

DATED:

(1) THE SECRETARY OF STATE FOR WORK AND PENSIONS

AND

(2) MAXIMUS UK SERVICES LIMITED

**AGREEMENT RELATING TO HEALTH
AND DISABILITY ASSESSMENT SERVICES**

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THIS AGREEMENT is made on

BETWEEN:

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BETWEEN:

- (1) **The Secretary of State for Work and Pensions** of Caxton House, Tothill Street, London SW1H 9DA (the "**Authority**"); and
- (2) **Maximus UK Services Limited**, a company registered in England and Wales under company number 9072343 (formerly called "The Centre for Health and Disability Assessments Limited" and which has as a trading name "Centre for Health and Disability Assessments") whose registered office is Ash House, the Broyle, Ringmer, Essex England BN8 5NN (the "**Supplier**"), following a novation agreement between Maximus UK Services Limited, the Authority and Maximus Health and Human Services.

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

INTRODUCTION

- (A) The Authority is responsible for welfare and pension policy and is a key player in tackling child poverty and supports the principle that work is good for you. To support the delivery of its business the Authority has procured the Supplier to deliver a range of Health and Disability Assessment Services. These services will be required in the main, but not exclusively, to support determinations of entitlement to welfare and social security provision including the level or type of support to be provided.
- (B) The Authority requires the Supplier to maintain and then increase performance through innovation and development of efficient processes that ensure that both quality and productivity measures are met. The Supplier will also need to provide clear direction and leadership to health care professionals, with a clear focus on recruitment, retention and job satisfaction. The Supplier will also ensure that Claimants are involved to help enhance their experience of the Health and Disability Assessment Services.
- (C) On 2 April 2014 the Authority advertised in the Official Journal of the European Union (reference 2014/S 065-111189) setting out details of its Part B competition for Health and Disability Assessment Services and inviting potential suppliers to complete and submit a Pre-Qualification Questionnaire ("**PQQ**").
- (D) The Supplier submitted its PQQ response on 24 April 2014 and following an evaluation of the PQQ responses by the Authority in accordance with the Authority's selection criteria, the Authority selected the Supplier and three other potential suppliers to proceed to the Invitation to Negotiate stage of the procurement.

- (E) On 19 May 2014 the Authority issued an Invitation to Negotiate ("ITN") to the potential suppliers (including the Supplier) in respect of the provision of the Services and invited potential suppliers (including the Supplier) to submit initial proposals in connection with the Authority's Service Requirements.
- (F) On 25 July 2014 the potential suppliers (including the Supplier) submitted their initial proposals in response to the ITN and subsequently, the Authority invited potential suppliers (including the Supplier) to engage in dialogue in connection with their respective initial proposals and the Authority's Service Requirements. Following dialogue, a deadline of 24 September 2014 was set by the Authority for the submission of best and final offers by the potential suppliers.
- (G) On 24 September 2014 the Supplier submitted the Best and Final Offer to provide the Services.
- (H) On the basis of the Supplier's Best and Final Offer proposal the Authority has selected the Supplier to provide the Services and the Supplier undertakes to supply the same on the terms set out in the Agreement below.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area 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

- (i) 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;
 - (a) 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";
 - (b) 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;
 - (c) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (d) unless otherwise provided and save for references in the Annexes of Schedule 5 (Software) and in Schedule 10 (Guarantee), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (e) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (Definitions);
 - (b) Schedules 2.1 (Service Requirement) and 2.2 (Performance Levels) and their Annexes;
 - (c) any other Schedules and their Annexes (other than Schedule 4.1 (Supplier Proposal) and its Annexes); and
 - (d) Schedule 4.1 (Supplier Proposal) and its Annexes (if any).
- 1.5 If there is any conflict between any provision of this Agreement and any provision of the MSA Transition Agreement, the Authority, acting reasonably, shall determine which provision shall take precedence and shall promptly notify the Supplier accordingly.
- 1.6 The Schedules and their Annexes form part of this Agreement.
- 1.7 In entering into this Agreement the Authority is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that subject to the Allowable Assumptions:

- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (i) the Authority Requirements;
 - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (iii) the operating processes and procedures and the working methods of the Authority;
 - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets;
 - (v) the ASIS Services Agreement; and
 - (vi) any other existing contract (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Authority in writing of:
 - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed to remedy each such unsuitable aspect; and
 - (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

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

- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- (a) any unsuitable aspects of the Operating Environment;
 - (b) any misinterpretation of the Authority Requirements; and/or
 - (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 2.3 The Parties shall comply with the provisions of Paragraph 12 of Schedule 7.1 (Charges and Invoicing) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

- 3.1 The Authority represents and warrants that:
- (a) it has full capacity and authority to enter into and to perform this Agreement;
 - (b) this Agreement is executed by its duly authorised representative;
 - (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law); and
 - (e) it has all rights in and to the Authority Software, the Authority Materials and the Authority Background IPRs which are necessary for the Supplier's performance of its obligations under this Agreement and that the Supplier's and each Sub-contractor's use of the Authority Software, the Authority Materials and the Authority Background IPRs in accordance with the terms of this Agreement will not infringe the IPR of any third party;
 - (f) it shall procure that the Supplier has all rights in and to the ASIS IT System which are necessary for the Supplier's performance of its obligations under this Agreement and that the Supplier's and each Sub-contractor's use of the ASIS IT System in accordance with the terms of this Agreement will not infringe the IPR of any third party.
- 3.2 The Supplier represents and warrants that:
- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the PQQ, ITN and BAFO stages, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- (i) Not used. ;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (k) the Target Cost identified in the Payment Model as at the Effective Date are true and accurate reflections of the costs of providing the Services forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the above;
- (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (m) 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.

- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clause 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.2 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B - THE SERVICES

4 TERM

- 4.1 This Agreement shall:
 - (a) come into force on the Effective Date; and
 - (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (Termination Rights), terminate:
 - (i) at the end of the Initial Term;
 - (ii) if extended under Clause 4.2(a), at the end of the Extension Period; or
 - (iii) if extended under Clause 4.2(b), at the end of the first Extension Period or, where applicable, the second Extension Period; or
 - (iv) if extended under Clause 4.2A under Contract Variation 444, at the end of such further Extension Period; or
 - (v) if extended under Clause 4.2B under Contract Variation 579, at the end of such further Extension Period.
- 4.2 The Authority shall have the right to request that the Term be extended for:
 - (a) one (1) Extension Period of up to two (2) years by giving the Supplier at least six (6) months' written notice before the end of the Initial Term; or

- (b) two (2) Extension Periods of up to one (1) year each up to a maximum overall extension of two (2) years, by giving the Supplier at least six (6) months' written notice before the end of the Initial Term (in relation to the first option to extend under this Clause 4.2(b)) and by giving the Supplier at least three (3) months' notice before the end of the first Extension Period (in relation to the second option to extend under this Clause 4.2(b)).
- 4.2A As effected by Contract Variation 444, the Parties agree that the Term shall be extended by a further Extension Period of seventeen (17) months after the end of the second Extension Period which expires on 31 March 2020, such further Extension Period (pursuant to this Clause 4.2A) to expire on 31 July 2021.
- 4.2B As effected by Contract Variation 579, the Parties agree that the Term shall be extended by a further Extension Period of twenty four (24) months after the end of the third Extension Period which expires on 31 July 2021, such further Extension Period (pursuant to this Clause 4.2B) to expire on 31 July 2023.
- 4.3 The Supplier shall not unreasonably withhold or delay its consent to any request to extend the Term provided by the Authority under Clause 4.2, provided that the Parties shall agree the Charges for each applicable Extension Period using the Change Control Procedure and such Charges are based on the Charges in effect immediately prior to that Extension Period with such reasonable adjustments as are necessary to take account of relevant market changes (for example, changes in market salaries for health care professionals).
- 4.4 Save as agreed otherwise pursuant to Clause 4.3, the provisions of this Agreement shall continue to apply throughout any Extension Period.

Condition Precedent

- 4.5 The rights and obligations of each Party under this Agreement shall have no force or effect until:
 - (a) the Supplier has delivered the validly executed Guarantee to the Authority; and
 - (b) the Parties and the Exiting Supplier have executed the MSA Transition Agreement.

New Guarantee

- 4.6 On or about the date of Contract Variation 444 (and in any event within ten (10) Working Days of the date of Contract Variation 444), the Supplier shall procure that the Guarantor shall execute and deliver to the Authority the New Guarantee.

5 SERVICES

Standard of Services

- 5.1 The Supplier shall provide the Services (other than the Operational Services) from (and including) the Effective Date and the Operational Services from the Operational Services Commencement Date.
- 5.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with the Service Requirement; and
 - (b) are supplied in accordance with the Supplier Proposal and the provisions of this Agreement.
- 5.3 The Supplier shall:
- (a) perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Service Guidance; and
 - (vi) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(v); and
 - (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(v), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier Covenants

- 5.5 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in

accordance with this Agreement;

- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Service Requirement and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (Security Management)) shall notify the Authority 3 months before the release of any new Software or Upgrade;
 - (iii) 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;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - (v) the Supplier System and Assets used in the performance of the Services will be free of any encumbrances which could affect the provision of the Services (except as agreed in writing with the Authority);
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services (or any services relevant to this Agreement) to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;

- (g) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
 - (h) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
 - (i) notify the Authority in writing within 1 month of any change of Control of the Supplier, the Guarantor or any Key Sub-contractor taking place;
 - (j) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations (to the extent that it is legally able to do so) before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - (k) ensure that neither it, nor any of its Affiliates, causes material adverse publicity for the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and
 - (l) manage closure or termination of Services and end of life of assets to take account of the Authority disposals requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 19.2 and 19.3 and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(h) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - (c) meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe which has a material adverse effect on the provision of the Services shall constitute a Notifiable Default.

Specially Written Software warranty

- 5.8 Without prejudice to Clauses 5.5 and 5.7 and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of any Specially Written Software shall:
- (a) be free from material design and programming errors;
 - (b) perform in all material respects in accordance with authority at the relevant specifications contained in the Supplier Proposal and Documentation; and
 - (c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

- 5.9 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- (a) the existence of an unresolved Dispute; and/or
 - (b) any failure by the Authority to pay any Charges,
- unless the Supplier is entitled to terminate this Agreement under Clause 33.3(a) for failure to pay undisputed Charges.

Additional Services and No Exclusivity

- 5.10 The Authority may require the Supplier to provide any or all of the Additional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Additional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Additional Services from any third party.
- 5.11 If a Change Request is submitted, the Supplier shall provide details of the impact (if any) that the proposed Change will have on the relevant Additional Services.
- 5.12 The Supplier undertakes to perform at any time during the Term of this Agreement such Additional Services as may be agreed by the Parties pursuant to the Change Control Procedure. Such Additional Services shall be performed in accordance with all applicable provisions of this Agreement.
- 5.13 The Additional Services implemented in accordance with this Clause shall become part of the Services for the purpose of all other sections, Clauses, obligations and rights contained within this Agreement.
- 5.14 The Supplier acknowledges and agrees that the Authority is at liberty to undertake pilot initiatives (using other suppliers, or its own resources) and that there is no obligation whatsoever on the Authority to invite or select the Supplier to provide delivery of any pilot scheme.

Information Technology Services

- 5.15 The Parties shall comply with the provisions of Schedule 18 (Information Technology Services).

Authority Responsibilities

- 5.16 The Authority shall comply with its responsibilities set out or referred to in Schedule 3 (Authority Responsibilities).

6 TRANSITION

Transition and Delays

- 6.1 The Parties shall comply with their respective obligations set out in:
- (a) the MSA Transition Agreement and the Detailed Transition Plan; and
 - (b) Schedule 6.1 (Mobilisation and Resource Plans).
- 6.2 The Supplier shall:
- (a) comply with the Mobilisation Plan;
 - (b) comply with the Resource Plan;
 - (c) where the Supplier agrees the delivery of any continuous improvement by reference to Milestones, shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:
- (a) notify the Authority in accordance with Clause 27.1; and
 - (b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

7 PERFORMANCE LEVELS

- 7.1 The Supplier shall:
- (a) provide the Operational Services in such a manner so as to meet or exceed the Performance Levels from the Operational Service Commencement Date; and
 - (b) comply with the provisions of Schedule 2.2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Levels.
- 7.2 The Parties acknowledge and agree that the Service Credits set out in Schedule 2.2 (Performance Levels) represent fair and reasonable reductions to the Service Charges to account for the Supplier's underperformance against the Service Levels.

Subsidiary Service Level Failures

- 7.3 If, in any Service Period, a Subsidiary Service Level Failure occurs, then the Supplier shall notify the Authority of the action (if any) it will take to rectify the Subsidiary Service Level Failure and/or to prevent the Subsidiary Service Level Failure from recurring.
- 7.4 If, in any three consecutive Service Periods, a Subsidiary Service Level Failure occurs (whether a repeated failure of the same Subsidiary Service Level, or a failure of any different Subsidiary Service Levels), then the Supplier shall comply with the Rectification Plan Process (and the Authority may exercise its rights to appoint a Remedial Adviser in accordance with Clause 29 (Remedial Adviser)).

Service Level Failures

- 7.5 If, in any Service Period, a Service Level Failure occurs, Service Points shall accrue in accordance with Schedule 2.2 (Performance Levels).
- 7.6 Service Points shall be converted into Service Credits, and deducted from Charges, in accordance with Schedule 7.1 (Charges and Invoicing).
- 7.7 In addition to the application of Service Credits pursuant to Clause 7.6 above (and without prejudice to any other rights of the Authority which may arise in such circumstances set out in this Agreement), the following provisions shall apply in respect of each of the levels of performance set out below:
- (a) Material Service Level Failure;
 - (b) Severe Service Level Failure;
 - (c) Critical Service Level Failure.

Provided that for each of Service Delivery Years 6 to 9 (inclusive) in respect of Service Level SC14:

- (i) subject to (iii) below, Material Service Level Failure, Severe Service Level Failure and Critical Service Level Failure shall not apply;
- (ii) the increase in Service Credits set out in Clause 7.11 to clause 7.13 (for Severe Service Level Failure and Critical Service Level Failure shall not apply; and
- (iii) the Supplier shall comply with the Rectification Plan Process in accordance with Clauses 7.9, 7.11(b), or 7.13(b) as applicable.

Material Service Level Failure

- 7.8 Material Service Level Failure shall arise if:
- (a) For the first Service Delivery Year only, in any two consecutive Service Periods, a Service Level Failure occurs in respect of the same Service Level below the threshold specified in paragraph 9 of Schedule 2.2 (Performance Levels). Consecutive Service periods will be calculated within i) the period March 2015 - September 2015; and separately ii) October 2015 onward i.e. the first Service Period for the calculation of consecutive service periods will again be October 2015.

For each subsequent Service Delivery Year, in any two consecutive Service Periods, a Service Level Failure occurs in respect of the same Service Level below the threshold specified in paragraph 9 of Schedule 2.2 (Performance Levels);

Notwithstanding the foregoing, where the Service Level Failure is in respect of the Target Service Level for SC4(b) at Schedule 2.2, Annex 1, Table 2, a Material Service Level Failure shall arise only if the Service Level Failure occurs in any two consecutive Service Periods in respect of the same region (as set out in Paragraph 60.4 of Schedule 2.1);

or

- (b) Service Points have accrued in any Service Period such that if they had been converted into Service Credits (and applied, but for the operation of the Service Credit Cap), the resulting deductions from the Charges would be equivalent to an amount of at least 5% of but less than 15% of the Charges in that Service Period.

7.9 In the event of Material Service Level Failure, the Supplier shall comply with the Rectification Plan Process.

Severe Service Level Failure

7.10 Severe Service Level Failure shall arise if:

- (a) For the first Service Delivery Year only, in any three consecutive Service Periods, a Service Level Failure occurs in respect of the same Service Level below the threshold specified in paragraph 9 of Schedule 2.2 (Performance Levels). Consecutive Service periods will be calculated within i) the period March - September 2015; and separately ii) October 2015 onward i.e. the first Service Period for the calculation of consecutive service periods will again be October 2015.

For each subsequent Service Delivery Year, in any three consecutive Service Periods, a Service Level Failure occurs in respect of the same Service Level below the threshold specified in paragraph 9 of Schedule 2.2 (Performance Levels); provided that, where the Service Level Failure in question is in respect of the Target Service Level for SC4(b) at Schedule 2.2, Annex 1, Table 2, a Severe Service Level Failure shall arise only if such Service Level Failure occurs in any three consecutive Service Periods below the threshold specified in Paragraph 9.1 of Schedule 2.2 (Performance Levels) in respect of the same region (as set out in Paragraph 60.4 of Schedule 2.1);

- (b) For the first Service Delivery Year only, in any three consecutive Service Periods, the Service Credit Cap is reached. Consecutive Service Periods will be calculated within i) the period March - September 2015; and separately ii) October 2015 onward i.e. the first Service Period for the calculation of consecutive service periods will again be October 2015.

For each subsequent Service Delivery Year, in any three consecutive Service Periods, the Service Credit Cap is reached; or

- (c) Service Points have accrued in any Service Period such that if they had been converted into Service Credits (and applied, but for the operation of the Service Credit Cap), the resulting deductions from the Charges would be

equivalent to an amount of at least 15% of but less than 30% of the Charges in that Service Period.

7.11 In the event of Severe Service Level Failure:

- (a) the amount of Service Credits to be deducted from the Charges due in the next following Service Period shall be increased as follows:
 - (i) if the Severe Service Level Failure has arisen as a result of the application of only one of Clause 7.10(a), (b) and (c) above, by an amount of £[REDACTED] except where the Severe Service Level Failure is in respect of the Target Service Level at Schedule 2.2 Annex 1 Table 2 and 3 for SC7, in which event, the amount shall be £[REDACTED] for each Target Service Level Schedule 2.2 Annex 1 Table 2 & 3;
 - (ii) if the Severe Service Level Failure has arisen as a result of the application of more than one of Clause 7.10(a), (b) and (c) above, by an amount of £[REDACTED] in respect of each applicable category, except where the Severe Service Level Failure is in respect of the Target Service Level at Schedule 2.2 Annex 1 Table 2 and 3 for SC7, in which event, the amount shall be £[REDACTED] for each Target Service Level Schedule 2.2 Annex 1 Table 2 & 3, provided always that the following principles shall govern whether more than one category applies concurrently:
 - (A) where Clause 7.10(a) applies, the Service Points in each of the three Service Periods in question shall be deducted from the Service Points that are used (in determining whether the Service Credit Cap has been reached) to establish whether Clause 7.10(b) applies;
 - (B) the Service Points applicable to the Service Level in a third relevant Service Period occurring under Clause 7.10(a) shall be deducted from the Service Points that are used to establish whether Clause 7.10(c) applies.

For the avoidance of doubt, the amount of Service Credits to be deducted from the Charges pursuant to Clause 7.11(a) in the event of a Severe Service Credit Level Failure shall count towards the Supplier's aggregate liability under Clause 25.4(b) and shall not, when added to any Service Credits applied pursuant to Clauses 7.6 and 7.13(a), exceed the Service Credit Cap.

- (b) the Supplier shall comply with the Rectification Plan Process; and
- (c) the Authority may appoint a Remedial Adviser in accordance with Clause 29 (Remedial Adviser).

7.11A Service Credits shall not be increased under Clause 7.11(a) to the extent that the circumstances giving rise to the increase under Clause 7.11(a) have arisen under Clause 7.10(c) and would not have arisen under that Clause 7.10(c) were the Service Points for the Service Points for the Service Periods October 2015 and November 2015 accrued in respect of the SC4a(i) and SC4a(ii) Target Service Levels to have been excluded in assessing the resulting deductions from the

Charges under that Clause 7.10(c). Such Service Points shall, however, be applied for all other purposes under this Agreement.

- 7.11B Where, pursuant to Clause 7.10(a), a Severe Service Level Failure occurs in respect of the Target Service Level for SC4(b) at Schedule 2.2, Annex 1, Table 2 in relation to more than one region listed under the said SC4(b) over the same consecutive three month period, the total increase in the amount of Service Credits to be deducted from the Charges due in the next following Service Period pursuant to Clause 7.11(a) in respect of all such Severe Service Level Failures (for all such regions) shall be capped at £[REDACTED] in aggregate.

Critical Service Level Failure

7.12 Critical Service Level Failure shall arise if:

- (a) For the first Service Delivery Year only, in any four consecutive Service Periods, (whether or not immediately following a previous period of four consecutive Service Periods, such that a fifth or subsequent consecutive Service Period would also constitute a Critical Service Level Failure), a Service Level Failure occurs in respect of the same Service Level below the threshold specified in paragraph 9 of Schedule 2.2 (Performance Levels). Consecutive Service periods will be calculated within i) the period March - September 2015; and separately ii) October 2015 onward i.e. the first Service Period for the calculation of consecutive service periods will again be October 2015.

For each subsequent Service Delivery Year, in any four consecutive Service Periods, (whether or not immediately following a previous period of four consecutive Service Periods, such that a fifth or subsequent consecutive Service Period would also constitute a Critical Service Level Failure), a Service Level Failure occurs in respect of the same Service Level below the threshold specified in paragraph 9 of Schedule 2.2 (Performance Levels); provided that, where the Service Level Failure in question is in respect of the Target Service Level for SC4(b) at Schedule 2.2, Annex 1, Table 2, a Critical Service Level Failure shall arise only if such Service Level Failure occurs in any four consecutive Service Periods below the threshold specified in Paragraph 9.1 of Schedule 2.2 (Performance Levels) in respect of the same region (as set out in Paragraph 60.4 of Schedule 2.1);

- (b) For the first Service Delivery Year only, in any four consecutive Service Periods, the Service Credit Cap is reached. Consecutive Service periods will be calculated within i) the period March - September 2015; and separately ii) October 2015 onward i.e. the first Service Period for the calculation of consecutive service periods will again be October 2015.

For each subsequent Service Delivery Year, in any four consecutive Service Periods, the Service Credit Cap is reached;

- (c) Service Points have accrued in any Service Period such that if they had been converted into Service Credits (and applied, but for the operation of the Service Credit Cap), the resulting deductions from the Charges would be equivalent to an amount of at least 30% of the Charges in that Service Period.

7.13 In the event of Critical Service Level Failure:

- (a) the amount of Service Credits to be deducted from the Charges due in the next following Service Period shall be increased as follows:
 - (i) if the Critical Service Level Failure has arisen as a result of the application of only one of Clause 7.12(a), (b) and (c) above, by an amount of £[REDACTED] except where the Critical Service Level Failure is in respect of the Target Service Level at Schedule 2.2 Annex 1 Table 2 and 3 for SC7, in which event the amount shall be £[REDACTED] for each Target Service Level at Schedule 2.2 Annex 1 Tables 2 & 3;
 - (ii) if the Critical Service Level Failure has arisen as a result of the application of more than one of Clause 7.12(a), (b) and (c) above, by an amount of £[REDACTED], except where the Critical Service Level Failure is in respect of the Target Service Level at Schedule 2.2 Annex 1 Table 2 and 3 for SC7, in which event the amount shall be £[REDACTED] for each Target Service Level at Schedule 2.2 Annex 1 Tables 2 & 3, in respect of each applicable category provided always that the following principles shall govern whether more than one category applies concurrently:
 - (A) where Clause 7.12(a) applies, the Service Points in each of the four Service Periods in question shall be deducted from the Service Points that are used (in determining whether the Service Credit Cap has been reached) to establish whether Clause 7.12(b) applies;
 - (B) the Service Points applicable to the Service Level in a fourth relevant Service Period occurring under Clause 7.12(a) shall be deducted from the Service Points that are used to establish whether Clause 7.12(c) applies.

For the avoidance of doubt, the amount of Service Credits to be deducted from the Charges pursuant to Clause 7.13(a) in the event of a Critical Service Credit Level Failure shall count towards the Supplier's aggregate liability under Clause 25.4(b) and shall not, when added to any Service Credits applied pursuant to Clauses 7.6 and 7.11(a), exceed the Service Credit Cap.

- (b) the Supplier shall comply with the Rectification Plan Process;
- (c) The Authority may:
 - (i) appoint a Remedial Adviser in accordance with Clause 29 (Remedial Adviser);
 - (ii) exercise its rights under Clause 30 (Step In Rights); and/or
 - (iii) exercise its rights under Clause 33 (Termination Rights).

7.13A Service Credits shall not be increased under Clause 7.13(a) to the extent that the circumstances giving rise to the increase under Clause 7.13(a) have arisen under

Clause 7.12(c) and would not have arisen under that Clause 7.12(c) were the Service Points for the Service Points for the Service Periods October 2015 and November 2015 accrued in respect of the SC4a(i) and SC4a(ii) Target Service Levels to have been excluded in assessing the resulting deductions from the Charges under that Clause 7.12(c). Such Service Points shall, however, be applied for all other purposes under this Agreement.

7.13B (a) Where, pursuant to Clause 7.12(a), a Critical Service Level Failure occurs in respect of the Target Service Level for SC4(b) at Schedule 2.2, Annex 1, Table 2 in relation to more than one region listed under the said SC4(b) over the same consecutive four month period, the total increase in the amount of Service Credits to be deducted from the Charges due in the next following Service Period pursuant to Clause 7.13(a) in respect of such Critical Service Level Failures (for all such regions) shall be capped at £[REDACTED] in aggregate.

(b) Where, pursuant to Clause 7.10(a) and Clause 7.12(a):

- (i) a Severe Service Level Failure occurs in respect of the Target Service Level for SC4(b) at Schedule 2.2, Annex 1, Table 2 in relation to at least one region listed under the said SC4(b) and a Critical Service Failure occurs in respect of that Target Service Level in relation to at least another region listed under the said SC4(b), and
- (ii) three of the four consecutive months of such Critical Service Failure coincide with the three consecutive months of such Severe Service Failure;

the total increase in the amount of Service Credits to be deducted from the Charges due in respect of such simultaneous Severe Service Failure(s) and Critical Service Failure(s) shall be capped at £[REDACTED] in aggregate.

7.14 Service Credits shall be the Authority's sole financial remedy for a Service Level Failure except where:

(a) the Service Level Failure:

- (i) has arisen due to the wilful default, theft, gross negligence or fraud by the Supplier or any Supplier Personnel; and
- (ii) results in:
 - (A) the corruption or loss of any Authority Data (in which case the remedies under Clause 20.7 shall also be available);
 - (B) the Authority being required to make a compensation payment to one or more third parties;
 - (C) damage to the reputation of the Authority (provided that if the Authority makes a claim against the Supplier in relation to such circumstances, it will give financial credit, in the amount of any Service Credits paid, against any damages recovered by it in respect of the same breach);

- (D) an inability for the Authority to comply with its statutory obligations or Law in general; and/or
- (E) the Authority being unable to report to stakeholder departments;
- (b) the Supplier has fraudulently misreported its performance against any Service Level;
- (c) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 33.1(b).

Annual Service Levels and application of Service Credits

- 7.15 In respect of any Service Levels which are measured for the period of the whole Service Delivery Year, any Service Credits which have been applied with respect to that Service Level in the preceding Service Delivery Year shall be repaid to the Supplier if it is determined following the end of the relevant Service Delivery Year that the relevant Service Level in respect of the period of the relevant whole Service Delivery Year has been achieved in accordance with the terms of this Agreement.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services, such as the e-learning solution (as set out in Paragraph 51.9A of Schedule 2.1), in accordance with this Clause 8 (Services Improvement) and Schedule 16 (Continuous Improvement). As part of this obligation the Supplier shall identify and report to the HDAS Delivery Board once every 6 Months on:
- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and
 - (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of the Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be

implemented. The Supplier shall provide any further information that the Authority requests.

- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 SUPPLIER EQUIPMENT AND PREMISES

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.3 Subject to any express provision of the BCDRP to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, and in compliance with the Service Levels.
- 9.4 The Parties shall comply with the provisions of Schedule 15.1 (Estates).

SECTION C - PAYMENT AND TAXATION PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (Charges and Invoicing).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 12 (Records, Reports, Audits and Open Book Data), 22 (Freedom of Information), 23 (Protection of Personal Data) and, to the extent specified therein, Clause 29 (Remedial Adviser) and Clause 30 (Step-In Rights).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

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

Set-off and Withholding

- 10.6 The Authority may set off any undisputed or determined amount owed by the Supplier to the Authority against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to set off any undisputed or determined amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to Clause 10.6, it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Promoting Tax Compliance

- 10.8 The Supplier represents and warrants that, as at the Effective Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any occasions of Tax Non-Compliance.
- 10.9 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

Termination Rights due to any Occasion of Tax Non-Compliance

10.10 In the event that:

- (a) the warranty given by the Supplier pursuant to Clause 10.8 is materially untrue; or
- (b) the Supplier commits a material breach of its obligations to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.9; or
- (c) the Supplier fails to provide details of proposed mitigating factors in accordance with Clause 10.9(b)(i) which, in the reasonable opinion of the Authority, are acceptable,

the Authority shall be entitled to terminate this Agreement by serving a Termination Notice on the Supplier.

Financial Distress

10.11 The Parties shall comply with the provisions of Schedule 7.4 (Financial Distress) in relation to the assessment of the financial standing of the Supplier, the Guarantor and the Key Sub-contractors and the consequences of a change to that financial standing.

Covid-19 Easements and Transition to Business as Usual

10.12 The Parties shall comply with Schedule 19 (Commercial Arrangements Whilst Covid-19 Easements Are In Place and during Transition to the Business As Usual Agreement) in respect of the impact of the Covid-19 pandemic on the Services and certain other aspects of this Agreement and the transition back to business as usual, as detailed in Schedule 19 (Commercial Arrangements Whilst Covid-19 Easements Are In Place and during Transition to the Business As Usual Agreement).

SECTION D - CONTRACT GOVERNANCE

11 GOVERNANCE

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

Representatives

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

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (Supplier Personnel).

11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

- (a) Schedule 8.4 (Records Provisions/Management Information) in relation to the maintenance and retention of Records; and
- (b) Part A of Schedule 7.5 (Transparency, Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data and the Cost MI which is based on that Open Book Data.

12.2 The Parties shall comply with the provisions of:

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

13 CHANGE

Change Control Procedure

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

13.1A Any Contract Variation may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract Variation.

Change in Law

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

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

13.3 If a Specific Change in Law or material change in Service Guidance occurs or will occur during the Term (other than as referred to in Clause 1.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any change is required to the Services, the Charges or this Agreement; and
 - (ii) 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 Levels; and

- (b) provide the Authority with evidence:
 - (i) 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;
 - (ii) as to how the Specific Change in Law or material change in Service Guidance has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (Services Improvement), has been taken into account in amending the Charges.

13.4 If a Specific Change in Law or material change in Service Guidance occurs or will occur during the Term (other than as referred to in Clause 1.1(b)) and the Supplier has complied with Clause 13.3, the Parties shall meet to discuss the impact of the Specific Change in Law or material change in Service Guidance and agree (acting reasonably) using the Change Control Procedure any necessary and appropriate variations to this Agreement and/or relief from the Supplier's obligations resulting from the Specific Change in Law or material change in Service Guidance.

Scottish Devolution

13.5 The Parties acknowledge that during the Term, the Authority's powers (in whole or in part) in respect of Scotland may be devolved to Scotland.

13.6 In the event of any Scottish devolution (or proposed devolution) which the Scottish Parliament, Scottish Government, Authority, HM Treasury, the Cabinet Office, any Government department, office, agency or Minister in England or Scotland; or any of their successors or assignees ("**Interested Parties**") reasonably believes may impact on and/or require changes to this Agreement whether arising from a change in Law or otherwise:

- (a) the Authority shall notify the Supplier in writing of such event; and
- (b) the Parties shall support, co-operate and jointly work with each other and relevant Interested Parties in good faith pursuant to the Change Control Procedure to agree the nature and extent of the impact on and/or agree and effect any changes required to this Agreement whether arising from a change in Law or otherwise.

SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

- (a) maintain a list of the names of all Supplier Personnel requiring admission to Authority Premises, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require and, at the request of the Authority, supply such list to the Authority;

- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with the Staff Vetting Procedure and, where applicable, the security requirements set out in Schedule 2.1 (Service Requirements) prior to the provision of the Services by them; and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (Security Management);
- (c) subject to Schedule 9.1 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) 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, only to the extent the Supplier would otherwise require such Supplier Personnel to provide the Services for the period of absence and (where the Services will be unaffected) excluding short term sickness or similar absences;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel;
- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement;
- (i) use all reasonable endeavours to ensure that each member of the Supplier Personnel provides a statement confirming that they are not unlawfully claiming any social security benefit (including where payment of that social security benefit is precluded due to earnings);
- (j) use all reasonable endeavours to ensure that its Supplier Personnel who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Supplier shall promptly take all reasonable steps to ensure compliance with this Clause 14.1(j).
- (k) where the Supplier is delivering other services to the Authority pursuant to a separate agreement with Authority;
 - (i) refrain from soliciting, enticing or in any other way encouraging any personnel engaged by the Supplier on those agreements to transfer their engagement to the Services being delivered under this Agreement;

- (ii) refrain from recruiting personnel to the Services being delivered under this Agreement from the pool of Supplier personnel engaged in other services for the Authority;
 - (l) promptly notify the Authority with full details of any Supplier personnel previously engaged on other services for the Authority that have transferred or commenced engagement with the Supplier on the Services except where the time period between cessation of the previous engagement and the commencement of the engagement on the Services is more than six (6) Months.
- 14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
 - (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
 - (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity, adoption, shared parental or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for a fair reason as defined in the Employment Rights Act 1996; or
 - (d) the Supplier obtains the Authority's prior Approval (which shall not be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
 - (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death,

unexpected ill health or where the Key Personnel's employment contract is terminated for a fair reason as defined in the Employment Rights Act 1996, this will mean at least 60 Working Days' notice;

- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.7 Subject to Schedule 9.1 (Staff Transfer), the Parties agree that:

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

Income Tax and National Insurance Contributions

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

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) subject to Clause 14.7(b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with any Supplier Personnel.

Staff Transfer

14.9 The Parties agree that:

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, the MSA Transition Agreement and Schedule 9.1 (Staff Transfer) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 9.1 (Staff Transfer) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (Staff Transfer) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 9.1 (Staff Transfer) shall apply;
 - (iv) Part C of Schedule 9.1 (Staff Transfer) shall not apply; and
 - (v) Part F of Schedule 9.1 (Staff Transfer) shall apply.
- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (Staff Transfer) shall apply and Parts A and B of Schedule 9.1 (Staff Transfer) shall not apply; and
- (c) Part D of Schedule 9.1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 15.1 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:
 - (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Agreement in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
 - (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the

proposed Sub-contract has been agreed on "arm's-length" terms.

15.3 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Authority.

15.4 The Authority may, acting reasonably and within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (or, if later, receipt of any further information requested pursuant to Clause 15.3), object to the appointment of the relevant Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) it is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the relevant services;
- (c) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (d) the proposed Sub-contractor employs unfit persons,

in which case the Supplier shall not proceed with the proposed appointment and in respect of Clause 15.4(b) the Supplier shall either (i) enter into a direct agreement with the relevant Sub-contractor or third party in respect of those services or (ii) limit the costs under such Sub-contract to the cost that would have been incurred had such an agreement described in (i) been entered into.

15.5 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 15.1; and
 - (ii) any further information requested by the Authority pursuant to Clause 15.3; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.6),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (Third Party Contracts) provided always that the Supplier shall ensure that each such Sub-contract shall include:

- (i) provisions which will enable the Supplier to discharge its obligations under this Agreement, including but not limited to adherence to Service Levels; and

- (ii) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (A) data protection requirements set out in Clauses 20 (Authority Data and Security Requirements) and 23 (Protection of Personal Data);
 - (B) FOIA requirements set out in Clause 22 (Freedom of Information);
 - (C) the obligation not to cause material adverse publicity for the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(k);
 - (D) the keeping of records in respect of the services being provided under the Sub-contract, including the maintenance of Open Book Data; and
 - (E) the conduct of Audits set out in Part C of Schedule 7.5 (Transparency, Financial Reports and Audit Rights).

Appointment of Key Sub-contractors

15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) it is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the relevant services;
- (c) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (d) the proposed Key Sub-contractor employs unfit persons,

in which case the Supplier shall not proceed with the proposed appointment and in respect of Clause 15.6(b) the Supplier shall either (i) enter into a direct agreement with the relevant Sub-contractor or third party in respect of those services, or (ii) limit the costs under such Key Sub-contract to the cost that would have been incurred had such an agreement described in (i) been entered into.

15.7 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).

15.8 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under

this Agreement, including but not limited to adherence to Service Levels;

- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (d) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 20 (Authority Data and Security Requirements) and 23 (Protection of Personal Data);
 - (ii) FOIA requirements set out in Clause 22 (Freedom of Information);
 - (iii) the obligation not to cause material adverse publicity for the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(k);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits set out in Part C of Schedule 7.5 (Transparency, Financial Reports and Audit Rights);
- (e) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33.1(a) and 34.5 and Schedule 7.2 (Payments on Termination);
- (f) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (g) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 29 (Remedial Adviser);
- (h) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 30 (Step-In Rights); and
- (i) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure.

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

Supply chain protection

15.10 The Supplier shall ensure that all Sub-contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and
- (b) a right for the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

15.11 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within 30 days from the receipt of a valid invoice;
- (b) include within the Management Information produced by it pursuant to Schedule 2.2 (Performance Levels) a summary of its compliance with Clause 15.11(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.11A Without prejudice to Clause 15.11(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Management Information a summary of its compliance with Clause 15.11A(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.11B If the Management Information shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall provide an action plan (the “**Action Plan**”) for improvement with the relevant Management Information. The Action Plan shall include the causes of such failure and the actions the Supplier will take to remedy the situation. The Supplier shall then comply with such Action Plan.

15.12 Notwithstanding any provision of Clauses 21 (Confidentiality) and 24 (Publicity and Branding), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within 30 days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on

government websites and in the press).

Termination of Sub-contracts

15.13 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b); and/or
 - (ii) the relevant Sub-contractor or any of its Affiliates have caused material adverse publicity for the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise; and/or
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.15; and
- (b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Retention of Legal Obligations

15.14 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15 (Supply Chain Rights and Protections), 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.

Exclusion of Sub-Contractors

15.15 Where the Authority considers there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
 - (i) the Authority Software;
 - (ii) the Authority Data;
 - (iii) the ASIS IT System;
 - (iv) the Project Specific IPRs;
 - (v) the Specially Written Software; and
 - (vi) the Authority Background IPRs.

16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

16.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

17 SPECIALLY WRITTEN SOFTWARE AND PROJECT SPECIFIC IPRs

Specially Written Software and Project Specific IPRs

- 17.1 Unless the Authority has Approved or notified the Supplier otherwise, the Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software (which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate), or shall procure that the first owner of the Project Specific IPRs or Specially Written Software assigns them to the Authority on the same basis. Such assignment shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Project Specific IPRs or Specially Written Software, as appropriate. The Supplier shall waive or procure a waiver of any moral rights in the Project Specific IPRs or Specially Written Software assigned to the Authority under this Agreement.
- 17.2 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under Clause 17.1.
- 17.3 The Supplier:
- (a) shall:
 - (i) inform the Authority of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to the Authority the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
 - (b) acknowledges and agrees that the ownership of the media referred to in Clause 17.3(a)(ii) shall vest in the Authority upon their receipt by the Authority.

Supplier Software and Supplier Background IPRs

- 17.4 The Supplier hereby grants to the Authority:
- (a) subject to Clause 17.5, for the duration of the Term and any Termination Assistance Period a royalty-free and non-exclusive licence 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)):
 - (i) the Supplier Non-COTS Software for any purpose relating to the Services ; and
 - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to

the Services

- (b) a licence to use the Supplier COTS Software and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (Software) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority 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 17.8 and 17.9 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs.
- 17.5 At any time during the Term or any Termination Assistance Period, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.4(a)(ii) by giving 30 days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 17.8 commits any material breach of the terms of Clause 17.4(a)(i) or 17.4(a)(ii) or 17.8(b) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
- 17.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.5, the Authority shall:
- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
 - (b) 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 Authority 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
 - (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority's right to sub-license

- 17.7 The Authority shall be freely entitled to assign, license or otherwise transfer the rights granted to the Authority pursuant to Clause 17.1.
- 17.8 The Authority may for the duration of the Term and any Termination Assistance Period sub-license the rights granted under Clause 17.4(a) to any third party contractor, consultant, professional adviser or supplier (excluding any

Replacement Supplier) engaged by the Authority in connection with the Services provided that:

- (a) the sub-licence is on terms no broader than those granted to the Authority;
- (b) the sub-licence authorises the third party to use the rights licensed in Clause 17.4(a) only for the purposes set out in that Clause; 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 Annex 2 to Schedule 5 (Software).

Authority's right to assign/novate licences

17.9 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.4(a) to:

- (a) a Central Government Body; or
- (b) 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 Authority.

17.10 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.4. If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.4.

17.11 If a licence granted in Clause 17.4 is novated under Clause 17.9 or there is a change of the Authority's status pursuant to Clause 17.10, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

17.12 The Supplier shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.4(a) and 17.5 and Clause 17.9; or
 - (b) complied with the provisions of Clause 17.13.
- 17.13 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.12(a), the Supplier shall:
- (a) notify the Authority 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
 - (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first Approved in writing the terms of the licence from the relevant third party.
- 17.14 The Supplier shall:
- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - (b) unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Clause 17.13(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority 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.

Termination and Replacement Suppliers

- 17.15 For the avoidance of doubt, unless expressly stated otherwise in this Agreement the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17 (Specially Written Software and Project Specific IPRs).
- 17.16 The Supplier shall, if requested by the Authority:
- (a) grant to any Replacement Supplier:
 - (i) a licence to use any Supplier Non-COTS Software and Supplier Non-COTS Background IPRs, and shall use all reasonable endeavours to procure the grant of a licence for any Replacement Supplier to use any Third Party Non-COTS IPRs and/or Third Party Non-COTS Software, 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 subject to receipt by the Supplier of a confidentiality undertaking in

its favour in or substantially in the form set out in Annex 2 to Schedule 5 (Software) duly executed by the Replacement Supplier;

- (ii) 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
- (b) 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.

18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Project Specific IPRs, the Specially Written Software and the Authority Materials solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (Confidentiality); and
 - (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.2 The Authority shall procure from the ASIS Provider for the duration of the Term and any Termination Assistance Period a royalty-free and non-exclusive licence for the Supplier to use the ASIS IT System solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (Confidentiality); and
 - (b) the Supplier shall not use the ASIS IT System for any other purpose or for the benefit of any person other than the Authority.
- 18.3 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of termination or expiry of any Termination Assistance Period and the Supplier shall:
- (a) immediately cease all use of the Authority Software, the Project Specific IPRs, the Specially Written Software, the Authority Background IPRs, the ASIS IT System and the Authority Data (as the case may be);

- (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Project Specific IPRs, the Specially Written Software, the Authority Background IPRs, the ASIS IT System and the Authority Data, provided that if the Authority 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 Authority Software, the Project Specific IPRs, the Specially Written Software, the Authority Background IPRs, the ASIS IT System and the Authority Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Authority Software, the Project Specific IPRs, the Specially Written Software, Authority Background IPRs, the ASIS IT System and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, the Project Specific IPRs, the Specially Written Software, Authority Background IPRs, the ASIS IT System and/or Authority Data.

19 IPRs INDEMNITY

- 19.1 Subject to Schedule 8.7 (Conduct of Claims), the Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim. This indemnity shall not apply to the extent that an IPRs Claim is based on:
- (a) a breach by the Authority of the applicable licence terms set out in this Agreement; or
 - (b) any adaption, modification or enhancement made by or on behalf of the Authority or other Indemnified Person to the Relevant IPRs which was not authorised by the Supplier in writing.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and

- (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:
 - (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

20 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (Service Requirements).
- 20.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor in accordance with the Security Requirements.
- 20.5 To the extent that Authority Data is under the control of the Supplier, the Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDRP. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request.
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
 - (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (Business Continuity and Disaster Recovery) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the

extent and in accordance with the requirements specified in Schedule 8.6 (Business Continuity and Disaster Recovery).

- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data under its control or the control of any Sub-contractor has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 The Supplier shall comply with the requirements of Schedule 2.4 (Security Management).
- 20.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 20.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

Malicious Software

- 20.13 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 20.14 Notwithstanding Clause 20.13, 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 Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 20.15 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.14 shall be borne by the Parties as follows:
 - (a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 20.13) or the Authority Data (whilst the Authority 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 Authority when provided to the Supplier; and
 - (b) otherwise by the Authority.

21 CONFIDENTIALITY

- 21.1 For the purposes of this Clause 21 (Confidentiality), 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.
- 21.2 Except to the extent set out in this Clause 21 (Confidentiality) or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) 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);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority'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 Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of

the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

21.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

21.6 The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6 (a) for any purpose relating to or connected with:
 - (i) this Agreement; and/or
 - (ii) Employment and Support Allowance or Personal Independence Payment service provision;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 30 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 29 (Remedial Adviser) and Exit Management rights;
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement, or
- (g) on a confidential basis to the Independent Assessment Assurance Provider

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement

containing terms no less stringent than those placed on the Authority under this Clause 21 (Confidentiality).

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

Transparency

- 21.8 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Authority shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 21.9 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time.
- 21.10 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Agreement.

22 FREEDOM OF INFORMATION

- 22.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 22.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority 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 Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

23 PROTECTION OF PERSONAL DATA

- 23.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is a Data Controller and the Supplier is a Data Processor. The only processing that the Supplier is authorised to do is listed in Schedule 18A by the Authority and may not be determined by the Supplier (or as may be required by the Authority to perform the Services in accordance with this Agreement and to the extent any such processing is not listed in Schedule 18A, the Supplier shall notify the Authority of the same as soon as is reasonably practicable and the Parties shall agree such changes to Schedule 18A).
- 23.2 Each of the Parties, including the personnel of the Authority (personnel shall include directors, officers, employees, agents, consultants, contractors and sub-contractors) and the Supplier Personnel, will comply with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- 23.3 The Supplier shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe (or compliance with the same will cause an infringement of) Data Protection Legislation. In this event, any change to the Authority's instructions shall be agreed in accordance with the Change Control Procedure in an accelerated or condensed manner in accordance with Paragraph 7 of Schedule 8.2 (Change Control Procedure).
- 23.4 The Supplier shall provide all reasonable assistance to the Authority in the preparation of or update to any Data Protection Impact Assessment. Such assistance (and in relation to 23.4(b) to (d), the final assessment to be undertaken by the Authority) may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and, where appropriate, the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects;
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and Special Categories of Personal Data; and
 - (e) upon request provide a copy of the record of the processing of any Personal Data and Special Categories of Personal Data it carries out on behalf of the

Authority including (without limitation) the records specified in Article 30(2) of the GDPR.

23.5 The Supplier shall, in relation to any Personal Data and Special Categories of Personal Data processed as Data Processor in connection with its obligations under this Agreement:

- (a) Process the Personal Data and Special Categories of Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Agreement and in accordance with Schedule 18A to perform its obligations under this Agreement, unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Authority before processing the Personal Data and Special Categories of Personal Data unless prohibited by Law;
- (b) ensure that at all times it has in place Protective Measures, which have been approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) review and approval of the Protective Measures by the Authority shall not relieve the Supplier of its obligations under Data Protection Legislation including, for the avoidance of doubt, putting sufficient Protective Measures in place;
- (d) ensure that it and the Supplier Personnel do not process Personal Data and Special Categories of Personal Data except in accordance with this Agreement and Data Protection Legislation and access to such data is limited to those Supplier Personnel who need to access Personal Data and Special Categories of Personal Data to meet the Supplier's Data Processor duties under the Agreement and Data Protection Legislation and only collect Personal Data and Special Categories of Personal Data on behalf of the Authority in the format agreed with the Authority which shall contain a data protection notice (once agreed) informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purpose(s) for which the Data Subject's Personal Data and Special Categories of Personal Data will be processed and any other information, which is necessary to comply with Data Protection Legislation. The Supplier shall not modify the format agreed with the Authority without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed);
- (e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and Special Categories of Personal Data and ensure that the Supplier Personnel:

- (i) are aware of and comply with the Supplier's duties under this Clause 23(Protection of Personal Data) and Clauses 20 (Authority Data and Security Requirements) and 21 (Confidentiality);
 - (ii) are subject to appropriate confidentiality undertakings with the Supplier and Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and Special Categories of Personal Data and do not publish, disclose or divulge any of the Personal Data and Special Categories of Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement or required to do so under a legal requirement / court order (provided that the Supplier shall (so far as it is legally able to do so) give notice to the Authority of any disclosure of Personal Data and Special Categories of Personal Data that is or any of its Supplier Personnel is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data and Special Categories of Personal Data;
- (f) subject to Clause 23.6 notify the Authority without undue delay if it receives:
- (i) from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Access Request);
 - (B) a request to rectify, block or erase any Personal Data and Special Categories of Personal Data; or
 - (C) any other request, complaint, communication or notice (where appropriate) relating to either Party's obligations under Data Protection Legislation;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data and Special Categories of Personal Data processed under this Agreement; or
 - (iii) a request from any third party for disclosure of Personal Data and Special Categories of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (iv) becomes aware of a Personal Data Breach or Data Loss Event.
- 23.6 The Supplier's obligations to notify under Clause 23.5(e) shall include the provision of further information to the Authority promptly, as details become available.
- 23.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with all reasonable cooperation and assistance (within the timescales reasonably required by the Authority) in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made as referred to in Clause 23.5(e), including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
 - (c) the Authority, on request by the Authority, with any Personal Data and Special Categories of Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Authority following any Personal Data Breach or Data Loss Event; and
 - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 23.8 The Supplier shall maintain complete and accurate records and information of any processing of Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR, to demonstrate its compliance with this clause.
- 23.9 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor in accordance with Part C of Schedule 7.5 and comply with all reasonable requests or directions by the Authority to enable the Authority to verify that the Supplier is in full compliance with its obligations under the Agreement.
- 23.10 The Supplier shall designate a Data Protection Officer as required by the Data Protection Legislation.
- 23.11 Before allowing any Sub-processor to process any Personal Data and Special Categories of Personal Data related to this Agreement, the Supplier must:
- (a) obtain the advance written consent of the Authority (such consent not to be unreasonably withheld or delayed) to allow the Sub-processor to process any Personal Data and Special Categories of Personal Data under the Agreement; and
 - (b) enter into a written contract with the Sub-processor which reflects the terms set out in Clause 23 such that they apply to the Sub-Processor as a Data Processor.
- 23.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor and Supplier Personnel
- 23.13 The Supplier shall not Process or otherwise transfer any Personal Data and Special Categories of Personal Data in or to any country outside the UK or any country not deemed adequate by the UK Government pursuant to Article 25(6) of Directive 95/46/EC (together "Restricted Countries"). If, after the Effective Date, the Supplier or any Sub-contractor wishes to Process and/or transfer any Personal Data and Special Categories of Personal Data in or to any Restricted Countries, the prior

written consent of the Authority shall be obtained and the following conditions must be fulfilled:

- (a) the Supplier shall submit a Change Request to the Authority which, if the Authority agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 23.10 (b) to 23.10 (d);
- (b) the Supplier shall set out in its Change Request details of the following:
 - (i) the Personal Data and Special Categories of Personal Data which will be transferred to and/or Processed in any Restricted Countries;
 - (ii) the Restricted Countries which the Personal Data and Special Categories of Personal Data will be transferred to and/or Processed in;
 - (iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data and Special Categories of Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure appropriate safeguards in respect of the Personal Data and Special Categories of Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the Data Protection Legislation (in accordance with GDPR Article 46) as determined by the Authority;
 - (v) how the Data Subject will have enforceable rights and effective legal remedies;
 - (vi) how the Supplier will comply with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data and Special Categories of Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (vii) how the Supplier will comply with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data and Special Categories of Personal Data;
- (c) in providing and evaluating the Change Request, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data and Special Categories of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the UK Government as offering adequate safeguards under the Data

Protection Legislation) into this Agreement or a separate data processing agreement between the Parties; and

- (ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data and Special Categories of Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-contractor relating to the relevant Personal Data transfer,

and in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the UK Government as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data and Special Categories of Personal Data.

- 23.14 At the written direction of the Authority, the Supplier shall delete or return Personal Data and Special Categories of Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data and Special Categories of Personal Data.
- 23.15 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under Data Protection Legislation to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 23.16 While not in any way limiting any other provision of this Agreement, in delivering the Services, the Supplier and its Sub-contractors, shall comply with the Authority's Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.
- 23.17 The Authority may, at any time by utilising the Change Control Procedure and such procedure to be completed within 30 Working Days, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme under Article 43 of the GDPR (which shall apply when incorporated by attachment to this Agreement)
- 23.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may by utilising the Change Control Procedure and such procedure to be completed within 30 Working Days, amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 23.19 The Supplier shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses howsoever arising directly out of, in respect of or in connection with, any breach by the Supplier or any of its Supplier Personnel of this Clause 23.

24 PUBLICITY AND BRANDING

24.1 The Parties shall agree (through their respective nominated representatives) by no later than the Effective Date the timing of their respective communications to announce the existence of this Agreement.

24.2 The Supplier shall not:

- (a) make any other press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

24.3 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement. No endorsement is further provided by the Supplier of any systems used by the Exiting Supplier.

24.4 The Parties will agree a joint and proactive communication programme to apply for the term of this Agreement. The Parties shall in as far as reasonably practicable, continue with the practice and principle of advance sharing of public communications that relate to the other Party, and avoiding surprises. The Parties shall work together to identify and respond promptly (as may be appropriate) to any false or misleading public statements by third parties about the performance or delivery of the Services.

24.5 Nothing in this Clause, or in any communication plan agreed between the Parties shall operate to prevent the Authority (or any other department, office or agency of the Crown) from, or in any way restrict the Authority (or any other department, office or agency of the Crown) when, making statements or disclosing information as necessary to meet the international obligations of the Government or to comply with domestic law or Government policy or Parliament, including any Government policy on "Open Government" or access to Government information, or in the discharge of the Authority's obligations to supply information for parliamentary, governmental, judicial or other administrative purposes.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);

- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) 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;
- (d) any liability to the extent it cannot be limited or excluded by Law; or
- (e) as referred to within the definition of "Loss", any expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement (but not the amount of any agreed or awarded settlement itself), judgment interest and penalties which a Party may become liable to pay to the other.

25.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (Employment Indemnity), Clause 14.8 (Income Tax and National Insurance Contributions), Clause 19 (IPRs Indemnity), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited.

25.2A The Supplier's liability in respect of indemnities in Clause 23.16 (Protection of Personal Data) shall be unlimited.

25.3 The Authority's liability in respect of the indemnities in Clause 14.7 (Employment Indemnity) and Schedule 9.1 (Staff Transfer) shall be unlimited.

Financial and other limits

25.4 Subject to Clauses 25.1, 25.2, 25.7 and 25.8:

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority'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 £[REDACTED];
- (b) the Supplier's aggregate liability in respect of all Service Credits shall be subject to the Service Credit Cap; and
- (c) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement 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 50% of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 50% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to £[REDACTED],

provided that where any Losses referred to in Clause 25.4(c) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the

Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 50% shall be deemed to be references to 100%.

- 25.5 Deductions from Charges (including Service Credits) shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4(c).
- 25.6 Subject to Clauses 25.1, 25.3 and 25.7 and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- (a) the Termination Payment payable by the Authority under Clause 34.3 shall in no event exceed the lower of:
 - (i) an amount equal to the Charges that would have been payable to the Supplier during the period from the Termination Date to the expiry of the Term if this Agreement had not been terminated at the Termination Date; or
 - (ii) an amount equal to the Charges payable by the Authority in the 12 month period preceding the Termination Date as calculated in accordance with Schedule 7.1 (Charges and Invoicing);
 - (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

- 25.7 Subject to Clauses 25.1, 25.2 and 25.3 and Clause 25.8, neither Party shall be liable to the other Party for:
- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 25.8 Notwithstanding Clause 25.7 but subject to Clause 25.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses

incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (d) any compensation which a regulatory body orders to be paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Conduct of indemnity claims

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

Mitigation

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

Claimants

25.11 The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Claimant, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.

25.12 The Authority shall not be liable for any claims arising out of:

- (a) its decision to classify a Claimant as demonstrating Unacceptable Claimant Behaviour, or failing to classify a Claimant as demonstrating Unacceptable Claimant Behaviour;
- (b) notification of or failure by the Authority to notify the Supplier of its decision; or
- (c) provision of or failure by the Authority to provide information relating to Unacceptable Claimant Behaviour to the Supplier.

25.13 The Supplier shall indemnify the Authority against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and

disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any Claimant or their companions and where due to an act or omission of the Supplier.

26 **INSURANCE**

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

SECTION H - REMEDIES AND RELIEF

27 **RECTIFICATION PLAN PROCESS**

27.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) there have been Subsidiary Service Level Failures in three consecutive Service Periods;
- (c) in any Service Period there has been:
 - (i) a Material Service Level Failure; or
 - (ii) a Severe Service Level Failure; or
 - (iii) a Critical Service Level Failure; and/or
- (d) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

Notification

27.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

- 27.3 The "**Rectification Plan Process**" shall be as set out in Clauses 27.4 (Submission of the draft Rectification Plan) to 27.9 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan

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

- 27.5 The draft Rectification Plan shall set out:

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

- 27.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (Dispute Resolution Procedure).

Agreement of the Rectification Plan

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

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is inconsistent with the Supplier's obligations under this Agreement and/or would in the opinion of the Authority adversely affect its business.

- 27.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification

Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

27.9 If the Authority consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

28 NO DOUBLE RELIEF

28.1 If circumstances arise where the Supplier becomes entitled to relief from (or to an adjustment to) its obligations under this Agreement due to more than one cause at the same time, then those causes shall be treated as a single cause together and the Supplier shall not be entitled to any greater relief than if only one cause had arisen.

29 REMEDIAL ADVISER

29.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "Intervention Cause"), the Authority may give notice to the Supplier (an "Intervention Notice") giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 29 (Remedial Adviser).

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 29.1 prior to or instead of exercising its right to terminate this Agreement.

29.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Authority; or
 - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

- (b) the terms of engagement and start date agreed with the Remedial Adviser must be Approved by the Authority; and
- (c) any right of the Authority to terminate this Agreement pursuant to Clause 33.1(b) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").

29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

29.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been Approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

29.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 29 (Remedial Adviser).

29.6 If:

- (a) the Supplier is in material Default of any of its obligations under Clause 29.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to Clause 33.1(b).

30 STEP-IN RIGHTS

30.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 30 (Step-In Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (Confidentiality)). The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

30.2 Following service of a Step-In Notice, the Authority shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;

- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
 - (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 30 (Step-In Rights).
- 30.3 For so long as and to the extent that the Required Action is continuing, then:
- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
 - (c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 30.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- (a) the degradation of any Services not subject to the Required Action; or
 - (b) the non-Achievement of a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 30.5 Unless otherwise agreed by the Parties in Schedule 19 (Commercial Arrangements Whilst Covid-19 Easements Are In Place and during Transition to the Business As Usual Agreement) , before ceasing to exercise its step in rights under this Clause 30 (Step-In Rights) the Authority shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Authority plans to end the Required Action (the **"Step-Out Date"**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 30.6.
- 30.6 Unless otherwise agreed by the Parties in Schedule 19 (Commercial Arrangements Whilst Covid-19 Easements Are In Place and during Transition to the Business As Usual Agreement) , the Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's Approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 30.7 If the Authority does not Approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not Approving it. The Supplier shall then

revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's Approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

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

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

31 **AUTHORITY CAUSE**

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

- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Operational Services in accordance with the Service Levels; and/or
- (c) comply with its obligations under this Agreement,

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

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

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (A) to terminate this Agreement pursuant to Clause 33.1(b) ; or
 - (B) to take action pursuant to Clauses 29 (Remedial Adviser) or 30 (Step-In Rights);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

- (B) the Mobilisation Plan shall be amended by the Parties to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and
- (C) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 4 of Schedule 7.1 (Charges and Invoicing); and/or
- (iv) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits and any Service Credits that have accrued as a direct result of the Authority Cause shall be disappplied;
 - (B) not used;
 - (C) not used;
 - (D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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

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

- (a) the Supplier Non-Performance;
- (b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- (d) the relief and/or compensation claimed by the Supplier.

31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

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

31.5 Without prejudice to Clause 5.9, if a Dispute arises as to:

- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
- (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

31.6 Any Change that is required to the Mobilisation Plan or to the Charges pursuant to this Clause 31 (Authority Cause) shall be implemented in accordance with the Change Control Procedure.

31.7 If any Allowable Assumption is not met by the time specified in the table in Annex 2 of Schedule 7.1 (Charges and Invoicing), then such occurrence shall not constitute Authority Cause, but the provisions of paragraph 12 of Schedule 7.1 (Charges and Invoicing) shall apply.

32 **FORCE MAJEURE**

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

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

32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 (Force Majeure) to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the Services including the BCDR Services, but the Supplier has failed to do so; and/or

- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 33.1(c) or Clause 33.3(b); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (Remedial Adviser) and/or Clause 30 (Step-In Rights) as a result of such failure; and
 - (B) to receive Service Credits to the extent that a Service Level Failure has been caused by the Force Majeure Event; and
 - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 32.8 Relief from liability for the Affected Party under this Clause 32 (Force Majeure) shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 32.7.

SECTION I - TERMINATION AND EXIT MANAGEMENT

33 TERMINATION RIGHTS

Termination by the Authority

33.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time;
- (b) if a Supplier Termination Event occurs; or
- (c) if a Force Majeure Event endures for a continuous period of more than 90 days,

and this Agreement shall terminate on the date specified in the Termination Notice.

33.2 Where the Authority:

- (a) is terminating this Agreement under Clause 33.1(b)) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 33.1 it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

33.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds an amount equal to one-sixth of the total Target Fee set out in Part 2 of Annex 1 of Schedule 7.1 (Charges and Invoicing) and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.3(b) would result in a Partial Termination, the provisions of Clause 33.4 (Partial Termination) shall apply.

Partial Termination

- 33.4 If the Supplier notifies the Authority pursuant to Clause 33.3(b) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 33.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
 - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Pricing Structure using the Payment Model Template and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.

34 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 34.1 The provisions of Clauses 5.8 (Specially Written Software warranty), 10.4 and 10.5 (VAT), 10.6 and 10.7 (Set-off and Withholding), 12 (Records, Reports, Audits and Open Book Data), 14.7 (Employment Indemnity), 14.8 (Income Tax and National Insurance Contributions), 16 (Intellectual Property Rights), 18 (Licences Granted by the Authority), 19.1 (IPRs Indemnity), 21 (Confidentiality), 22 (Freedom of Information), 23 (Protection of Personal Data), 25 (Limitations on Liability), 34 (Consequences of Expiry or Termination), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights), 45 (Disputes) and 46 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Charges and Invoicing), 7.2 (Payments on Termination), 7.5 (Transparency, Financial Reports and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Records Provisions/Management Information), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Agreement.

Exit Management

- 34.2 The Parties shall comply with the provisions of Schedule 8.5 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

- 34.3 Subject to Clauses 25.6(a) and 34.4, if this Agreement is terminated by the Authority pursuant to Clause 33.1(a) or by the Supplier pursuant to Clause 33.3(a), the Authority shall pay the Termination Payment (which, in addition to the Authority's obligation to pay any Charges properly due under this Agreement up to and including the Termination Date, shall be the Supplier's sole remedy for such termination of this Agreement).
- 34.4 The Authority shall not be liable under Clause 34.3 to pay any sum which was 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.
- 34.5 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b) or 33.1(c), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (Exit Management); and
 - (b) payments in respect of unpaid Charges for Services received up until the Termination Date.
- 34.6 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) and/or 33.3(b).

Payments by the Supplier

- 34.7 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

35 COMPLIANCE

Health and Safety

- 35.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with all:
- (a) applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

35.3 The Supplier shall:

- (a) perform its obligations under this Agreement (including those in relation to the Services and those set out in Schedule 14 (Equality and Diversity)) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);
- (c) with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof;

Official Secrets Act and Finance Act

35.4 The Supplier shall comply with the provisions of:

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

36 ASSIGNMENT AND NOVATION

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

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

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body other than a direct competitor of the Supplier) which performs any of the functions that previously had been performed by the Authority,

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

- 36.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 36.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (j) of the definition of Supplier Termination Event (as if references in that limb (j) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

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

38 RELATIONSHIP OF THE PARTIES

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

39 PREVENTION OF FRAUD AND BRIBERY AND CONFLICTS OF INTEREST

- 39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

39.2 The Supplier shall not during the term of this Agreement:

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

39.3 The Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) ensure that the Supplier and Sub-contractor performance management systems do not encourage Supplier Personnel to make false claims regarding achievement of contract performance levels;
- (c) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (d) ensure a segregation of duties within the Supplier or Sub-contractor's operation between those directly involved in delivering the Service performance and those reporting achievement of contract performance to the Authority;
- (e) co-operate fully with the Authority and assist it in the identification of Claimants who may be unlawfully claiming state benefits. The Authority may from time to time brief the Supplier as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Claimants. On receipt of the information, further evidence may be collected by the Authority or other department, office or agency of Her Majesty's Government with a view to prosecution; and
- (f) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request; and
- (g) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible

for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 39.5 If the Supplier makes a notification to the Authority pursuant to Clause 39.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (Record, Reports, Audits & Open Book Data).
- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 39.7 Any notice served by the Authority under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).
- 39.8 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Personnel are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Agreement. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 39.9 The Authority reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Agreement. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 39.10 Clauses 39.7 to 39.9 shall apply during the continuance of this Agreement and for a period of two (2) years after its termination or expiry.

40 SEVERANCE

- 40.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the

validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

- 40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 of Schedule 8.3 (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 Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 40.3.

41 FURTHER ASSURANCES

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

42 ENTIRE AGREEMENT

- 42.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43 THIRD PARTY RIGHTS

- 43.1 The provisions of Clause 19.1 (IPRs Indemnity), Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1 and 3.3 of Part B, and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 43.2 Subject to Clause 43.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

43.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

44 **NOTICES**

44.1 Any notices sent under this Agreement must be in writing.

44.2 Subject to Clause 44.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Bravo	9.00am on the first Working Day after sending	Uploaded with any applicable attachment(s) to Bravo without any error message.
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

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

	Supplier	Authority
Contact	Programme Director	Head of Health Services Category
Address	CHDA 22 Angel Gate London EC1V 2PT	Department for Work and Pensions Commercial Directorate Finance Group Third Floor, 1 Hartshead Square Sheffield S1 2FD
Email	Communication via Bravo	Communication via Bravo

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

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) Notices issued by the Supplier pursuant to Clause 33.3;
- (d) Termination Notices; and
- (e) Dispute Notices.

- 44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 shall invalidate the service of the related e-mail transmission or notice issued via Bravo. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice or the notice sent via Bravo.
- 44.6 This Clause 44 (Notices) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

45 DISPUTES

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

46 GOVERNING LAW AND JURISDICTION

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

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

SIGNED for and on behalf of **THE SECRETARY OF STATE FOR WORK AND PENSIONS** by:

Signature:

Name (block capitals):

Position:

Date:

SIGNED for and on behalf of **MAXIMUS UK SERVICES LIMITED** by:

Signature:

Name (block capitals):

Position:

Date: