential Information otherwise prohibited by Clause 32.1 (Confidentiality) where that information is exempt from disclosure under section 41 of the FOIA.

32.3 Obligations Preserved

Where disclosure is permitted under Clause 32.2 (Permitted Disclosure), other than Clauses 32.2.2, 32.2.4, 32.2.5 and 32.2.9 (Permitted Disclosure), the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

32.4 Subject Information

The Contractor acknowledges that it must not hold or process any information relating to Subjects arising from the operation or support of the Software or performance of the Services to which it may gain access. The Contractor shall not take any steps to gain



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access to any such information and shall disable any systems which would give access to such information.

32.5 Freedom of Information

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

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

- (a) transfer to the Authority or, as applicable, the relevant Related Organisation all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;
- (b) provide the Authority or, as applicable, the relevant Related Organisation with a copy of all Information in its possession, or power in the form that the Authority or, as applicable, the relevant Related Organisation requires within five (5) Business Days (or such other period as the Authority may specify) of the Authority's request; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority or, as applicable, the relevant Related Organisation to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

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

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

32.5.5 The Contractor acknowledges that (notwithstanding the provisions of this Clause 32.5 (Freedom of Information)) the Authority or, as applicable, the relevant Related Organisation may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

- (a) in certain circumstances without consulting the Contractor; or



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- (b) following consultation with the Contractor and having taken their views into account;

provided always that where Clause 32.5.5(a) (Freedom of Information) applies the Authority shall (or, as applicable, shall ensure the relevant Related Organisation shall) take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 32.5.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority and Related Organisations to inspect such records as requested from time to time.

33. PROTECTION OF INFORMATION

33.1 Authority Data

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

- 33.1.2 The Contractor shall:

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

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

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

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

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



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- 33.1.4 From the date of receipt of (or of being given access to) Authority Data and throughout the Term whilst such Authority Data is in the possession or control of the Contractor, any Sub-contractor or any Contractor Related Party, the Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption, loss, unauthorised use, theft or unauthorised disclosure of Authority Data.
- 33.1.5 The Contractor shall perform secure back-ups of all Authority Data in accordance with the timescale set out in Schedule 2 (Specifications) and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon reasonable request.
- 33.1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with Schedule 13 (Security).
- 33.1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 33.1.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data to the extent and in accordance with Schedule 2 (Specifications) and the Contractor shall do so as soon as practicable; and
 - 33.1.7.2 if the Contractor does not comply with Clause 33.1.7.1 of this Contract, the Authority may restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 33.1.8 If at any time the Contractor suspects or have reason to believe that Authority Data has or may become corrupted, lost or significantly degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action that the Contractor proposes to take.
- 33.2 Protection of Personal Data**
- 33.2.1 Where the Contractor acts as a Data Processor in respect of any Personal Data for which the Authority is the Data Controller, the Contractor shall comply with Clauses 33.2.1 – 33.2.14. In such circumstances the Parties shall agree a new Schedule relating to the Processing of Personal Data by the Contractor which shall apply throughout the duration of such processing and may not be determined by the Contractor.
- 33.2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 33.2.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing



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any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

33.2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with a new Schedule which will be agreed by the Parties, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Contractor's Staff do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor's Staff who have access to the Personal Data and ensure that they:
 - (iii) are aware of and comply with the Contractor's duties under this clause;
 - (iv) are subject to appropriate confidentiality undertakings

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with the Contractor or any Sub-processor;

- (v) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (vi) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

33.2.5 Subject to clause 33.2.6, the Contractor shall notify the Authority immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner



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or any other regulatory authority in connection with Personal Data processed under this Agreement;

- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

33.2.6 The Contractor's obligation to notify under clause 33.2.5 shall include the provision of further information to the Authority in phases, as details become available.

33.2.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 33.2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

33.2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Authority determines that the processing is not occasional;
- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and



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- (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.2.9 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 33.2.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 33.2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
 - (a) notify the Authority in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Authority;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 33 such that they apply to the Sub-processor; and
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 33.2.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 33.2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply pursuant to a Change Order under the Integrated Change Control Procedure).
- 33.2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 33.3 In the event that the Contractor processes Personal Data pursuant to the Contract for Law Enforcement Purposes, the Contractor shall:
 - 33.3.1 maintain logs for its processing operations in respect of:
 - (a) collection;
 - (b) alteration;
 - (c) consultation;



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- (d) disclosure (including transfers);
 - (e) combination; and
 - (f) erasure.
- (together the “Logs”).

33.3.2 ensure that:

- (a) the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;
- (b) the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure; and the identity of the recipients of the data; and
- (c) the Logs are made available to the Information Commissioner’s Office on request

33.3.3 use the Logs only to:

- (a) verify the lawfulness of processing;
- (b) assist with self-monitoring by the Authority or (as the case may be) the Supplier, including the conduct of internal disciplinary proceedings;
- (c) ensure the integrity of Personal Data; and
- (d) assist with criminal proceeding

33.3.4 as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and

33.3.5 where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:

- (a) persons suspected of having committed or being about to commit a criminal offence;
- (b) persons convicted of a criminal offence;
- (c) persons who are or maybe victims of a criminal offence; and
- (d) witnesses or other persons with information about offences.

33.4 Clauses 33.2 and 33.3 shall apply during the Term and shall continue to apply indefinitely after its expiry or early termination.



SECTION K: LIABILITIES

34. NOTIFICATION REQUIREMENTS

- 34.1 Whenever the Contractor becomes aware of the occurrence or imminent occurrence of any Relief Event, Compensation Event, Delay Waiver Compensation Event, Service Failure or the non-occurrence or imminent non-occurrence of a Dependency by it, the Authority or another EM Contractor then the Contractor shall notify the Authority as soon as reasonably practicable and in any event within two (2) Business Days.
- 34.2 In such notification made under Clause 34.1 the Contractor shall summarise the reasons for the likely Relief Event, Compensation Event, Delay Waiver Compensation Event, Service Failure or non-occurrence of a Dependency.
- 34.3 Where the Contractor makes a notification under Clause 34.1, it shall, as soon as reasonably practicable and in any event not later than five (5) Business Days after the initial notification under Clause 34.1, give the Authority:
- 34.3.1 full details in writing of the reasons for and possible consequences of the likely Relief Event, Compensation Event, Delay Waiver Compensation Event, Service Failure or non-occurrence of a Dependency;
 - 34.3.2 any claim for relief from its obligations under this Contract and/or its EM Services Contract; and
 - 34.3.3 whether the likely Relief Event, Compensation Event, Delay Waiver Compensation Event, Service Failure or non-occurrence of a Dependency will result in a Delay.
- 34.4 For the purposes of Clause 34.3, "full details" shall mean such details as are available to the Contractor at that time (to be promptly updated as and when further details become available) and as are necessary for the Authority to understand and assess the reasons for the default.
- 34.5 Not used
- 34.6 Whenever the circumstances outlined in Clause 34.1 arise the Parties shall work together to minimise the effect of any such Relief Event, Compensation Event, Delay Waiver Compensation Event, Service Failure or non-occurrence of a Dependency and shall perform any unaffected obligations in accordance with the terms of this Contract. In all such circumstances, the "fix first, resolve later" principle set out in Clause 3.5 (Fix First/Resolve Later) shall apply.
35. **NOT USED**
36. **NOT USED**
37. **NOT USED**

38. LIABILITIES

Operating Model Liability Structures

- 38.1 The Contractor agrees that, as a consequence of the Operating Model for the provision of the Services, it shall be liable to the Authority for Direct Losses incurred by the other EM Contractors for which the Authority becomes liable through the Dispute Resolution Procedure where such liability arises as a result of a successful claim against the Contractor for breach of Contract or for any other liability arising from or under the Contract..
- 38.2 The Contractor shall be entitled, subject to Clause 34.5 (Notification Requirements), as its sole financial remedy in the event of any failure by the Authority to comply with any Dependency (including in these circumstances the non-achievement of any Dependency by any other EM Contractor which results in the Contractor not meeting its obligations under this Contract) to compensation from the Authority for the Direct Losses (excluding legal costs) of the Contractor that the Authority may recover from the defaulting EM Contractor pursuant to an Integration Claim.
- 38.3 The Authority shall be entitled at its discretion pursuant to any Integration Claim to give:
- 38.3.1 the Contractor the right to take legal action against another EM Contractor under the Third Party Rights Act provision in the EM Services Contract with that other EM Contactor; and/or
- 38.3.2 another EM Contractor the right to take legal action against the Contractor under Clause 45.7,
- in respect of a specific claim or series of connected claims.
- 38.4 The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure or liability is caused by a Relief Event provided that the Contractor complies with the Notification Requirements set out in Clause 34 above and its obligations as set out in the BCDR Plan.
- 38.5 The Contractor agrees that if another EM Contractor can claim relief from liability for failing to comply with its obligations under its EM Services Contract due to a Relief Event as defined in that EM Contractor's EM Services Contract, then the Contractor shall not be entitled to make any claim or recover any Direct or Indirect Losses that it incurs as a consequence of that Relief Event from the Authority or from the other EM Contractor which is the subject of the Relief Event.
- 38.6 The Contractor shall obtain insurance as required by Clause 39 (Insurance) and Schedule 22 (Insurance Requirements).
- 38.7 In no circumstances shall the Authority be liable to make any payment to the Contractor of any sum (or be liable in any other respect to any person) under this Contract, the Collaboration Agreement or otherwise in respect of any Integration Claim unless it has received such sum by way of an agreement, settlement or determination under the EM Services Contract of another EM Contractor specifically as a result of the Authority's

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processing of the relevant claim against such EM Contractor in any regard via the Dispute Resolution Procedure.

- 38.8 Save as expressly stated in this Clause 38, the Contractor acknowledges that nothing in this Contract shall relieve the Contractor from any obligation or liability under the Collaboration Agreement.

Financial Limits of Liability

- 38.9 Unless otherwise expressly provided, the maximum amount for which the Contractor shall be liable to the Authority in any Year with respect to this Contract and the Collaboration Agreement shall be limited to an aggregate amount for that Year equivalent to REDACTED of the aggregate of the Monthly Contract Price for all Months of that Year.
- 38.10 Unless otherwise expressly provided, the maximum amount for which the Authority shall be liable to the Contractor in the aggregate in any Year (excluding with respect to Integration Claims, the Contract Price and any sums recovered under Clause 31.9, but including under any indemnity) with respect to this Contract and the Collaboration Agreement shall be limited to REDACTED
- 38.11 The amounts specified in clauses 38.9 and 38.10 shall not include the recovery of any overpayments by the Authority under this Contract, which shall be recoverable by the Authority without reference to the limits specified in Clauses 38.9 and 38.10.
- 38.12 Subject to Clause 38.15, neither Party shall be liable to the other Party for any Indirect Losses.
- 38.13 The Authority confirms that the EM&FS Contract is of significantly higher value than the financial value of this Contract. Special limitations will apply to the Contractor with respect to Mobilisation, in relation to Integration Claims by the EM&FS Contractor against the Contractor only, as further set out in this Clause 38.13 (the "**Special Limitations**"). The Special Limitations shall apply to delay to Services Commencement Date caused by the Contractor and shall be (subject to Clause 38.9) as follows: a maximum of REDACTED for any delay up to the end of the first week following Services Commencement Date and a maximum of REDACTED for any period of delay to Services Commencement Date thereafter. With respect to the Contract Period following Services Commencement Date, the Special Limitations shall be a maximum of REDACTED for each Day of delay, subject to a weekly cap of REDACTED per week.

Deemed Direct Losses of the Authority

- 38.14 The following losses shall be recoverable by the Authority, as Direct Losses and shall not constitute Indirect Loss:
- 38.14.1 any losses incurred by any Related Organisation within the permitted categories of loss set out in this Clause;
- 38.14.2 any additional operational and/or administrative cost and expenses (including the costs in connection with undertaking a new procurement) arising from the Contractor's default;



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- 38.14.3 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority or the Related Organisations arising from the Contractor's default;
- 38.14.4 any regulatory fines and penalties; and
- 38.14.5 any amount payable or paid to another EM Contractor by the Authority or a Related Organisation arising from the Contractor's default (including compensation payments relating to additional costs incurred by another EM Contractor as a result of the Contractor's default and any amount claimed from the Authority or the Contractor by another EM Contractor by way of an Integration Claim or otherwise under the Collaboration Agreement) and any legal expenses incurred by the Authority in administering any such claims arising from the Contractor's default.

General Exclusions

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

- 38.15.1 any Party's liability to the other for death or personal injury caused by that Party's negligence;
- 38.15.2 any Party's liability to the other for fraudulent misrepresentation or fraudulent concealment;
- 38.15.3 any Party's liability to the other for any liability which cannot be limited or excluded by law;
- 38.15.4 any liability of the Contractor in respect of loss, corruption or destruction of, or damage to, any Authority Data;
- 38.15.5 any liability of the Contractor in respect of unlawful processing of Personal Data; and
- 38.15.6 any liability pursuant to Clause 31.9.

38.16 The exclusions set out in Clause 38.12 above shall apply to liability under indemnity as well as to contractual claims.

39. INSURANCE

39.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 22 (Insurance Requirements) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 39 (Insurance) and Schedule 22 (Insurance Requirements) and any other insurances as may be required by Legislation, collectively the Insurances. The Contractor shall ensure that each of these Insurances is effective in each case not later than the date on which the relevant risk commences.



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- 39.2 The Insurances shall be maintained from time to time (as far as is reasonably practicable) on terms no less favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 39.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 39.4 The Contractor shall ensure in respect of each of the public and products liability and employers liability insurances that the policies of insurance shall contain an indemnity to principals clause under which the Authority, the Authority Related Parties, the Contractor's Staff, Subjects and Related Organisations shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage and for which the Contractor is legally liable in the provision of the Services under this Contract.
- 39.5 The Contractor shall ensure in respect of each of the public and products liability and employers liability insurances that the policies of insurance contain a clause waiving all rights of subrogation or action that insurers may acquire against the Authority, its employees, servants and agents. The provisions of this Clause 39.5 shall not apply against any Authority employee, servant or agent who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition.

40. INDEMNITIES

40.1 Contractor's Indemnity

The Contractor shall, subject to Clause 38 (Liabilities), be responsible for, and shall indemnify and keep indemnified in full and on demand the Authority from and against:

40.1.1 all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Authority or any Related Organisation or for which it is responsible);
- (c) breach of statutory duty;
- (d) failure to exercise its duty of care under the Occupiers Liability Act 1957 (as amended);
- (e) third party (other than other EM Contractors) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) arising in connection with any tort committed by the Contractor (including negligence or breach of statutory duty), misrepresentation by the Contractor or the Contractor's breach of its obligations under this Contract; and
- (f) loss, corruption or destruction of, or damage to, any Authority Data;



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

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

40.2 Contractor not Responsible

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

40.2.1 any of the matters referred to in Clause 40.1 (Contractor's Indemnity) which arises as a direct result of the Contractor acting on the written instruction of the Authority's Representative, provided that the Contractor has implemented the instruction in a manner which is not negligent and is in accordance with Good Industry Practice; or

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

40.3 Limitation of Indemnity

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

40.3.1 any indemnity by that Party under any other provision of this Contract or the Collaboration Agreement; or

40.3.2 any other liability of that Party under this Contract or the Collaboration Agreement.

40.4 Notification of Claims

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

40.5 Conduct of Claims

40.5.1 The Contractor shall give notice to the Authority, or, where applicable, to the relevant Related Organisation as soon as reasonably practicable of any



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proceedings in relation to any Third Party Claim (including any claim by employees of the Parties) to which the Authority or relevant Related Organisation is or is likely to be a party, regardless of whether the Contractor (or any sub-contractor) is also a party to such proceedings, and such notice shall set out full particulars of the claim. The Contractor shall provide the Authority or, where applicable, the relevant Related Organisation with copies of any such claim form and statement of claim.

- 40.5.2 The Contractor shall have conduct of proceedings in relation to any Third Party Claim, provided that the Authority or, where applicable, the relevant Related Organisation may, on giving written notice to such effect to the Contractor, at any time take control of and where appropriate conduct any proceedings in relation to any Third Party Claim where the Authority is the Indemnifying Party in relation to the Third Party Claim (including any claim by employees of the Parties, to which the Authority or, where applicable, the relevant Related Organisation is a party, regardless of whether the Contractor (or any sub-contractor) is also a party to such proceedings). The Contractor shall procure compliance by its sub-contractors with the provisions of this Clause 40.5.2 (Conduct of Claims).
- 40.5.3 Where the Authority or, where applicable, the relevant Related Organisation does not exercise its right pursuant to Clause 40.5.2 (Conduct of Claims), the Contractor shall at all times keep the Authority or, where applicable, the relevant Related Organisation informed as to the progress of any such Third Party Claim until such Third Party Claim is finally determined, settled or withdrawn, and shall at the Authority's request or, where applicable, that of the relevant Related Organisation, provide the Authority or, where applicable, the relevant Related Organisation with copies of all documentation relating to such claim and shall where so required by the Authority or, where applicable, the relevant Related Organisation liaise and work with the Authority or, where applicable, the relevant Related Organisation in the conduct of the claim.
- 40.5.4 Where the Authority or, where applicable, the relevant Related Organisation exercises its right pursuant to Clause 40.5.2 (Conduct of Claims), the Authority shall keep the Contractor informed as to the progress of any such Third Party Claim until such Third Party Claim is finally determined, settled or withdrawn.
- 40.5.5 The Authority agrees that it and, where applicable, the relevant Related Organisation shall not settle or compromise any Third Party Claim for which the Contractor is liable to indemnify the Authority or Related Organisation under Clause 40.1 (Contractor's Indemnity) without prior consultation with the Contractor. The Authority shall, and shall ensure that any relevant Related Organisation shall, keep the Contractor reasonably informed as to the progress and status of any such Third Party Claim until such Third Party Claim is settled or withdrawn.
- 40.5.6 The Contractor undertakes that:



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- (a) it shall not, without the prior written consent of the Authority or, where applicable, the relevant Related Organisation, settle or compromise any claim (whether insured or uninsured) for which the Contractor is liable to indemnify the Authority under this Contract or to which the Authority or, where applicable, the relevant Related Organisation is, or is likely to become a party; and
- (b) it shall ensure that its sub-contractors give undertakings identical to those given by the Contractor to the Authority or, where applicable, the relevant Related Organisation under this Clause 40.5 (Conduct of Claims).

40.6 Mitigation

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

SECTION L: TERM, TERMINATION AND EXIT

41. TERM

- 41.1 This Contract and the rights and obligations of the Parties shall take effect on the 1st August 2018 and (subject to the provisions for early termination set out in this Contract) shall continue until the Expiry Date.
- 41.2 The Term of this Contract may, at the Authority's sole discretion, be extended for further Notified Extension Periods up to a maximum of six (6) Years in the aggregate, any such extension to be implemented in accordance with the procedure set out in Clause 41.3. For the avoidance of doubt, any initial Notified Extension Period shall commence on the date three (3) Years after the Services Commencement Date and any subsequent Notified Extension Period shall commence on the relevant anniversary thereof.
- 41.3 Not more than twelve (12) Months and not less than six (6) Months prior to the Expiry Date, the Authority may serve a written notice upon the Contractor the effect of which shall be to extend the term of this Contract by the term of the relevant Notified Extension Period and to amend the Expiry Date accordingly.

42. TERMINATION

42.1 Voluntary Termination by the Authority

- 42.1.1 The Authority may terminate this Contract in whole or in part at any time on or before the Expiry Date for convenience by serving not less than three (3)



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Months' written notice upon the Contractor.

42.1.2 If the Authority wishes to terminate this Contract under this Clause 42.1 (Voluntary Termination by the Authority) in whole or in part, it must give a Termination Notice to the Contractor stating:

- (a) that the Authority is terminating this Contract in whole or in part under this Clause 42.1 (Voluntary Termination by the Authority);
- (b) that, subject to Clause 42.1.1, this Contract will terminate on the date specified in the Termination Notice in whole or in respect of the relevant part.

42.1.3 This Contract will terminate in whole or in part as specified by the Authority on the date specified in the Termination Notice referred to in Clause 42.1.2 (Voluntary Termination by the Authority).

42.2 Termination by the Authority for Contractor Default

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

42.2.1 the Contractor commits a material breach of this Contract and (if such breach is remediable) fails to remedy that breach within twenty (20) Business Days of being notified in writing to do so;

42.2.2 the Contractor commits a Persistent Breach;

42.2.3 any of the following occur:

- (a) there is a material breach of the Collaboration Agreement by the Contractor and (if such breach is remediable) the Contractor fails to remedy that breach within twenty (20) Business Days of being notified in writing to do so by the Authority;
- (b) the Contractor is in breach of Clause 13 (Security Obligations), Clause 31 (Intellectual Property Rights) or Clause 33 (Protection of Information);
- (c) the Contractor fails to achieve Information Assurance Accreditation for the Services in accordance with the timescales set out in the Mobilisation Plan or the Contractor fails to maintain the Information Assurance Accreditation for the Services;
- (d) the Authority is entitled to terminate the Contract in accordance with Paragraph 2.25-2.28 (Rectification) of Schedule 7 (Contract Delivery Indicators) for failure to meet the terms of a Rectification Notice;
- (e) failure by the Contractor to meet the threshold applicable to the same



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- CDI three (3) or more times in any six (6) Month rolling period, regardless of whether or not a Service Credit applies to that CDI;
- (f) failure by the Contractor to provide a Parent Company Guarantee in favour of the Authority substantially in the form set out in Schedule 9 (Parent Company Guarantee) or, in the circumstances where the Guarantor ceases to be the Contractor's ultimate Holding Company, the Contractor's new ultimate Holding Company does not execute a Parent Company Guarantee in the prescribed time where required to do so under Clause 45.2 (Parent Company Guarantees);
 - (g) the Contractor makes any public announcement or a director of the board of directors of the Contractor advises an officer of the Authority that the Contractor is no longer to continue to develop or to offer the provision of the Services or Software or services or software similar to the Services;
 - (h) the circumstances described in paragraph 5.1 of Schedule 16 (Financial Distress) in respect of a Financial Distress Event arise;
 - (i) any Payment Milestone identified within Schedule 6 (Price and Payment Mechanism) is not Accepted by the adjusted Acceptance Date following not less than one (1) repeat testing cycle under the Repeat Acceptance Procedure as described in Schedule 24 (Acceptance Procedure);
 - (j) the Authority is entitled to terminate the Contract in accordance with Clause 45.3.2 (Change of Ownership);
 - (k) failure to achieve the Services Commencement Date within fifty (50) Days of the Services Commencement Milestone Date, except where such failure arises from a failure by the Authority or another EM Contractor to meet a Dependency;
 - (l) the Authority is entitled to terminate the Contract in accordance with paragraph 3.12.1(b) of Schedule 24 (Acceptance); or
 - (m) a Prohibited Act is committed by the Contractor or a sub-contractor (or anyone employed by or acting on behalf of any of them);
- 42.2.4 the Contractor has a petition presented for its winding up (which is not dismissed within fourteen (14) Days of its service) or has an application made for the appointment of a provisional liquidator or has a creditors' meeting convened pursuant to section 98 of the Insolvency Act 1986;
- 42.2.5 the Contractor goes into liquidation or passes a resolution for voluntary winding up, or its directors convene a meeting of shareholders to consider passing such a resolution (except for the exclusive purpose of a bona fide reconstruction or amalgamation);



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- 42.2.6 the Contractor has an administrator appointed (by court order or otherwise (including without limitation by its directors or by a floating charge holder)) or has an application made either for the appointment of an administrator or for an administration order or has a notice of intention to appoint an administrator given;
- 42.2.7 the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or it has proposed in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition or scheme or arrangement with or assignment for the benefit of any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or its solvent reconstruction);
- 42.2.8 an administrative receiver or receiver or similar officer is appointed over, substantially all of the Contractor's assets or undertaking;
- 42.2.9 the Contractor is the subject of any judgment or order made against it which is not complied with or discharged within thirty (30) Days;
- 42.2.10 the Contractor has an encumbrancer or creditor attach or take possession of, or is the subject of any execution, distress, sequestration or other process levied upon or enforced against all or substantially all of its assets;
- 42.2.11 the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 42.2.12 the Contractor has a moratorium come into force in respect of it pursuant to Schedule A1 of the Insolvency Act 1986;
- 42.2.13 any of the events mentioned in Clause 42.2.4 to Clause 42.2.12 (Termination by the Authority for Contractor Default) (inclusive) occurs with respect to the Guarantor and the Guarantor is not replaced by a substitute guarantor reasonably acceptable to the Authority within twenty (20) Business Days of the occurrence of any such event; or
- 42.2.14 any event occurs with respect to the Contractor or Guarantor in any relevant jurisdiction that has a similar or analogous effect to any of the events in Clause 42.2.4 to Clause 42.2.12 (Termination by the Authority for Contractor Default) (inclusive).
- 42.3 Termination on Force Majeure Event**
- 42.3.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.



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- 42.3.2 On the occurrence of a Force Majeure Event:
- (a) the Affected Party shall notify the other Party as soon as practicable, including details of the Force Majeure Event, evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect;
 - (b) use all reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event and, where the Contractor is the Affected Party, the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice and the BCDR Plan to overcome or minimise the consequences of the Force Majeure Event;
 - (c) as soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract;
 - (d) if no such terms are agreed on or before the date falling twenty (20) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than sixty (60) Business Days, then, subject to Clause 42.3.2 (Termination on Force Majeure Event), the Authority may terminate this Contract by giving not less than twenty (20) Business Days' written notice to the Contractor (and the Authority may instead elect to terminate this Contract in part by terminating the affected Services only); and
 - (e) the Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall, subject to Clause 42.3.2(d) (Termination on Force Majeure Event) continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 42.3.3 If this Contract is terminated under Clause 42.3.2(d) (Termination on Force Majeure Event) (in whole or in part) the Authority shall pay to the Contractor the "**Force Majeure Termination Sum**". The Force Majeure Termination Sum shall be an amount equivalent to REDACTED of the applicable Contractor Breakage Costs provided that for the purposes of the Force Majeure Termination Sum, no loss of profits shall be compensated.
- 42.3.4 The amount payable under Clause 42.3.3 (Force Majeure Termination Sum) shall be reduced or extinguished to the extent that the Contractor has already received such amount through the Contract Price or through the financial benefit of any other remedy given under the Contract (or, in the case of a termination of this Contract in part, will receive through future payments of



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the Contract Price) so that there is no double counting in calculating the relevant payment.

42.4 Termination for Prolonged Relief Event

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

42.5 Termination by the Contractor

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

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

43. EXIT MANAGEMENT

43.1 Application of Schedule 11 (Exit Management and Transfer)

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

43.2 Compensation on Voluntary Termination

43.2.1 On termination of this Contract (in whole or in part) under Clause 42.1 (Voluntary Termination by the Authority), the Authority shall pay the Contractor the applicable Contractor Breakage Costs.

43.2.2 The amount payable under this Clause 43.2 (Compensation on Voluntary Termination) shall be reduced or extinguished to the extent that the Contractor has already received such amount through the Contract Price or through the financial benefit of any other remedy given under the Contract (or, in the case of a termination of this Contract in part, will receive through future payments of the Contract Price) so that there is no double counting in calculating the relevant payment.

43.3 Compensation on Termination for Authority Default

43.3.1 On termination of this Contract under Clause 42.5 (Termination by the Contractor), the Authority shall pay the Contractor the applicable Contractor Breakage Costs.



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43.3.2 The amount payable under this Clause 43.3 (Compensation on Termination for Authority Default) shall be reduced or extinguished to the extent that the Contractor has already received such amount through the Contract Price or through the financial benefit of any other remedy given under the Contract so that there is no double counting in calculating the relevant payment.

43.4 Exclusivity of Remedy

43.4.1 Save as provided in and subject to Clause 43.7 (Continuing Obligations), any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to the termination of this Contract (in whole or in part). The payment of compensation under Clause 43.2 (Compensation on Voluntary Termination), Clause 42.3 (Termination on Force Majeure Event) and/or Clause 43.3 (Compensation on Termination for Authority Default) shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract (in whole or in part).

43.5 Assistance With Exit of Other EM Contractors

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

43.6 Duty to Co-operate

Without prejudice to its obligations under Schedule 11 (Exit Management and Transfer), during the eighteen (18) Months immediately preceding the Expiry Date and during the period of any Termination Notice, and in either case for the period subsequently as specified in Schedule 11 (Exit Management and Transfer), the Contractor shall co-operate fully in any re-tendering process and in the transfer of responsibility for the Services (or any part of the Services) to the Authority and/or any New Contractor and for the purposes of this Clause 43 (Exit Management) the meaning of the term "**co-operate**" shall include:

43.6.1 liaising with the Authority, the bidders in a re-tendering process and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such New Contractor;

43.6.2 allowing the bidders in a re-tending process and any New Contractor the opportunity to attend the Contractor's Premises to understand the Services process (at reasonable times and on reasonable notice) but not so as to interfere with or impede the provision of the Services; and

43.6.3 providing to the Authority, the bidders in a re-tendering process and/or to any New Contractor all and any information concerning the Services which is reasonably required for the submission of tenders and the efficient transfer of responsibility to a New Contractor.

43.7 Post Expiry and Termination Warranty and Services Obligations



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Without prejudice to the Contractor's obligations under Schedule 11 (Exit Management and Transfer) and Clauses 43.5 and 43.8, the Contractor shall following the expiry or any early termination of this Contract:

43.7.1 continue to honour the warranty obligations for each Service as set out in Clause 18.5; and

43.7.2 continue to provide service and support in accordance with the support and service descriptions as agreed pursuant to the relevant Exit Plan and upon the terms and charges set out in Schedule 11 (Exit Management and Transfer).

43.8 Continuing Obligations

43.8.1 Except as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Contractor Breakage Costs or other payment of compensation on termination pursuant to this Contract, and notwithstanding the provisions of Clause 43.4 (Exclusivity of Remedy):

(a) termination of this Contract, in whole or in part, shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date; and

(b) termination, in whole or in part, (howsoever arising) or expiry of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under Clauses 1, 2, 3.3, 18, 19, 21, 25, 26, 30, 31, 32, 33, 38, 39, 40, 43, 44, 45, 46 and Schedules 1, 6, 8, 11, 12, 13, 22 or under any other provision of this Contract which is expressed or implied to survive termination (howsoever arising) or expiry or which is required to give effect to such termination or expiry or the consequences of such termination.

SECTION M: DISPUTES

44. DISPUTE RESOLUTION

44.1 Disputes

44.1.1 The Parties shall attempt to resolve any Dispute arising in relation to any aspect of this Contract through application of the governance structures set out in Clause 23 (Governance). Any Dispute which has not been resolved through application of the governance structures set out in Clause 23 (Governance) shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 23 (Dispute Resolution).

44.1.2 Notwithstanding Clause 44.1.1, either Party may refer a Dispute to the Dispute Resolution Procedure, and issue an Issue Resolution Request or Notice of Dispute in accordance with such procedure, at any time.



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- 44.1.3 The "fix first, resolve later" principle set out in Clause 3.5 (Scope of Agreement) of this Contract shall continue to apply in respect of the subject matter of any Dispute, notwithstanding the referral of that Dispute to the Dispute Resolution Procedure.

SECTION N: MISCELLANEOUS AND GOVERNING LAW

45. MISCELLANEOUS

45.1 Public Relations and Publicity

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

45.2 Parent Company Guarantee

45.2.1 The Contractor shall procure the execution on or before the date of this Contract (and as a condition of this Contract) of a Parent Company Guarantee in favour of the Authority in the form set out in Schedule 9 (Parent Company Guarantee) to secure the due performance by the Contractor of its obligations to the Authority.

45.2.2 As at the Reset Date the Guarantor shall be Airbus SE.

45.2.3 Unless and until otherwise agreed by the Parties the form of guarantee set out at Schedule 9 (Parent Company Guarantee) shall be the relevant specified form for the purposes of this Contract.

45.2.4 The Contractor shall notify the Authority forthwith in writing if at any time the Guarantor ceases to be its ultimate Holding Company. In such circumstances, the Contractor shall, within thirty (30) Days of a request by the Authority, procure that a replacement Parent Company Guarantee in the form set out in Schedule 9 (Parent Company Guarantee) is executed by the Contractor's new ultimate Holding Company together with, where the new ultimate Holding Company is incorporated outside of the United Kingdom, a legal opinion as to the enforceability of the Parent Company Guarantee in a form acceptable to the Authority from an independent legal adviser qualified to practice in the jurisdiction in which such Holding Company is established and has its own office.

45.3 Change of Ownership

45.3.1 The Contractor shall provide written notice to the Authority as soon as is reasonably practicable and at least twenty (20) Business Days prior to any



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Change of Ownership or corporate restructuring occurring with respect to the Contractor, any sub-contractor, the Guarantor or any Affiliate of the Contractor or any sub-contractor. If the giving of such notice within such timescale would be contrary to any restriction imposed by law, then the Contractor shall provide notice immediately upon the restriction ceasing to apply.

45.3.2 Subject to Clause 45.3.3 (Change of Ownership), the Authority shall be entitled to terminate this Contract in accordance with Clause 42.2.3(k) (Termination by the Authority for Contractor Default) where there is a Change of Ownership or corporate restructuring with respect to the Contractor or a Change of Ownership or corporate restructuring to a Restricted Third Party with respect to the Guarantor or any Affiliate of the Contractor or any sub-contractor, to which the Authority objects for any reason, except where the Authority has given its prior written consent to the particular Change of Ownership or corporate restructuring, which subsequently takes place as notified under this Clause 45.3.

45.3.3 The Authority's right to terminate this Contract under Clause 45.3.2 (Change of Ownership) shall expire if not exercised within six (6) Months of the particular Change of Ownership or corporate restructuring or, if later, of the date on which notification was provided pursuant to this Clause 45.3.

45.4 No Agency

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

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

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

45.5 Entire Agreement

45.5.1 Prior Representations Superseded

Except where expressly provided in this Contract (which, for the avoidance of doubt shall not include the ITN), this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

45.6 Acknowledgements



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Each of the Parties acknowledges that:

45.6.1 subject to Clause 18 (Contractor Warranties), it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy under this Contract; and

45.6.2 Clause 45.5 (Entire Agreement) shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

45.7 Contracts (Rights of Third Parties)

45.7.1 Save as expressly stated in this Clause 45.7 and Clause 38.3 or otherwise in this Contract, no term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

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

45.8 Notices

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

45.9 Severability

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

45.10 Waiver

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

45.10.2 No waiver under Clause 45.10 (Waiver) shall be a waiver of a past or future

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default or breach nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

45.11 Sole Remedy

45.11.1 Without prejudice to any entitlement of the Contractor:

- (a) to specific performance of any obligation under this Contract;
- (b) to injunctive relief; or
- (c) to any other express right of the Contractor pursuant to this Contract,

the Contractor's sole remedy in relation to any Compensation Event shall be to make an Integration Claim. The Contractor agrees that no Delay Waiver Compensation Event shall apply if wholly within the Delay Waiver Period and that resolution of an Integration Claim arising from a Delay Waiver Compensation Event that continues after the Delay Waiver Period shall not commence before the Services Commencement Date.

45.11.2 The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is a result of the Authority's breach of its obligations under this Contract.

45.11.3 Save where stated to the contrary, there shall be no right to claim damages for breach of this Contract or the Collaboration Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party or a Related Organisation is for Indirect Losses.

45.11.4 Neither Party may terminate this Contract, except as expressly set out in this Contract.

45.11.5 Save as expressly stated in this Contract, but subject to Clause 45.10.6 (Sole Remedy), the rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law, or otherwise.

45.11.6 The rights, powers and remedies provided to the Authority and Related Organisations in this Contract are in addition to the statutory conditions relating to description, quality, fitness of purpose and correspondence with sample implied into this Contract by the Sale of Goods and Services Act 1982.

45.12 No Double Recovery

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

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45.13 Counterparts

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

45.14 Capacity

45.14.1 Without prejudice to the remedies and contractual rights of the Contractor in respect of a risk or liability or obligation expressly provided in this Contract as being a risk, liability or obligation of the Authority:

- (a) nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Authority in any capacity other than in its capacity as a contracting counterparty; and
- (b) the exercise by the Authority of its duties powers and functions in any capacity other than in its capacity as a contracting counterparty shall not lead to any liability under this Contract on the part of the Authority to the Contractor.

45.15 Further Assurance

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

45.16 Costs

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

46. GOVERNING LAW AND JURISDICTION

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

SIGNED for and on behalf of The Secretary of State for Justice acting through Her Majesty's
Prison and Probation Service

by



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.....

Name:

Title:

SIGNED for and on behalf of Airbus Defence and Space Limited

by

.....

Name:

Title: