

FRAMEWORK SCHEDULE 4 – ANNEX 2

RM6100 TECHNOLOGY SERVICES 3

LOTS 2, 3 AND 5 CALL OFF TERMS

TABLE OF CONTENTS

| | | |
|-----|--|----|
| 1. | DEFINITIONS..... | 4 |
| 2. | INTERPRETATION | 4 |
| 3. | GUARANTEE | 5 |
| 4. | DUE DILIGENCE..... | 5 |
| 5. | WARRANTIES AND REPRESENTATIONS | 6 |
| 6. | CONTRACT PERIOD | 8 |
| 7. | IMPLEMENTATION..... | 8 |
| 8. | PROVISION AND RECEIPT OF THE SERVICES | 10 |
| 9. | SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING | 13 |
| 10. | CRITICAL SERVICE LEVEL FAILURE | 14 |
| 11. | SUPPLIER PERSONNEL | 14 |
| 12. | STAFF TRANSFER..... | 16 |
| 13. | STANDARDS..... | 16 |
| 14. | EQUIPMENT AND MAINTENANCE | 16 |
| 15. | CHARGES AND INVOICING | 18 |
| 16. | INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS | 19 |
| 17. | BENCHMARKING AND CONTINUOUS IMPROVEMENT | 19 |
| 18. | FINANCIAL DISTRESS | 20 |
| 19. | LIMITATION OF LIABILITY..... | 20 |
| 20. | INTELLECTUAL PROPERTY RIGHTS | 22 |
| 21. | TRANSFERS AND LICENCES GRANTED BY THE SUPPLIER..... | 23 |
| 22. | LICENCES GRANTED BY THE BUYER | 28 |
| 23. | IPR INDEMNITY..... | 29 |
| 24. | OPEN SOURCE PUBLICATION | 30 |
| 25. | PUBLICITY AND BRANDING | 31 |
| 26. | BUYER DATA AND SECURITY REQUIREMENTS | 31 |
| 27. | MALICIOUS SOFTWARE | 32 |
| 28. | GOVERNANCE..... | 33 |
| 29. | RECORDS AND AUDIT..... | 33 |
| 31. | BUYER REMEDIES FOR DEFAULT..... | 35 |
| 32. | SUPPLIER RELIEF DUE TO BUYER CAUSE..... | 37 |
| 33. | FORCE MAJEURE..... | 39 |
| 34. | PROTECTION OF PERSONAL DATA..... | 41 |

| | | |
|-----|---|-----|
| 35. | TERMINATION AND EXPIRY..... | 47 |
| 36. | CONSEQUENCES OF TERMINATION AND EXPIRY | 50 |
| 37. | APPOINTMENT OF SUB-CONTRACTORS..... | 52 |
| 38. | APPOINTMENT OF KEY SUB-CONTRACTORS..... | 53 |
| 39. | SUPPLY CHAIN PROTECTION | 54 |
| 40. | CONFIDENTIALITY | 56 |
| 41. | TRANSPARENCY AND FOIA | 58 |
| 42. | WAIVER..... | 60 |
| 43. | FURTHER ASSURANCES | 60 |
| 44. | SEVERANCE | 60 |
| 45. | RELATIONSHIP OF THE PARTIES..... | 60 |
| 46. | PREVENTING FRAUD BRIBERY AND CORRUPTION..... | 60 |
| 47. | EQUALITY, DIVERSITY AND HUMAN RIGHTS..... | 62 |
| 48. | ASSIGNMENT AND NOVATION..... | 62 |
| 49. | CHANGE..... | 63 |
| 50. | NOTICES..... | 63 |
| 51. | ENTIRE AGREEMENT | 65 |
| 52. | THIRD PARTY RIGHTS | 65 |
| 53. | CONFLICTS OF INTEREST..... | 65 |
| 54. | DISPUTES..... | 66 |
| 55. | GOVERNING LAW AND JURISDICTION | 66 |
| | SCHEDULE 1 - DEFINITIONS..... | 67 |
| | SCHEDULE 2 - CHARGES AND INVOICING | 89 |
| | SCHEDULE 3 - SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING | 99 |
| | SCHEDULE 4 - DISPUTE RESOLUTION PROCEDURE..... | 103 |
| | SCHEDULE 5 - CHANGE CONTROL PROCEDURE..... | 111 |
| | SCHEDULE 6 - TRANSPARENCY REPORTS..... | 125 |
| | SCHEDULE 7 - GOVERNANCE..... | 126 |
| | SCHEDULE 8 - FINANCIAL DISTRESS | 133 |
| | SCHEDULE 9 - SOFTWARE | 139 |
| | SCHEDULE 10 - EXIT MANAGEMENT..... | 145 |

1. DEFINITIONS

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in these Call Off Terms and in particular Schedule 1 (Definitions).
- 1.2 If no meaning is given to a capitalised expression in this Contract, it shall, in the first instance, be interpreted in accordance with the Order Form and related documents and otherwise in accordance with common interpretation within the relevant services sector/industry where appropriate.

2. INTERPRETATION

- 2.1 In this Contract, unless the context otherwise requires:
 - 2.1.1 the singular includes the plural and vice versa;
 - 2.1.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 2.1.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 2.1.4 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 2.1.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
 - 2.1.6 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Schedule or the part of the Schedule in which the references appear;
 - 2.1.7 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract; and
 - 2.1.8 any reference which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law

by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

2.2 In the event and to the extent only of a conflict between the Order Form, these Call Off Terms and the provisions of the Framework, the conflict shall be resolved in accordance with the following descending order of precedence:

2.2.1 the Framework, except Framework Schedule 18 (Tender);

2.2.2 the Order Form;

2.2.3 these Call Off Terms; and

2.2.4 Framework Schedule 18 (Tender).

2.3 Where Framework Schedule 18 (Tender) contains provisions which are more favourable to the Buyer in relation to this Contract such provisions of the Tender (as applicable) shall prevail. The Buyer shall in its absolute and sole discretion determine whether any provision in the Tender and/or this Contract is more favourable to it in this context.

3. **GUARANTEE**

Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S8 (Guarantee).

4. **DUE DILIGENCE**

4.1 The Supplier acknowledges that:

4.1.1 the Buyer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;

4.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

4.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Buyer before the Commencement Date) of all relevant details, including but not limited to, details relating to the:

- (a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Commencement Date) future Operating Environment;
- (b) operating processes and procedures and the working methods of the Buyer;
- (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Buyer Assets; and

- (d) existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Services; and

4.1.4 it has advised the Buyer in writing of:

- (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (b) the actions needed to remedy each such unsuitable aspect; and
- (c) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Contract, including the Services Specification and/or Buyer Responsibilities, as applicable.

4.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

4.2.1 any unsuitable aspects of the Operating Environment; and/or

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

5. **WARRANTIES AND REPRESENTATIONS**

5.1 Each Party warrants and represents that:

5.1.1 it has full capacity and authority to enter into and to perform this Contract;

5.1.2 this Contract is executed by its duly authorised representative;

5.1.3 here are no actions, suits or proceedings or regulatory investigation before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and

5.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

5.2 The Supplier warrants and represents that:

- 5.2.1 it is validly incorporated, organised and subsisting in accordance with the Law of its place of incorporation;
- 5.2.2 it has all necessary consents and regulatory approvals to enter into this Contract;
- 5.2.3 it has notified the Buyer in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 5.2.4 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 5.2.5 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 5.2.6 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Buyer in writing prior to the date of this Contract;
- 5.2.7 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
- 5.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 5.2.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 5.2.10 within the previous 12 months, no Financial Distress Events (as defined in Schedule 8 (Financial Distress)) have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this

Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

- 5.3 Each of the representations and warranties set out in Clauses 5.1 and 5.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 5.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 5.1 and 5.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 5.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Buyer may have in respect of breach of that provision by the Supplier.
- 5.6 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

6. **CONTRACT PERIOD**

- 6.1 This Contract shall take effect on the Commencement Date specified in the Order Form and shall unless terminated earlier under the terms of this Contract, shall expire:
 - 6.1.1 at the end of the Initial Term (as specified in the Order Form); or
 - 6.1.2 if the Buyer elects to extend the Initial Term by giving the Supplier at least thirty (30) days' notice before the end of the Initial Term, at the end of the notified Extension Period.

7. **IMPLEMENTATION**

Quality Plans

- 7.1 The Supplier shall develop, within 30 Working Days (or such other date as agreed between the Parties) of the Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 7.2 The Supplier shall obtain the Buyer Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Buyer's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 7.3 Following the approval by the Buyer of the Quality Plans:
 - 7.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and

- 7.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan

- 7.4 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S1 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 7.5 The Supplier shall:
- 7.5.1 comply with the Implementation Plan (if any);
 - 7.5.2 ensure that each Milestone (if any) is Achieved on or before the Milestone Date.

Delays and Delay Payments

- 7.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
- 7.6.1 it shall:
 - (a) notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (b) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (c) comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 7.6.2 if the Delay or anticipated Delay relates to a Milestone Clauses 7.7 and 7.8 below shall apply.
- 7.7 If a Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 2 (Charges and Invoicing) shall apply in relation to the payment of Delay Payments.
- 7.8 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
- 7.8.1 the Buyer is entitled to or does terminate this Contract pursuant to Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause); or
 - 7.8.2 the Delay exceeds the Delay Deduction Period.

Testing and Achievement of Milestones

- 7.9 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S2 (Testing Procedures) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

8. PROVISION AND RECEIPT OF THE SERVICES

Standards of Services

- 8.1 The Supplier shall ensure the Services:
- 8.1.1 comply in all respects with the Services Specification set out or referred to in Attachment 1 (Services Specification) of the Order Form; and
 - 8.1.2 are supplied in accordance with the provisions of this Contract.
- 8.2 The Supplier shall perform the Services under this Contract in accordance with:
- 8.2.1 all applicable Laws;
 - 8.2.2 Good Industry Practice;
 - 8.2.3 the Standards;
 - 8.2.4 the Security Policy (if so required by the Buyer);
 - 8.2.5 the ICT Policy (if so required by the Buyer);
 - 8.2.6 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.2.1 to 8.2.5.
- 8.3 The Supplier shall take reasonable steps to ensure that the in the performance of its obligations under this Contract it does not disrupt the Buyer's operations, employees or other contractor engaged by the Buyer.
- 8.4 The Buyer shall comply with its Buyer Responsibilities set out in the Order Form.

Supplier Covenants

- 8.5 The Supplier shall:
- 8.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
 - 8.5.2 save to the extent that obtaining and maintaining the same are Buyer Responsibilities and subject to Clause 49 (Change), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - 8.5.3 ensure that:
 - (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any

- other materials made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
- (b) the release of any new Software or Upgrade to any Software complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) months before the release of any new Software or Upgrade;
 - (c) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (d) any products or services recommended or otherwise specified by the Supplier for use by the Buyer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Buyer; and
 - (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Buyer) and will be Euro Compliant;
- 8.5.4 minimise any disruption to the Services, the IT Environment and/or the Buyer's operations when carrying out its obligations under this Contract;
- 8.5.5 ensure that any Documentation and training provided by the Supplier to the Buyer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 8.5.6 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Buyer and/or to any Replacement Supplier;
- 8.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Buyer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Buyer may notify from time to time to the Supplier;
- 8.5.8 unless it is unable to do so, assign to the Buyer on the Buyer's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 8.5.7;
- 8.5.9 provide the Buyer with such assistance as the Buyer may reasonably require during the Contract Period in respect of the supply of the Services; and

- 8.5.10 gather, collate and provide such information and co-operation as the Buyer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- 8.5.11 ensure that neither it, nor any of its Affiliates, embarrasses the Buyer or otherwise brings the Buyer into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Buyer.
- 8.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 8.7 Without prejudice to Clauses 23.2 and 23.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Buyer howsoever arising the Supplier shall:
 - 8.7.1 remedy any breach of its obligations in Clauses 8.5.2 to 8.5.4 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Buyer or within such other time period as may be agreed with the Buyer (taking into account the nature of the breach that has occurred);
 - 8.7.2 remedy any breach of its obligations in Clause 8.5.1 and Clauses 8.5.5 to 8.5.10 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Buyer;
 - 8.7.3 meet all the costs of, and incidental to, the performance of such remedial work.

Specially Written Software

- 8.8 The Supplier warrants to the Buyer that all components of the Specially Written Software shall:
 - 8.8.1 be free from material design and programming errors;
 - 8.8.2 perform in all material respects in accordance with the relevant specifications contained in the Order Form and Documentation; and
 - 8.8.3 not infringe any Intellectual Property Rights.

Continuing Obligation to Provide the Services

- 8.9 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
 - 8.9.1 any withholding or deduction by the Buyer of any sum due to the Supplier pursuant to the exercise of a right of the Buyer to such withholding or deduction under this Contract;
 - 8.9.2 the existence of an unresolved Dispute; and/or
 - 8.9.3 any failure by the Buyer to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 35.2 (Termination by the Supplier) for failure to pay undisputed Charges.

9. SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

- 9.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 9.2 The Supplier shall at all times provide the Services to meet or exceed the Service Level Performance Measure for each Service Level.
- 9.3 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A (Service Levels and Service Credits) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring), including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 9.4 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 9.5 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
 - 9.5.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or
 - 9.5.2 the Service Level Failure:
 - (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel;
 - (c) results in the corruption or loss of any Buyer Data; and/or
 - (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
 - 9.5.3 the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause);
- 9.6 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
 - 9.6.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Commencement Date;
 - 9.6.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and

9.6.3 there is no change to the Service Credit Cap.

10. **CRITICAL SERVICE LEVEL FAILURE**

10.1 On the occurrence of a Critical Service Level Failure:

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

10.1.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 10 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

11. **SUPPLIER PERSONNEL**

Supplier Personnel

11.1 The Supplier shall:

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

11.1.2 ensure that all Supplier Personnel involved in the performance of this Contract:

(a) are adequately trained and suitably qualified and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

(b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule S3 (Security Requirements), where used; and

(c) comply with any reasonable instructions issued by the Buyer from time to time (including, if so required, the ICT Policy).

11.1.3 subject to Schedule S4 (Staff Transfer) where used, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Buyer;

11.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;

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

- 11.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 11.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 11.1.8 procure that the Supplier Personnel shall vacate the Buyer Premises immediately upon the termination or expiry of this Contract.
- 11.2 If the Buyer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 11.2.1 refuse admission to the relevant person(s) to the Buyer's Premises; and/or
 - 11.2.2 require that the Supplier replace as soon as reasonably practicable any such relevant person(s) with a suitably qualified alternative and procure that any security pass issued by the Buyer to the relevant person(s) replaced is surrendered.

Key Supplier Personnel

- 11.3 The Supplier shall ensure that the Key Supplier Personnel fulfil the Key Roles at all times during the Contract Period.
- 11.4 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall for the purposes of this Contract be included on the list of Key Supplier Personnel.
- 11.5 The Supplier shall not and shall procure that any Sub-Contractor shall not remove or replace any Key Supplier Personnel (including when carrying out Exit Management, if any) unless:
- 11.5.1 requested to do so by the Buyer or the Supplier obtains the Buyer's prior written consent to such removal or replacement (such consent not to be unreasonably withheld or delayed);
 - 11.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave; or
 - 11.5.3 the person's employment or contractual arrangement with the Supplier or Sub-Contractor is terminated for material breach of contract by the employee.
- 11.6 The Supplier shall:
- 11.6.1 notify the Buyer promptly of the absence of any Key Supplier Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 11.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

- 11.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Supplier Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Supplier Personnel's employment contract, this will mean at least three (3) Months' notice;
 - 11.6.4 ensure that all arrangements for planned changes in Key Supplier Personnel provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services and Deliverables; and
 - 11.6.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Supplier Personnel whom he or she has replaced.
- 11.7 The Buyer may require the Supplier to remove or procure that any Sub-Contractor shall remove any Key Supplier Personnel that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Supplier Personnel.

Employment Liabilities

- 11.8 The Parties agree that:
- 11.8.1 the Supplier shall both during and after the Contract Period indemnify the Buyer against all Employee Liabilities that may arise as a result of any claims brought against the Buyer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
 - 11.8.2 the Buyer shall both during and after the Contract Period indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

12. STAFF TRANSFER

Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S4 (Staff Transfer).

13. STANDARDS

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

14. EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 14.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Buyer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this

Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Buyer Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

- 14.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer.
- 14.3 Subject to any express provision of the BCDR Plan (if any) to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Service Levels.

Maintenance

- 14.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Buyer. Once the Maintenance Schedule has been agreed with the Buyer Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 14.5 The Supplier shall give as much notice as is reasonably practicable to the Buyer Representative prior to carrying out any Emergency Maintenance.
- 14.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

- 14.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Buyer:
 - 14.7.1 the relevant Goods and their prices shall be as set out in the Order Form;
 - 14.7.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - 14.7.3 the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for 12 months after delivery;
 - 14.7.4 if following inspection or testing the Buyer considers that the Goods do not conform with the relevant specification, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and

- 14.7.5 without prejudice to any other rights or remedies of the Buyer:
- (a) risk in the Goods shall pass to the Buyer at the time of delivery; and
 - (b) ownership of the Goods shall pass to the Buyer at the time of payment.

15. CHARGES AND INVOICING

Charges and Invoicing

- 15.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Buyer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 2 (Charges and Invoicing).
- 15.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 7.9 (Testing and Achievement of Milestones), 29 (Reports and Audits), 41 (Transparency and Freedom of Information), 34 (Protection of Personal Data) and, to the extent specified therein, Clause 31 in respect of step-in.
- 15.3 If the Buyer fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 15.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice.
- 15.5 The Supplier shall indemnify the Buyer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Buyer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 15.5 shall be paid in cleared funds by the Supplier to the Buyer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Buyer.

Set-off and Withholding

- 15.6 The Buyer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.
- 15.7 If the Buyer wishes to exercise its right pursuant to Clause 15.6 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Buyer's reasons for withholding or retaining the relevant Charges.

16. INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 16.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 16.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 (including IR35) and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - 16.1.2 indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services and/or Deliverables by the Supplier or any Supplier Personnel.
- 16.2 In the event that any one of the Supplier Personnel is a Worker who receives consideration relating to the Services and/or Deliverables, then, in addition to its obligations under Clause 16.1 the Supplier shall ensure that its contract with the Worker contains the following requirements:
- 16.2.1 that the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 16.1, or why those requirements do not apply to it. In such case, the Buyer may specify the information which the Worker must provide and the period within which that information must be provided;
 - 16.2.2 that the Worker's contract may be terminated at the Buyer's request if:
 - (e) the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer; or
 - (f) the Worker provides information which the Buyer considers is inadequate to demonstrate how the Worker complies with Clause 16.1 or confirms that the Worker is not complying with those requirements;
 - 16.2.3 that the Buyer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

17. BENCHMARKING AND CONTINUOUS IMPROVEMENT

- 17.1 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S5 (Benchmarking) in relation to the benchmarking of any or all of the Services.

- 17.2 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S7 (Continuous Improvement) in relation to the continuous improvement of the Services.

18. FINANCIAL DISTRESS

The Parties shall comply with the provisions of Schedule 8 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

19. LIMITATION OF LIABILITY

Unlimited Liability

- 19.1 Neither Party limits its liability for:

- 19.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 19.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 19.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 19.1.4 any liability to the extent it cannot be limited or excluded by Law.

- 19.2 The Supplier's liability in respect of the indemnities in Clause 15.5 (VAT), Clause 11.8.1 (Employment Indemnity), Clause 16.1.2 (Income Tax and National Insurance Contributions), Clause 23 (IPRs Indemnity) and where used, Schedule S4 (Staff Transfer) and the Annexes to Schedule S4 (Staff Transfer) be unlimited.

- 19.3 The Buyer's liability in respect of the indemnities in Clause 11.8.2 (Employment Indemnity) and where used, Schedule S4 (Staff Transfer) and the Annexes to Schedule S4 (Staff Transfer) shall be unlimited.

Financial and other limits

- 19.4 Subject to Clauses 19.1 and 19.2 and Clauses 19.7:

- 19.4.1 the Supplier's aggregate liability in respect of loss of or damage to the Buyer Premises or other property or assets of the Buyer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Buyer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- 19.4.2 the Supplier's aggregate liability in respect of loss of or damage to Buyer Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- 19.4.3 the Supplier's aggregate liability in respect of all:

- (g) Service Credits; and
- (h) Compensation for Critical Service Level Failure;

incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and

19.4.4 the Supplier's aggregate liability in respect of all other Losses incurred by the Buyer under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:

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

provided that where any Losses referred to this Clause 19.4.4 have been incurred by the Buyer as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200%.

19.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 19.4.4.

19.6 Subject to Clauses 19.1 and 19.3 and Clause 19.7 and without prejudice to the Buyer's obligation to pay the Charges as and when they fall due for payment:

19.6.1 the Buyer's total aggregate liability as a result of early termination of this Contract by the Buyer pursuant to Clause 35.1.9 (Termination Without Cause) shall comprise the fee calculated in accordance with the provisions of Clause 36.2 and Attachment 2 (Charges) of the Order Form;

19.6.2 the Buyer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Buyer shall in no event exceed:

- (l) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- (m) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (n) in relation to Defaults occurring after the end of the Contract Period, an amount equal to the total Charges paid and/or due to

be paid to the Supplier in the 12 month period immediately prior to the last day of the Contract Period.

Consequential Losses

- 19.7 Subject to Clauses 19.1, 19.2 and 19.3 and Clause 19.8, neither Party shall be liable to the other Party for:
- 19.7.1 any indirect, special or consequential Loss; or
 - 19.7.2 any loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 19.8 Notwithstanding Clause 19.7 but subject to Clause 19.4, the Supplier acknowledges that the Buyer may, amongst other things, recover from the Supplier the following Losses incurred by the Buyer to the extent that they arise as a result of a Default by the Supplier:
- 19.8.1 any additional operational and/or administrative costs and expenses incurred by the Buyer, including costs relating to time spent by or on behalf of the Buyer in dealing with the consequences of the Default;
 - 19.8.2 any wasted expenditure or charges;
 - 19.8.3 the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
 - 19.8.4 any compensation or interest paid to a third party by the Buyer; and
 - 19.8.5 any fine or penalty incurred by the Buyer pursuant to Law and any costs incurred by the Buyer in defending any proceedings which result in such fine or penalty.

Mitigation

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

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Except as expressly set out in this Contract:
- 20.1.1 the Buyer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (a) the Supplier Software;
 - (b) the Third Party Software;
 - (c) the Third Party IPRs; and

- (d) the Supplier Background IPRs;
 - 20.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Buyer or its licensors, including:
 - (a) the Buyer Software;
 - (b) the Buyer Data; and
 - (c) the Buyer Background IPRs;
 - 20.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Buyer.
- 20.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 20.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 20.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 20.4 Unless the Buyer otherwise agrees in advance in writing:
 - 20.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software; and
 - 20.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Buyer.
- 20.5 Where the Buyer agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Buyer's ability to publish other Open Source software under Clause 24.
- 20.6 The Supplier waives (and shall procure that each of the Supplier Personnel shall waive) any moral rights which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, to the extent such rights arise.

21. TRANSFERS AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

- 21.1 Subject to Clause 21.17 the Supplier hereby agrees to transfer to the Buyer, or shall procure the transfer to the Buyer of, all rights (subject to Clause 20.1.1 in the Specially Written Software and the Project Specific IPRs including (without limitation):

- 21.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software; and
- 21.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”);

but not including any Know-How, trade secrets or Confidential Information.

21.2 The Supplier:

21.2.1 shall:

- (a) inform the Buyer of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
- (b) deliver to the Buyer the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer; and
- (c) without prejudice to Clause 21.11, provide full details to the Buyer of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

21.2.2 acknowledges and agrees that the ownership of the media referred to in Clause 21.2.1(b) shall vest in the Buyer upon their receipt by the Buyer; and

21.2.3 shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Buyer.

Supplier Software and Supplier Background IPRs

21.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in the Order Form, and where Part A of Schedule 7 (Governance) applies to this Contract as indicated in the Order Form, sent to the Technical Board (as defined therein) for review and approval granted by the Buyer.

21.4 The Supplier hereby grants to the Buyer:

21.4.1 subject to the provisions of Clause 21.17, perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load,

execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Buyer for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
- (b) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function;

21.4.2 a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Buyer and Supplier COTS Background IPRs on the licence terms identified in a letter or substantially in the form set out in Part A of Schedule 9 (Software) and signed by or on behalf of the Parties on or before the Commencement Date provided always that the Buyer shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 21.7 and 21.8 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

21.4.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

21.5 At any time during the Contract Period or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under 21.4.1(a) or in respect of the Supplier Non-COTS Background IPRs under Clause 21.4.1(b) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Buyer or any person to whom the Buyer grants a sub-licence pursuant to Clause 21.7 (Buyer's right to sub-license) commits any material breach of the terms of Clause 21.4.1(a) or 21.4.1(b) or 21.7.1 (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

21.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 21.5, the Buyer shall:

21.6.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);

21.6.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Buyer may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS

Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and

- 21.6.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Buyer's right to sub-license

21.7 Subject to Clause 21.17, the Buyer may sub-license:

- 21.7.1 the rights granted under Clause 21.4 to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
- (a) the sub-licence is on terms no broader than those granted to the Buyer;
 - (b) the sub-licence authorises the third party to use the rights licensed in Clause 21.4 only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
 - (c) the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Part B to Schedule 9 (Software); and
- 21.7.2 the rights granted under Clause 21.4 to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
- (a) the sub-licence is on terms no broader than those granted to the Buyer; and
 - (b) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Part B to Schedule 9 (Software) duly executed by the Approved Sub-Licensee.

Buyer's right to assign/novate licenses

21.8 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 21.4 to:

21.8.1 a Central Government Body; or

21.8.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

- 21.9 Any change in the legal status of the Buyer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 21.4. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licence granted in Clause 21.4.
- 21.10 If a licence granted in Clause 21.4 is novated under Clause 21.8 or there is a change of the Buyer's status pursuant to Clause 21.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Buyer.

Third Party Software and Third Party IPRs

- 21.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in the Order Form, where Part A of Schedule 7 (Governance) applies to this Contract as indicated in the Order Form, approval is granted by the Buyer following a review by the Technical Board and has in each case either:
- 21.11.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Buyer on a royalty-free basis to the Buyer and on terms no less favourable to the Buyer than those set out in Clauses 21.4.1 and 21.5 and Clause 21.8; or
 - 21.11.2 complied with the provisions of Clause 21.12.
- 21.12 If the Supplier cannot obtain for the Buyer a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 21.11.1, the Supplier shall:
- 21.12.1 notify the Buyer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - 21.12.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Buyer has first approved in writing the terms of the licence from the relevant third party.
- 21.13 The Supplier shall:
- 21.13.1 notify the Buyer in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - 21.13.2 unless instructed otherwise in writing by the Buyer in any case within twenty (20) Working Days of notification pursuant to 21.12.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Buyer on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

- 21.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Buyer does not have a suitable licence, then the Supplier must notify the Buyer within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

- 21.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 21.

- 21.16 The Supplier shall, if requested by the Buyer and at the Supplier's cost:

- 21.16.1 grant (or procure the grant) to any Replacement Supplier of:

- (a) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Buyer in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 21 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Part B to Schedule 9 (Software) duly executed by the Replacement Supplier;
- (b) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or

- 21.16.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

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

22. LICENCES GRANTED BY THE BUYER

- 22.1 The Buyer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Buyer Software, the Buyer Background IPRs, the Specially Written Software, the Project Specific IPRs and the Buyer Data solely to the extent necessary for performing the Services in accordance with this

Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- 22.1.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 39; and
 - 22.1.2 the Supplier shall not, without the Buyer's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.
- 22.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 22.1 and any sub-licence granted by the Supplier in accordance with Clause 22.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
 - 22.2.1 immediately cease all use of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be);
 - 22.2.2 at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data, provided that if the Buyer has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be); and
 - 22.2.3 ensure, so far as reasonably practicable, that any Buyer Software, Buyer Background IPRs and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Buyer Software, Buyer Background IPRs and/or Buyer Data.

23. IPR INDEMNITY

- 23.1 The Supplier shall at all times, during and after the Contract Period, on written demand indemnify the Buyer and each other Indemnified Person, and keep the Buyer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 23.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
 - 23.2.1 procure for the Buyer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - 23.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

- (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (c) there is no additional cost to the Buyer or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 23.3 If the Supplier elects to procure a licence in accordance with Clause 23.2.1 or to modify or replace an item pursuant to Clause 23.2.2, but this has not avoided or resolved the IPRs Claim, then:
 - 23.3.1 the Buyer may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and
 - 23.3.2 without prejudice to the indemnity set out in Clause 23.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

24. OPEN SOURCE PUBLICATION

- 24.1 The Supplier agrees that the Buyer may at its sole discretion publish as Open Source all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Commencement Date.
- 24.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
 - 24.2.1 are suitable for release as Open Source and that any release will not allow a third party to use the Open Source to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Buyer System;
 - 24.2.2 shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
 - 24.2.3 do not contain any material which would bring the Buyer into disrepute upon publication as Open Source;
 - 24.2.4 do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
 - 24.2.5 will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Commencement Date.
- 24.3 The Supplier shall ensure that the Open Source Publication Material provided to the Buyer does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or

Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Buyer and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Buyer when publishing as Open Source.

- 24.4 The Supplier hereby indemnifies the Buyer against all claims in which the Buyer is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Clause 24.

25. PUBLICITY AND BRANDING

- 25.1 The Supplier shall not, and shall take all reasonable steps to ensure the Supplier Personnel do not, make any press announcements or publicise this Contract or any part of it in any way nor use the Buyer's name or brand in any promotion or marketing or announcement of orders, without the Buyer's prior written approval (the decision of the Buyer to approve or not shall not be unreasonably withheld or delayed).
- 25.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services and Deliverables) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

26. BUYER DATA AND SECURITY REQUIREMENTS

Security Requirements

- 26.1 Where indicated in the Order Form, the Parties shall comply with either Part A or Part B of Schedule S3 (Security Requirements).
- 26.2 Where a Buyer has notified the Supplier that the award of this Contract by the Buyer shall be conditional upon the Supplier having an accredited security facility and a number of UK national security cleared personnel, the Supplier shall have:
- 26.2.1 (or be willing obtain within such period as agreed between the Parties) an accredited secure facility environment in accordance with HMG Security Policy Framework May 2018 and/or any future variations to the policy, (commonly referred to as List X). Further information on List X accreditation can be found at: <https://www.gov.uk/government/publications/security-policy-framework>; and
- 26.2.2 a number of UK national security cleared personnel prior to the Commencement Date.
- 26.3 If the Supplier fails to comply with Clause 26.2 above, then without prejudice to the Buyer's other rights and remedies (if any), the Buyer shall be entitled to terminate this Contract for material Default in accordance with Clause 35.1.1.

Protection of Buyer Data

- 26.4 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer Data.

- 26.5 The Supplier shall not store, copy, disclose, or use the Buyer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Buyer.
- 26.6 To the extent that the Buyer Data is held and/or Processed by the Supplier, the Supplier shall supply that Buyer Data to the Buyer as requested by the Buyer and in the format (if any) specified in this Contract and in any event as specified by the Buyer from time to time in writing.
- 26.7 The Supplier shall preserve the integrity of Buyer Data and prevent the corruption or loss of Buyer Data at all times that the relevant Buyer Data is under its control or the control of any Sub-Contractor.
- 26.8 The Supplier shall perform secure back-ups of all Buyer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Buyer (or to such other person as the Buyer may direct) at all times upon request and are delivered to the Buyer at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 26.9 The Supplier shall ensure that any system on which the Supplier holds any Buyer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 26.10 If the Buyer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Buyer may:
- 26.10.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of buyer Data to the extent and in accordance with the requirements specified in Schedule S6 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Buyer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Buyer's notice; and/or
- 26.10.2 itself restore or procure the restoration of Buyer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule S6 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Buyer.

27. MALICIOUS SOFTWARE

- 27.1 The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 27.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:

27.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Buyer Data (whilst the Buyer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and

27.3.2 by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

28. **GOVERNANCE**

28.1 The Parties shall comply with the provisions of Schedule 7 (Governance) in relation to the management and governance of this Contract.

Representatives

28.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.

28.3 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 11 (Supplier Personnel).

28.4 The initial Buyer Representative shall be the person named as such in the Order Form. The Buyer may, by written notice to the Supplier, revoke or amend the authority of the Buyer Representative or appoint a new Buyer Representative.

29. **RECORDS AND AUDIT**

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

29.2 The Supplier shall:

29.2.1 keep the records and accounts referred to in Clause 29.1 in accordance with Good Industry Practice and Law; and

29.2.2 afford any Auditor access to the records and accounts referred to in Clause 29.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 29.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including for the following purposes to:

- (a) verify the accuracy of the Charges and any other amounts payable by the Buyer under this Contract (and any proposed or actual variations to them in accordance with this Contract);
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
- (c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (d) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened Breach of Security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor (if applicable) and/or any Sub-Contractors or their ability to perform the Services;
- (f) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (h) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
- (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
- (j) review any Performance Monitoring Reports provided under Part B (Performance Monitoring) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (k) verify the accuracy and completeness of any information delivered or required by this Contract;
- (l) inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);

- (m) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - (n) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (o) review the Supplier's compliance with the Standards;
 - (p) inspect the Buyer Assets, including the Buyer's IPRs, equipment and facilities, for the purposes of ensuring that the Buyer Assets are secure and that any register of assets is up to date; and/or
 - (q) review the integrity, confidentiality and security of the Buyer Data.
- 29.3 The Buyer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Buyer.
- 29.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 29.4.1 all reasonable information requested by the Buyer within the scope of the audit;
 - 29.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 29.4.3 access to the Supplier Personnel.
- 29.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 29.1, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Buyer for the Buyer's reasonable costs incurred in relation to the audit.

30. INSURANCE

- 30.1 Without limitation to the generality of Clause 30.2, the Supplier shall ensure that it maintains the policy or policies of insurance referred to in the Order Form.
- 30.2 Notwithstanding the benefit to the Buyer of the policy or policies of insurance referred to in Framework Schedule 14 (Insurance Requirements), the Supplier shall effect and maintain any such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured by under the Framework in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.

31. BUYER REMEDIES FOR DEFAULT

Remedies

- 31.1 Without prejudice to any other right or remedy of the Buyer howsoever arising (including under Schedule 3 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 9.5 and 7.8, if the Supplier commits any Default of this Contract then the Buyer may (whether or not any part of the Services have been delivered) do any of the following:
- 31.1.1 at the Buyer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Buyer's instructions;
 - 31.1.2 carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
 - 31.1.3 if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different)) obligations and regardless of whether such Defaults are remedied, which taken together constitute a material Default):
 - (a) instruct the Supplier to comply with the Rectification Plan Process;
 - (b) suspend this Contract (whereupon the relevant provisions of Clause 35.3 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (c) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 35.3 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;
- 31.2 Where the Buyer exercises any of its step-in rights under Clauses 31.1.3(b) or 31.1.3(c), the Buyer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Buyer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Buyer or a third party and provided that the Buyer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

Rectification Plan Process

- 31.3 Where the Buyer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 31.1.3(c) the Supplier shall submit a draft Rectification Plan to the Buyer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Buyer's instructions. The Supplier shall submit a draft Rectification Plan even

if the Supplier disputes that it is responsible for the Default giving rise to the Buyer's request for a draft Rectification Plan.

31.4 The draft Rectification Plan shall set out:

31.4.1 full details of the Default that has occurred, including a root cause analysis;

31.4.2 the actual or anticipated effect of the Default; and

31.4.3 the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

31.5 The Supplier shall promptly provide to the Buyer any further documentation that the Buyer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an Expert in accordance with Paragraph 6 of Schedule 4 (Dispute Resolution Procedure).

31.6 The Buyer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

31.6.1 is insufficiently detailed to be capable of proper evaluation;

31.6.2 will take too long to complete;

31.6.3 will not prevent recurrence of the Default; and/or

31.6.4 will rectify the Default but in a manner which is unacceptable to the Buyer.

31.7 The Buyer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Buyer rejects the draft Rectification Plan, the Buyer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Buyer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Buyer's notice rejecting the first draft.

31.8 If the Buyer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

32. **SUPPLIER RELIEF DUE TO BUYER CAUSE**

32.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

32.1.1 Achieve a Milestone by its Milestone Date;

32.1.2 provide the Services in accordance with the Service Levels; and/or

32.1.3 comply with its obligations under this Contract,

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

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Buyer Cause, then (subject to the Supplier fulfilling its obligations in this Clause 32):

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Buyer Cause;
- (b) the Buyer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Buyer Cause;
 - (ii) if the Buyer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Buyer Cause;
 - (iii) the Supplier shall have no liability to pay any Delay Payments associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Buyer Cause; and
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (iv) the Supplier shall not be liable to accrue Service Credits;
 - (v) the Buyer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 10; and
 - (vi) the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Buyer Cause,

in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Buyer Cause.

32.2 In order to claim any of the rights and/or relief referred to in Clause 32.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Buyer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Buyer notice (a “**Relief Notice**”) setting out details of:

32.2.1 the Supplier Non-Performance;

32.2.2 the Buyer Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Contract;

- 32.2.3 any steps which the Buyer can take to eliminate or mitigate the consequences and impact of such Buyer Cause; and
- 32.2.4 the relief claimed by the Supplier.
- 32.3 Following the receipt of a Relief Notice, the Buyer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Buyer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Buyer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 32.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Buyer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 32.5 Without prejudice to Clause 8.9 (Continuing obligation to provide the Services), if a Dispute arises as to:
 - 32.5.1 whether a Supplier Non-Performance would not have occurred but for an Buyer Cause; and/or
 - 32.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,
 either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 32.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 32.1 shall be implemented in accordance with the Change Control Procedure.

33. **FORCE MAJEURE**

- 33.1 Subject to the remaining provisions of this Clause 33 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule S6 (Business Continuity Plan and Disaster Recovery where used)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 33.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 33.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:
 - 33.3.1 are capable of being mitigated, but the Supplier has failed to do so;

- 33.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
 - 33.3.3 are the result of the Supplier's failure to comply with its BCDR Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the BCDR Plan).
- 33.4 Subject to Clause 33.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 33.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 33.6 Where, as a result of a Force Majeure Event:
 - 33.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days and the Other Party may terminate this Contract in whole or in part after such continuous period by issuing a Termination Notice to the other Party; and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
 - 33.6.2 the Supplier fails to perform its obligations in accordance with this Contract:
 - (a) the Buyer shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 31.1.2 and 31.1.3 (Buyer Remedies for Default) as a result of such failure;
 - (ii) to receive Delay Payments pursuant to Clause 7.8 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits or withhold and retain any of the Service Charges as Compensation for Critical Service Level Failure pursuant to Clause 10.1 (Critical Service Level Failure) to the extent that a Service Level Failure or

Critical Service Level Failure has been caused by the Force Majeure Event; and

- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

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

33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 33.7.

33.9 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract under Clause 33.6.1(a) for a continuing Force Majeure Event.

34. **PROTECTION OF PERSONAL DATA**

Status of the Controller

34.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

34.1.1 **“Controller”** (where the other Party acts as the **“Processor”**);

34.1.2 **“Processor”** (where the other Party acts as the **“Controller”**);

34.1.3 **“Joint Controller”** (where both Parties are considered to jointly control the same Personal Data);

34.1.4 **“Independent Controller”** of the Personal Data where the other Party is also **“Controller”** of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in the Schedule of Processing, Personal Data and Data Subjects which scenario or scenarios are intended to apply under this Contract.

Where One Party is Controller and the other Party its Processor

34.2 Where a Party is a Processor, the only processing that the Supplier is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Controller.

34.3 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

- 34.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- 34.4.1 a systematic description of the envisaged processing operations and the purpose of the Processing;
 - 34.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 34.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 34.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 34.5 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 34.5.1 Process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
 - 34.5.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 26 (Buyer Data and Security Requirements) which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 34.5.3 ensure that:
 - (a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular the Schedule of Processing, Personal Data and Data Subjects);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any of the Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Supplier's duties under this Clause, Clauses 39 (Confidentiality) and in the case of the Supplier, 26 (Buyer Data and Security Requirements);
 - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

- (iii) 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 Buyer or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 34.5.4 not transfer Personal Data to a Restricted Country unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37 as relevant) as determined by the Buyer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
 - (e) in respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with this Clause 34.5.4, the Processor shall, when requested by the Controller, promptly enter into an agreement with the Controller including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Controller might require which terms shall, in the event of any conflict, take precedence over those in this Clause 34, and the Processor shall comply with any reasonable instructions notified to it in advance by the Controller with respect to the transfer of the Personal Data; and
- 34.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.
- 34.6 Subject to Clause 34.7, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
 - 34.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 34.6.2 receives a request to rectify, block or erase any Personal Data;

- 34.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation; or
 - 34.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 34.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 34.6.6 becomes aware of a Data Loss Event.
- 34.7 The Processor's obligation to notify under Clause 34.6 shall include the provision of further information to the Controller in phases, as details become available.
- 34.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 34.6 (and insofar as possible within the timescales reasonably required by the Buyer) including by promptly providing:
- 34.8.1 the Controller with full details and copies of the complaint, communication or request;
 - 34.8.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 34.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 34.8.4 assistance as requested by the Controller following any Data Loss Event; and
 - 34.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 34.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 34. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 34.9.1 the Controller determines that the processing is not occasional;
 - 34.9.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 34.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 34.10 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor or representative.

- 34.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 34.12 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Processor must:
- 34.12.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 34.12.2 obtain the written consent of the Controller;
 - 34.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 34 such that they apply to the Sub-processor; and
 - 34.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 34.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 34.14 The Buyer may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 34.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance, codes of practice, codes of conduct, regulatory guidance, standard clauses or any other related laws arising from the GDPR.

Where the Parties are Joint Controllers of Personal Data

- 34.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in the alternative Joint Controller clauses as indicated in Section C, Part C (Alternative Clauses) of the Order Form.

Where the Parties are Independent Controllers of Personal Data

- 34.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 34.18 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 34.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 34.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

- 34.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 34.21 The Parties shall only provide Personal Data to each other:
- 34.21.1 to the extent necessary to perform the respective obligations under this Contract;
 - 34.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - 34.21.3 where it has recorded it in the Schedule of Processing, Personal Data and Data Subjects.
- 34.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 34.23 A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 34.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("the **Request Recipient**"):
- 34.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 34.24.2 where the request or correspondence is directed to the other party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:
 - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

- 34.25 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- 34.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 34.25.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 34.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 34.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 34.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in the Schedule of Processing, Personal Data and Data Subjects.
- 34.27 Personal Data shall not be retained or Processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in the Schedule of Processing, Personal Data and Data Subjects.
- 34.28 Notwithstanding the general application of Clauses 34.2 to 34.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 34.16 to 34.27.

35. TERMINATION AND EXPIRY

35.1 Buyer Termination Rights

Termination on Material Default

- 35.1.1 The Buyer may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- (a) the Supplier commits a Critical Service Level Failure;
 - (b) as a result of any Defaults, the Buyer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clause 19.4.1, 19.4.2, 19.4.3 and 19.4.4;
 - (c) the Buyer expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following: Clause 23 (IPRs Indemnity), Clause 46.5.2 (Prevention of Fraud and Bribery) and Paragraph 4 of Schedule 8 (Financial Distress);

- (d) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Buyer, capable of remedy;
- (e) the Supplier commits a Default, including a material Default, which in the opinion of the Buyer is remediable but has not remedied such Default to the satisfaction of the Buyer in accordance with the Rectification Plan Process; and/or
- (f) the Buyer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;

35.1.2 For the purpose of Clause 35.1.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

Termination in Relation to Financial Standing

- 35.1.3 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Buyer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
- (a) adversely impacts on the Supplier's ability to supply the Services under this Contract; or
 - (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Contract.

Termination on Insolvency

- 35.1.4 The Buyer may terminate this Contract with immediate effect by issuing a written notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

Termination on Change of Control

- 35.1.5 The Supplier shall notify the Buyer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 35.1.6 The Supplier shall ensure that any notification made pursuant to Clause 35.1.5 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 35.1.7 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier within six (6) Months of:
- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or

- (b) where no notification has been made, the date that the Buyer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

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

Termination for breach of Regulations

- 35.1.8 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c) of the Regulations.

Termination Without Cause

- 35.1.9 The Buyer shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least the number of days stipulated in the Order Form.

Termination in Relation to the Framework

- 35.1.10 The Buyer may terminate this Contract by giving by issuing a Termination Notice to the Supplier if the Framework is terminated for any reason whatsoever.

Termination in Relation to Benchmarking

- 35.1.11 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraph 3 Schedule S5 (Benchmarking) where used.

35.2 Supplier Termination Right

- 35.2.1 Supplier may issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate this Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.
- 35.2.2 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services for failure of the Buyer to pay undisputed sums of money (whether in whole or in part).

35.3 Partial Termination, Suspension and Partial Suspension

- 35.3.1 Where the Buyer has the right to terminate this Contract, the Buyer shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Buyer elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Buyer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

- 35.3.2 Any suspension of this Contract under Clause 35.3.1 shall be for such period as the Buyer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Buyer.
- 35.3.3 The Parties shall seek to agree the effect of any Change necessitated by a partial termination, suspension or partial suspension in accordance with the Change Control Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:
- (a) an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Buyer's termination rights under Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause); and
 - (b) reject the Change.

36. CONSEQUENCES OF TERMINATION AND EXPIRY

36.1 Consequences of termination under Paragraph 1.2 Schedule S8 (Guarantee) where used, 35.1.1 (Termination on Material Default), 35.1.3 (Termination in Relation to Financial Standing), 35.1.10 (Termination in Relation to Framework Agreement) and 35.1.11 (Termination in Relation to Benchmarking)

36.1.1 Where the Buyer:

- (a) terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 36.1; and
- (b) then makes other arrangements for the supply of the Services,

the Buyer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Buyer throughout the remainder of the Contract Period provided that Buyer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Buyer to the Supplier until the Buyer has established the final cost of making those other arrangements.

36.2 Consequences of termination under Clauses 35.1.9 (Termination without Cause)

36.2.1 Where the Buyer terminates (in whole or in part) this Contract under Clause 35.1.9 (Termination without Cause) and Attachment 2 (Charges) of the Order Form expressly states:

- (a) the Supplier is entitled to be paid an early termination fee pursuant to this Clause 36.2.1 where the Buyer terminates this Contract pursuant to Clause 35.1.9 (Termination without Cause); and

- (b) in detail how any such early termination fee is to be calculated in the event of termination for convenience (including where relevant details of any formula for such calculation),

the Buyer shall pay to the Supplier the early termination fee (calculated in accordance with the formula set out in Attachment 2 (Charges) of the Order Form and due solely as a result of the Buyer terminating this Contract for convenience pursuant to Clause 35.1.9 (Termination without Cause)).

36.2.2 The Buyer shall not be liable under Clause 36.2.1 to pay any early termination fee(s):

- (a) which are claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) which when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated; or
- (c) where no such calculation details are expressly set out in Attachment 2 (Charges) of the Order Form.

36.3 **Consequences of Termination for Any Reason or Expiry**

36.3.1 Save as otherwise expressly provided in this Contract:

- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Buyer or the Supplier under Clauses 8.8 (Specially Written Software), 15.4 and 15.5 (VAT), 15.6 and 15.7 (Set-off and Withholding), 29 (Records and Audits), 11.8 (Employment Liabilities), 16 (Income Tax and National Insurance Contributions), 20 (IPRs), 21 (Transfers and Licenses Granted by the Supplier), 23 (IPRs Indemnity), 40 (Confidentiality), 41 (Transparency and FOIA), 34 (Protection of Personal Data), 19 (Limitation of Liability), 36 (Consequences of Termination or Expiry), 44 (Severance), 51 (Entire Agreement), 52 (Third Party Rights), 54 (Disputes), 55 (Governing Law and Jurisdiction), Schedule 1 (Definitions), Schedule 4 (Dispute Resolution Procedure), Schedule 10 (Exit Management), Schedule S4 (Staff Transfer) where used, Clause C3 (Collaboration Agreement) where used and without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive termination or expiry of this Contract.

- 36.3.2 The Parties shall comply with the provision of Schedule 10 (Exit Management) any current Exit Plan in relation to the orderly transition of the Services to the Buyer or a Replacement Supplier.

37. APPOINTMENT OF SUB-CONTRACTORS

- 37.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
 - 37.1.1 manage any Sub-contractors in accordance with Good Industry Practice; and
 - 37.1.2 comply with its obligations under this Contract in the delivery of the Services.
- 37.2 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Buyer in writing of:
 - 37.2.1 the proposed Sub-Contractor's name, registered office and company registration number;
 - 37.2.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 37.2.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 37.3 If requested by the Buyer within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 37.2, the Supplier shall also provide:
 - 37.3.1 a copy of the proposed Sub-Contract; and
 - 37.3.2 any further information reasonably requested by the Buyer.
- 37.4 The Buyer may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 37.2 (or, if later, receipt of any further information requested pursuant to Clause 37.3), object to the appointment of the relevant Sub-Contractor if it considers that:
 - 37.4.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Buyer;
 - 37.4.2 the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 37.4.3 the proposed Sub-Contractor employs unfit persons;in which case, the Supplier shall not proceed with the proposed appointment.
- 37.5 If:

37.5.1 the Buyer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of 10 Working Days of receipt of:

- (a) the Supplier's notice issued pursuant to Clause 37.2; and
- (b) any further information requested by the Buyer pursuant to Clause 37.3; and

37.5.2 the proposed Sub-Contract is not a Key Sub-Contract (which shall require the written consent of CCS and the Buyer in accordance with Clause 38 (Appointment of Key Sub-contractors),

the Supplier may proceed with the proposed appointment.

37.6 The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

38. APPOINTMENT OF KEY SUB-CONTRACTORS

38.1 The Supplier shall only be entitled to sub-contract its obligations to the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors) where such Key Sub-Contractors are set out in the Order Form.

38.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of CCS and the Buyer (such consent not to be unreasonably withheld or delayed). CCS and/or the Buyer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:

- 38.2.1 the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
- 38.2.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- 38.2.3 the proposed Key Sub-Contractor employs unfit persons.

38.3 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:

- 38.3.1 provisions which will enable the Supplier to discharge its obligations under this Contract;
- 38.3.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
- 38.3.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
- 38.3.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
- 38.3.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:

- (a) the data protection requirements set out in Clause 31 (Data Protection);
 - (b) the FOIA requirements set out in Clause 41 (Transparency and FOIA);
 - (c) the keeping of records in respect of the services being provided under the Key Sub-Contract; and
 - (d) the conduct of audits set out in Clause 27 (Records and Audit);
- 38.3.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 35 and 36 of this Contract;
- 38.3.7 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer;
- 38.3.8 a provision requiring the Key Sub-Contractor to participate in, and if required by the Buyer in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-Contractors in, the Multi-Party Dispute Resolution Procedure;
- 38.3.9 a provision requiring the Key Sub-Contractor to:
 - (a) promptly notify the Supplier and the Buyer in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor; or
 - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-Contractor first becomes aware of such); and

- (b) co-operate with the Supplier and the Buyer in order to give full effect to the provisions of Schedule 8 (Financial Distress), including meeting with the Supplier and the Buyer to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 3.3.2(b) of Schedule 8 (Financial Distress).

39. **SUPPLY CHAIN PROTECTION**

Advertising Sub-Contract Opportunities

39.1 The Supplier shall:

- 39.1.1 subject to Clauses 39.3 and 39.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Contract Period;
 - 39.1.2 within ninety (90) days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
 - 39.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 39.1.4 provide reports on the information at Clause 39.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer; and
 - 39.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 39.2 Each advert referred to in Clause 39.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 39.3 The obligation at Clause 39.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.
- 39.4 Notwithstanding Clause 39.1 the Buyer may, by giving its prior written approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

Supply Chain Protection

- 39.5 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:
- 39.5.1 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
 - 39.5.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 39.5.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph 39.5.2, the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph 39.5.4 after a reasonable time has passed;
 - 39.5.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 39.5.5 giving the Buyer a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and

- 39.5.6 requiring the Sub-Contractor to include a clause to the same effect as this Clause 39 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 39.6 The Supplier shall:
 - 39.6.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
 - 39.6.2 include within the Performance Monitoring Reports required under Part B of Schedule 3 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with Clause 39.6.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
- 39.7 Notwithstanding any provision of Clauses 40 (Confidentiality) and 25 (Publicity and Branding) if the Supplier notifies the Buyer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 39.8 The Buyer may require the Supplier to terminate:
 - 39.8.1 a Sub-Contract where:
 - (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Buyer's right of termination pursuant to any of the termination events in Clause 35.1 (Buyer Termination Rights) except Clause 35.1.9 (Termination Without Cause); and/or
 - (b) the relevant Sub-Contractor or its Affiliates embarrassed the Buyer or otherwise brought the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Buyer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
 - 39.8.2 a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (c) the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (d) the Buyer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Buyer was given notice of the Change of Control.

40. **CONFIDENTIALITY**

- 40.1 For the purposes of this Clause 40, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information

and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

- 40.2 Except to the extent set out in this Clause 40 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 40.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - 40.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
 - 40.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
 - 40.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 40.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 40.3.1 the Recipient is required to disclose the Confidential Information by Law;
 - 40.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Buyer arising out of or in connection with this Contract;
 - (b) the purpose of the examination and certification of the Buyer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer is making use of any Services provided under this Contract; or
 - (c) the conduct of a Central Government Body review in respect of this Contract;
 - 40.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 40.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

- 40.5 Subject to Clauses 40.2 and 40.3, the Supplier may only disclose the Buyer's Confidential Information on a confidential basis to:
- 40.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Contract; and
 - 40.5.2 its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 40.6 Where the Supplier discloses Confidential Information of the Buyer pursuant to this Clause 40, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 40.7 The Buyer may disclose the Confidential Information of the Supplier:
- 40.7.1 on a confidential basis to any Central Government Body for any proper purpose of the Buyer or of the relevant Central Government Body;
 - 40.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 40.7.3 to the extent that the Buyer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 40.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Buyer for any purpose relating to or connected with this Contract;
 - 40.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
 - 40.7.6 to a proposed transferee, assignee or novatee of, or successor in title to the Buyer,
- 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 Buyer under this Clause 40.
- 40.8 In the event of a breach by the Supplier of any of the applicable provisions of this Clause 40, the Buyer reserves the right to terminate this Contract for material Default.

41. **TRANSPARENCY AND FOIA**

- 41.1 The Parties acknowledge that:
- 41.1.1 the Transparency Reports; and
 - 41.1.2 the content of this Contract, including any changes to this Contract agreed from time to time, except for:

- (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and
- (b) Commercially Sensitive Information;

(together the “**Transparency Information**”) are not Confidential Information.

- 41.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Buyer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Buyer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 41.3 The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 6 (Transparency Reports).
- 41.4 The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
 - 41.4.1 provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;
 - 41.4.2 transfer to the Buyer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 41.4.3 provide the Buyer with a copy of all Information held on behalf of the Buyer which is requested in a Request For Information and which is in its possession or control in the form that the Buyer requires within five (5) Working Days (or such other period as the Buyer may reasonably specify) of the Buyer's request for such Information; and
 - 41.4.4 not respond directly to a Request For Information addressed to the Buyer unless authorised in writing to do so by the Buyer.
- 41.5 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Buyer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Buyer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

42. WAIVER

- 42.1 A partial or full waiver or relaxation of the terms of this Contract is only valid if it is stated to be a waiver in writing to the other Party.
- 42.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

43. FURTHER ASSURANCES

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

44. SEVERANCE

- 44.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 44.2 In the event that any deemed deletion under Clause 44.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 44.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 44.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 4 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 44.3.

45. RELATIONSHIP OF THE PARTIES

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

46. PREVENTING FRAUD BRIBERY AND CORRUPTION

- 46.1 The Supplier must not during the Contract Period:

- 46.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); nor
- 46.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Sub-Contractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 46.2 The Supplier must during the Contract Period:
 - 46.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Sub-Contractors to do the same;
 - 46.2.2 keep full records to show it has complied with its obligations under this Clause 46 and give copies to the Buyer on request; and
 - 46.2.3 if required by the Buyer, within 20 Working Days of the Commencement Date, and then annually, certify in writing to the Buyer, that it has complied with this Clause 46, including compliance of Supplier Personnel, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 46.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 46.1 and 46.2 or has any reason to think that it, or any of the Supplier Personnel, has either:
 - 46.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 46.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 46.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Framework or any contract entered into under the Framework; or
 - 46.3.4 suspected that any person or Party directly or indirectly related to the Framework or any contract entered into under the Framework has committed or attempted to commit a Prohibited Act.
- 46.4 If the Supplier notifies the Buyer as required by Clause 46.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation.
- 46.5 If the Supplier breaches Clause 46.2 , the Buyer may by notice:
 - 46.5.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 46.5.2 immediately terminate this Contract for material Default.
- 46.6 In any notice the Supplier gives under Clause 46.3 it must specify the:

- 46.6.1 Prohibited Act;
- 46.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
- 46.6.3 action it has decided to take.

47. **EQUALITY, DIVERSITY AND HUMAN RIGHTS**

- 47.1 The Supplier must follow all applicable equality Law when it performs its obligations under this Contract, including:
 - 47.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - 47.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 47.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

48. **ASSIGNMENT AND NOVATION**

- 48.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.
- 48.2 The Buyer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
 - 48.2.1 any Central Government Body; or
 - 48.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer,and the Supplier shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer shall reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 48.2.
- 48.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not, subject to Clause 48.4, affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.
- 48.4 If the Buyer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Buyer (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Buyer under Clause 35.1.4 as if references in that Clause to the Supplier and to Supplier or Guarantor (if applicable) in the definition of Insolvency Event were references to the Successor Body).

49. CHANGE

Change Control Procedure

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

Change in Law

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

49.2.1 a General Change in Law; or

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

49.3 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 49.2.2), the Supplier shall:

49.3.1 notify the Buyer as soon as reasonably practicable of the likely effects of that change, including:

(a) whether any Change is required to the Services, the Charges or this Contract; and

(b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and

49.3.2 provide the Buyer with evidence:

(a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

(b) as to how the Specific Change in Law has affected the cost of providing the Services; and

(c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Schedule S7 (Continuous Improvement) where used, has been taken into account in amending the Charges.

49.3.3 Any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 49.2.2) shall be implemented in accordance with the Change Control Procedure.

50. NOTICES

50.1 Any notices sent under this Contract must be in writing.

50.2 Subject to Clause 50.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

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

50.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 50.2:

50.3.1 notices issued by the Supplier pursuant to Clause 35.2 (Termination by the Supplier);

50.3.2 Termination Notices; and

50.3.3 Dispute Notices.

50.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 50.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 50.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

50.5 This Clause 50 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute

resolution (other than the service of a Dispute Notice under Schedule 4 (Dispute Resolution Procedure)).

- 50.6 For the purposes of this Clause 50, the address and email address of each Party shall be the address and email address set out in the Order Form.

51. **ENTIRE AGREEMENT**

- 51.1 This Contract constitutes the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 51.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 51.3 Nothing in this Clause 51 shall exclude any liability in respect of misrepresentations made fraudulently.

52. **THIRD PARTY RIGHTS**

- 52.1 The provisions of Clause 23 (IPRs Indemnity), Paragraphs 2.1 and 3.1 of Part A, Paragraphs 2.1, 3.1 and 3.3 of Part B, Paragraphs 1.2 and 1.5 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.5 of Part E of Schedule S4 (Staff Transfer) where used and the provisions of Paragraph 8.9 of Schedule 10 (Exit Management) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 52.2 Subject to Clause 52.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 52.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 52.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 52.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

53. **CONFLICTS OF INTEREST**

- 53.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier’s staff are placed in the position of an actual or potential Conflict of Interest.
- 53.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest happens or is expected to happen.

- 53.3 The Buyer can terminate this Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

54. **DISPUTES**

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

55. **GOVERNING LAW AND JURISDICTION**

- 55.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 55.2 Subject to Clause 54 (Disputes) and Schedule 4 (Dispute Resolution Procedure) (including the Buyer's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

SCHEDULE 1 - DEFINITIONS

1. In accordance with Clause 1 (Definitions), in this Contract the following expressions shall have the meanings ascribed in the table below.

| | |
|------------------------------|---|
| Achieve | <p>means:</p> <p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule S2 (Testing Procedures) where used,</p> <p>and “Achieved” and “Achievement” shall be construed accordingly</p> |
| Affected Party | means the Party seeking to claim relief in respect of a Force Majeure Event |
| Affiliates | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time |
| Approved Sub-Licensee | <p>means any of the following:</p> <p>(a) a Central Government Body;</p> <p>(b) any third party providing services to a Central Government Body; and/or</p> <p>(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer</p> |
| Attachment | means an attachment to the Order Form |
| Assets | means all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Buyer Assets |
| Auditor | <p>means:</p> <p>(a) the Buyer’s internal and external auditors;</p> <p>(b) the Buyer’s statutory or regulatory auditors;</p> <p>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>(d) HM Treasury or the Cabinet Office;</p> <p>(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> |

| | |
|-------------------------------------|---|
| | (f) successors or assigns of any of the above |
| BCDR Plan | means the plan prepared pursuant to Paragraph 2.1 of Schedule S6 (Business Continuity and Disaster Recovery), as may be amended from time to time |
| Breach of Security | <p>the occurrence of:</p> <p>(a) any unauthorised access to or use of the Services, the Sites, the IT Environment and/or any IT, information or data (including the Confidential Information and the Buyer Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or</p> <p>(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Buyer Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,</p> <p>in either case as more particularly set out in the Security Policy (if any)</p> |
| Buyer | means the organisation eligible to use the Framework as specified in the Order Form |
| Buyer Assets | means the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Services details of which shall be set out in the Order Form |
| Buyer's Existing Entitlement | means Buyer's funds held on account by the Supplier in respect of another transaction(s) outside of this Contract and to be used as part or whole payment of the Charges |
| Buyer Background IPRs | <p>means</p> <p>(a) IPRs owned by the Buyer before the Commencement Date, including IPRs contained in any of the Buyer's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Buyer independently of this Contract; and/or</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;</p> <p>but excluding IPRs owned by the Buyer subsisting in the Buyer Software</p> |
| Buyer Cause | any material breach by the Buyer of any of the Buyer Responsibilities, except to the extent that such breach is: |

| | |
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| | <p>(d) the result of any act or omission by the Buyer to which the Supplier has given its prior consent; or</p> <p>(e) caused by the Supplier, any Sub-Contractor or any Supplier Personnel</p> |
| Buyer Data | <p>means:</p> <p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:</p> <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or <p>(b) any Personal Data for which the Buyer is the Controller</p> |
| Buyer Premises | means premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Services and/or Deliverables (or any of them) as set out or referred to in the Order Form |
| Buyer Representative | means the representative appointed by the Buyer (as may be changed from time to time in accordance with Clause 28.4, the details of which as at the Commencement Date are set out in the Order Form |
| Buyer Responsibilities | means the responsibilities of the Buyer set out the Order Form or agreed in writing between the Parties from time to time in connection with this Contract |
| Buyer Software | software which is owned by or licensed to the Buyer (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services |
| Buyer System | the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by the Buyer or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services |
| Call Off Terms | means these terms and conditions |
| CCS | means Crown Commercial Service, the authority to the Framework |
| Central Government Body | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector |

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| | <p>Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency |
| Change | means any change to this Contract |
| Change Control Procedure | means the procedures for changing this Contract set out in Part A and Part B of Schedule 5 (Change Control Procedure) and either Part A or Part B shall apply to this Contract as indicated in the Order Form |
| Change in Law | means any change in Law which impacts on the performance of the Services which comes into force after the Commencement Date |
| Charges | means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 2 (Charges and Invoicing), including any Milestone Payment or Service Charge |
| Commencement Date | means the date specified as such in the Order Form |
| Commercially Sensitive Information | the Confidential Information listed in Section D of the Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss |
| Comparable Supply | means the supply of services to another customer of the Supplier that are the same or similar to any of the Services |
| Compensation for Critical Service Level Failure | has the meaning given to it in Clause 10.1.2 |
| Confidential Information | <p>means the Buyer's confidential information and/or the Supplier's confidential information, as the context requires, but not including any information which:</p> <ul style="list-style-type: none"> (a) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party; (b) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; |

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|---------------------------------------|---|
| | <p>(c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or</p> <p>(d) was independently developed without access to the Confidential Information</p> |
| Conflict of Interest | a conflict between the financial or personal duties of the Supplier or the Supplier's staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer |
| Contract | <p>means the contract between the Buyer and the Supplier (entered into pursuant to the terms of the Framework) consisting of:</p> <p>(e) the Order Form; and</p> <p>(f) the Call Off Terms</p> |
| Contract Finder | means the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015 |
| Contract Period | <p>means the period commencing on the Commencement Date and ending on:</p> <p>(a) expiry of the Initial Term or the Extension Period; or</p> <p>(b) on the earlier of termination of this Contract,</p> <p>which for the avoidance of doubt may not exceed the Maximum Contract Period.</p> |
| Contract Value | means the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the Supplier |
| Contract Year | means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof |
| Control | means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly |
| Controller | has the meaning given to it in the GDPR |
| Critical Service Level Failure | means any instance of critical service level failure specified in Attachment 4 of the Order Form |
| Crown Body | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and |

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| | particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf |
| CRTPA | means the Contracts (Rights of Third Parties) Act 1999 |
| Data Loss Event | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach |
| Data Protection Impact Assessment | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data |
| Data Protection Legislation | means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy |
| Data Protection Officer | has the meaning given to it in the GDPR |
| Data Subject | has the meaning given to it in the GDPR |
| Data Subject Request | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data |
| Default | means any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or its personnel in connection with or in relation to this Contract or the subject matter of this Contract and in respect of which the Supplier is liable to the Buyer |
| Defect | <p>means:</p> <ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Documentation (including any adverse effect on response |

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| | times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria |
| Delay | means: (a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan |
| Delay Deduction Period | the period of one hundred (100) days commencing on the relevant Milestone Date |
| Delay Payments | means the amounts payable by the Supplier to the Buyer in respect of a Delay in Achieving a Milestone as specified in Schedule 2 (Charges and Invoicing) |
| Deliverable | means an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract |
| Detailed Implementation Plan | means the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule S1 (Implementation Plan) where used |
| Dispute | means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure |
| Dispute Resolution Procedure | means the dispute resolution procedure set out in Schedule 4 (Dispute Resolution Procedure) |
| Documentation | means all documentation as: (a) is required to be supplied by the Supplier to the Buyer under this Contract; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; (c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services |
| DPA 2018 | means the Data Protection Act 2018 |

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| Due Diligence Information | any information supplied to the Supplier by or on behalf of the Buyer prior to the Commencement Date |
| EIR | the Environmental Information Regulations 2004 |
| Emergency Maintenance | <p>means ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> (a) the Buyer reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault |
| Employment Liabilities | <p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation |

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| Electronic Invoice | an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870 |
| Estimated Year 1 Charges | means the sum in pounds estimated by the Buyer to be payable by it to the Supplier as the total aggregate Charges from the Commencement Date until the end of the first Contract Year stipulated in the Order Form |
| Euro Compliant | <p>means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Buyer's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <ul style="list-style-type: none"> (a) be able to perform all such functions in any number of currencies and/or in euros; (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro; (d) incorporate protocols for dealing with rounding and currency conversion; (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Buyer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK; |
| Exit Day | shall have the meaning in the European Union (Withdrawal) Act 2018 |
| Exit Management | means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from |

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| | the Supplier to the Buyer and/or a Replacement Supplier, as set out or referred to in Schedule 10 (Exit Management) |
| Exit Plan | means the plan produced and updated by the Supplier during the Contract Period in accordance with Paragraph 4 of Schedule 10 (Exit Management) where used |
| Extension Period | means (where applicable) a period as specified in the Order Form to take effect from the end of the Initial Term |
| FOIA | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation |
| Force Majeure Event | any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-Contractor's supply chain |
| Force Majeure Notice | means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event |
| Framework | means the framework agreement reference RM6100 between the Supplier and CCS |
| GDPR | the General Data Protection Regulation (Regulation (EU) 2016/679) |
| General Change in Law | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply |
| Government | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf |

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| Guarantee | means a deed of guarantee executed by the Guarantor in favour of the Buyer in the form set out in the Annex of Schedule S8 (Guarantee) where used |
| Guarantor | means the entity (if any) set out in the Order Form who executes a Guarantee in favour of the Buyer |
| Implementation Plan | means the Outline Implementation Plan or (if and when approved by the Buyer pursuant to Paragraph 3 of Schedule S1 (Implementation Plan)), where used, the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule S1 (Implementation Plan) where used, from time to time |
| Indemnified Person | means the Buyer and each and every person to whom the Buyer (or any direct or indirect sub-licensee of the Buyer) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract |
| Information | has the meaning given to it under section 84 of the Freedom of Information Act 2000 |
| Independent Control | where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and "Independent Controller" shall be construed accordingly |
| Initial Term | means a period from the Commencement Date as specified in the Order Form |
| Insolvency Event | <p>means, in respect of the Supplier or Guarantor (as applicable):</p> <ul style="list-style-type: none"> (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or |

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| | <ul style="list-style-type: none"> (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or (e) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or (g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or (h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or (i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction |
| Intellectual Property Rights or IPR | <p>means:</p> <ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction |
| IPRs Claim | <p>means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Buyer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Specification or the provisions of this Contract</p> |
| IT | <p>means information and communications technology</p> |
| IT Environment | <p>means the Buyer System and the Supplier System</p> |

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| ICT Policy | means the Buyer's ICT policy, referred to in the Order Form, in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier |
| Joint Controllers | where two or more Controllers jointly determine the purposes and means of Processing |
| Key Sub-Contract | means each Sub-Contract with a Key Sub-Contractor |
| Key Sub-Contractor | means any Sub-Contractor: (a) listed as such in the Order Form; (b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Services and/or Deliverables; and/or (c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract |
| Know-How | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Commencement Date; |
| Law | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply |
| LED | means the Law Enforcement Directive (Directive (EU) 2016/680) |
| Licensed Software | means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software specified in the Order Form and/or any Specially Written Software |
| Losses or Loss | means all losses, liabilities, damages, costs, fines, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise |

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| Malicious Software | means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence |
| Maximum Contract Period | means the period from the Commencement Date set out in the Order Form in respect of the applicable lot |
| Milestone | means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date |
| Milestone Date | means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved |
| Milestone Payment | means a payment identified in Schedule 2 (Charges and Invoicing) to be made following the issue of a Milestone Achievement Certificate |
| Milestone Achievement Certificate | means the certificate to be granted by the Buyer when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule S2 (Testing Procedures) |
| New Releases | an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item |
| Non-trivial Customer Base | means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor |
| Object Code | means software and/or data in machine-readable, compiled object code form |
| Open Source | means computer software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source |
| Operating Environment | means the Buyer System and the Sites |
| Order | means the order placed by the Buyer with the Supplier for the provision of the Services and/or Deliverables in accordance with the Framework and under the terms of this Contract |

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| Order Form | means the form (based on the template included at Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off Terms)) together with any Attachments, as completed and forming part of this Contract, which contains details of an Order together with other information in relation to such Order, including the description of the Services to be provided |
| Other Supplier | any supplier to the Buyer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware |
| Outline Implementation Plan | the outline plan set out at Attachment 3 (Outline Implementation Plan) of the Order Form (where used) |
| Party | means a party to this Contract, namely either the Buyer or the Supplier (together the “ Parties ”) |
| Performance Monitoring Reports | has the meaning given in Paragraph 1.2 Part B (Performance Monitoring) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring) |
| Personal Data | has the meaning given to it in the GDPR |
| Personal Data Breach | has the meaning given to it in the GDPR |
| Processing | has the meaning given to it in the GDPR and “Process” and “Processed” shall be interpreted accordingly |
| Processor | has the meaning given to it in the GDPR |
| Processor Personnel | means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract |
| Prohibited Acts | <p>means:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; or (c) committing any offence: |

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| | <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or <p>(d) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or</p> <p>(e) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK</p> |
| “Project Specific IPRs” | <p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p> |
| Protective Measures | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it |
| Quality Plans | has the meaning given in Clause 7.1 |
| Rectification Plan | means the rectification plan pursuant to the Rectification Plan Process |
| Rectification Plan Process | means the process set out in Clauses 31.3 to 31.8 |
| Regulations | means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) |
| Relevant IPRs | means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer or a third party in the fulfilment of the Supplier's obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Buyer Software, the Buyer Background IPRs, the |

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| | Supplier COTS Software, the Supplier COTS Background IPRS, the Third Party COTS Software and/or the Third Party COTS IPRs |
| Relevant Requirements | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010 |
| Replacement Services | means any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the expiry or termination (in whole or in part) of this Contract, whether those services are provided by the Buyer internally and/or by any third party |
| Replacement Supplier | means any third party service provider of Replacement Services appointed by the Buyer from time to time (or where the Buyer is providing replacement Services for its own account, the Buyer) |
| Reminder Notice | means a notice sent in accordance with Clause 35.2.1 given by the Supplier to the Buyer providing notification that payment has not been received on time |
| Request for Information | means a request for information or an apparent request relating to this Contract or an apparent request for such information under the FOIA or the EIRs |
| Restricted Country | means any country which is not: <ul style="list-style-type: none"> (a) a member of the European Economic Area; (b) the United Kingdom; or (c) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the GDPR |
| Risk Register | means the register of risk and contingencies that have been identified by the Parties, a copy of which is set out in Part D of Attachment 2 of the Order Form |
| Schedule of Processing, Personal Data and Data Subjects | means the schedule of processing, personal data and data subjects set out in Attachment 9 of the Order Form (to be completed by the Buyer) which sets out various details concerning the processing of Personal Data including: <ul style="list-style-type: none"> (a) identity of the Controller and Processor; (b) subject matter of processing; (c) duration of the processing; (d) nature and purposes of the processing; (e) type of Personal Data being Processed; (f) categories of Data Subject; and |

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| | (g) plan for return of the data once the processing is complete unless requirement under Data Protection Legislation to preserve that type of data |
| Service Charges | means the periodic payments made in accordance with Schedule 2 (Charges and Invoicing) in respect of the supply of the Services |
| Service Credit Cap | means the service credit cap specified in Attachment 4 of the Order Form |
| Service Credits | means any service credits specified in Attachment 4 of the Order Form being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels; |
| Service Level Failure | means a failure to meet the Service Level Performance Measure in respect of a Service Level |
| Service Level Performance Measure | shall be as set out against the relevant Service Level in Attachment 4 of the Order Form |
| Service Level Threshold | shall be as set out against the relevant Service Level in Attachment 4 of the Order Form |
| Service Levels | means any service levels applicable to the provision of the Services under this Contract specified in Attachment 4 of the Order Form |
| Service Period | means a service period which, for the purposes of this Contract and unless otherwise agreed, shall be a recurrent period of one (1) month during the Contract Period |
| Services | means the services which the Supplier shall make available to the Buyer under this Contract as set out or referred to in the Order Form |
| Security Policy | means the security policy, referred to in the Order Form, in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier |
| Services Specification | means the specification of the Services as set out or referred to in Attachment 1 to the Order Form |
| Sites | means any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> (a) the Services and/or Deliverables are (or are to be) provided; or (b) the Supplier manages, organises or otherwise directs the provision or the use of the Services and/or Deliverables, |

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| | and which are set out in or referred to in the Order Form |
| Software | means the Specially Written Software, Supplier Software and Third Party Software |
| Software Supporting Materials | has the meaning given in Clause 21.1.2 |
| Source Code | means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software |
| Specially Written Software | means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract |
| Specific Change in Law | means a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply |
| Standards | means any standards set out or referred to in these Call Off Terms (if any), the Order Form and the Framework |
| Standard Contractual Clauses | means the standard contractual clauses for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission |
| Sub-Contract | means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof |
| Sub-Contractor | means any third party other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person |
| Sub-processor | means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract |

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| Supplier | means the entity identified as such in the Order Form |
| Supplier Background IPRs | <p>means</p> <p>(a) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Contract,</p> <p>which in each case is or will be used before or during the Contract Period for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software</p> |
| Supplier COTS Background IPRs | <p>means any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p> |
| Supplier COTS Software | <p>means Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p> |
| Supplier Equipment | means the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-Contractors (but not hired, leased or loaned from the Buyer) for the provision of the Services |
| Supplier Non-COTS Background IPRs | means any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Buyer and that are not Supplier COTS Background IPRs |
| Supplier Non-COTS Software | means Supplier Software that is not Supplier COTS Software |
| Supplier Personnel | means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, |

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| | suppliers and sub-contractors) used in the performance of its obligations under this Contract |
| Supplier Representative | means the representative appointed by the Supplier (as may be changed from time to time in accordance with Clause 28.3, the details of which as at the Commencement Date are set out in the Order Form |
| Supplier Software | software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in the Order Form |
| Supplier System | means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System) |
| Tender | means the tender submitted by the Supplier to CCS and annexed to or referred to in Framework Schedule 18 |
| Termination Notice | means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination |
| Test Issues | has the meaning given in Schedule S2 (Testing Procedures) where used |
| Test and Testing | means any tests required to be carried out under this Contract, as further described in Schedule S2 (Testing Procedure) where used and “ Tested ” shall be construed accordingly |
| Test Success Criteria | has the meaning given in Paragraph 1 of Schedule S2 (Testing Procedure) |
| Third Party Beneficiary | has the meaning given in Clause 52.1 |
| Third Party COTS IPRs | means Third Party IPRs that: (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base |
| Third Party COTS Software | means Third Party Software (including open source software) that: |

| | |
|--------------------------------------|--|
| | <p>(a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and</p> <p>(b) has a Non-trivial Customer base;</p> |
| Third Party IPRs | means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software |
| Third Party Non-COTS IPRs | means Third Party IPRs that are not Third Party COTS IPRs |
| Third Party Non-COTS Software | means Third Party Software that is not Third Party COTS Software |
| Third Party Software | means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in the Order Form |
| Transparency Reports | means the information relating to the Services and performance of this Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports) |
| Updates | in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item |
| Upgrades | any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Contract Period |
| VAT | means value added tax in accordance with the provisions of the Value Added Tax Act 1994 |
| Worker | <p>any one of the Supplier Personnel which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees)</p> <p>(https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Services and/or Deliverables</p> |
| Working Day | means any day other than a Saturday, Sunday or public holiday in England and Wales |

SCHEDULE 2 - CHARGES AND INVOICING

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

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| “Delay Payment Rate” | has the meaning given in Paragraph 1.1.1 of Part C; |
| “Indexation” and “Index” | the adjustment of an amount or sum in accordance with Paragraph 3 of Part C; |
| “Reimbursable Expenses” | <p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none">(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and(b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed; and |
| “Supporting Documentation” | sufficient information in writing to enable the Buyer reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts. |

PART A – PRICING

1. FIXED PRICE CHARGES

- 1.1 The Milestone Payments and Service Charges due under this Contract are charged on a fixed price basis.
- 1.2 The Milestone Payments and Service Charges due under this Contract are set out in the respective tables in Part A (Milestone Payments and Delay Payments) and Part B (Service Charges) of Attachment 2 (Charges and Invoicing) of the Order Form.

2. TIME AND MATERIAL CHARGES

- 2.1 Where the Parties agree in writing that a particular Charge is to be calculated by reference to a Time and Materials pricing mechanism (e.g. pursuant to a Contract Change):
 - 2.1.1 the day rates set out in the table in Part C (Supplier Personnel Rate Card for Calculation of Time and Materials Charges) of Attachment 2 (Charges and Invoicing) of the Order Form shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-Contractor) shall:
 - (a) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (b) not be paid any Charges to the extent that they would otherwise exceed any cap on such Charges agreed in writing by the Parties unless the Supplier has obtained the Buyer's prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Buyer immediately in the event of any risk that the cap may be exceeded and the Buyer shall instruct the Supplier on how to proceed;
 - (c) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
 - 2.1.2 the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Buyer requests copies of such records, the Supplier shall make them available to the Buyer within ten (10) Working Days of the Buyer's request.
- 2.2 The Supplier shall be entitled to Index the rates set out in table in Part C (Supplier Personnel Rate Card for Calculation of Time and Materials Charges) of Attachment 2

(Charges and Invoicing) of the Order Form in accordance with Paragraph 3 of Part C of this Schedule 2 (Charges and Invoicing).

3. REIMBURSEABLE EXPENSES

3.1 Where:

3.1.1 Services are to be charged using the Time and Materials pricing mechanism; and

3.1.2 the Buyer so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Buyer for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

3.2 The Buyer shall provide a copy of its current expenses policy to the Supplier upon request.

3.3 Except as expressly set out in Paragraph 3.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Buyer to the Supplier in respect of such performance, including in respect of matters such as:

3.3.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

3.3.2 any amount for any services provided or costs incurred by the Supplier prior to the Commencement Date.

PART B – CHARGING MECHANISMS

1. MILESTONE PAYMENTS

- 1.1 Subject to the provisions of Paragraph 1.2 of Part C of this Schedule 2 (Charges and Invoicing) in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Buyer for the Milestone Payment associated with that Milestone.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate.

2. SERVICE CHARGES

- 2.1 Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part D of this Schedule 2 (Charges and Invoicing).
- 2.2 If a Service Charge:
 - 2.2.1 commences on a day other than the first day of a month; and/or
 - 2.2.2 ends on a day other than the last day of a month,the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.

PART C – ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1. DELAY PAYMENTS

- 1.1 If a Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to the Buyer in respect of that Milestone. Delay Payments shall accrue:
 - 1.1.1 at the daily rate (the “**Delay Payment Rate**”) set out in the Milestone Payment table in Part A (Milestone Payments and Delay Payments) of Attachment 2 of the Order Form;
 - 1.1.2 from (but excluding) the relevant Milestone Date to (and including) the earlier of:
 - (a) the date on which the Milestone is Achieved;
 - (b) the expiry of the Delay Deduction Period; and
 - 1.1.3 on a daily basis, with any part day’s Delay counting as a day.
- 1.2 Where the Supplier serves a notice of Delay in achieving a Milestone, the Supplier shall, within five (5) Working Days of the date the notice is served:
 - 1.2.1 pay to the Buyer in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.3) an amount equal to 10 days of Delay Payments in accordance with paragraph 1.4, calculated at the applicable Delay Payment Rate; and
 - 1.2.2 issue a credit note to the Buyer in respect of the relevant amount.

Failure to make payment within ten (10) Working Days of the Supplier’s notice shall invalidate the notice.
- 1.3 Any amounts paid to the Buyer pursuant to Paragraph 1.2 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier's notice:
 - 1.3.1 does not occur; or
 - 1.3.2 does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.2.
- 1.4 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Buyer will incur as a result of any failure by the Supplier to Achieve the relevant Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.5 The Delay Payment in respect of a Milestone (net of any payment made in respect of that Milestone pursuant to Paragraph 1.3) shall be shown as a deduction from the amount due from the Buyer to the Supplier in the next invoice due to be issued by the

Supplier after the date on which the relevant Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within ten (10) Working Days of expiry of the Delay Deduction Period, then the Supplier shall within ten (10) Working Days of expiry of the Delay Deduction Period:

- 1.5.1 issue a credit note to the Buyer in respect of the total amount of the Delay Payment in respect of the Milestone (net of any payment made in respect of the Milestone pursuant to Paragraph 1.2); and
- 1.5.2 pay to the Buyer as a debt a sum equal to the total amount of the Delay Payment in respect of the Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2. CHANGES TO CHARGES

- 2.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 5 (Change Control Procedure).
- 2.2 The Buyer may request that any Impact Assessment (as defined in Schedule 5 (Change Control Procedure)) presents Charges without Indexation for the purposes of comparison.

3. INDEXATION

- 3.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 3 to reflect the effects of inflation. For the avoidance of doubt, Milestone Payment amounts shall not be subject to Indexation.
- 3.2 Where Indexation applies, the relevant adjustment shall be:
 - 3.2.1 applied on the first day of the second April following the Commencement Date and on the first day of April in each subsequent year (each such date an “adjustment date”); and
 - 3.2.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 3.3 Except as set out in this Paragraph 3, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-Contractors of the performance of their obligations.

4. RISK REGISTER

The Parties shall review the Risk Register set out in Part D (Risk Register) of Attachment 2 (Charges and Invoicing) of the Order Form from time to time and as otherwise required under Schedule 7 (Governance).

PART D – ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1. SUPPLIER INVOICES

- 1.1 The Buyer shall accept for processing any Electronic Invoice that complies with any standards required by this Contract or otherwise agreed in writing by the Parties, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with such agreed standards the Supplier shall comply with the requirements of the Buyer's e-invoicing system. In the alternative the Supplier shall:
 - 1.2.1 prepare and provide to the Buyer for approval of the format a template invoice within ten (10) Working Days of the Commencement Date which shall include, as a minimum, the details set out in Paragraph 1.2.3 together with such other information as the Buyer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - 1.2.2 make such amendments as may be reasonably required by the Buyer if the template invoice outlined in (1.2.1) is not approved by the Buyer.
 - 1.2.3 The Supplier shall ensure that each invoice contains the following information:
 - (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Contract;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Fixed Price, Time and Materials etc.);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Buyer under the terms of this Contract, and,

separately, any VAT or other sales tax payable in respect of each of the same;

- (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (l) reference to any reports required by the Buyer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Buyer, then to any such reports as are validated by the Buyer in respect of the Services);
- (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number);
- (o) where the Services have been structured into separate Service lines, the information at (1.2.3(a)) to (1.2.3(n)) of this paragraph 1.2.3 shall be broken down in each invoice per Service line; and
- (p) and any other information reasonably required by the Buyer.

- 1.3 The Supplier shall invoice the Buyer in respect of Services in accordance with the requirements of Part B of Schedule 2 (Charges and Invoicing).
- 1.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Buyer as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Buyer any other documentation reasonably required by the Buyer from time to time to substantiate an invoice.
- 1.5 The Supplier shall submit all invoices and Supporting Documentation through the Buyer's electronic system (as notified to the Supplier) or if that is not possible to the address or email set out in the Order Form with a copy (again including any Supporting Documentation) to such other person and at such place as the Buyer may notify to the Supplier from time to time.
- 1.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Buyer in writing.
- 1.7 The Buyer shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to the Buyer's requirements set out in this Part D, the Buyer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

2. PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule 2 (Charges and Invoicing), the Buyer shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

SCHEDULE 3 - SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. SCOPE

- 1.1 This Schedule 3 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
- 1.2 This Schedule 3 comprises:
 - 1.2.1 Part A: Service Levels and Service Credits; and
 - 1.2.2 Part B: Performance Monitoring.

PART A – SERVICE LEVELS AND SERVICE CREDITS

1. SERVICE LEVELS

1.1 If the level of performance of the Supplier:

1.1.1 is likely to or fails to meet any Service Level Performance Measure; or

1.1.2 is likely to cause or causes a Critical Service Failure to occur,
the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
- (b) instruct the Supplier to comply with the Rectification Plan Process;
- (c) if a Service Level Failure has occurred, deduct from the Charges the applicable Service Level Credits payable by the Supplier to the Buyer; and/or
- (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 10 (including the right to terminate for material Default).

2. SERVICE CREDITS

2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Schedule 3 to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

2.2 The liability of the Supplier in respect of Service Credits shall be subject to Clause 19.4.3 provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Credits in excess of such financial limit in accordance with the provisions of this Schedule 3.

2.3 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula set out in Attachment 4 (Service Levels and Service Credits) of the Order Form.

PART B – PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 Within twenty (20) Working Days of the Commencement at the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule 3 (Service Levels, Service Credits and Performance Monitoring) which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.2.3 details of any Critical Service Level Failures;
 - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 1.2.6 such other details as the Buyer may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
 - 1.3.2 be attended by the Supplier Representative and the Buyer Representative; and
 - 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer Representative and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier Representative and the Buyer Representative at each meeting.

- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

2. SATISFACTION SURVEYS

- 2.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Services. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.

SCHEDULE 4 - DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule 4, the following definitions shall apply:

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|---|--------------|---|
| “CEDR” | | the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU; |
| “Counter Notice” | | has the meaning given in Paragraph 7.2; |
| “Expert” | | in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute; |
| “Expert Determination” | | determination by an Expert in accordance with Paragraph 6; |
| “Expedited Dispute Timetable” | | the expedited dispute timetable set out in Paragraph 3; |
| “Mediation Notice” | | has the meaning given in Paragraph 4.2; |
| “Mediator” | | the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute; |
| “Multi-Party Dispute” | | a Dispute which involves the Parties and one or more Related Third Parties; |
| “Multi-Party Dispute Representatives” | | has the meaning given in Paragraph 9.7; |
| “Multi-Party Dispute Resolution Board” | | has the meaning given in Paragraph 9.7; |
| “Related Party(ies)” | Third | <p>a party to:</p> <p>(a) another contract with the Buyer or the Supplier which is relevant to this Contract; or</p> <p>(b) a Sub-Contract; and</p> |
| “Supplier Request” | | a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute. |

2. DISPUTE NOTICES

2.1 If a Dispute arises then:

2.1.1 the Buyer Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

- 2.1.2 if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.
- 2.2 A Dispute Notice:
 - 2.2.1 shall set out:
 - (a) the material particulars of the Dispute;
 - (b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
 - 2.2.2 may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Buyer) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.
- 2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2.2, then:
 - 2.3.1 if it is served by the Buyer it shall be treated as a Multi-Party Procedure Initiation Notice; and
 - 2.3.2 if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 9 shall apply.
- 2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Buyer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
 - 2.4.1 first by commercial negotiation (as prescribed in Paragraph 4);
 - 2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 55).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8.

3. EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule 4 would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Buyer.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 3.2.1 in Paragraph 4.2.3, ten (10) Working Days;
 - 3.2.2 in Paragraph 5.2, ten (10) Working Days;
 - 3.2.3 in Paragraph 6.2, five (5) Working Days; and
 - 3.2.4 in Paragraph 7.2, ten (10) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Buyer may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (2) Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Buyer fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4. COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Buyer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Buyer and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Buyer Representative and the Supplier Representative, or such other individual as may be notified by a Party to the other Party from time to time.
- 4.2 If:
- 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
 - 4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
 - 4.2.3 the Parties have not settled the Dispute in accordance with Paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice,

- 4.2.4 either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

5. **MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6. **EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
- 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- 6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:

- (a) an appropriate body agreed between the Parties; or
- (b) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- 6.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. ARBITRATION

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Buyer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Buyer of its intentions and the Buyer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 7.3 If the Buyer serves a Counter Notice, then:
 - 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

- 7.4 If the Buyer does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“LCIA”) (subject to Paragraphs 7.5.5, 7.5.6 and 7.5.7);
 - 7.5.2 the arbitration shall be administered by the LCIA;
 - 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 7.5.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 7.5.5 the chair of the arbitral tribunal shall be British;
 - 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
 - 7.5.7 the seat of the arbitration shall be London.

8. URGENT RELIEF

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 8.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
 - 8.1.2 where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9. MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the “**Multi-Party Dispute Resolution Procedure**”).
- 9.2 If at any time following the issue of a Dispute Notice, the Buyer reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Buyer shall be entitled to determine that the Dispute is a Multi-Party Dispute

and to serve a notice on the Supplier which sets out the Buyer's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "Multi-Party Procedure Initiation Notice".

- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Buyer.
- 9.4 The Buyer shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
 - 9.5 a Multi-Party Dispute, in which case the Buyer shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - 9.5.1 not a Multi-Party Dispute, in which case the Buyer shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.6 If the Buyer has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.7 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "Multi-Party Dispute Resolution Board") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
 - 9.7.1 the Buyer;
 - 9.7.2 the Supplier;
 - 9.7.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 9.7.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Buyer considers necessary,
(together "**Multi-Party Dispute Representatives**").
- 9.8 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
 - 9.8.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 9.8.2 the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure

Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Buyer, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

9.8.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.9 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty-five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

9.9.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;

9.9.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or

9.9.3 subject to Paragraph 9.10, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

9.10 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Buyer or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

SCHEDULE 5 - CHANGE CONTROL PROCEDURE

PART A – SHORT FORM CHANGE CONTROL PROCEDURE

1. CHANGE CONTROL PROCEDURE

- 1.1 Subject to the provisions of Clause 49, either Party may request a Change to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law.
- 1.2 A Party may request a Change by completing and sending the Change Form set out in Annex 1 of this Part A (Short Form Change Control Procedure) of Schedule 5 (Change Control Procedure) to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Change and any additional cost that may be incurred.
- 1.3 The Buyer may require the Supplier to carry out an impact assessment of the Change on the Services (the “**Impact Assessment**”). The Impact Assessment shall be completed in good faith and shall include:
 - 1.3.1 details of the impact of the proposed Change on the Services and the Supplier's ability to meet its other obligations under this Contract;
 - 1.3.2 details of the cost of implementing the proposed Change;
 - 1.3.3 details of the ongoing costs required by the proposed Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 1.3.4 a timetable for the implementation, together with any proposals for the testing of the Change; and
 - 1.3.5 such other information as the Buyer may reasonably request in (or in response to) the Change request.
- 1.4 The Parties may agree to adjust the time limits specified in the Change request to allow for the preparation of the Impact Assessment.
- 1.5 Subject to paragraph 1.4 above, the receiving Party shall respond to the request within the time limits specified in the Change Form. Such time limits shall be reasonable and ultimately at the discretion of the Buyer having regard to the nature of the Services and the proposed Change.
- 1.6 In the event that the Supplier is unable to agree to or provide the Change and/or the Parties are unable to agree a change to the Charges that may be included in a request of a Change or response to it as a consequence thereof, the Buyer may:
 - 1.6.1 agree to continue to perform its obligations under this Contract without the Change; or

- 1.6.2 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case, the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 1.7 If the Parties agree the Change, the Supplier shall implement such Change and be bound by the same provisions so far as is applicable, as though such Change was stated in this Contract.

ANNEX 1 – CHANGE FORM

No of Order Form being varied:

.....

Change Form No:

.....

BETWEEN:

[insert name of Buyer] ("the Buyer") and

[insert name of Supplier] ("the Supplier")

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation]

2. Words and expressions in this Change shall have the meanings given to them in this Contract.

3. This Contract, including any previous Changes, shall remain effective and unaltered except as amended by this Change.

Signed by an authorised signatory for and on behalf of the Buyer

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

.....

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

.....

Date

Name (in Capitals)

Address

PART B – LONG FORM CHANGE CONTROL PROCEDURE

1. DEFINITIONS

In this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure), the following definitions shall apply:

| | |
|-------------------------------------|---|
| “Buyer Change Manager” | the person appointed to that position by the Buyer from time to time and notified in writing to the Supplier or, if no person is notified, the Buyer Representative; |
| “Change Authorisation Note” | an authorisation note setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure); |
| “Change Request” | a written request for a Contract Change which shall be substantially in the form of Annex 1 of this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure); |
| “Change Communication” | any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure); |
| “Contract Change” | any change to this Contract other than an Operational Change; |
| “Fast-track Change” | any Contract Change which the Parties agree to expedite in accordance with Paragraph 8; |
| “Impact Assessment” | an assessment of a Change Request in accordance with Paragraph 5; |
| “Impact Assessment Estimate” | has the meaning given in Paragraph 4.3; |
| “Operational Change” | <p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <p>(a) will not affect the Charges and will not result in any other costs to the Buyer;</p> <p>(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;</p> |

(c) will not adversely affect the interfaces or interoperability of the Services with any of the Buyer's IT infrastructure; and

(d) will not require a change to this Contract;

“Receiving Party” the Party which receives a proposed Contract Change;

“RFOC” has the meaning given in Paragraph 9.2; and

“Supplier Change Manager” the person appointed to that position by the Supplier from time to time and notified in writing to the Buyer or, if no person is notified, the Supplier Representative.

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure) sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a Change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
 - 2.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - 2.3.2 unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
 - 2.3.3 the Buyer shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - 2.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - 2.3.5 save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 6.2; and
 - 2.3.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule S2 (Testing Procedures) where used, and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

- 2.5 Until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 6.2, then:
- 2.5.1 unless the Buyer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - 2.5.2 any discussions, negotiations or other communications which may take place between the Buyer and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.6 The Supplier shall:
- 2.6.1 within 10 Working Days of the Buyer's signature and issue of a Change Authorisation Note, deliver to the Buyer a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - 2.6.2 thereafter provide to the Buyer such further copies of the updated Contract as the Buyer may from time to time request.

3. COSTS

- 3.1 Subject to Paragraph 3.3:
- 3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
 - 3.1.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Buyer shall not be required to pay any such costs if:
 - (a) such costs are below the figure set out in Order Form;
 - (b) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
 - (c) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 2 (Charges and Invoicing). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4. CHANGE REQUEST

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Contract Period. A Change Request shall be substantially in the form of Annex 1 of this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure) and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Buyer as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Buyer issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate (“**Impact Assessment Estimate**”) of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Buyer within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Buyer.
- 4.4 If the Buyer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Buyer as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Buyer and provided that sufficient information is received by the Buyer to fully understand:
- 4.4.1 the nature of the request for clarification; and
- 4.4.2 the reasonable justification for the request;
- the time period to complete the Impact Assessment shall be extended by the time taken by the Buyer to provide that clarification. The Buyer shall respond to the request for clarification as soon as is reasonably practicable.

5. IMPACT ASSESSMENT

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- 5.1.1 details of the proposed Contract Change including the reason for the Contract Change;
- 5.1.2 details of the impact of the proposed Contract Change on the Services and the Supplier's ability to meet its other obligations under this Contract; and
- 5.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
- (a) the Services Specification and/or the Service Levels;
- (b) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;

- (c) other services provided by third party contractors to the Buyer, including any changes required by the proposed Contract Change to the Buyer's IT infrastructure;
- 5.1.4 details of the cost of implementing the proposed Contract Change;
- 5.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- 5.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- 5.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- 5.1.8 such other information as the Buyer may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 34 (Protection of Personal Data).
- 5.3 Subject to the provisions of Paragraph 5.4, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within fifteen (15) Working Days of receiving the Impact Assessment.
- 5.4 If the Buyer is the Receiving Party and the Buyer reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Buyer within ten (10) Working Days of receiving such notification. At the Buyer's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Buyer is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
 - 5.5.1 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 5.5.2 include full disclosure of any assumptions underlying such Impact Assessment;
 - 5.5.3 include evidence of the cost of any assets required for the Change; and
 - 5.5.4 include details of any new Sub-Contracts necessary to accomplish the Change.

6. BUYER'S RIGHT OF APPROVAL

- 6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request

pursuant to Paragraph 5.4, the Buyer shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Buyer shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Buyer does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Buyer shall approve or reject the proposed Contract Change within ten (10) Working Days.
- 6.2 If the Buyer approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Buyer for its signature. Following receipt by the Buyer of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Buyer's signature the Change Authorisation Note shall constitute (or, where the Buyer has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.
- 6.3 If the Buyer does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Buyer and if the Buyer does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to Paragraph 3 of Schedule 4 (Dispute Resolution Procedure).

7. SUPPLIER'S RIGHT OF APPROVAL

- 7.1 Following an Impact Assessment, if:
- 7.1.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Buyer would:
 - (a) materially and adversely affect the risks to the health and safety of any person; and/or
 - (b) require the Services to be performed in a way that infringes any Law; and/or
 - 7.1.2 the Supplier demonstrates to the Buyer's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and the

Services Specification does not state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Buyer of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8. FAST-TRACK CHANGES

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

8.2.1 the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and

8.2.2 both Parties agree the value of the proposed Contract Change over the remaining Contract Period and any period for which Termination Assistance may be required does not exceed the figure set out in the Order Form and the proposed Contract Change is not significant (as determined by the Buyer acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9. OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

9.1.1 have an impact on the business of the Buyer;

9.1.2 require a change to this Contract;

9.1.3 have a direct impact on use of the Services; or

9.1.4 involve the Buyer in paying any additional Charges or other costs.

9.2 The Buyer may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier Representative.

9.3 The RFOC shall include the following details:

- 9.3.1 the proposed Operational Change; and
- 9.3.2 the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Buyer of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Buyer when the Operational Change is completed.

10. COMMUNICATIONS

For any Change Communication to be valid under this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure), it must be sent to either the Buyer Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 50 (Notices) shall apply to a Change Communication as if it were a notice.

ANNEX 1: Change Request Form

| | | |
|--|--------|-------------------|
| CR NO.: | TITLE: | TYPE OF CHANGE: |
| CONTRACT: | | REQUIRED BY DATE: |
| ACTION: | NAME: | DATE: |
| RAISED BY: | | |
| AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>): | | |
| ASSIGNED FOR IMPACT ASSESSMENT BY: | | |
| ASSIGNED FOR IMPACT ASSESSMENT TO: | | |
| SUPPLIER REFERENCE NO.: | | |
| FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT): | | |
| DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS: | | |
| REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE: | | |
| SIGNATURE OF REQUESTING CHANGE OWNER: | | |
| DATE OF REQUEST: | | |

ANNEX 2: Change Authorisation Note

| | | |
|---|-----------------|-----------------------------------|
| CR NO.: | TITLE: | DATE RAISED: |
| CONTRACT: | TYPE OF CHANGE: | REQUIRED BY DATE: |
| [KEY MILESTONE DATE: <i>[if any]</i>] | | |
| DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT: | | |
| PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE: | | |
| DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS): | | |
| SIGNED ON BEHALF OF THE BUYER: | | SIGNED ON BEHALF OF THE SUPPLIER: |
| Signature: _____ | | Signature: _____ |
| Name: _____ | | Name: _____ |
| Position: _____ | | Position: _____ |
| Date: _____ | | Date: _____ |

SCHEDULE 6 - TRANSPARENCY REPORTS

1. Within three (3) months from the Commencement Date the Supplier shall provide to the Buyer for approval (the Buyer's decision to approve or not shall not be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements specified in Attachment 10 (Transparency Reports) of the Order Form.
2. If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for approval by the Buyer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included.
3. The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in Attachment 10 (Transparency Reports) of the Order Form.
4. Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
5. The requirements in this Schedule 6 are in addition to any other reporting requirements in this Contract.

SCHEDULE 7 - GOVERNANCE

PART A – SHORT FORM GOVERNANCE

1. DEFINITIONS

In this Part A (Short Form Governance) of this Schedule 7 (Governance), the following definitions shall apply:

| | |
|----------------------------|--|
| "Operational Board" | the board established in accordance with Paragraph 2.1 of this Part A (Short Form Governance) of this Schedule 7 (Governance); and |
| "Project Manager" | the manager appointed in accordance with Paragraph 2.1 of Part A (Short Form Governance) of this Schedule 7 (Governance). |

2. PROJECT MANAGEMENT

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in Part A of Attachment 8 (Governance) of the Order Form.

3. ROLE OF THE SUPPLIER CONTRACT MANAGER

- 3.1 The Supplier's Contract Manager's shall be:
 - 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
 - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;
 - 3.1.3 able to cancel any delegation and recommence the position himself; and
 - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Contract Manager's in regards to this Contract and it will be the Supplier's Contract Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier's Contract Manager's by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under this Contract.

4. ROLE OF THE OPERATIONAL BOARD

- 4.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Part A of Attachment 8 (Governance) of the Order Form.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

5. CONTRACT RISK MANAGEMENT

- 5.1 The Parties shall:
 - 5.1.1 subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
 - 5.1.2 agree which risks to close on the Risk Register; and
 - 5.1.3 identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.
- 5.2 The Supplier will maintain the Risk Register in relation to the risks relating to this Contract which the Buyer's and the Supplier have identified and shall submit this to the Buyer for the Buyer's review.

6. CONTRACT MANAGEMENT MECHANISMS

- 6.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 6.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
 - 6.2.1 the identification and management of risks;
 - 6.2.2 the identification and management of issues; and
 - 6.2.3 monitoring and controlling project plans.
- 6.3 The Risk Register shall be updated by the Supplier and submitted to the Buyer for review in accordance with Paragraph 5.2 above.

PART B – LONG FORM GOVERNANCE

1. DEFINITIONS

In this Part B (Short Form Governance) of this Schedule 7 (Governance), the following definitions shall apply:

| | |
|-----------------------------------|--|
| “Board Member” | the initial persons appointed by the Buyer and Supplier to the Boards as set out in Part B of Attachment 8 (Governance) of the Order Form and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3; |
| “Boards” | the Service Management Board, Programme Board, Change Management Board, Technical Board and Risk Management Board and “Board” shall mean any of them; |
| “Change Management Board” | the body described in Paragraph 6; |
| “Project Managers” | the individuals appointed as such by the Buyer and the Supplier in accordance with Paragraph 2; |
| “Risk Management Board” | the body described in Paragraph 8; |
| “Service Management Board” | the body described in Paragraph 4; and |
| “Technical Board” | the body described in Paragraph 7. |

2. MANAGEMENT OF THE SERVICES

- 2.1 The Supplier and the Buyer shall each appoint a project manager for the purposes of this Contract through whom the Services shall be managed at a day-to-day.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

3. BOARDS

Establishment and structure of the Boards

- 3.1 The Boards shall be established by the Buyer for the purposes of this Contract on which both the Supplier and the Buyer shall be represented.
- 3.2 In relation to each Board, the:
 - 3.2.1 Buyer Board Members;
 - 3.2.2 Supplier Board Members;
 - 3.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - 3.2.4 location of the Board's meetings; and
 - 3.2.5 planned start date by which the Board shall be established,

shall be as set out in Part B of Attachment 8 (Governance) of the Order Form.

- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Buyer Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board Meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.4.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - 3.4.2 that he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Buyer for each Board as identified in Part B of Attachment 8 (Governance) of the Order Form. The chairperson shall be responsible for:
- 3.5.1 scheduling Board meetings;
 - 3.5.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - 3.5.3 chairing the Board meetings;
 - 3.5.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - 3.5.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven (7) Working Days after the Board meeting; and
 - 3.5.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4. ROLE OF THE SERVICE MANAGEMENT BOARD

- 4.1 The Service Management Board shall be responsible for the executive management of the Services and shall:
- 4.1.1 be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;

- 4.1.2 report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
- 4.1.3 receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
- 4.1.4 review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
- 4.1.5 deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- 4.1.6 consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
- 4.1.7 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

5. ROLE OF THE PROGRAMME BOARD

- 5.1 The Programme Board shall:
 - 5.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
 - 5.1.2 be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board;
 - 5.1.3 ensure that this Contract is operated throughout the Contract Period in a manner which optimises the value for money and operational benefit derived by the Buyer and the commercial benefit derived by the Supplier;
 - 5.1.4 receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
 - 5.1.5 determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services;
 - 5.1.6 provide guidance and authorisation to the Change Management Board on relevant Changes.

6. ROLE OF THE CHANGE MANAGEMENT BOARD

- 6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.
- 6.2 The Change Management Board shall:
 - 6.2.1 analyse and record the impact of all Changes, specifically whether the proposed Change:

- (a) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;
 - (b) has an impact on the ability of the Buyer to meet its agreed business needs within agreed time-scales;
 - (c) will raise any risks or issues relating to the proposed Change; and
 - (d) will provide value for money in consideration of any changes to the future Charges and/or Service Levels;
- 6.2.2 provide recommendations, seek guidance and authorisation from the Programme Board as required; and
- 6.2.3 approve or reject (close) all proposed Changes.

7. ROLE OF THE TECHNICAL BOARD

- 7.1 The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Services and ensuring that technological choices are made to maximise the long term value of the Services.
- 7.2 The Technical Board shall:
- 7.2.1 ensure compliance with the Standards;
 - 7.2.2 grant dispensations for variations from such compliance where appropriate;
 - 7.2.3 assure the coherence and consistency of the systems architecture for the Services;
 - 7.2.4 monitor developments in new technology and reporting on their potential benefit to the Services; and
 - 7.2.5 provide advice, guidance and information on technical issues.

8. ROLE OF THE RISK MANAGEMENT BOARD

- 8.1 The Risk Management Board shall identify and manage risks relating to the performance of the Services.
- 8.2 The Risk Management Board shall:
- 8.2.1 provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
 - 8.2.2 identify the risks to be reported to the Programme Board via the regular risk reports;
 - 8.2.3 subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
 - 8.2.4 ratify or refuse requests to close risks on the Risk Register; and
 - 8.2.5 identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

9. CONTRACT MANAGEMENT MECHANISMS

- 9.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.

- 9.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
 - 9.2.1 the identification and management of risks;
 - 9.2.2 the identification and management of issues; and
 - 9.2.3 monitoring and controlling project plans.
- 9.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

10. ANNUAL REVIEW

- 10.1 An annual review meeting shall be held throughout the Contract Period on a date to be agreed between the Parties.
- 10.2 The meetings shall be attended by the Buyer Representative and Supplier Representative and any other persons considered by the Buyer necessary for the review.

SCHEDULE 8 - FINANCIAL DISTRESS

1. DEFINITIONS

In this Schedule 8 (Financial Distress), the following definitions shall apply:

"Credit Rating Threshold" the minimum credit rating level for the Monitored Company as set out in Part A of Attachment 7 (Financial Distress) of the Order Form;

"Financial Distress Event" the occurrence or one or more of the following events:

- a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;
- b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;
- d) Monitored Company committing a material breach of covenant to its lenders;
- e) a Key Sub-Contractor (where applicable) notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
- f) any of the following:
 - i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;
 - ii) non-payment by the Monitored Company of any financial indebtedness;
 - iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or
 - iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company;

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly

| | |
|---|--|
| | impact on the continued performance delivery of the Services in accordance with this Contract; |
| "Financial Distress Service Continuity Plan" | a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs; |
| "Monitored Company" | Supplier, Guarantor (if any) or any Key Sub-Contractor; and |
| "Rating Agencies" | the rating agencies set out in Part B of Attachment 7 (Financial Distress) of the Order Form. |

2. WARRANTIES AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Buyer that as at the Commencement Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Part B of Attachment 7 (Financial Distress) of the Order Form.
- 2.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter provide the Buyer within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the Buyer (such requests not to exceed four (4) in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by Buyer. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company;
- B is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Monitored; and
- D is the value at the relevant date of the current liabilities of the Monitored Company.

- 2.4 The Supplier shall:
- 2.4.1 regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
 - 2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 2.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

3. CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 3.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.
- 3.2 In the event that a Financial Distress Event arises due to a Key Sub-Contractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (10) Working Days to:
- 3.2.1 rectify such late or non-payment; or
 - 3.2.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 3.3 The Supplier shall and shall procure that the other Monitored Companies shall:
- 3.3.1 at the request of the Buyer, meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
 - 3.3.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
 - (a) submit to the Buyer for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and

- (b) provide such financial information relating to the Monitored Company as the Buyer may reasonably require.
- 3.4 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Buyer or referred to the Dispute Resolution Procedure under Paragraph 3.5.
- 3.5 If the Buyer considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:
 - 3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Contract;
 - 3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its approval, and the provisions of Paragraphs 3.5 and 3.6 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - 3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 3.6.

4. TERMINATION RIGHTS

- 4.1 The Buyer shall be entitled to terminate this Contract for material Default if:
 - 4.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 2.4;
 - 4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
 - 4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6.3.

5. PRIMACY OF CREDIT RATINGS

- 5.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 4, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
 - 5.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
 - 5.1.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3.2(b).

ANNEX – RATING AGENCIES

Rating Agencies:

- Dun and Bradstreet

SCHEDULE 9 - SOFTWARE

PART A – FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

*[insert Buyer
name and address]*

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the contract between us dated *[insert date]* in respect of *[brief summary of subject of the contract]* (the “Contract”). Capitalised expressions used in this letter have the same meanings as in the Contract.

In accordance with Clause 21.4.2 of the Contract we confirm that:

1. the Buyer is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “**Appendix**”) on the terms of the licences identified in the second column of the Appendix (the “**Licences**”); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Buyer may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 21.4.2 of the Contract.

Yours faithfully,

Signed:

On behalf of *[name of the Supplier]*

PART B - FORM OF CONFIDENTIALITY UNDERTAKING CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the "Sub-licensee"); and
- (2) [insert name] of [insert address] (the "Supplier" and together with the Supplier, the "Parties").

WHEREAS:

- (A) [insert name of Buyer] (the "Buyer") and the Supplier are party to a contract dated [insert date] (the "Contract") for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to the Contract (the "Sub-licence").
- (C) It is a requirement of the Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

"Confidential Information"

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and

procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Buyer pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

(a) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;

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

(c) was independently developed without access to the Information;

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence” has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

2. CONFIDENTIALITY OBLIGATIONS

- 2.1 In consideration of the Buyer entering into the Sub-licence, the Sub-licensee shall:
- 2.1.1 treat all Confidential Information as secret and confidential;
 - 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
 - 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
 - 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
 - 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
 - 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
 - 2.1.7 upon the expiry or termination of the Sub-licence:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - (c) make no further use of any Confidential Information.

3. PERMITTED DISCLOSURES

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

- 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
- 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

4. GENERAL

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. NOTICES

5.1 Any notice to be given under this Agreement (each a "Notice") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6. GOVERNING LAW

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature: _____

Date:

Name:

Position:

For and on behalf of [name of Sub-licensee]

Signature: _____

Date:

Name:

Position:

SCHEDULE 10 - EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Schedule 10, the following definitions shall apply:

| | |
|--|---|
| "Exclusive Assets" | Assets used exclusively by the Supplier or a Key Sub-Contractor in the provision of the Services; |
| "Exit Information" | has the meaning given to it in Paragraph 3.1 of this Schedule 10; |
| "Exit Manager" | the person appointed by each Party to manage their respective obligations under this Schedule 10; |
| "Net Book Value" | the current net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice); |
| "Non-Exclusive Assets" | those Assets used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes; |
| "Registers" | the register and configuration database referred to in Paragraph 2.2 of this Schedule 10; |
| "Replacement Goods" | any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following termination or expiry of this Contract, whether those goods are provided by the Buyer internally and/or by any third party; |
| "Termination Assistance" | the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice; |
| "Termination Assistance Notice" | has the meaning given to it in Paragraph 5.1 of this Schedule 10; |
| "Termination Assistance Period" | the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule 10; |
| "Transferable Assets" | Exclusive Assets which are capable of legal transfer to the Buyer; |
| "Transferable Contracts" | Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other |

agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;

"Transferring Assets"

has the meaning given to it in Paragraph 8.2.1 of this Schedule 10;

"Transferring Contracts"

has the meaning given to it in Paragraph 8.2.3 of this Schedule 10.

2. SUPPLIER MUST ALWAYS BE PREPARED FOR CONTRACT EXIT

2.1 The Supplier shall within 30 days from the Commencement Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Supplier shall promptly:

2.2.1 create and maintain a detailed register of all Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-Contracts and other relevant agreements required in connection with the Services; and

2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services

("Registers").

2.3 The Supplier shall:

2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and

2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Sub-Contractor or provider of Services.

2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Commencement Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

3. ASSISTING RE-COMPETITION FOR SERVICES

3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of

any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "Exit Information").

- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Sub-Contractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the Supplier.

4. EXIT PLAN

- 4.1 The Supplier shall, within three (3) Months after the Commencement Date, deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule 10 and is otherwise reasonably satisfactory to the Buyer.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
 - 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
 - 4.3.2 how the Service will transfer to the Replacement Supplier and/or the Buyer;
 - 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon termination or expiry of this Contract together with any reasonable costs required to effect such transfer;
 - 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Services following the termination or expiry of this Contract;
 - 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Services and required for their continued use;
 - 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Services;
 - 4.3.7 proposals for the identification and return of all Buyer Assets in the possession of and/or control of the Supplier or any third party;

- 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
 - 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
 - 4.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 The Supplier shall:
- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
 - (a) every six (6) months throughout the Contract Period; and
 - (b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
 - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
 - (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Services (including all changes under the Change Control Procedure); and
 - 4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5. TERMINATION ASSISTANCE

- 5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a notice to terminate this Contract. The Termination Assistance Notice shall specify:
- 5.1.1 the nature of the Termination Assistance required; and
 - 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.

- 5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.3 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule 10 and the last Buyer approved version of the Exit Plan (insofar as it still applies).

6. TERMINATION ASSISTANCE PERIOD

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
- 6.1.1 continue to provide the Services (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
 - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Services to the Buyer and/or its Replacement Supplier;
 - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
 - 6.1.4 subject to Paragraph 6.3, provide the Services and the Termination Assistance at no detriment to the Service Levels, the provision of the management information or any other reports nor to any other of the Supplier's obligations under this Contract;
 - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
 - 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Change Control Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

7. OBLIGATIONS WHEN THE CONTRACT IS TERMINATED

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance), the Supplier shall:
 - 7.2.1 vacate any Buyer Premises;
 - 7.2.2 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
 - 7.2.3 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
 - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

8. ASSETS, SUB-CONTRACTS AND SOFTWARE

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
 - 8.1.1 terminate, enter into or vary any Sub-Contract or licence for any software in connection with the Services; or
 - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:
 - 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
 - 8.2.2 which, if any, of:

(a) the Exclusive Assets that are not Transferable Assets; and

(b) the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Buyer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

8.7 The Buyer shall:

8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 52 shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

9. NO CHARGES

- 9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule 10.

10. DIVIDING THE BILLS

- 10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:
- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.