

**DECLASSIFIED ON 25TH JANUARY 2016: CONTRACTS FINDER PULICATION –
FOR INFORMATION PURPOSES ONLY**

CONTACT CENTRE SERVICES

CALL-OFF TERMS

TERMS AND CONDITIONS

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IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the definitions set out in Schedule 1 (Definitions) shall apply. If a capitalised term or phrase used in this Agreement is not defined within Schedule 1 (Definitions) it shall have the meaning as set out in Schedule 1 (Definitions) of the Framework Agreement and if it does not have an interpretation in the Framework Agreement it shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise it shall be interpreted in accordance with the Oxford English dictionary meaning.
- 1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:
 - 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
 - 1.2.3 the words "**including**", "**includes**", "**in particular**", "**for example**" or words having a similar effect, shall be construed as illustrative and without limitation to the words which precede them;
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.5 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it, whether before or after the date of this Agreement. The impact of any such amendment, extension or re-enactment on this Agreement shall be dealt with in accordance with Clause 37 (Change In Law);
 - 1.2.6 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - 1.2.7 references in this Agreement to any Clause or Schedule without further designation shall be construed as a reference to the Clause or Schedule to this Agreement so numbered;
 - 1.2.8 references in this Agreement to any Paragraph without further designation shall be construed as a reference to the paragraph of the relevant Schedule to this Agreement so numbered; and
 - 1.2.9 references to a Clause are a reference to the whole of that Clause unless stated otherwise.

- 1.3 Without prejudice to Clauses 9.11.1 and 12.3 and subject to Paragraph 1.2 of the Call-Off Form, if there is any conflict between the Clauses and the Schedules and/or any appendices to the Schedules and/or any other documents referred to in this Agreement, the following order of precedence shall apply:
- 1.3.1 the completed Call-Off Form;
 - 1.3.2 the Clauses of this Agreement and Schedule 1 (Definitions);
 - 1.3.3 any other Schedules to this Agreement and their appendices (other than Schedule 2.4 (Contractor Service Description));
 - 1.3.4 Schedule 2.4 of this Agreement (which sets out the Contractor Service Description); and
 - 1.3.5 any other document referred to in any of the above.
- 1.4 Subject to Clauses 5 (Implementation Delays – General Provisions) to 8 (Delays Not Due to One Party) (inclusive), neither Party shall be liable for any Default of its obligations under this Agreement to the extent that such Default is caused by a failure or delay by the other Party in performing its obligations under this Agreement. The affected Party shall notify the other Party of such failure or delay in writing and, in respect of the Contractor subject to its obligation under Clause 1.5, within five (5) Working Days of the affected Party becoming aware of its occurrence and of its likely impact.
- 1.5 Prompt and expedited performance of this Agreement is important to the Customer Authority. In all cases therefore where the Contractor is obliged to take action, provide notice or complete a task under this Agreement then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in this Agreement. However, unless stated otherwise, time is not of the essence in this Agreement.
- 1.6 In accordance with Clauses 35.3 and 35.4, the Contractor acknowledges that certain obligations in the Framework Agreement are intended to benefit and may be enforced by the Customer Authority (including those clauses listed in Clause 1.4 of the Framework Agreement). Accordingly, the Contractor agrees to comply, and shall ensure and procure that its Sub-contractors comply with the requirements of such obligations in the context of this Agreement.
- 1.7 The Contractor acknowledges that the Customer Authority may at any time and at its sole discretion appoint one or more agents (including the SIAM Service Tower Provider) to act in pursuance of any of the Customer Authority's rights or to perform any of the Customer Authority's obligations or functions under this Agreement. The Contractor agrees to deal with such appointed agent or agents (including a service/system integrator) as directed by the Customer Authority from time to time.

2. DUE DILIGENCE

- 2.1 The Contractor acknowledges that it has:

- 2.1.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer Authority;
 - 2.1.2 raised all relevant due diligence questions with the Customer Authority (or with the Framework Authority as part of the procurement of the Framework Agreement) before the Effective Date; and
 - 2.1.3 entered into this Agreement in reliance on its own due diligence alone.
- 2.2 Unless agreed otherwise with the Customer Authority and reflected in any Special Terms in the Call-Off Form, the Contractor shall not be relieved of its obligations and shall not be entitled to recover any additional costs or charges from the Customer Authority relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the Customer Authority Premises. The onus shall be on the Contractor to prove to the Customer Authority that any work to the Customer Authority Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Contractor shall not incur such additional costs or charges without obtaining the Customer Authority's Approval.

SECTION B - SERVICE IMPLEMENTATION

3. IMPLEMENTATION PLAN

- 3.1 The Contractor shall conduct the Implementation of the Services as follows:
- 3.1.1 in respect of the Take-On Services, in accordance with the Take-On Plan;
 - 3.1.2 in respect of the Transition, in accordance with the Transition Plan; and
 - 3.1.3 in respect of each Project or Special Service Request, in accordance with the relevant Project Plan.
- 3.2 The Contractor shall develop each draft Detailed Implementation Plan based on the relevant Outline Implementation Plan and deliver the same to the Customer Authority within one (1) month of the Effective Date (or such other period as set out in the relevant Outline Implementation Plan or as otherwise agreed by the Parties in writing). Each Detailed Implementation Plan must contain information at the level of detail necessary to manage the implementation projects effectively and this shall include identification of Milestones and Tests. Each draft Detailed Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Contractor. Once a draft Detailed Implementation Plan is Approved by the Customer Authority (such agreement not to be unreasonably delayed or withheld), the Contractor shall:
- 3.2.1 monitor its performance against the Implementation Plan;
 - 3.2.2 report to the Customer Authority on such performance; and
 - 3.2.3 keep the Detailed Implementation Plan under review as set out in Paragraph 4.7 of Schedule 4.1 (Implementation Plan).

- 3.3 An Implementation Plan shall only be varied in accordance with the processes set out in Paragraphs 3.2, 4.7 and 4.8 of Schedule 4.1 (Implementation Plan).
- 3.4 Where implementation is taking place in a number of phases, the Customer Authority may request that the process of agreeing Detailed Implementation Plans under this Clause 3 takes place in phases and the Contractor shall comply with such request.
- 3.5 The Contractor and Customer Authority shall meet their respective responsibilities set out in Schedule 4.5 (Take On and Transition Description).

4. TESTING

- 4.1 When the Contractor has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing and the Parties shall follow the applicable provisions of the Testing Procedures.
- 4.2 Each Party shall bear its own costs in respect of the Testing Procedures. However, if a Milestone and/or Test does not Achieve the Test Success Criteria the Customer Authority shall be entitled to recover from the Contractor any reasonable additional costs it may incur as a direct result of further review or re-Testing to Achieve the Test Success Criteria. In such circumstances and without prejudice to Clause 5.6, the Contractor shall bear all costs related to amending the Deliverables, re-performing the Services and re-submitting them for Testing.
- 4.3 If the Contractor successfully completes the requisite Tests, the Customer Authority shall issue a Milestone Achievement Certificate in accordance with Paragraph 13 of Schedule 4.2 (Testing Procedures). Notwithstanding the issuing of any Milestone Achievement Certificate or Test Certificate and without prejudice to Paragraph 2 of Schedule 4.2 (Testing Procedures), the Contractor shall remain solely responsible for ensuring that the:
- 4.3.1 Contractor Service Description are and shall continue to be suitable for the delivery of the Services;
 - 4.3.2 Services are implemented and provided in accordance with this Agreement; and
 - 4.3.3 Service Level Targets are achieved during the Operational Phase.
- 4.4 No estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate or a Test Certificate (or conditional Milestone Achievement Certificate or Test Certificate pursuant to Clause 6 (Delays Due To Contractor Default)).
- 4.5 If the Contractor does not successfully complete or Achieve any Milestone or Test, the provisions of Clauses 5 (Implementation Delays - General Provisions), 6 (Delays Due To Contractor Default), 7 (Delays To Milestones Due To Customer Authority Cause) and 8 (Delays Not Due To One Party) shall apply as appropriate.

5. IMPLEMENTATION DELAYS - GENERAL PROVISIONS

- 5.1 If, at any time, for any reason and regardless of whose fault the Contractor considers the Delay to be, the Contractor becomes aware that it shall not (or is unlikely to) Achieve any Milestone and/or Test by the Milestone Date it shall:

- 5.1.1 immediately notify the Customer Authority in writing of:
 - 5.1.1.1 the fact and likely length of such Delay and summarise the reasons for it; and
 - 5.1.1.2 the consequences or likely consequences of such Delay;
- 5.1.2 immediately take all remedial action that is reasonable to avoid or reduce so far as possible such Delay and the effects of such Delay on Achieving other Milestones and/or Tests; and
- 5.1.3 mitigate the impact on the Customer Authority of such Delay.
- 5.2 Except in cases of emergency, before taking any remedial action in accordance with Clause 5.1.2 the Contractor shall notify the Customer Authority in writing of its intended action and have regard to any comments the Customer Authority may make in respect of such intended action. Having regard to the Customer Authority's comments, or not doing so, shall not relieve the Contractor of any responsibility in respect of remedying any Delay.
- 5.3 The Contractor shall, as soon as reasonably practicable and in any event not later than three (3) Working Days (or such other period as the Parties agree in writing) after the initial notification under Clause 5.1, give the Customer Authority full details in writing of:
 - 5.3.1 the reasons for and likely length of (if such length is different to that given under Clause 5.1.1.1) the Delay; and
 - 5.3.2 the consequences of the Delay (if such consequences are different to those given under Clause 5.1.1.2); and
 - 5.3.3 the remedial action and the action taken by the Contractor to mitigate the impact of the Delay as required under Clauses 5.1.2 and 5.1.3; and.
 - 5.3.4 if the Contractor claims that the Delay is due to a Customer Authority Cause, the reason for that claim.
- 5.4 Whether or not a Delay is due to a Customer Authority Cause or if there is a Dispute about a Delay, the Contractor shall nevertheless comply with Clauses 5.1 to 5.3 (inclusive).
- 5.5 Where a Delay is being caused or contributed to by a Customer Authority Cause the Customer Authority shall not be liable to compensate the Contractor for Delays to which Clauses 7 (Delays to Milestones Due to Customer Authority Cause) or 8 (Delays Not Due to One Party) apply unless the Contractor has fulfilled its obligations set out in, and in accordance with, Clauses 5.1 to 5.3 (inclusive).

Correction Plan

- 5.6 The Contractor shall submit a draft Correction Plan for the Customer Authority's Approval where it:
 - 5.6.1 becomes aware that it will not Achieve a Milestone by the Milestone Date; or

- 5.6.2 has failed to Achieve a Milestone by its Milestone Date, whether that failure arises because of:
- 5.6.2.1 a failure to submit any or all Deliverables in respect of that Milestone prior to the Milestone Date;
 - 5.6.2.2 the failure of any Deliverable relating to the Milestone successfully to complete or Achieve any Test so that the relevant Milestone Achievement Certificate cannot be issued; or
 - 5.6.2.3 where there are no Tests in respect of the relevant Milestone, any non-conformance in respect of that Milestone.
- 5.7 The draft Correction Plan shall identify the issues arising out of the Delay and the steps that the Contractor proposes to take to Achieve the Milestone in accordance with this Agreement.
- 5.8 The draft Correction Plan shall be submitted to the Customer Authority for its Approval as soon as possible and in any event not later than five (5) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) after the initial notification under Clause 5.1 or the issue of a Non-conformance Report.
- 5.9 The Customer Authority shall not withhold its Approval of a draft Correction Plan unreasonably. If the Customer Authority does not Approve the draft Correction Plan it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Correction Plan, which shall be resubmitted to the Customer Authority within two (2) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) of the rejection of the first draft. The Customer Authority may withhold Approval of the draft Correction Plan if the plan does not provide assurance regarding the allocation of sufficient and appropriately skilled technical and programme management resource to Achieve the Milestone.
- 5.10 The Contractor shall comply with the Correction Plan following its Approval by the Customer Authority.
- 5.11 Approval and implementation of any Correction Plan by the Customer Authority shall not relieve the Contractor of any responsibility to Achieve Milestones and/or Tests by their agreed Milestone Date, or remedy any failure to do so, and no estoppel or waiver shall arise from any such Approval and/or implementation. The Correction Plan shall not change the Milestone Dates save where agreed with the Customer Authority in accordance with Schedule 6.2 (Change Control Procedure).

6. DELAYS DUE TO CONTRACTOR DEFAULT

- 6.1 If a Milestone is not Achieved due to the Contractor's Default (including where a Deliverable does not Achieve its associated Test Certificate so that the relevant Milestone Achievement Certificate cannot be issued by the Milestone Date), the Contractor shall in consultation with the Customer Authority promptly issue a Non-conformance Report to the Customer Authority. This Non-conformance Report shall:

- 6.1.1 categorise the Test Issues as described in the Testing Procedures or, where no Testing has taken place, shall set out in detail the non-conformities of the Deliverable;
- 6.1.2 include any other reasons for the relevant Milestone not being Achieved; and
- 6.1.3 set out the consequential impact on any other Milestones.

The Customer Authority will then have the options set out in Clause 6.2.

- 6.2 The Customer Authority may at its discretion (without waiving any rights in relation to the other options) choose to:

- 6.2.1 withhold any applicable Milestone Payment until the Milestone is Achieved but issue (as applicable) a Test Certificate and/or Milestone Achievement Certificate conditional on the remediation of the Test Issues, or the non-conformities of the Deliverable where no Testing has taken place, in accordance with an agreed Correction Plan;

- 6.2.2 if the Test Issue is a Material Test Issue, withhold any applicable Milestone Payment until the Milestone is Achieved, refuse to issue a conditional Test Certificate and/or Milestone Achievement Certificate as specified in Clause 6.2.1 and escalate the matter in accordance with the Dispute Resolution Procedure and/or exercise any right it may have under Clause 45.4 (Termination for Cause by the Customer Authority); and/or

- 6.2.3 require the payment of Delay Payments, which shall be payable by the Contractor on demand, where Paragraph 11 of Schedule 5.1 (Charges and Invoices) identifies that Delay Payments are payable in respect of the relevant Milestone. Delay Payments associated with Take-On shall accrue on a daily basis from the relevant Milestone Date and shall continue to accrue for each day of Delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually Achieved and the Customer Authority provides the Contractor with a Milestone Achievement Certificate. Delay Payments associated with Transition shall be calculated in accordance with Paragraph 11.2 of Schedule 5.1.

- 6.3 Where Paragraph 11 of Schedule 5.1 (Charges and Invoices) does not identify the payment of Delay Payments in respect of a Milestone the Customer Authority reserves its rights. Otherwise Delay Payments are the primary financial remedy for the Contractor's failure to Achieve a relevant Milestone Date and it shall be the Customer Authority's exclusive financial remedy for such failure except where:

- 6.3.1 the Customer Authority is otherwise entitled to or does terminate this Agreement for the Contractor's Default; or

- 6.3.2 the failure to Achieve the Milestone exceeds the shorter of:

- 6.3.2.1 the period commencing on the relevant Milestone Date and ending on the Fail Date associated with that Milestone as set out in Paragraph 11 of Schedule 5.1 (Charges and Invoices); and

6.3.2.2 the period of three (3) months after the relevant Milestone Date.

- 6.4 Delay Payments shall not be subject to or count towards any cap on liability except the liability cap in Clause 42.2.4.
- 6.5 Where an event which has caused a Delay has also given rise to other cause(s) of action for the Customer Authority or to other rights under this Agreement, including Clause 10.8, Clause 6.3 does not affect the Customer Authority's rights in respect of such cause of action.
- 6.6 Where the Customer Authority issues a conditional Test Certificate and/or Milestone Achievement Certificate as specified in Clause 6.2.1, it may (but does not have to) revise the failed Milestone Date and any subsequent Milestone Date.
- 6.7 Any Correction Plan shall be agreed in accordance with Clauses 5.6 to 5.11 (inclusive) before the issue of a conditional Test Certificate and/or Milestone Achievement Certificate unless the Customer Authority agrees otherwise. In the latter case, the Contractor shall submit a Correction Plan for Approval by the Customer Authority within five (5) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) of receipt of the Non-conformance Report.

7. DELAYS TO MILESTONES DUE TO CUSTOMER AUTHORITY CAUSE

- 7.1 Without prejudice to Clause 5.4 and subject to Clause 5.5, if the Contractor would have been able to Achieve the Milestone by its Milestone Date but has failed to do so as a result of a Customer Authority Cause the Contractor shall have the rights and relief set out in this Clause 7.
- 7.2 The Contractor shall:
- 7.2.1 subject to Clause 7.3, be allowed an extension of time equal to the Delay directly caused by that Customer Authority Cause;
 - 7.2.2 not be in breach of this Agreement as a result of the failure to Achieve the relevant Milestone by its Milestone Date;
 - 7.2.3 have no liability for Delay Payments in respect of the relevant Milestone to the extent that the Delay results directly from that Customer Authority Cause; and
 - 7.2.4 be entitled to compensation as set out in Clause 7.4.
- 7.3 The Customer Authority Representative shall:
- 7.3.1 consider the duration of the Delay, the nature of the Customer Authority Cause and the effect of the Delay and the Customer Authority Cause on the Contractor's ability to comply with the Implementation Plan;
 - 7.3.2 consult with the Contractor Representative in determining the effect of the Delay;
 - 7.3.3 fix a Revised Milestone Date taking account of the seriousness of the Delay; and

- 7.3.4 if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan.
- 7.4 If the Contractor has incurred any direct loss and/or expense as a result of a Delay due to a Customer Authority Cause then, to the extent such loss exceeds five thousand pounds sterling (£5,000) the Contractor shall be entitled to compensation to the extent that it cannot mitigate that loss or expense in accordance with Clause 7.5. The Contractor shall provide the Customer Authority with any information the Customer Authority may reasonably require in order to assess the validity of the Contractor's claim to compensation. Such claim must be served by written notice on the Customer Authority as soon as possible after the Contractor incurs any such direct loss and in any event within ten (10) Working Days (or such other period as the Parties agree in writing).
- 7.5 If the Contractor is entitled to compensation in accordance with Clause 7.4 then such compensation shall consist of staged payments to cover all direct loss and/or expense incurred by the Contractor as a result of a Delay due to a Customer Authority Cause provided that this compensation is intended to cover wasted costs only and shall not operate as to put the Contractor in a better position than it would have been but for the occurrence of the Customer Authority Cause. To the extent that:
- 7.5.1 any contributory or related breach of this Agreement (or any other agreement between the Customer Authority and the Contractor) by the Contractor caused or resulted in the Customer Authority Cause; and/or
- 7.5.2 the Customer Authority gives any advance notification that the Customer Authority Cause is or is likely to occur and the Contractor fails to comply with Clause 7.8,
- then the compensation amount payable pursuant to this Clause 7.5 shall be reduced by a fair and equitable amount.
- 7.6 Any Change that is required to the Implementation Plan pursuant to Clause 7.3 or the Charges pursuant to Clause 7.4 shall be implemented in accordance with Schedule 6.2 (Change Control Procedure). If the Contractor's analysis of the effect of the Delay in accordance with Clause 5.3 permits a number of options, then the Customer Authority may select which option shall apply.
- 7.7 The Customer Authority shall not delay unreasonably when considering and determining the effect of a Delay under this Clause 7 or in agreeing a resulting Change pursuant to Schedule 6.2 (Change Control Procedure). As soon as reasonably possible after receipt of any notice of claim for compensation the Customer Authority shall assess the validity of the claim and shall either:
- 7.7.1 make a payment to the Contractor for the compensation claimed within three (3) months of receipt of the notice relating to the valid claim; or
- 7.7.2 acting reasonably reject the claim for compensation (in whole or in part) and provide the reasons for such rejection within two (2) months of receipt of the notice of claim,
- and where the Contractor Disputes the rejection of any claim for compensation such Dispute shall be referred to the Dispute Resolution Procedure.

- 7.8 The Contractor shall, and shall procure that each Sub-contractor shall, take and continue to take all reasonable steps to eliminate or mitigate the effects of a Customer Authority Cause.

8. DELAYS NOT DUE TO ONE PARTY

Without prejudice to Clause 5.4 and subject to Clause 5.5, where a Delay is attributable in part to the Contractor's Default and in part to a Customer Authority Cause the Parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. The Parties agree that Delay Payments and compensation payable pursuant to Clause 7.4 shall be recoverable subject to reductions to reflect the extent to which the Customer Authority and the Contractor respectively have contributed to the Delay. The Customer Authority shall notify the Contractor in writing of the ratio in which it believes the Parties have contributed to the Delay. Where it disagrees with the Customer Authority's assessment, the Contractor may escalate the matter in accordance with the Dispute Resolution Procedure.

SECTION C - SERVICE SUPPLY

9. SERVICES

- 9.1 The Contractor shall provide the Operational Services from the Commencement Date and shall ensure that all the Services:

- 9.1.1 comply in all respects with the Service Requirements;
- 9.1.2 are PSN Services where required by the Customer Authority;
- 9.1.3 are supplied in accordance with the Contractor Service Description and the terms of this Agreement;
- 9.1.4 do not prejudice the Customer Authority's compliance with, or cause the Customer Authority to breach, the Code of Connection and/or PSN Compliance Certificate;
- 9.1.5 are supplied in accordance with the specific requirements set out in any applicable Service Request, Special Service Request or Project Work Order.

- 9.2 The Contractor shall perform its obligations under this Agreement including those in relation to the Services with all due care, skill and attention and in particular:

- 9.2.1 in accordance with:
 - 9.2.1.1 the Implementation Plans;
 - 9.2.1.2 the Service Requirements and Contractor Service Description;
 - 9.2.1.3 the Standards;
 - 9.2.1.4 Good Industry Practice;
 - 9.2.1.5 the Security Standards and Policies;

- 9.2.1.6 the Sustainability Plan;
 - 9.2.1.7 the relevant Codes, GCN Service Agreements and agreements with Other PSN Services Contractors and Wider PSN Contractors; and
- 9.2.2 so as to co-ordinate with and facilitate the operations of the Customer Authority.
- 9.3 The Contractor shall deliver the Services in a way that enables the sharing of services across Customers of the Services and maximises the savings to be achieved by such sharing of Services.
- 9.4 The Contractor shall ensure that any PSN Services and/or GCN Services that it supplies, or are supplied by others, pursuant to this Agreement shall have been awarded and retain at all times a PSN Compliance Certificate.
- 9.5 The Contractor shall ensure that any PSN Services and/or GCN Services that it supplies, or are supplied by others, pursuant to this Agreement are delivered in accordance with the applicable Code, Codes or DoU.
- 9.6 The Customer Authority shall procure that any Customer Environment used to consume PSN Services and GCN/or Services supplied pursuant to this Agreement shall have been awarded and retain at all times a PSN Compliance Certificate.
- 9.7 The Customer Authority shall procure that any Customer Environment used to consume PSN Services and/or GCN Services supplied pursuant to this Agreement shall be provided and maintained in accordance with the applicable Code or Codes.
- 9.8 Each of the Parties warrants and undertakes that they shall throughout the Term, where specifically requested in writing by the PSN Authority acting on advice from the Infrastructure SIRO, immediately disconnect its GCN Services, PSN Services or Customer Environment (as the case may be) from such PSN Services (including any Direct Network Services), GCN Services and Customer Environments as the PSN Authority instructs where there is an event affecting national security, or the security of the GCN or PSN.
- 9.9 The Parties acknowledge and agree that the PSN Authority shall not be liable to them or any other Party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to Clause 9.8.
- 9.10 Each of the Parties acknowledges and agrees that Clauses 9.3 to 9.9 are for the benefit of and may be enforced by the PSN Authority, notwithstanding the fact that the PSN Authority is not a party to this Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 9.11 The Contractor shall:
 - 9.11.1 draw any conflict between any of the requirements of Clauses 9.1 and 9.2 to the attention of the Customer Authority and (subject to Paragraph 1.2 of the Call-Off Form and Clause 12.4) shall comply with the Customer Authority's decision on the resolution of that conflict; and

- 9.11.2 ensure that the Services and the Contractor System integrate with the Customer Authority System (including the Customer Authority Assets) as required in order for the Customer Authority to receive the Services in accordance with this Agreement.
- 9.12 If the Contractor becomes aware of any Default in its performance of the Services or of another obligation under this Agreement it shall, where such Default is capable of remedy, at its own expense remedy the same as soon as is reasonably practicable.
- 9.13 If the Contractor fails to provide the Services or to comply with its obligations in accordance with this Agreement, the Customer Authority may, without prejudice to its other rights, require the Contractor to re-perform the Services or to comply with its obligations.
- 9.14 Within twenty (20) Working Days of the Effective Date (or such other period as specified in the Implementation Plan or otherwise agreed by the Parties in writing), the Contractor shall deliver a draft Call-Off Operating Manual to the Customer Authority for its Approval. The Call-Off Operating Manual shall include a spreadsheet which provides a detailed breakdown of where the Services are to be provided to (the "**Site Matrix**").
- 9.15 The Customer Authority shall not unreasonably withhold its Approval of the draft Call-Off Operating Manual. If the Customer Authority does not Approve the draft Call-Off Operating Manual it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Call-Off Operating Manual, which shall be resubmitted to the Customer Authority within five (5) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) of the rejection of the first draft.
- 9.16 The Contractor shall comply with the Call-Off Operating Manual following its Approval by the Customer Authority and shall maintain an up-to-date version of the Site Matrix to provide an accurate view of the Services at each Site during the Term.
- 9.17 Approval of the Call-Off Operating Manual by the Customer Authority shall not relieve the Contractor of any responsibility to deliver the Services in accordance with this Agreement.
- 9.18 The Contractor shall deliver the Services in a way that enables the Customer Authority to achieve maximum levels of efficiency, service integration and innovation across its service operating model in accordance with Schedule 2.5 (Supplier Performance Management).
- 10. SERVICE LEVELS, PERFORMANCE MONITORING AND WARNING NOTICES**
- 10.1 The Contractor shall provide the Services to meet or exceed the Service Level Targets and KPIs from the Commencement Date. Accordingly, the provisions of Schedule 2.3 (Service Levels and Related Remedies) shall apply. The remaining provisions of this Clause 10 are subject to Clause 11 (Effect Of Customer Authority Cause In The Operational Phase).
- 10.2 If there is a Service Failure or a KPI Failure or if there are reasonable grounds for the Contractor to believe that there will be a Service Failure or a KPI Failure, the Contractor shall:

- 10.2.1 immediately notify the Customer Authority in writing;
 - 10.2.2 immediately take all remedial action that is reasonable to mitigate the impact on the Customer Authority of the Service Failure or KPI Failure and to rectify or to prevent the Service Failure or KPI Failure from taking place or recurring;
 - 10.2.3 if action taken under Clause 10.2.1 or 10.2.2 has not already remedied the Service Failure or KPI Failure, provide the Customer Authority with a Correction Plan within four (4) Working Days (or such other period as the Parties agree in writing) from the day the Contractor notifies the Customer Authority under Clause 10.2.1. The Contractor shall set out in the Correction Plan the action that it shall take to:
 - 10.2.3.1 rectify or prevent the Service Failure or KPI Failure; and
 - 10.2.3.2 prevent the Service Failure or KPI Failure from recurring,

and then obtain the Customer Authority's Approval of such Correction Plan; and
 - 10.2.4 carry out the Correction Plan Approved under Clause 10.2.3 in accordance with its terms.
- 10.3 Approval and implementation of any Correction Plan by the Customer Authority shall not relieve the Contractor of any responsibility to achieve the Service Level Targets and/or KPIs, or remedy any failure to do so, and no estoppel or waiver shall arise from any such Approval and/or implementation and, notwithstanding the Contractor's obligations to prepare, deliver and implement a Correction Plan as referred to in Clause 10.2, the Contractor shall:
- 10.3.1 take all reasonable steps to minimise the impact of any Service Failure or KPI Failure to the Customer Authority; and
 - 10.3.2 as early as practicable after the Service Failure or KPI Failure and at no additional charge to the Customer Authority, deploy all such additional resources and take such remedial actions as may be reasonably necessary to perform the Services to meet the Service Level Targets or KPIs (as applicable) and with the intention of preventing the recurrence of the same failure.
- 10.4 Subject to the Service Credit limit in Clause 42.2.4, where a Service Failure occurs in respect of which Service Credits are provided as a remedy the Contractor shall automatically credit the Customer Authority with the applicable Service Credits in the next invoice then due to be issued under this Agreement (which shall be shown as a deduction from the amount due from the Customer Authority). If no further Charges fall due after the Service Credits accrue or no invoice is due to be issued then the Contractor shall issue a credit note to the Customer Authority (as applicable):
- 10.4.1 for a sum equal to any such Service Credits then outstanding; or
 - 10.4.2 against the previous invoice,

and the amount for the Service Credits shall be repayable by the Contractor to the Customer Authority as a debt within the same period as applies to the payment of the Contractor's undisputed invoices under this Agreement.

- 10.5 Where Service Credits are provided as a remedy for Service Failures they shall be the Customer Authority's exclusive financial remedy except where:
- 10.5.1 the aggregate number of Service Failures (whether the Service Failure relates to the same or to different parts of the Services) exceeds four (4) over a Service Measurement Period;
 - 10.5.2 the Service Level falls to or beneath a Service Failure Threshold;
 - 10.5.3 the failure to perform the Services in accordance with the Service Level Targets has arisen due to theft, gross negligence, Fraud or wilful default as caused by the Contractor and/or its Sub-contractors;
 - 10.5.4 the Service Failure results in corruption or loss of data; or
 - 10.5.5 the Customer Authority is otherwise entitled under this Agreement to, or does, terminate in accordance with this Agreement (in whole or part) for the Contractor's Default.
- 10.6 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Customer Authority, then the Customer Authority may, on written notice to the Contractor, require that the Charges are reduced by a sum which is proportionate to the severity and impact of the Service Failure until such time as the relevant Service Failure is remedied and/or the Service is restored. If the Contractor Disputes that the amount of the reduction has been determined by the Customer Authority otherwise than in accordance with this Clause 10.6 the matter shall be resolved pursuant to the Expedited Dispute Timetable.
- 10.7 Subject to Clauses 13.5 and 24.4, the Customer Authority and the Contractor shall review the Service Level Targets and KPIs in accordance with Paragraph 9 of Schedule 2.3 (Service Levels and Related Remedies).

Warning Notices and Increased Monitoring

- 10.8 Without prejudice to the other rights or remedies of the Customer Authority, if at any time the Contractor has:
- 10.8.1 committed any material Default;
 - 10.8.2 in respect of its performance of the Services, fallen to or below a Service Failure Threshold;
 - 10.8.3 accrued in aggregate four (4) or more Service Failures in any Service Measurement Period;
 - 10.8.4 accrued five (5) or more events giving rise to Service Credits and/or Delay Payments in any Service Measurement Period;

10.8.5 failed to Achieve any Milestone or Test by its associated Milestone Date;
or

10.8.6 failed to achieve, obtain or maintain PSN Compliance,

then the Customer Authority may, but is not obliged to, give a written notice (a "**Warning Notice**") to the Contractor setting out the matter or matters giving rise to such notice and containing a reminder to the Contractor of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.

10.9 Without prejudice to the other rights or remedies of the Customer Authority, if the Contractor receives a Warning Notice during a Service Measurement Period in respect of any Services (or any part thereof), the Customer Authority may, by written notice to the Contractor, reasonably increase the level of its monitoring of the Contractor or (at the Customer Authority's option) require the Contractor to increase the level of its monitoring of its own performance of its obligations under this Agreement, in respect of the Services (or relevant part thereof) to which the Warning Notices relate until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Customer Authority that it shall perform (and is capable of performing) its obligations in accordance with this Agreement. If the Customer Authority does use its rights under this Clause 10.9, the following provisions shall apply:

10.9.1 any such notice to the Contractor shall specify in reasonable detail the additional measures to be taken by the Customer Authority or by the Contractor (as the case may be) in monitoring the performance of the Contractor;

10.9.2 if the Contractor (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Customer Authority in writing within four (4) Working Days of receipt of the Warning Notice of the measures objected to (and of any changes necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Agreement);

10.9.3 the measures to be taken by the Customer Authority and/or the Contractor (as the case may be) shall be agreed by the Parties in writing or, in the absence of agreement, within three (3) Working Days of the Customer Authority's receipt of the Contractor's objection, determined pursuant to the Expedited Dispute Timetable; and

10.9.4 the Contractor shall bear its own costs and shall reimburse the Customer Authority in respect of any additional costs that are directly incurred by the Customer Authority in respect of any such additional measures.

10.10 In Clause 10.9, references to "monitoring" shall include any of: the gathering of information, the provision of reports, site visits, management meetings and audits.

11. EFFECT OF CUSTOMER AUTHORITY CAUSE IN THE OPERATIONAL PHASE

11.1 If the Contractor would have provided the Services in accordance with the Service Level Targets, the KPIs and/or this Agreement but has failed to do so as a result of a Customer Authority Cause the Contractor shall have the rights and relief set out in Clause 11.2, provided that it complies with Clause 11.3.

- 11.2 Where Clause 11.1 applies, the Contractor shall:
- 11.2.1 (in measuring the performance of any affected Service) be treated as though the relevant Service had met the relevant Service Level Targets or KPIs to the extent that the Service Failure or KPI Failure is due to that Customer Authority Cause;
 - 11.2.2 not be treated as being in Default of this Agreement to the extent that the Service Failure or KPI Failure is due to that Customer Authority Cause; and
 - 11.2.3 be entitled to the Service Charges for the relevant Services affected by that Customer Authority Cause as if the Service Failure or KPI Failure had not occurred.
- 11.3 If the Contractor considers that Clause 11.1 applies, then in order to claim the rights and reliefs in Clause 11.2, it shall provide the Customer Authority with details of the Customer Authority Cause within ten (10) Working Days of the Customer Authority Cause arising.
- 11.4 Any Disputes about or arising out of whether a Customer Authority Cause applies to the Contractor's failure to provide the Services in accordance with the Service Level Targets, KPIs and/or this Agreement shall be resolved through the Expedited Dispute Timetable. Pending the resolution of the Dispute both Parties shall continue to resolve the causes of, and mitigate the effects of, such failure.

12. STANDARDS

Industry Standards

- 12.1 Without prejudice to Clauses 35.3.2 and 37, the Contractor shall comply with the Industry Standards in providing the Services and performing its obligations under this Agreement.

Customer Authority Standards

- 12.2 Without prejudice to Clauses 35.3.2 and 37, the Contractor shall comply with the Standards in providing the Services and performing its obligations under this Agreement.
- 12.3 Subject to Clause 12.4, the Contractor shall discuss with the Customer Authority any conflict that the Contractor reasonably believes that there is or will be between:
- 12.3.1 any of the Standards set out in Schedule 6.10 (Customer Authority Standards & Policies) of this Agreement; and/or
 - 12.3.2 any other obligation under this Agreement,
- and shall comply with the Customer Authority's decision on the resolution of that conflict.
- 12.4 In accordance with the Framework Agreement, the Contractor shall discuss with the Framework Authority any conflict that the Contractor reasonably believes that there is or will be between:

- 12.4.1 any of the Standards set out in Schedule 6 (Standards) of the Framework Agreement; and/or
- 12.4.2 any of the Standards set out in Schedule 6.10 (Customer Authority Standards & Policies) of this Agreement and any other obligation under this Agreement,

and shall comply with the Framework Authority's decision on the resolution of that conflict.

Sustainable development

- 12.5 The Contractor acknowledges that the Customer Authority is committed to promoting sustainable development and undertakes to comply with the provisions relating to sustainable development in Schedule 8.1 (Sustainable Development Requirements).

13. SERVICES IMPROVEMENT

- 13.1 Subject to Clauses 13.5 and 24.4, the Contractor shall be committed to the process of continuous improvement and improved efficiency of the Services. Throughout the Term, the Contractor shall take the initiative in identifying and evaluating improvements for application to the Services to the Customer Authority and responding to any Customer Authority requests for information in respect of potential improvements to the Services that the Customer Authority has identified. As part of this obligation, the Contractor shall identify and report in accordance with the Continual Service Improvement Policies and Procedures as referenced in row 4.4 of Table 4 (SIAM Policies and Procedures) in Paragraph 2.4 of Schedule 6.10 (Customer Authority Standards and Policies) on:
- 13.1.1 subject to any obligation of confidentiality to third parties the emergence of new and evolving relevant technologies which could improve the Services and those technological advances potentially available to the Contractor and the Customer Authority which the Parties may wish to adopt;
- 13.1.2 potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and Customer Authority support services in relation to the Services;
- 13.1.3 potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customer Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
- 13.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Customer Authority.
- 13.2 The Contractor shall ensure that the information that it provides to the Customer Authority shall be sufficient for the Customer Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Customer Authority reasonably requests.

- 13.3 The Customer Authority shall determine its own ICT strategy. The Customer Authority may, at any time during the Term, notify the Contractor in writing of any changes to the Customer Authority's ICT strategy and request the Contractor to consider, review and respond to such changes. If, in the Contractor's opinion, any notified change to the Customer Authority's ICT strategy would impact upon the provision of the Services, the Contractor shall refer the matter to the Change Control Procedure which is set out in Schedule 6.2 (Change Control Procedure).
- 13.4 If the Customer Authority wishes to incorporate any improvement identified by the Contractor pursuant to Clause 13.1, the Customer Authority shall send the Contractor a Change Request and the Contractor shall:
- 13.4.1 submit to the Customer Authority a plan for the implementation of the improvement within fifteen (15) Working Days of the Customer Authority's Change Request for the Approval of the Customer Authority;
 - 13.4.2 implement the improvement in accordance with the provisions of an implementation plan Approved by the Customer Authority; and
 - 13.4.3 submit the improvements to Testing in accordance with the provisions of Clause 4 (Testing).
- 13.5 Notwithstanding anything to the contrary in this Agreement, the Parties may not change or improve, or propose any change or improvement, to the Services which affects or may affect PSN Compliance. The Parties shall refer any such changes or improvements to the PSNA and comply with the PSNA's decision (which shall be final and conclusive).

14. CONTRACTOR ASSETS AND CUSTOMER AUTHORITY ASSETS

- 14.1 Subject to Clause 14.10 and 14.11, the Contractor shall provide all Contractor Assets necessary to enable it to provide the Services.
- 14.2 All Exclusive Assets shall be used by the Contractor solely for the purposes of providing the Services to the Customer Authority and shall not be used for the Contractor's own purposes or in providing any other services to third parties. However, where Services provided only for the benefit of the Customer Authority become provided on a shared basis to Customers under other PSN Services Call-Off Contracts (for example where more than one Direct Customer and/or Indirect Customer is sharing Services to a single building) then such Exclusive Assets may be used for the purpose of providing the Services to the Customer Authority and all other relevant Customers. However such Contractor Assets shall remain designated as Exclusive Assets and in such cases, the Customer Authority shall be responsible for agreeing with any other relevant Customer(s) which of them shall be entitled to exercise their rights under this Agreement (or the parallel rights under any other PSN Services Call-Off Contract) in relation to such Exclusive Assets.
- 14.3 All Contractor Assets and Customer Authority Assets shall have a recorded unique identifier and physical assets shall in all cases be tagged.
- 14.4 The Contractor shall be solely responsible for obtaining all permits relating to and for the cost of carriage of Contractor Assets to the Sites, including its import and clearance through customs, payment of any duties or imposts, off-loading, removal of all packaging and all other costs associated with delivery and/or carriage of the

Contractor Assets. If the Customer Authority wishes to follow a particular process the Contractor shall cooperate with the Customer Authority in this. Likewise on termination or expiry of this Agreement, except where the Customer Authority acquires such Contractor Assets and does not wish them to be removed from the relevant Sites, the Contractor shall be responsible for the removal of all relevant Contractor Assets from the Sites including the cost of packing, carriage and making good the Sites or any objects contained therein following removal.

- 14.5 Subject to any encumbrances set out in Paragraph 12 of the Call-Off Form, the Contractor hereby assigns to the Customer Authority the beneficial interest in all such Contractor Assets as the Customer Authority may otherwise be entitled to acquire under this Agreement (including in accordance with Clause 48.3), such assignment to take effect either now or at the time in the future when the Contractor Asset is acquired (which shall include any re-purchase of the Financed Assets in accordance with Clause 14.10E or Clause 47.3A of this Call-Off Contract). All such Contractor Assets shall remain in the Contractor's possession and subject to a lien which shall be discharged only upon the Customer Authority paying any sums due in respect of such Contractor Assets at or after the time stipulated in this Agreement. If the Customer Authority indicates that it does not wish to acquire all or any of such Contractor Assets, such Contractor Assets shall then at once be automatically assigned to the Contractor.
- 14.5A The Parties acknowledge that title in the Financed Assets shall pass to the Financed Assets Assignee on a phased basis, in accordance with Clause 14.5 of this Agreement, following the Effective Date, and that the Contractor shall ensure that the table of Assets at Paragraph 12.1 of the Call-Off Form shall be maintained and updated throughout the Term in order to provide an accurate and up-to-date record of ownership and title in the Financed Assets. The table of Assets shall be amended by the Parties as described in this Clause 14.5A in accordance with the Change Control Procedure.
- 14.6 All the Contractor's property located on the Sites, including the Contractor Assets, shall remain at the sole risk and responsibility of the Contractor, except that the Customer Authority shall be liable (subject to Clause 42.3.1) for loss of or damage to any of the Contractor's property located on the Sites which is due to the negligent or malicious act or omission of the Customer Authority, and such acts or omissions shall constitute a Customer Authority Cause subject to the obligations on the Contractor to eliminate or mitigate the effect of such Customer Authority Cause in accordance with Clause 7.8, including (without limitation) by utilising spare assets and/or equipment. The loss or destruction of the Contractor Assets held on any Site shall not relieve the Contractor of its obligation to supply the Services in accordance with the Service Levels except to the extent of any express provision to the contrary in the ITSCDR Plan and subject always to the Contractor's rights pursuant to Clause 11.
- 14.7 Where a failure of any Contractor Asset or any component part thereof causes two (2) or more Service Failures in any twelve (12) month period, the Contractor shall notify the Customer Authority in writing and shall, at the Customer Authority's request (acting reasonably), replace and install such Contractor Asset or component part thereof at its own cost with a new Contractor Asset or component part thereof (of the same specification or having the same capability as the Contractor Asset being replaced).

- 14.8 The Contractor shall not enter into, or vary the terms of, any leasing or finance arrangements which relate to acquisition or use of the Contractor Assets without the prior written consent of the Customer Authority. Such consent is not to be unreasonably withheld or delayed.
- 14.9 The Contractor shall ensure that it undertakes efficient recycling of Contractor Assets and Customer Authority Assets in the delivery of the Services, and in meeting its obligations to comply with the Standards and meet the sustainability development requirements in Schedule 8.1 (Sustainable Development Requirements).

Use of Leased Assets

- 14.10 In making a request for the Customer Authority's consent pursuant to Clause 14.8, the Contractor shall provide the Customer Authority with the following information regarding the proposed arrangements:
- 14.10.1 the description and value of the Contractor Assets that are subject to the lease or finance agreement;
 - 14.10.2 a copy of the terms and conditions relating to the lease or finance agreement; and
 - 14.10.3 details of payment terms and any associated security offered.

Financed Assets

- 14.10A Where a Contractor request is made in accordance with Clause 14.10 of this Agreement, the Contractor hereby confirms that it shall promptly:
- 14.10A.1 provide a description and value of the Financed Assets;
 - 14.10A.2 provide to the Customer Authority a copy of the Financing Agreement; and
 - 14.10.A.3 provide details of the payment terms and any associated security offered in respect of the Financed Assets,
- and (subject to the Customer Authority's agreement to the above) the effect of using Financed Assets in this way shall be implemented into this Agreement by CCN which shall only have the effect of updating paragraph 12 (Encumbrances) of the Call-Off Form to include details of the encumbrances.
- 14.10B The Contractor shall ensure that all payments relating to the Financed Assets set out in the table in Paragraph 12.1 of the Call-Off Form shall be made promptly to the Financed Assets Assignee and in accordance with the payment terms set out in the Financing Agreement, which have been disclosed to the Customer Authority in accordance with Clause 14.10A.3 above. For the avoidance of doubt, the Parties agree that a failure of the Contractor to comply with its obligations of payment to the Financed Assets Assignee would constitute a material Default of this Agreement for the purposes of Clause 45.4.1 (Termination for cause by the Customer Authority).
- 14.10C The Contractor acknowledges that the assignment or transfer of the right to receive payments in respect of the Financed Assets to the Financed Assets Assignee shall

be without prejudice to the Contractor's ongoing obligation to perform its obligations directly to the Customer Authority in accordance with the terms of this Agreement, and in particular that such assignment shall not:

- 14.10C.1 affect the Contractor's obligations to continue to deliver the Services in accordance with this Agreement, including but not limited to the Contractor's obligations regarding Exit Management;
- 14.10C.2 save for the right of the Financed Assets Assignee to receive payment directly from the Customer Authority for the Financed Assets pursuant to Clause 51.2.3.2 or to recover the Financed Assets (as described in Clause 47.3A) in the event of a subsequent Default by the Customer Authority to pay said direct payments, grant any other right to the Financed Assets Assignee to exercise rights and/or enforce the terms of this Agreement in its own right or on behalf of the Contractor, including for the purposes of Clause 60 (Third Party Rights); and
- 14.10C.3 have the effect of requiring the Financed Assets Assignee's approval or other consent in respect of any aspect of the performance or discharge of the Contractor's obligations under this Agreement, or require the Financed Assets Assignee's consent in respect of any Change and/or Contract Change agreed between the Contractor and the Customer Authority.

14.10D The Contractor acknowledges that whilst the Customer Authority is performing those obligations applicable to it under:

- 14.10D.1 Clause 15.1 (Charging, Invoicing and Management Information); and
- 14.10D.1 Schedule 3 (Customer Authority Responsibilities),

(in each case insofar as applicable to the Financed Assets) the Financed Assets Assignee will have no right to interfere with either (a) the Customer Authority's use or enjoyment of the Financed Assets (or any other Assets provided under this Agreement) or (b) the obligation to assign any beneficial interest in any Assets (including the Financed Assets) to the Customer Authority in accordance with Clause 14.5.

Re-purchase of Financed Assets

14.10E In addition to the Customer Authority's rights contained in Clause 47.3A to re-purchase the Financed Assets on payment of any Termination Payment, at any time during the Term of this Agreement the Customer Authority shall be entitled to re-purchase all or any of the Financed Assets from the Financed Assets Assignee at the Annual Financed Assets Settlement Figure in accordance with Clause 14.10F. On a request by the Customer Authority to re-purchase all or any of the Financed Assets in accordance with this Clause 14.10E, the Contractor shall make and/or procure such re-purchase of the relevant Financed Assets for the benefit of the Customer Authority. The Annual Financed Assets Settlement Figure for each Contract Year shall be provided by the Contractor to the Customer Authority prior to the Effective Date.

14.10F At the time of any request by the Customer Authority to re-purchase the Financed Assets in accordance with Clause 14.10E, the Contractor shall prepare and provide a written proposal to the Customer Authority setting out the details of the re-purchase

together with any such information as the Customer Authority may reasonably require in order to verify the Annual Financed Assets Settlement Figure. If the Customer Authority does not accept the basis of the Contractor's proposal, then the Parties shall refer the matter for resolution in accordance with the Dispute Resolution Procedure. Where any Change(s) to the applicable Charges are agreed by the Parties under this Clause 14.10F, such Change(s) shall be implemented in accordance with the Change Control Procedure.

- 14.10G Where the Customer Authority elects to re-purchase any Financed Assets in accordance with Clauses 14.10E and 14.10F above, the Contractor shall, within ten (10) Working Days of receipt of the Customer Authority's request, prepare and provide a written proposal to the Customer Authority setting out details of the impact of the proposed re-purchase on the Contractor's costs of delivering the Contact Centre Services (by reference to the then current Financial Model) and consequently on the Resource Unit Charges, together with details of any proposed Changes necessary in order to reflect such impact. The Customer Authority shall review and (where necessary) provide comments on the Contractor's written proposal within ten (10) Working Days of receipt, and where requested the Contractor shall promptly provide the Customer Authority with such further information as the Customer Authority may reasonably require in order to verify the basis of the calculations of such proposed Changes to the Resource Unit Charges. If the Customer Authority does not accept the basis of the Contractor's proposed Changes, it may require the Contractor to re-submit its proposal, taking due account of the Customer Authority's feedback. Any re-submitted proposal shall be submitted by the Contractor and reviewed by the Customer Authority within the same timescales applicable to the original proposal as set out above in this Clause 14.10G. If after such re-submission the proposal is still not agreed, the Parties shall refer the matter for resolution in accordance with the Dispute Resolution Procedure. Where any Change(s) to the applicable Resource Unit Charges are agreed by the Parties under this Clause 14.10G, such Change(s) shall be implemented in accordance with the Change Control Procedure.

Use of Customer Authority Assets

- 14.11 From the Commencement Date of this Call-Off Contract, the Customer Authority Assets are made available to the Contractor as set out in Schedule 6.9 (Customer Authority Assets). The Contractor shall use those Customer Authority Assets solely in the performance of the Services and shall be responsible for maintaining the Customer Authority Assets at all times and complying with applicable terms for their use, including as set out in Clause 30.3.2 in respect of the Specified Software. If the Contractor requires use of the Customer Authority Assets set out in Clause 30.3.2 in respect of the Specified Software and requires an upgrade to such Specified Software (subject to the licence terms and the Customer Authority's agreement), the Contractor will be responsible for any associated support and upgrade costs. On any upgrade of the Specified Software the Customer Authority will retain ownership of the Specified Software.
- 14.12 The Customer Authority makes no warranty as to the condition or suitability for the Services of the Customer Authority Assets.
- 14.13 The Contractor shall notify the Customer Authority within thirty (30) days of receipt (or as otherwise agreed between the Parties) where any Customer Authority Asset is

not in good condition when received by or on behalf of the Contractor, in each case providing an explanation of the defects that have been identified.

- 14.14 The Contractor undertakes the safe custody of and due return of all Customer Authority Assets and shall be responsible for all loss or damage to the Customer Authority Assets (except to the extent such loss or damage is caused by the Customer Authority's Default) and shall indemnify the Customer Authority against such loss and damage.
- 14.15 The Contractor shall be responsible for any deterioration in the Customer Authority Assets save for any deterioration resulting from its normal and proper use for the purposes of this Agreement, provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair, where the Contractor is responsible for the maintenance of such Customer Authority Assets.
- 14.16 Neither the Contractor, nor any Affiliate of the Contractor, any Sub-contractor nor any other person, shall have a lien on any Customer Authority Assets for any sum due to the Contractor, any Affiliate of the Contractor, any Sub-contractor or other person and the Contractor shall take all reasonable steps to ensure that the title of the Customer Authority and the exclusion of any such lien are brought to the notice of all Affiliates of the Contractor and all other persons dealing with any Customer Authority Assets.
- 14.17 Subject to Clause 14.15, title and risk in the Customer Authority Assets shall remain with the Customer Authority at all times.
- 14.18 Not Used.
- 14.19 Not Used.
- 14.20 Not Used.
- 14.21 Not Used.

Asset Register

- 14.22 The Contractor shall compile and maintain a complete and up to date CMDB in accordance with the Configuration Management Policies and Procedures as defined in Schedule 6.10 (Customer Authority Standards & Policies).
- 14.23 The Contractor shall compile and maintain a complete and up to date Asset Register, in a format agreed with the Customer Authority, which shall:
- 14.23.1 list all of the Contractor Assets, Customer Authority Assets and Software;
 - 14.23.2 specify in respect of each of those:
 - 14.23.2.1 a unique identifier and record the relevant attributes in Appendix 2 of Schedule 6.6 (Records Provisions);
 - 14.23.2.2 which Party owns the relevant Intellectual Property Rights consistent with the principles set out in Clause 30, in each case

separately identifying any Designated IPRs and Specially Written Software;

- 14.23.3 identify any Contractor Assets that are subject to lease or finance agreements including (in each case) details of the purchase date, lease relevant lessor, lease period, agreement number and date on which the finance arrangements are due to expire;
- 14.23.4 identify the owner of each Contractor Asset, Customer Authority Asset or item of Software;
- 14.23.5 identify the Net Book Value of each Contractor Asset, Customer Authority Asset and Software;
- 14.23.6 identify which of those Contractor Assets and Software are to be used by the Contractor exclusively in the provision of the Services to the Customer Authority;
- 14.23.7 identify:
 - 14.23.7.1 in respect of each Contractor Asset, whether it is an Exclusive Asset or a Non-Exclusive Asset;
 - 14.23.7.2 in the case of each Non-Exclusive Asset, availability (or otherwise) for transfer to the Customer Authority and/or its Replacement Contractor on termination or expiry of this Agreement pursuant to Paragraph 4.3.9 of Schedule 6.4 (Exit Management); and
- 14.23.8 record the acquisition date, the purchase price, any associated implementation charges and the depreciation policy for each Contractor Asset and Customer Authority Asset and Software,

provided always that, in the event that any aspect of the Services is ceased or the Services cease to be provided to a specific Site, details of the Contractor Assets used to provide such Services shall continue to be included in the Asset Register after such cessation for so long as is necessary to enable the Customer Authority to maintain a record of the Net Book Value and/or depreciation of those Contractor Assets.

14.24 The Contractor shall provide the Customer Authority with an updated copy of the Asset Register on the Commencement Date and thereafter no later than:

14.24.1 seven (7) days after the 15th day of each of SMP3, SMP6 and SMP9; and

14.24.2 28 February and 31 March,

in each Contract Year and at any time reasonably requested by the Customer Authority. In any event, the Contractor shall provide the Customer Authority with an updated copy upon service of any notice to terminate this Agreement or twelve (12) months prior to expiry of this Agreement (whichever is sooner).

- 14.25 The Contractor shall maintain an audit trail of all changes to the Asset Register (to include details of all additions, deletions and modifications) in the form of a change log accompanying each new version of the Asset Register.

SECTION D - PAYMENT AND PRICING

15. CHARGING, INVOICING AND MANAGEMENT INFORMATION

Charges and Invoicing

- 15.1 In consideration of the Contractor carrying out its obligations in accordance with this Agreement, including the provision of the Services, the Customer Authority shall pay the Charges to the Contractor in accordance with the payment profile and the invoicing procedure specified in Schedule 5.1 (Charges and Invoices). The Customer Authority acknowledges that the Contractor may pass on all or part of the Management Charge to Customers and accordingly Schedule 5.1 (Charges and Invoices) sets out the portion and amount (if any) of the Management Charge that shall be passed on to the Customer Authority.
- 15.2 The Contractor shall ensure that a term is included in any Sub-contract permitted under this Agreement which requires the Contractor to pay any undisputed sums due to the relevant Sub-contractor within a specified period that does not exceed thirty (30) days from the date the Contractor receives the Sub-contractor's invoice in accordance with the terms of the Sub-contract. The Contractor shall comply with such terms.
- 15.3 In the event that the Framework Authority is entitled to exercise its rights and remedies under Paragraph 3.2 of Schedule 7 (Financial Distress) to the Framework Agreement, and until such time as the Customer Authority receives from the Contractor a copy of the written agreement provided for in Paragraph 3.6 of that Schedule, the Customer Authority shall be entitled to pay to any Sub-contractor (without set off or deduction) any sums properly due from the Contractor to that Sub-contractor and to deduct the equivalent amount from any sums properly due to be paid by the Customer Authority to the Contractor.
- 15.4 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Agreement under Clause 45.20 (Termination by the Contractor) for failure to pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced at the rate of five percent (5%) per annum above the Bank of England base rate from time to time.
- 15.5 Except as otherwise provided in this Agreement, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.
- 15.6 The Contractor may at any time reduce the prices set out in:
- 15.6.1 Schedule 5.1 (Charges and Invoices) and shall implement such reductions by notice to the Customer Authority in accordance with Schedule 6.2 (Change Control Procedure); and
 - 15.6.2 the Contractor's Call Off Service Catalogue in accordance with Clause 24.2.

Management Information

- 15.7 Without prejudice to the monitoring rights which the Customer Authority has under this Agreement, the Contractor shall submit Management Information to the Customer Authority throughout the Term in accordance with the provisions of Schedule 6.6 (Records Provisions). The Customer Authority may audit the Management Information in accordance with Clause 23.1.9.
- 15.8 The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver Management Information to the Customer Authority in accordance with this Agreement.
- 15.9 The Contractor permits the Customer Authority to use the Management Information and any such third parties with whom the Management Information is shared in accordance with Clause 15.10 below in connection with their normal operational activities.
- 15.10 The Contractor permits the Customer Authority to share the Management Information with the Framework Authority, any Customer, any Customer Authority Third Party and/or any other Crown Body.
- 15.11 In the event that the Customer Authority shares the Management Information, any Crown Body or Customer or Customer Authority Third Party receiving such Management Information shall be informed of the sensitive nature thereof and shall be requested not to disclose it to any body which is not a Crown Body or Customer or Customer Authority Third Party (unless required to do so by Law).
- 15.12 The Customer Authority may, in accordance with Schedule 6.2 (Change Control Procedure), make changes to the Management Information which the Contractor is required to supply.

Euro

- 15.13 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Contractor free of charge to the Customer Authority.
- 15.14 Upon written request from the Contractor, the Customer Authority shall use reasonable endeavours to provide such assistance as the Contractor reasonably requires from the Customer Authority to assist the Contractor in complying with Clause 15.13.

16. TAX

- 16.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer Authority following delivery of a valid VAT invoice.
- 16.2 The Contractor shall indemnify the Customer Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this Clause 16.2 shall be paid in cleared funds by the Contractor to the Customer Authority not less than

five (5) Working Days before the date upon which the tax or other liability is payable by the Customer Authority.

17. RECOVERY OF SUMS DUE

17.1 The Customer Authority may retain or set off any amount owed to it by the Contractor (including any sum which the Contractor is liable to pay to the Customer Authority in respect of any breach of this Agreement) against any amount due to the Contractor under this Agreement or under any other agreement between the Contractor and the Customer Authority.

17.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

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

18. VALUE FOR MONEY

The Parties shall comply with their obligations set out in Schedule 5.3 (Value for Money Provisions).

19. FINANCIAL MODEL AND OPEN BOOK PRICING

Financial Model

19.1 The provisions of Schedule 5.4 (Financial Model) shall apply in relation to the Financial Model and the Parties shall comply with their respective obligations in Schedule 5.4 (Financial Model).

Open Book Pricing

19.2 The provisions of Schedule 5.4 (Financial Model) shall apply in relation to the Open Book Pricing and Financial Transparency Objective and the Parties shall comply with their respective obligations in Paragraph 13 of Schedule 5.1 (Charges and Invoices) and Schedule 5.4 (Financial Model).

SECTION E - CONTRACT GOVERNANCE

20. REPRESENTATIVES

20.1 Each Party appoints the persons so specified in the Call-Off Form as the Customer Authority Representative and the Contractor Representative.

20.2 The Representatives shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement. Either Party may, by further written notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.

20.3 The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and be granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Agreement.

- 20.4 The Customer Authority may require the Contractor to replace the Contractor Representative in accordance with Clause 26.10.

21. GOVERNANCE

The Parties agree to manage this Agreement through the Governance Structure detailed in Schedule 6.1 (Governance).

22. SUPPLY CHAIN RIGHTS

Sub-contracting

- 22.1 Subject to Clause 22.2, the Contractor shall not sub-contract any of its obligations under this Agreement without the Customer Authority's Approval, which shall not be unreasonably withheld or delayed.
- 22.2 The Contractor may Sub-contract any of its obligations under this agreement to a Material Sub-contractor. If the Customer Authority or the Contractor wish to remove any Material Sub-contractors and/or add any more Sub-contractors to the list of Material Sub-contractors in relation to this Agreement, they must give prior written notice to the Framework Authority for approval in accordance with Clause 30.3 of the Framework Agreement.
- 22.3 Subject to Clause 22.2, the circumstances where the Customer Authority may withhold or delay its Approval to the Contractor sub-contracting any of its obligations under this Agreement include where it considers that the:
- 22.3.1 proposed Sub-contractor needs to achieve and maintain PSN Compliance Verification and has not;
 - 22.3.2 appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Customer Authority;
 - 22.3.3 appointment of the proposed Sub-contractor might reasonably be expected to adversely affect the compliance of the Services with any of the Standards (including PSN Compliance);
 - 22.3.4 proposed Sub-contractor has not provided reasonable services to the Customer Authority or to its other customers such that such services have been subject to dispute or escalation on the grounds of poor service;
 - 22.3.5 proposed Sub-contractor (or members of its Group) takes a stance on matters relating to corporate social responsibility (including environmental sustainability) which is inconsistent with the policies of the UK government; and/or
 - 22.3.6 proposed Sub-contractor (or members of its Group) employs unfit persons in the reasonable opinion of the Customer Authority.
- 22.4 Subject to Clause 22.5, in making a request pursuant to Clause 22.1, the Contractor shall provide the Customer Authority with the following information about the proposed Sub-contractor:
- 22.4.1 its name, registered office and company registration number;

- 22.4.2 a copy of the proposed Sub-contract;
 - 22.4.3 the purposes for which the proposed Sub-contractor shall be employed, including the scope of any services to be provided by the proposed Sub-contractor;
 - 22.4.4 if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant Service Level Targets;
 - 22.4.5 where the proposed Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Customer Authority that the proposed Sub-contract has been agreed on "arms-length" terms; and
 - 22.4.6 any further information reasonably requested by the Customer Authority (including its long term credit ratings).
- 22.5 If the supply of information required pursuant to Clause 22.4 would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing and/or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall be obliged to provide the Customer Authority with the relevant information only to the extent and at the first opportunity permitted by those rules and regulations and shall then provide the fullest information permitted. Any such failure to provide information shall, however, be grounds for the Customer Authority to withhold or delay its Approval.
- 22.6 Subject to Clause 22.2, the Customer Authority has Approved the engagement of the Material Sub-contractors listed in the Call-Off Form.
- 22.7 Subject to Clause 30.3 of the Framework Agreement the Contractor shall ensure, except where and to the extent the Customer Authority has stated otherwise when a Sub-contractor is Approved in accordance with Clause 22.2, that each Sub-contract includes the following provisions:
- 22.7.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer Authority to enforce the terms of that Sub-contract (including in particular the wording referred to in Clause 22.7.12) as if it were the Contractor;
 - 22.7.2 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Customer Authority and also obliging the Sub-contractor to (at the Customer Authority's request) enter into a direct contract with the Customer Authority in respect of the services provided for the benefit of the Customer Authority on the same terms as are in place with the Contractor, in such cases the Sub-contractor shall be entitled to terminate without penalty all or the relevant part of the Sub-contract from the time that the new direct contract becomes effective;
 - 22.7.3 a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Customer Authority on the same terms as set out in Clause 34 (Confidentiality and Publicity);

- 22.7.4 a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to Clauses 31 (Customer Authority Data) and 32 (Protection of Personal Data);
- 22.7.5 a provision restricting the ability of the Sub-contractor to further sub-contract the service provided to the Contractor without first obtaining the consent of the Contractor and the Customer Authority;
- 22.7.6 a provision requiring the Sub-contractor to have in place an appropriate exit and migration plan which enables it to comply (and shall enable the Contractor to comply) with the requirements of this Agreement, to put such plan into effect on any termination or expiry of the Sub-contract, and otherwise to ensure that any such termination or expiry shall not affect the continuity of the Services;
- 22.7.7 a provision enabling the Contractor, the Customer Authority or any other person on behalf of the Customer Authority to step-in on substantially the same terms as are set out in Clause 49 (Step-In Rights);
- 22.7.8 a provision requiring the Contractor to pay all sums due to the Sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt by the Contractor of a valid invoice under the Sub-contract;
- 22.7.9 a provision requiring the Sub-contractor to comply with the provisions placed in this Agreement on the Contractor in relation to the PSN Compliance Conditions and PSN Compliance including Clauses 9.1.2, 9.2.1.7, 13.5, 36.2.2, 36.2.4.2 and 36.2.12.4;
- 22.7.10 a provision requiring the Sub-contractor to report to the Framework Authority, within ten (10) Working Days (or such other period as the Framework Authority may permit and notify to the Contractor in writing) of the due date for payment, any material non-payment or late payment of any sums due to it from the Contractor under the provisions of the Sub-contract;
- 22.7.11 equivalent provisions to those set out in Schedule 6.8 (Further Terms for Third Party Contracts); and
- 22.7.12 the following wording (amended only as appropriate to conform with the layout of and definitions in the Sub-contract):
- "In any situation where either (1) the [Sub-contractor] has the right to terminate the [Sub-contract] otherwise than for convenience or (2) the [Customer Authority] has the right to terminate [this Agreement] or step into [this Agreement] pursuant to Clause 49 of [this Agreement], then the [Customer Authority] may require that the rights and obligations of the [Contractor] under the [Sub-contract] will be assigned and transferred to the [Customer Authority] either permanently or for such a period as the [Customer Authority] may specify and the [Sub-contractor] shall consent to such assignment and transfer and continue to perform the [Sub-contract] directly for the benefit of the [Customer Authority]. The [Sub-contractor] shall not exercise any termination right referred to in (1)

without having first given the [Customer Authority] at least fourteen (14) days' advance notice in writing."

If the Customer Authority does require an assignment and transfer of rights and obligations pursuant to such wording, the Contractor shall automatically be relieved to the extent of its obligations to provide Services under this Agreement and the Customer Authority's obligation to pay the Charges shall be reduced proportionately.

The Sub-contracts include the provisions set out in this Clause 22.7.

- 22.8 Where the Contractor, having used all reasonable endeavours, is unable to comply with Clause 22.7 in relation to Sub-contractors, it shall notify the Customer Authority in writing of the issue. The Parties shall act in good faith to try to find a resolution which is acceptable to the Customer Authority within ten (10) Working Days (or such other period as the Parties agree in writing). If the Parties are unable to find a resolution which is acceptable to the Customer Authority, the Contractor shall act as directed by the Customer Authority (acting reasonably) in relation to such requirements. Notwithstanding the foregoing, the approval of a Sub-contractor by the Framework Authority is required in accordance with Clause 22.2.
- 22.9 The Contractor shall not make use of a pre-existing contract with any Sub-contractor without the prior written consent of the Framework Authority and the Approval of the Customer Authority, which shall not be unreasonably withheld or delayed. In such cases the Framework Authority and the Customer Authority may consent on the basis that all or part of the requirements of Clause 22.7 may be waived.

Termination of Sub-contracts

- 22.9.1 The Contractor shall not terminate or materially amend the terms of any Approved Sub-contract without the prior written consent of the Framework Authority and the Customer Authority's Approval, which shall not be unreasonably withheld or delayed.
- 22.9.2 The Customer Authority may require the Contractor to cease to use a Sub-contractor in connection with the Services where the acts or omissions of the relevant Sub-contractor have given rise to the Customer Authority's right of termination pursuant to Clause 45 (Termination for Cause by the Customer Authority). If it does so require and, subject to Clause 22.2, the Contractor fails to cease to use the Sub-contractor within twenty (20) Working Days (or such other period as the Parties agree in writing) of such notice, then this shall constitute an irremediable material Default for the purposes of Clause 45.4.2. Accordingly, the Customer Authority shall notify the Framework Authority in writing if it wishes to exercise its rights under this Clause 22.11.
- 22.9.3 The Customer Authority may require the Contractor to cease to use the relevant Sub-contractor in connection with the Services if there is a Change of Control of a Sub-contractor on the same terms as those set out in Clause 45.12 (Termination for Change of Ownership). If it does so require and, subject to Clause 22.2, the Contractor fails to cease to use the Sub-contractor within twenty (20) Working Days (or such other period as the Parties agree in writing) of such notice, then this shall constitute an irremediable material Default for the purposes of Clause 45.4.2.

Accordingly, the Customer Authority shall notify the Framework Authority in writing if it wishes to exercise its rights under this Clause 22.12.

Retention of Legal Obligations

- 22.10 Despite the Contractor's right to sub-contract pursuant to this Clause 22, the Contractor 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.
- 22.11 An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its, its Sub-contractors and Affiliates, and its and their employees, officers, and agents also do, or refrain from doing, such act or thing.

Sub-contracting Targets

- 22.12 The Contractor acknowledges the Customer Authority's requirement to support Crown targets in respect of the nature of organisations, and in particular the number of SMEs, to whom services are sub-contracted under the Contracting Authority's service agreements with third party suppliers. As at the Effective Date, such Crown targets are for at least 25% of total contract revenue being subcontracted, and with SMEs being utilised as sub-contractors wherever practicable. In order to support such requirements, the Contractor shall use best endeavours to procure that:
- 22.12.1 at least 25% of the total revenue pursuant to this Agreement relates to services which are provided by Sub-contractors; and
- 22.12.2 wherever practicable Sub-contractors are SMEs.
- 22.13 On the Effective Date, and on each anniversary thereof during the Term, the Contractor shall deliver a report to the Customer Authority ("**Sub-contracting Report**") setting out how, and to what extent, it has complied with the targets set out in clauses 22.12.1 and 22.12.2.

23. AUDITS, NOTIFICATIONS AND RECORD KEEPING

Audits - general provisions

- 23.1 Except where an audit is imposed on the Customer Authority by a Regulatory Body, the Customer Authority may at any time during the Term and for a period of twelve (12) months following the Term conduct Financial Audits, Security Audits and/or Operational Audits for the following purposes:
- 23.1.1 to verify the accuracy of any Charges that become due and payable by the Customer Authority to the Contractor in respect of the Services (and proposed or actual variations to them in accordance with this Agreement), any cost reduction and income generation initiatives carried out pursuant to Clause 13 (Services Improvement) and/or the costs of all suppliers (including Sub-contractors) of the Services. (a "**Financial Audit**");
- 23.1.2 to review the integrity, confidentiality and security of the Customer Authority Data (including the Customer Authority Confidential Information);

- 23.1.3 to review the Contractor's compliance with the Data Protection Legislation, FOIA and other Law applicable to the Services;
 - 23.1.4 to review the Contractor's compliance with its obligations under this Agreement;
 - 23.1.5 to review any records created during the provision of the Services (including design and development of the Contractor System and pre-operational environment such as information relating to Testing);
 - 23.1.6 to review any books of account kept by the Contractor in connection with the provision of the Services;
 - 23.1.7 to carry out the audit and certification of the Customer Authority's accounts;
 - 23.1.8 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer Authority has used its resources;
 - 23.1.9 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - 23.1.10 to inspect the ICT Environment, the Contractor Assets and the Customer Authority Assets including the Customer Authority's IPRs, equipment, facilities and maintenance; and/or
 - 23.1.11 to ensure that the Contractor is complying with the Standards,
- (and an audit for any of the purposes referred to in Clauses 23.1.2 to 23.1.11 (inclusive) is an "**Operational Audit**"). For each Financial Audit and/or Operational Audit, the Customer Authority may then carry out a follow-up assessment limited in scope to confirming that actions from the Financial Audit and/or the Operational Audit have been carried out.
- 23.2 The Customer Authority shall use its reasonable endeavours to ensure that:
- 23.2.1 where an audit relates to information which is available from the Performance Monitoring System or the Framework Authority as a result of the records and accounts which the Contractor is required to submit in accordance with Clause 17.1 of the Framework Agreement, it will seek that information from the Performance Monitoring System or the Framework Authority in the first instance;
 - 23.2.2 the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services; and
 - 23.2.3 any external auditor used by it to conduct an audit is bound by confidentiality provisions preventing unlawful disclosure of the Contractor's Confidential Information to direct competitors of the Contractor or its Sub-contractors.
- 23.3 In addition to the Operational Audits and Financial Audits, the Customer Authority may carry out a Security Audit of the Services, including in relation to any Contractor

Assets and/or Customer Authority Assets used and the Contractor System or any components of the services, and the Contractor shall facilitate such audit. A Security Audit may, at the Customer Authority's discretion, include penetration testing of any Contractor Asset and/or Customer Authority Asset (whether Software or Equipment) used in the provision of the Services, whether or not it is an Exclusive Asset, and the Contractor shall procure that the Customer Authority may have such access. The Customer Authority will not initiate a penetration test without first notifying the Contractor. If, following a Security Audit, the Customer Authority believes that the Services or any element of the Contractor System or any Contractor Asset, Customer Authority Asset, Software or Equipment has the potential to prejudice security or information assurance, the Customer Authority may:

- 23.3.1 subject to Clauses 13.5, 24.4 and 37 (Change In Law), require the Contractor to do any of the following and within such time period as required by the Customer Authority (in setting the time period the Customer Authority shall act reasonably):
 - 23.3.1.1 amend the manner in which it provides the Services;
 - 23.3.1.2 cease using some or all such Contractor Assets and/or some or all such Customer Authority Assets as part of the Services immediately;
 - 23.3.1.3 suspend provision of the Services (or any part thereof);
 - 23.3.1.4 replace some or all of the affected Contractor Assets and/or affected Customer Authority Assets with new Contractor Assets and/or Customer Authority Assets (as appropriate) which are of equivalent capability in terms of their ability to provide the Services, such replacement to be at the Contractor's expense except in the case of Customer Authority Assets, in respect of which the Parties shall consult in good faith in order to agree how the affected items shall be replaced and how the costs of such replacement shall be allocated; and/or
 - 23.3.1.5 submit the replacement Contractor Assets and/or Customer Authority Assets (as applicable) for a further Security Audit, such further audit to be at the Contractor's expense except in the case of replacement Customer Authority Assets (in which case the audit costs shall be apportioned applying the cost allocation principle in Clause 23.3.1.4; and
- 23.3.2 if any of the actions in Clause 23.3.1 have not or cannot be done by the Contractor within the time period required by the Customer Authority pursuant to Clause 23.3.1, the Customer Authority may terminate this Agreement for irremediable material Default pursuant to Clause 45.4.2.
- 23.4 Subject to the Customer Authority's obligations of confidentiality, the Contractor shall on demand provide the Customer Authority, the Comptroller and Auditor General and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable cooperation, access and assistance in relation to each audit, including:
 - 23.4.1 all information requested within the permitted scope of the audit;

- 23.4.2 reasonable access to any premises and/or Sites controlled by the Contractor and to any Contractor Assets and/or Customer Authority Assets used (whether exclusively or non-exclusively) in the performance of the Services;
 - 23.4.3 access to the Contractor Software and the Contractor System; and
 - 23.4.4 access to Contractor Personnel; and
 - 23.4.5 accommodation (including desks) at the premises and/or Sites as reasonably required to conduct the audit.
- 23.5 The Customer Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct any audit.
- 23.6 If an audit or follow up assessment identifies that:
- 23.6.1 the Contractor has committed a material Default, the Contractor shall correct such Default as such as reasonably practicable and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Customer Authority about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 23.6.2 the Customer Authority has overpaid any Charges that become due and payable by the Authority to the Contractor in respect of the Services, the Contractor shall pay to the Customer Authority the amount overpaid within twenty (20) Working Days of such audit or assessment. Without prejudice to any other rights of the Customer Authority under this Agreement, the Customer Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment;
 - 23.6.3 the Customer Authority has underpaid any charges that become due and payable by the Customer Authority to the Contractor in respect of the Services, the Customer Authority shall pay to the Contractor the amount of the under-payment (less the cost of audit incurred by the Customer Authority if this was due to a Default by the Contractor) within twenty (20) Working Days, provided that under-payment is within the timescales of being validly invoiced pursuant to paragraph 16 of Part B of Schedule 5.1 (Charges and Invoices).

International Standard on Assurance Engagements 3402

- 23.7 The Contractor shall appoint, with the prior Approval of the Customer Authority (such Approval not to be unreasonably withheld or delayed) an external auditor to prepare a Type 2 Report (in accordance with ISAE 3402) on the description, design and operational effectiveness of the controls associated with the Services. The control objectives contained within the Type 2 Report shall be agreed with the Customer Authority prior to commencement.
- 23.8 The Contractor shall:
- 23.8.1 no later than 15 February each year, deliver to the Customer Authority an interim Type 2 Report, prepared by the auditor, which covers the first nine

(9) months of the relevant Accounting Year. The Customer Authority shall be entitled to make recommendations to the Contractor relative to the contents of the interim Type 2 Report and the Contractor shall implement those recommendations before the end of the relevant Accounting Year; and

- 23.8.2 no later than five (5) working days after the end of each Accounting Year, deliver to the Customer Authority a final Type 2 Report for the relevant Accounting Year.
- 23.9 If a Type 2 Report triggers a Default, the Contractor shall procure that the auditor who authored that Type 2 Report assess whether the remedial activities undertaken by the Contractor now permit the auditor to issue an unqualified Type 2 Report. If the auditor issues a modified Type 2 Report which triggers a further Default, the Contractor shall prepare a further remedial plan and then repeat the process set out in this Clause.
- 23.10 Unless the Commencement Date is between 1 April and 15 August inclusive, the Customer Authority will not require a Type 2 Report for the first Accounting Year of the Agreement.
- 23.11 The Customer Authority may decide, at its absolute discretion, that a Type 2 Report is not required for the Accounting Year in which the Initial Term ends. The Customer Authority is likely to require a Type 2 Report for the Accounting Year in which the Initial Term ends where the Customer Authority terminates the Agreement (particularly where termination is due to a material Default of the Contractor) or where the Initial Term is likely to be extended).

Exceptional Audits

- 23.12 The Contractor shall permit the Customer Authority and/or its appointed representatives access to conduct an audit (an "**Exceptional Audit**") of the Contractor in any of the following circumstances:
- 23.12.1 the Customer Authority receives from the Contractor a qualified Type 2 Report on the description, design and operational effectiveness of the controls associated with the Services:
- 23.12.1.1 actual or suspected impropriety or Fraud;
- 23.12.1.2 there are reasonable grounds to suspect that the Contractor is in Default under the Agreement;
- 23.12.1.3 there are reasonable grounds to suspect that the Guarantor may be in default of the Guarantee;
- 23.12.2 the Contractor is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Contractor financial distress and result in a risk of the Contractor becoming insolvent or bankrupt has occurred; or
- 23.12.3 a breach of the Security Policy or the Security Plan has occurred under the Contract,

(each an "**Exceptional Circumstance**").

- 23.13 If the Customer Authority notifies the Contractor of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Contractor shall provide access in accordance with Clause 23.4 as soon as reasonably practicable after such request and in any event within forty eight (48) hours.

Audit - Costs

- 23.14 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 23.1 to 23.13, unless an audit identifies a material Default by the Contractor in which case the Contractor shall reimburse:

23.14.1 the Customer Authority for all the Customer Authority's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and

23.14.2 where the Customer Authority, a Regulatory Body, or the Comptroller and Auditor General appoint another Contracting Body to conduct an audit under this Clause, the Customer Authority shall be able to recover on demand from the Contractor the identifiable reasonable and properly incurred costs and expenses of the relevant Contracting Body.

Notifications

- 23.15 Without prejudice to the Customer Authority's other rights or remedies or to the Contractor's other reporting obligations set out in this Agreement, the Contractor shall notify the Customer Authority in writing, as soon as reasonably practicable after it comes to the Contractor's attention, of any event or circumstance which may adversely affect the performance of the Contractor's obligations under this Agreement, in whole or in part (including its performance against the Service Level Targets), or which is reasonably likely to result in any material Delay in the implementation or delivery of any of the Services, including any actual or potential:

23.15.1 change in the role or status of any Key Personnel;

23.15.2 Service Failure, KPI Failure, Delay, failure or interruption of performance (including in respect of any delay, failure or interruption under, or termination of any Sub-contract);

23.15.3 threat of, or planned, industrial action affecting the Contractor or any Sub-contractor, including any strikes or lock-outs;

23.15.4 failure of any Contractor Assets and/or Customer Authority Assets used in the provision of the Services;

23.15.5 loss or corruption of any Customer Authority Data;

23.15.6 breach of Law or enforcement notice or other regulatory investigation;

23.15.7 breach of confidentiality or failure to comply with any of the Security Requirements;

- 23.15.8 Force Majeure Event;
 - 23.15.9 failure by the Customer Authority to comply with its obligations under this Agreement; and
 - 23.15.10 failure by the Customer Authority to provide adequate resource or information as is reasonably necessary to enable the Contractor to perform its obligations under this Agreement.
- 23.16 Upon notifying the Customer Authority of any relevant event or circumstance in accordance with Clause 23.15, the Contractor shall (in addition to any other obligations) provide the Customer Authority with a written proposal regarding the steps it considers the Parties should take to avert, remedy or mitigate the effect of that event or circumstance.
- 23.17 Following receipt by the Customer Authority of any such proposal pursuant to Clause 23.16, if requested by the Customer Authority, the Parties shall, within three (3) Working Days (or such other period as the Parties agree in writing) of the Customer Authority's request, meet to discuss the Contractor's proposal and agree any appropriate steps which the Parties should take to avert, remedy or mitigate any adverse impact on the performance of the Contractor's obligations. If the Parties fail to agree upon those steps, either Party may, at its option and without prejudice to its other rights and remedies, refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- 23.18 The Contractor shall copy any notice provided under Clause 23.15 to the Framework Authority within four (4) Working Days.

Record Keeping

- 23.19 The Contractor shall comply with the provisions set out in Schedule 6.6 (Records Provisions).

24. CHANGE CONTROL

- 24.1 Any requirement for a Change shall be subject to the Change Control Procedure which is set out in Schedule 6.2 (Change Control Procedure).
- 24.2 The Contractor shall maintain and keep the Contractor's Call Off Service Catalogue up-to-date as required by the Customer Authority throughout the Term. Any amendment to the Contractor's Call Off Service Catalogue shall be subject to the Approval of the Customer Authority pursuant to the process set out in paragraph 12 of Schedule 6.2 (Change Control Procedure).
- 24.3 The Contractor shall not propose any change which would be in breach of:
- 24.3.1 any Laws or cause the Customer Authority to be in breach of any Laws; or
 - 24.3.2 Clauses 13.5, 24.1 and 24.4.
- 24.4 Neither Party may make or allow to be made any changes to the Services which affects or may affect the performance (including functioning, implementation and operation) security or PSN Compliance of the Services.

- 24.5 At the Customer Authority's request the Contractor shall use the Financial Model to demonstrate any proposed revisions to the Charges arising as a result of any proposed Change.
- 24.6 To the extent that a Change is requested for Services that are not covered by the Service Charges listed in the Appendices to Schedule 5.1 (Charges and Invoices), then the Contractor shall prepare a quotation for the cost of the Change which shall:
- 24.6.1 be based on and reflect the principles of the Financial Model;
 - 24.6.2 include (if applicable) estimated volumes of each type of resource to be employed and the cost of each type of resource as specified in the Financial Model;
 - 24.6.3 include full disclosure of any assumptions underlying such quotation; and
 - 24.6.4 include (if applicable) evidence of the cost of any Contractor Assets (and/or any Customer Authority Assets) required for the Change.
- 24.7 If the Change is adopted by the Customer Authority in accordance with Schedule 6.2 (Change Control Procedure) then the Contractor shall update the Financial Model in accordance with Schedule 5.4 (Financial Model).

25. DISPUTES

- 25.1 Subject to Clause 25.2, the Parties shall seek to resolve all Disputes in accordance with the Dispute Resolution Procedure.
- 25.2 Disputes relating to pensions shall be resolved in accordance with Paragraph 16 of Appendix 1 of Schedule 7.1 (Staff Transfer).
- 25.3 The Contractor shall have no right to suspend or terminate any Service in connection with a Dispute.

SECTION F - PERSONNEL

26. CONTRACTOR PERSONNEL

- 26.1 The Customer Authority may refuse admission to the Customer Authority Premises and/or direct the Contractor to end the involvement in the provision of the Services of any of the Contractor Personnel whom the Customer Authority believes represents a security risk or does not have the required levels of training and expertise or where the Customer Authority has other reasonable grounds for doing so. The decision of the Customer Authority shall be final and it shall not be obliged to provide any reasons.
- 26.2 The Contractor shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

Relevant Convictions

- 26.3 The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), is employed or engaged in the provision of any part of the Services, without the Customer Authority's approval.
- 26.4 For each of the Contractor Personnel who, in providing the Services, has, will have or is likely to have access to members of the public to whom the Customer Authority has notified the Contractor that it owes a special duty of care the Contractor shall (and shall procure that the relevant Sub-contractor shall):
- 26.4.1 carry out a policy check with the records held by the Department for Education;
 - 26.4.2 conduct thorough questioning regarding any Relevant Convictions; and
 - 26.4.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service,

and the Contractor shall not (and shall ensure that a Sub-contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

Key Personnel

- 26.5 The Parties have agreed to the appointment of the Key Personnel against the Key Roles set out in the Call-Off Form.
- 26.6 The Contractor shall, and shall procure that any Sub-contractor shall, obtain the Approval of the Customer Authority before removing or replacing any member of the Key Personnel from their corresponding Key Role during the Key Role Minimum Period (including when carrying out Exit Management), and, where possible, at least three (3) months' written notice must be provided by the Contractor of its intention to replace any member of Key Personnel from their corresponding Key Role. Where there is good reason for a Key Personnel leaving their Key Role, the Contractor or Sub-contractor does not need the Customer Authority's Approval, but shall give as much notice as possible and shall still comply with Clause 26.8. In this context "good reason" is where the individual concerned resigns, retires or dies, takes maternity or paternity leave, is required for long term jury service, suffers a long term sickness, applies for and is awarded another role in the Contractor's organisation or where the individual is suspended or their employment or contractual arrangement with the Contractor or Sub-contractor is terminated for material breach of contract by the individual in question.
- 26.7 The Contractor shall obtain the Customer Authority's Approval to the appointment of a replacement to any relevant member of Key Personnel by the Contractor or Sub-contractor, such Approval not to be unreasonably withheld or delayed. The Contractor shall allow the Customer Authority to interview the candidates for Key Roles before the Contractor appoints a candidate.
- 26.8 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer Authority. The Contractor shall ensure that there is appropriate cover for short term absences, such as vacations and sickness

and that no Key Role is vacant for any longer than ten (10) Working Days (or longer with the Customer Authority's Approval, not to be unreasonably withheld or delayed) and that any replacement shall be sufficiently qualified, experienced and competent to carry out such Key Role.

- 26.9 Subject to Clause 26.5, the Contractor shall ensure that each of the Key Personnel shall work for such period of time in the performance of the Services that is commensurate with and sufficient to perform the obligations of that person's Key Role. To the extent that it can do so without disregarding its statutory obligations, the Contractor shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 26.10 If required by the Customer Authority, the Contractor shall remove any member of the Key Personnel that the Customer Authority reasonably considers in any respect unsatisfactory.
- 26.11 The Customer Authority shall not be liable for the cost of replacing any member appointed to a Key Role and the Contractor shall indemnify the Customer Authority against all Employee Liabilities that may arise in this respect.

Staffing Security

- 26.12 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Personnel employed or engaged in the provision of the Services. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 26.13 The Contractor shall provide training on a continuing basis for all Contractor Personnel employed or engaged in the provision of the Services in compliance with the Security Standards and Policies as set out in Schedule 6.10 (Customer Authority Standards & Policies) and Security Plan as detailed in Schedule 2.2 Security Requirements and Security Plan).
- 26.14 Where the procedures set out in Clauses 26.3, 26.4 and 26.12 cannot be applied to Contractor Personnel engaged overseas, the Contractor shall apply the nearest equivalent processes operated in that jurisdiction in accordance with Good Industry Practice.
- 26.15 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise). The Contractor shall take all reasonable steps to secure the observance of the foregoing by the Contractor Personnel.
- 26.16 Clauses 26.1 to 26.15 (inclusive) shall not affect the application of Clause 5 of the Framework Agreement.

Diversity and Equality

- 26.17 The Contractor acknowledges that the Customer Authority has a duty to promote equality of opportunity for and good relations between all persons irrespective of race, gender, gender reassignment, disability, age, sexual orientation or religious belief and undertakes to comply with the provisions relating to diversity and equality

in Schedule 7.2 (Diversity and Equality) to assist the Customer Authority in meeting those objectives.

Apprenticeship and Skills

- 26.18 The Contractor acknowledges that the Customer Authority is committed to promoting the development of apprenticeship and skills in the wider workforce and undertakes to comply with the provisions relating to apprenticeship and skills in Schedule 7.3 (Apprenticeship and Skills).

Co-location

- 26.19 At any point during the Term of this Call-Off Contract, the Customer Authority may require Customer Authority staff to be co-located with the Contractor team(s) delivering the Services at Contractor accommodation. In the event the Customer Authority exercises this right, the Parties shall meet to agree:

26.19.1 the numbers of Customer Authority staff;

26.19.2 the relevant location(s) to be used; and

26.19.3 the length of time the Contractor shall provide the co-location arrangement.

- 26.20 In the event that the Customer Authority exercises its rights set out in Clause 26.19, the Contractor shall not be entitled to charge the Customer Authority for the provision of accommodation for up to and including fifteen (15) Customer Authority staff and/or for up to and including fifteen (15) months.

27. EMPLOYMENT INDEMNITY

The Contractor shall indemnify the Customer Authority against all Employee Liabilities that may arise as a result of any claims brought against the Customer Authority by any of the Customer Authority's employees or former employees and/or any of the Contractor Personnel where such claim arises from any act or omission of the Contractor, any Sub-contractor or any Contractor Personnel.

28. STAFF TRANSFER

The Parties acknowledge that the commencement of the provision of the Services (or any part of them) and the termination of the provision of the Services (or any part of them) by the Contractor pursuant to this Agreement may constitute a relevant transfer for the purposes of the Employment Regulations, and agree that the provisions of Schedule 7.1 (Staff Transfer) shall apply in relation to such commencement or termination.

29. HEALTH AND SAFETY

- 29.1 The Contractor acknowledges that it has been supplied with a copy of the Customer Authority's rules regarding health and safety. The Contractor shall comply with these rules and any additional rules made known to the Contractor from time to time by the Customer Authority together with all applicable statutory rules and regulations regarding these matters. The Customer Authority shall procure that its employees and agents also comply with these rules and regulations.

- 29.2 Either Party shall notify the other in writing as soon as practicable of any health and safety hazards at the Customer Authority Premises of which it becomes aware. The Contractor shall draw these hazards to the attention of the Contractor Personnel and shall instruct those persons in connection with any necessary associated safety measures.

SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

30. INTELLECTUAL PROPERTY RIGHTS

Ownership

- 30.1 Neither the Customer Authority nor any Indirect Customers transfer ownership of any Intellectual Property Rights to the Contractor or to any Sub-contractor under this Agreement. All Intellectual Property Rights in any materials:

30.1.1 provided to the Contractor for use in the provision of the Services; or

30.1.2 transmitted, processed or stored whilst the Services are being utilised,

shall be retained by (as applicable) the Customer Authority or Indirect Customers. If the Contractor or any Sub-contractor or Contractor Personnel acquires any interest in such Intellectual Property Rights which is inconsistent with this Clause 30.1 it shall (or shall procure that the relevant third party shall) assign all such right, title and interest to the Customer Authority or such person as the Customer Authority may nominate, free of all encumbrances and third party rights.

- 30.2 Subject to Clauses 30.1 and 30.10:

30.2.1 the Contractor does not transfer ownership of any Intellectual Property Rights to the Customer Authority or to any Indirect Customer under this Agreement; and

30.2.2 all Intellectual Property Rights in any materials provided by the Contractor for use in the provision of the Services shall be retained by the Contractor (including all Intellectual Property Rights which existed prior to the Effective Date), and

if the Customer Authority or any Indirect Customer acquires any interest in such Intellectual Property Rights which is inconsistent with this Clause 30.2 it shall (or shall procure that the relevant third party shall) assign all such right, title and interest to the Contractor or such person as the Contractor may nominate, free of all encumbrances and third party rights.

Licence

- 30.3 The Customer Authority hereby grants, including by way of a present licence of future rights, a limited, revocable, non-exclusive, non-assignable and royalty free licence for the Contractor (and where required, its Sub-contractors) to use the Intellectual Property Rights in:

30.3.1 materials made available to it by the Customer Authority and which the Customer Authority has expressly confirmed in writing at the time of making such available that they can be used pursuant to this Clause 30.3;

30.3.2 from the Commencement Date the Specified Software set out in Schedule 6.9 (Customer Authority Assets);and

30.3.3 the Designated IPRs which have been assigned pursuant to Clause 30.10,

in all cases, solely as may be necessary to provide the Services and for no other purposes whatsoever. This licence may be revoked by the Customer Authority at any time.

30.4 In the event of the termination (however arising) or expiry of this Agreement, this licence (and any sub-licence) shall terminate automatically and the Contractor shall, in accordance with and without prejudice to Paragraph 10.1.3 of Schedule 6.4 (Exit Management), return to the Customer Authority all such materials and Designated IPRs licensed to the Contractor under Clause 30.3.

30.5 The Contractor hereby grants, including by way of a present licence of future rights, (or shall procure that any relevant third party shall grant) a non-exclusive, non-assignable (save in connection with the permitted assignment under Clause 51 (Assignment and Novation) and royalty free licence for the Customer Authority and each Indirect Customer and End User ("**Licensee**") to Use the Intellectual Property Rights that are used in the Services to the extent necessary:

30.5.1 to benefit from the receipt of the Services during the Term;

30.5.2 to benefit from the receipt of the Termination Services during the Termination Assistance Period;

30.5.3 to conduct a replacement or re-tendering process for the provision of Replacement Services; and

30.5.4 to otherwise enable the Customer Authority and each Indirect Customer and End User to:

30.5.4.1 complete an efficient transition of the Services from the Contractor to a Replacement Contractor in accordance with Schedule 6.4 (Exit Management); and/or

30.5.4.2 benefit from the receipt of Replacement Services.

30.6 The licences granted pursuant to Clauses 30.5.1, 30.5.2 and 30.5.3 shall survive the termination or expiry of this Agreement and shall not be subject to payment of any additional licence fees, except as specifically identified in the Exit Plan in respect of any extended licence that may be required pursuant to Clause 30.5.3 only.

30.7 The Licensee may sub-license the rights granted to it pursuant to Clause 30.5 to a third party provided that:

30.7.1 the sub-licence only authorises the third party to Use the relevant Intellectual Property Rights for the benefit of the Licensee; and

30.7.2 the third party has entered into a confidentiality undertaking with the Licensee.

- 30.8 In relation to documents setting out or incidental to the architecture and configuration of the Services, the licence in Clause 30.5 shall include the right to make such documents available both during and after the Term to the Customer Authority, Indirect Customers, End Users and as permitted under Clause 34 (Confidentiality and Publicity).

Designated IPRs

- 30.9 Where any Intellectual Property Rights created by the Contractor or any Sub-contractor pursuant to this Agreement:

- 30.9.1 relate specifically to the business of the Customer Authority and/or any Indirect Customer including Specially Written Software; or
- 30.9.2 are listed in Appendix 4 (Designated IPRs) of Schedule 6.4 (Exit Management); or
- 30.9.3 have been agreed through Schedule 6.2 (Change Control Procedure) as being intended to be used only for the Customer Authority and/or any Indirect Customer,

such Intellectual Property Rights shall be "**Designated IPRs**".

Assignment

- 30.10 The Contractor hereby assigns and shall procure that all Sub-contractors, Affiliates of Sub-contractors and Contractor Personnel waive all moral rights in, and assign to the Customer Authority or such person as it may nominate for no additional payment, with full title guarantee all right, title and interest to or in the Designated IPRs.
- 30.11 The Contractor shall from time to time at the Customer Authority's request deliver up to the Customer Authority (or to such other Customers as the Customer Authority may direct) all associated Source Code or other materials embodying Designated IPR and any such adaptations and modifications comprising software.
- 30.12 The assignment under Clause 30.10 shall be a present assignment of future rights that shall take effect immediately on the coming into existence of the relevant Intellectual Property Rights.
- 30.13 The Contractor hereby grants to the Customer Authority (and shall procure that any relevant third party licensor shall grant to the Customer Authority) a perpetual (in the sense of never ending), irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-licence and commercially exploit any Intellectual Property Rights which do not form part of the Designated IPR but which are integral to the ability of the Customer Authority to enable the Customer Authority to obtain the full benefits of ownership of the Designated IPR.

31. CUSTOMER AUTHORITY DATA

- 31.1 All Customer Authority Data shall remain owned by the Customer Authority at all times.

- 31.2 The Contractor shall not, and shall procure that its Sub-contractors do not, delete or remove any proprietary notices contained within or relating to the Customer Authority Data.
- 31.3 The Contractor shall not, and shall procure that its Sub-contractors do not, store, copy, disclose or use the Customer Authority Data except as necessary for the performance by (as applicable) the Contractor or Sub-contractor of its obligations under this Agreement or as otherwise expressly authorised in advance in writing by the Customer Authority.
- 31.4 To the extent that Customer Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Customer Authority Data to the Customer Authority as requested by the Customer Authority in the format specified in Schedule 6.4 (Exit Management) or specified to the Contractor by the Customer Authority from time to time in writing, which shall replace the content of Schedule 6.4 (Exit Management) to the extent required.
- 31.5 To the extent that Customer Authority Data is held, accessed and/or processed by the Contractor, the Contractor shall, and shall procure that its Sub-contractors, preserve the integrity of Customer Authority Data and prevent the corruption or loss of Customer Authority Data (including of any copy of such Customer Authority Data).
- 31.6 The Contractor shall perform secure back-ups of all Customer Authority Data held and/or processed by the Contractor and shall ensure that up-to-date back-ups are stored off-site in accordance with Schedule 6.5 (IT Service Continuity and Disaster Recovery Provisions). The Contractor shall ensure that such back-ups are available to the Customer Authority at all times upon request and are delivered to the Customer Authority at no less than monthly intervals.
- 31.7 The Contractor shall, and shall procure that its Sub-contractors, ensure that any system on which the Contractor or Sub-contractor holds and/or accesses any Customer Authority Data, including back-up data, is a secure system that complies with the Schedule 2.2 (Security Standards and Policies).
- 31.8 The Contractor shall, and shall procure that its Sub-contractors, ensure that any system on which it holds and/or accesses any Customer Authority Data which is protectively marked shall be accredited using HMG IA Standard Number 2 (Risk Management and Accreditation of Information Systems) (a copy of which is available at <https://cesgiap.gsi.gov.uk/ia-policy-portfolio/title.shtml> (this requires registration, in respect of which the Customer Authority will provide reasonable assistance to the Contractor where required). The Contractor shall review such accreditation status at least once in each Contract Year to assess whether material changes have occurred, or which could occur and, which could alter the original accreditation decision. If any such changes have occurred or could occur then the Contractor shall resubmit such system for accreditation.
- 31.9 If the Customer Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer Authority may:
- 31.9.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Authority Data to the extent and in accordance with the requirements specified in Schedule 6.5 (IT Service Continuity and Disaster Recovery Provisions) and the Contractor shall do so as soon as possible; and/or

- 31.9.2 itself restore or procure the restoration of Customer Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 6.5 (IT Service Continuity and Disaster Recovery Provisions).
- 31.10 If at any time the Contractor suspects or has reason to believe that Customer Authority Data or any copy thereof has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Customer Authority in writing immediately and inform the Customer Authority of the remedial action the Contractor proposes to take. The Customer Authority may rely upon such report in relation to any action it then takes under this Agreement.
- 31.11 The Contractor shall not Process, host, transmit or access Customer Authority Data (including Customer Authority Personal Data) outside the United Kingdom without the Approval of the Customer Authority, provided that where the Customer Authority Approves such use, the Contractor shall comply with:
- 31.11.1 the DWP Offshoring Policy; and
- 31.11.2 any reasonable instructions notified to it by the Customer Authority.
- 31.12 In addition to its obligations pursuant to this Clause 31, the Contractor shall comply with the obligations relating to Customer Authority Data set out at Clause 46.

32. PROTECTION OF PERSONAL DATA

- 32.1 With respect to Personal Data for which the Customer Authority and/or an Indirect Customer is the Data Controller and which are Processed by the Contractor or any Sub-contractor pursuant to or in connection with this Agreement (the "**Customer Authority Personal Data**"), the Parties agree that the Contractor is the Data Processor.
- 32.2 The Contractor recognises the value and importance of Customer Authority Personal Data and the material prejudice to individuals, the Customer Authority and/or Indirect Customers that may arise from it being mishandled. The Contractor shall:
- 32.2.1 Process the Customer Authority Personal Data only in accordance with instructions from the Customer Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Customer Authority to the Contractor during the Term, including instructions provided by the Customer Authority on behalf of Indirect Customers);
- 32.2.2 Process the Customer Authority Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 32.2.3 implement and maintain appropriate technical and organisational measures to protect the Customer Authority Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the

Customer Authority Personal Data and having regard to the nature of the Customer Authority Personal Data which is to be protected;

- 32.2.4 when implementing such technical and organisational measure, have regard to:
 - 32.2.4.1 the sensitive nature of the Personal Data contained within the Customer Authority Personal Data and the substantial harm which would result from unauthorised or unlawful Processing or accidental loss or destruction of or damage to such Personal Data or copies thereof; and
 - 32.2.4.2 the state of technological development and the cost of implementing such measures;
- 32.2.5 if there are options as to whether and/or how to Process Customer Authority Personal Data, always use the most secure commercially reasonable option (this shall include using dummy data rather than live Customer Authority Personal Data, and not downloading Customer Authority Personal Data onto portable media or devices or removing it from secure premises where it would be possible to carry out the activity required under this Agreement without doing so);
- 32.2.6 take reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Customer Authority Personal Data;
- 32.2.7 not disclose or transfer any Customer Authority Personal Data to any Sub-contractor or Affiliate other than when strictly necessary for the provision of the Services and in such event to obtain Approval from the Customer Authority;
- 32.2.8 ensure that all Contractor Personnel required to access the Customer Authority Personal Data:
 - 32.2.8.1 are informed of the confidential nature of the Customer Authority Personal Data and comply with the obligations set out in this Clause 32;
 - 32.2.8.2 have undergone all adequate training in the care, protection and handling of Customer Authority Personal Data; and
 - 32.2.8.3 perform their duties in relation to this Agreement strictly in compliance with this Clause 32 and with the Data Protection Legislation;
- 32.2.9 ensure that none of the Contractor Personnel publish, disclose or divulge any of the Customer Authority Personal Data to any third party unless directed in writing to do so by the Customer Authority;
- 32.2.10 notify the Customer Authority (in writing within five (5) Working Days or such other period as required by the Customer Authority) if it receives:

- 32.2.10.1 a request from a Data Subject to have access to that person's Personal Data; or
- 32.2.10.2 a complaint or request relating to the Customer Authority's and/or an Indirect Customer's obligations under the Data Protection Legislation (including from the Information Commissioner's Office);
- 32.2.11 provide the Customer Authority and Indirect Customers (via the Customer Authority) with full cooperation and assistance in relation to any complaint or request made, including by:
 - 32.2.11.1 providing the Customer Authority and Indirect Customers (if applicable, and via the Customer Authority) with full details of the complaint or request;
 - 32.2.11.2 complying with:
 - 32.2.11.2.1 a data access request;
 - 32.2.11.2.2 a request from the Customer Authority, an Indirect Customer or a Data Subject to rectify, block or erase any Customer Authority Personal Data, to prevent the Processing of such Customer Authority Personal Data in connection with direct marketing and/or to require an explanation of any decision made by automated means in respect of such Data Subject's Personal Data; and
 - 32.2.11.2.3 the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer Authority's instructions (including those on behalf of an Indirect Customer);
 - 32.2.11.3 providing the Customer Authority and/or an Indirect Customer with any Customer Authority Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer Authority and/or an Indirect Customer); and
 - 32.2.11.4 providing the Customer Authority with any information requested by the Customer Authority and/or an Indirect Customer;
- 32.2.12 permit the Customer Authority, Indirect Customers and/or the Customer Authority Representative (subject to reasonable confidentiality undertakings), to inspect and audit, in accordance with Clause 23 (Audits, Notifications and Record Keeping), the Contractor's data Processing activities (and/or those of its agents, Affiliates and Sub-contractors) and comply with all reasonable requests or directions by the Customer Authority and Indirect Customers to enable the Customer Authority and Indirect Customers to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;

- 32.2.13 provide the Customer Authority with a written description of the technical and organisational methods employed by the Contractor for Processing Customer Authority Personal Data (within the timescales required by the Customer Authority); and
 - 32.2.14 not Process Customer Authority Personal Data outside the European Economic Area (or such other territory as shall be notified by the Customer Authority on the Call-Off Form) without the Approval of the Customer Authority and, where the Customer Authority Approves a transfer, to:
 - 32.2.14.1 comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Customer Authority Personal Data that is transferred;
 - 32.2.14.2 comply with any reasonable instructions notified to it by the Customer Authority; and
 - 32.2.14.3 notify the Customer Authority in writing of any circumstances that may prevent the Contractor from fulfilling its obligations under this Clause 32.
 - 32.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Customer Authority and/or any Indirect Customer to breach any of its applicable obligations under the Data Protection Legislation.
 - 32.4 The Contractor shall not carry out any research, analysis or profiling activity which involves the use of any element of the Customer Authority Personal Data (including in aggregate form) or any information derived from the Processing of such Customer Authority Personal Data unless it is specifically required as part of the provision of the Services.
 - 32.5 The Contractor acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Customer Authority Personal Data that the Customer Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer Authority and/or an Indirect Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 33. FREEDOM OF INFORMATION**
- 33.1 The Contractor acknowledges that the Customer Authority is subject to the requirements of the FOIA (unless the Customer Authority is a private authority) and the Environmental Information Regulations and shall assist and cooperate with the Customer Authority to enable it to comply with its Information disclosure obligations.
 - 33.2 The Contractor shall and shall procure that the Sub-contractors and Contractor Personnel shall:

- 33.2.1 transfer to the Customer Authority all Requests for Information that it or they receive as soon as practicable and in any event within two (2) Working Days of receipt;
 - 33.2.2 provide the Customer Authority with a copy of all required Information in its possession or power in the form that the Customer Authority requests within five (5) Working Days (or such other period as the Customer Authority may specify in writing) of the Customer Authority's request; and
 - 33.2.3 provide all necessary assistance as reasonably requested by the Customer Authority to enable the Customer Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 33.3 The Customer Authority may determine in its absolute discretion (and notwithstanding any other provision in this Agreement or any other agreement) whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations. Where any Commercially Sensitive Information includes Management Information, the Customer Authority may disclose such Management Information in accordance with Clauses 15.8 (Charging, Invoicing and Management Information) and Clause 23 (Audits, Notifications and Record Keeping).
- 33.4 The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so in writing by the Customer Authority.
- 33.5 The Contractor acknowledges that (notwithstanding this Clause 33) the Customer Authority may, acting in accordance with the Access Code or otherwise as required by Law, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 33.5.1 in certain circumstances without consulting the Contractor; or
 - 33.5.2 following consultation with the Contractor and having taken its views into account;
- provided always that, where Clause 33.5.1 applies, the Customer Authority shall, in accordance with any recommendations of the Access Code, take reasonable steps where appropriate to give the Contractor advanced notice or, failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

34. CONFIDENTIALITY AND PUBLICITY

- 34.1 Except to the extent set out in this Clause 34 or where disclosure is expressly permitted elsewhere in this Agreement or to the Framework Authority under the Framework Agreement, each Party shall:
- 34.1.1 treat the other Party's Confidential Information as confidential and safeguard it from loss or disclosure accordingly; and
 - 34.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

- 34.2 Clause 34.1 shall not apply to the extent that:
- 34.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
 - 34.2.2 such information was in the possession of the Party making the disclosure without restriction as to its disclosure before its disclosure by the information owner;
 - 34.2.3 such information was obtained from a third party who acquired it lawfully and who is under no obligation restricting its disclosure;
 - 34.2.4 such information was already in the public domain at the time of disclosure otherwise than by a Default;
 - 34.2.5 such information is developed independently, without access to the other Party's Confidential Information; or
 - 34.2.6 such information relates to the assignment of the Financed Assets and disclosure to the Financed Assets Assignee is reasonably and necessarily required for the proper performance of this Agreement by the Contractor. Such disclosure is subject to the Financed Assets Assignee agreeing confidentiality obligations no less onerous than those set out in this Clause 34.
- 34.3 The Contractor may disclose the Customer Authority Confidential Information only to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and comply with these obligations as to confidentiality.
- 34.4 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Customer Authority Confidential Information other than for the purposes of this Agreement.
- 34.5 In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Agreement, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the Contractor shall provide such evidence to the Customer Authority as the Customer Authority may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Contractor is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 34.6 In order to ensure that no unauthorised person gains access to any Customer Authority Confidential Information or any data obtained in performance of this Agreement, in accordance with Schedule 2.2 (Security Requirements and Plan) the Contractor shall maintain adequate security arrangements that meet the Security Requirements.

- 34.7 In accordance with Schedule 2.2 (Security Requirements and Plan), the Contractor shall:
- 34.7.1 notify the Customer Authority of any Breach of Security in relation to the Customer Authority Confidential Information and furthermore the Contractor shall keep a record of such Breaches of Security; and
 - 34.7.2 take all reasonable steps required by the Customer Authority to remedy and prevent any Breach of Security in relation to the Customer Authority Confidential Information including cooperating with the Customer Authority in any investigation that the Customer Authority considers necessary to undertake as a result of any Breach of Security in relation to any Customer Authority Confidential Information.
- 34.8 Without prejudice to Schedule 2.2 (Security Requirements and Plan), the Contractor shall, at its own expense, alter any security systems used in connection with the performance of the Services at any time during the Term at the Customer Authority's request if the Customer Authority believes (acting reasonably) that the Contractor has failed to comply with Clauses 34.6 and/or 34.7.2.
- 34.9 Nothing in this Agreement shall prevent the Customer Authority from disclosing the Contractor's Confidential Information (including Management Information):
- 34.9.1 to the PSNA, any Crown Body or any other Contracting Authority. The PSNA and all Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies and other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of the PSNA, any Crown Body or any Contracting Authority (or to any person which is a permitted assignee of either of them);
 - 34.9.2 as permitted under the Framework Agreement;
 - 34.9.3 to any consultant, contractor or other person engaged by the Customer Authority (including in connection with the receipt or management of the Services, the Termination Services, the Replacement Services or any services that are or are intended to interface with the Services);
 - 34.9.4 to any person conducting a gateway review;
 - 34.9.5 for the purpose of the examination and certification of the Customer Authority's accounts or those of the Framework Authority or any Indirect Customer; or
 - 34.9.6 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer Authority has used its resources.
- 34.10 The Customer Authority shall use its reasonable endeavours to ensure that any person to whom the Contractor's Confidential Information is disclosed pursuant to Clause 34.9 is made aware of the Customer Authority's obligations of confidentiality.

- 34.11 Nothing in this Clause 34 shall prevent either Party 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 other Party's Confidential Information or an infringement of IPR.
- 34.12 Where, pursuant to Clause 53.2, the Customer Authority appoints an Other PSN Services Contractor or Wider PSN Contractor to act on its behalf or represent it to the Contractor in relation to this Agreement, then, dependent on the role allocated to the Other PSN Services Contractor or Wider PSN Contractor, the Contractor may be required to provide information to the Other PSN Services Contractor or Wider PSN Contractor rather than, or as well as, the Customer Authority. The Contractor shall not be required to disclose information directly relating to its Charges to the Other PSN Services Contractor or Wider PSN Contractor. If the Contractor reasonably believes that the disclosure to the Other PSN Services Contractor or Wider PSN Contractor of other Contractor Confidential Information which it regards as commercially sensitive would prejudice its ability to compete with the Other PSN Services Contractor or Wider PSN Contractor (or any person to whom the Other PSN Services Contractor or Wider PSN Contractor acts as a sub-contractor), then the Contractor may notify the Customer Authority in writing of its concerns and the reasons for them and, where the Customer Authority, acting reasonably, believes that such concerns are justified, the Customer Authority shall:
- 34.12.1 direct the Contractor to redact specific elements of the information disclosed to the Other PSN Services Contractor or Wider PSN Contractor;
 - 34.12.2 disclose the relevant Contractor's Confidential Information only to the Customer Authority; and
 - 34.12.3 not itself disclose the relevant Contractor's Confidential Information to the Other PSN Services Contractor or Wider PSN Contractor,
- in each case to the extent necessary to protect the legitimate interests of the Contractor as identified above. However the Contractor agrees that, subject to the provisions of this Clause 34, the Customer Authority may disclose the Contractor's Confidential Information to the Other PSN Services Contractor or Wider PSN Contractor.
- 34.13 The Contractor shall comply with, and shall ensure that the Contractor Personnel comply with:
- 34.13.1 the Official Secrets Act 1911 to 1989; and
 - 34.13.2 Section 182 of the Finance Act 1989.
- 34.14 The Contractor shall not and shall procure that its Sub-contractors and the Contractor Personnel shall not:
- 34.14.1 do anything which may damage the reputation of the Customer Authority (or any Indirect Customer) or bring the Customer Authority (or any Indirect Customer) into disrepute; or
 - 34.14.2 make any press announcements or publicise this Agreement in any way without the Customer Authority's Approval. Where the Contractor or a Holding Company is required to make a public announcement by the

applicable rules of any regulated securities exchange, it may do so, but shall notify the Customer Authority in writing and in advance of the announcement it intends to release and shall make any reasonable changes requested by the Customer Authority.

- 34.15 The Customer Authority may publicise this Agreement in accordance with any legal obligation upon the Customer Authority (or any Indirect Customer), including any examination of this Agreement by an auditor or otherwise.
- 34.16 The Contractor acknowledges to the Customer Authority that nothing in this Agreement either expressly or by implication constitutes an endorsement of any goods and/or services of the Contractor (including the Services) and the Contractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 34.17 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 Customer Authority shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 34.18 Subject to Clause 34.17 and notwithstanding any other term of this Agreement, the Contractor hereby gives consent for the Customer Authority to publish this Agreement in its entirety, including from time to time agreed Changes to this Agreement, to the general public.
- 34.19 The Customer Authority may consult with the Contractor to inform its decision regarding any exemptions under the provisions of the FOIA but the Customer Authority shall have the final decision in its absolute discretion. The Contractor shall assist and cooperate with the Customer Authority to enable the Customer Authority to publish this Agreement.

SECTION H - CONTRACTOR AND CUSTOMER AUTHORITY PROTECTIONS

35. GENERAL OBLIGATIONS OF THE PARTIES AND RIGHTS UNDER THE FRAMEWORK AGREEMENT

Contractor's Obligations

- 35.1 The Contractor shall:
- 35.1.1 at all times allocate sufficient resources to provide the Services as required by this Agreement;
- 35.1.2 subject to Clause 37 (Change In Law) obtain, and maintain throughout the Term, all the consents, authorisations (including PSN Compliance and CESG accreditation), licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of the Services;
- 35.1.3 in addition to its obligations under any Call-Off Cooperation Agreement and subject to the relevant Customer Authority Third Party accepting duties of confidentiality to the Contractor in relation to such information

(such duties may already be set out in any Call-Off Cooperation Agreement), provide (in a timely manner) to other Customer Authority Third Parties as are notified to the Contractor periodically, such reasonable cooperation, relevant information (including any System Documentation), advice and assistance in connection with the Services including to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Contractor(s). The Contractor shall also work pro-actively with each of the other Customer Authority Third Parties in a spirit of trust and mutual confidence;

- 35.1.4 in addition to its obligations under any Call-Off Cooperation Agreement the Contractor shall cooperate with suppliers of other PSN Services and GCN Service Providers to enable the efficient operation of the Public Services Network in accordance with the PSN Operating Model;
- 35.1.5 enter into a Call-Off Cooperation Agreement with any relevant Customer Authority Third Parties if reasonably required by the Customer Authority;
- 35.1.6 comply with its obligations in Schedule 6.8 (Further Terms for Third Party Contracts) if required by the Customer Authority (acting reasonably); and
- 35.1.7 provide the Customer Authority with such assistance as the Customer Authority may reasonably require during the Term in respect of the supply of the Services including providing any ancillary or incidental service and/or function not specified in the Service Requirements where such service and/or function is reasonably and necessarily required for the proper performance of the Services under this Agreement.

Customer Authority Responsibilities and Rights

- 35.2 The Customer Authority shall comply with the Customer Authority Responsibilities.

Rights and obligations under the Framework Agreement

- 35.3 Without prejudice to any other Customer Authority rights and Contractor obligations under this Agreement, the following Customer Authority rights and Contractor obligations shall be exercised and enforced by the Framework Authority under internal agreements between the Customer Authority and the Framework Authority:
 - 35.3.1 Schedule 7 (Financial Distress) of the Framework Agreement;
 - 35.3.2 adherence to Standards (excluding Industry Standards and those Standards set out in Schedule 6.10 (Customer Authority Standards & Policies) which shall be subject to the terms of this Agreement;
 - 35.3.3 Schedule 11 (Insurance Requirements) of the Framework Agreement; and
 - 35.3.4 any other rights and obligations set out in the clauses listed in Clause 1.6.
- 35.4 These rights and obligations are set out in more detail in the Framework Agreement. Notwithstanding this, the Contractor agrees to comply, and shall ensure and procure that its Sub-contractors comply with such obligations in the context of this Agreement

and where the Contractor and/or its Sub-contractors breaches any obligation under the Framework Agreement which is intended to confer a benefit on the Customer Authority (either itself or for a number of Customers including the Customer Authority) Clause 42 (Limitations on Liability) of this Agreement shall apply when calculating the extent of the Contractor's liability under this Agreement.

36. WARRANTIES

36.1 Each Party warrants, represents and undertakes at the Effective Date that:

- 36.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 36.1.2 this Agreement is executed by a duly authorised representative of that Party;
- 36.1.3 it is Solvent and shall remain Solvent throughout the Term;
- 36.1.4 there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement; and
- 36.1.5 once duly executed this Agreement shall constitute its legal, valid and binding obligations.

36.2 The Contractor warrants, represents and undertakes for the Term that:

- 36.2.1 it has and shall continue to hold all necessary regulatory approvals (if any) from the Regulatory Bodies necessary to perform its obligations under this Agreement;
- 36.2.2 where it provides PSN Services it is a PSN Service Provider and it has and shall continue to maintain PSN Compliance Certification in respect of such PSN Services and shall comply with all agreements and arrangements (whether or not legally binding) which it has entered into with the Framework Authority, the PSNA and the GCN Service Providers, or otherwise in relation to the governance and administration of the PSN;
- 36.2.3 it has and shall continue to have all necessary Intellectual Property Rights in and to all materials made available by the Contractor and/or the Sub-contractors to the Customer Authority in connection with this Agreement;
- 36.2.4 in performing its obligations under this Agreement, all Software used by or on behalf of the Contractor shall:
 - 36.2.4.1 be currently supported versions of that Software subject to any specific provisions relating to currency of software updates under Schedule 2.1 (Service Description);
 - 36.2.4.2 where applicable, comply with the PSN Compliance Conditions; and

- 36.2.4.3 perform in all material respects in accordance with its specification;
- 36.2.5 it has taken, and shall continue to take all steps in accordance with Paragraph 7 of Schedule 2.2 (Security Requirements and Plan), in accordance with Good Industry Practice, to prevent the:
 - 36.2.5.1 introduction, creation or propagation of any disruptive element, virus, worms and/or trojans, spyware or other malware (including any Malware); and
 - 36.2.5.2 unauthorised use of any codification or access;
- 36.2.6 it shall take all measures necessary to avoid and prevent any and all data loss and data corruption during the provision of the Services including as required by the Security Requirements;
- 36.2.7 all Contractor Personnel are appropriately qualified, trained, and experienced to provide the Services in accordance with this Agreement;
- 36.2.8 as at the Effective Date all statements, information, warranties and representations contained in the Contractor's Response to the ITT and (unless otherwise agreed by the Parties) any other documents which resulted in the award of the Framework Agreement are to the best of its knowledge, information and belief, true and accurate and that it shall advise the Customer Authority of any fact, matter or circumstance of which it may become aware which would render any such statement, information, warranty or representation to be false or misleading. Accordingly, all statements, information, warranties and representations contained in the Contractor's Response to the ITT shall be deemed repeated in this Agreement with reference to the circumstances existing at the time that they are deemed to be repeated;
- 36.2.9 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Agreement;
- 36.2.10 it owns, has obtained or is able to obtain valid licences for all IPRs that are necessary for the performance of its obligations under this Agreement and shall maintain the same in full force and effect;
- 36.2.11 any manuals or other explanatory documentation provided by the Contractor to the Customer Authority (or any Indirect Customer) in respect of the use of the Services will contain all necessary information and explanation required for the purpose of executing the Exit Plan and for suitably experienced and qualified employees of the Customer Authority or of the Replacement Contractor to be able to use the Software and receive the Services and to perform the Replacement Services on termination or expiry; and
- 36.2.12 the Contractor System and Contractor Assets used in the performance of the Services shall:

- 36.2.12.1 be free of all encumbrances except for (i) hire purchase or leasing arrangements in respect of Contractor Assets other than Exclusive Assets; and (ii) any lien created pursuant to Clause 14.5;
- 36.2.12.2 (to the extent necessary for operation of the Services in accordance with this Agreement) be Date Compliant;
- 36.2.12.3 (to the extent necessary for operation of the Services in accordance with this Agreement) be Euro Compliant; and
- 36.2.12.4 where applicable, comply with the PSN Compliance Conditions; and
- 36.2.13 it shall at all times comply with the Law in carrying out its obligations under this Agreement.
- 36.3 Except as expressly stated in this Agreement, all warranties and conditions implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 36.4 The fact that any provision is expressed as a warranty shall not preclude any right of termination or rescission the Customer Authority may have in respect of breach of that provision by the Contractor.
- 37. CHANGE IN LAW**
- 37.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with this Agreement nor be entitled to an increase in the Charges as the result of:
 - 37.1.1 new or revised PSN Compliance Conditions;
 - 37.1.2 a General Change in Standards; or
 - 37.1.3 a General Change in Law, Specific Change in Law or Customer Authority Specific Change in Standards where the effect of that General Change in Law, Specific Change in Law or Customer Authority Specific Change in Standards on the Services is known at the Effective Date. The effect of a General Change in Law, Specific Change in Law or Customer Authority Specific Change in Standards shall be "known" where the Contractor was aware or should reasonably have been aware of it as at the Effective Date.
- 37.2 If a General Change in Law, Specific Change in Law or Customer Authority Specific Change in Standards occurs during the Term (other than those referred to in Clause 37.1.3), the Contractor shall notify the Customer Authority in writing of the likely effects of that change, including:
 - 37.2.1 whether any Change is required to the Services, the Charges or this Agreement; and

- 37.2.2 whether any relief from compliance with the Contractor's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Targets or KPIs at any time.
- 37.3 As soon as practicable after any notification in accordance with Clause 37.2, the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Contractor can mitigate the effect of the General Change in Law, Specific Change in Law or Customer Authority Specific Change in Standards including:
- 37.3.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- 37.3.2 demonstrating that a foreseeable General Change in Law, Specific Change in Law or Customer Authority Specific Change in Standards had been taken into account by the Contractor before it occurred; and
- 37.3.3 giving evidence as to how the General Change in Law, Specific Change in Law or Customer Authority Specific Change in Standards has affected the overall cost of providing the Services (including by taking into account any expenditure that has been avoided).
- 37.4 Any change to the Charges or relief from the Contractor's obligations agreed by the Parties pursuant to Clause 37.3 shall be implemented in accordance with Schedule 6.2 (Change Control Procedure).
- 37.5 The Contractor's obligation to deliver the Services in accordance with the Standards and to comply with any Change in Law or changes to the Standards shall be subject always to the Customer Authority's resolution of conflicts pursuant to Clauses 12.3, 12.4 and 9.11.1. For the avoidance of doubt, the Contractor shall notify and seek the Customer Authority's authorisation before implementing any changes which may have an adverse impact on the ability of the Services to interface with a Third Party Service Provider, or the ability of the Contractor System to integrate with the Customer Authority System.

SECTION I - RISK PROTECTION

38. SECURITY REQUIREMENTS

- 38.1 The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, Security Standards and Policies and the Security Plan detailed in Schedule 2.2 (Security Requirements and Plan) and Schedule 6.10 (Customer Authority Standards & Policies). The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Standards and Policies.
- 38.2 Subject to Clauses 13.5 and 24.4, the Customer Authority shall notify the Contractor in writing of any changes or proposed changes to the Security Standards and Policies and, subject to Clauses 38.3 and 38.4, the Contractor shall comply with any such changes.
- 38.3 If the Contractor believes that a change or proposed change to the Security Standards and Policies shall alter the way it provides the Services it may submit a Change Request and, where such Change shall have a material and unavoidable

cost implication to the Services it may request a Change to the Charges in such Change Request. In doing so, the Contractor 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 Services and/or the Charges shall then be agreed in accordance with the Schedule 6.2 (Change Control Procedure).

- 38.4 Until and/or unless a change to the Charges is agreed by the Customer Authority pursuant to Clause 38.3 the Contractor shall continue to perform the Services in accordance with its existing obligations.
- 38.5 The Contractor shall, at its own expense, keep itself fully informed of the latest best practice security and risk mitigation measures relating to the Services and shall promptly implement such measures. Subject to Clauses 13.5 and 24.4, where such measures would require a change to the Security Standards and Policies as detailed in Schedule 6.10 (Customer Authority Standards & Policies), the Contractor shall first notify the Customer Authority in writing and the Customer Authority shall decide whether or not to implement them; if it decides to implement them, Clauses 38.2 to 38.4 shall apply.
- 38.6 On each anniversary of the Effective Date, the Contractor shall provide to the Customer Authority (and shall copy simultaneously to the Framework Authority) a letter from its managing director (or equivalent officer) confirming that having made due and careful inquiry:
- 38.6.1 it has in the previous Contract Year carried out all tests and has in place all procedures required in relation to security matters under this Agreement; and
- 38.6.2 it is confident that its security and risk mitigation procedures with respect to the Services remain effective.
- 38.7 The Contractor shall ensure that all relevant Services:
- 38.7.1 which fall within the scope of the UK Critical National Infrastructure (as defined by the National Infrastructure Security Coordination Centre) are provided in accordance with the requirements of the UK Critical National Infrastructure protection programme;
- 38.7.2 are, and remain throughout the Term, PSN Compliant;
- 38.7.3 have and continue to have any approval and accreditation required under this Agreement (including PSNA approval and CESC accreditation, such CESC accreditation being subject to the approval of the SRO); and
- 38.7.4 are not provided in such a way that causes or is likely to cause the Customer Authority to breach the PSN Compliance Certificate and/or the Code of Connection.
- 38.8 Except to the extent specified from time to time by the Customer Authority, the Parties shall participate (and the Contractor shall ensure that appropriate Sub-contractors participate) in the UK Critical National Infrastructure protection programme and give all necessary assistance to those organisations responsible for this programme so as to ensure that the provision of the Services to the Customer Authority is protected at all times.

39. IT SERVICE CONTINUITY AND DISASTER RECOVERY

- 39.1 The Parties shall comply with the ITSCDR Plan and Schedule 6.5 (IT Service Continuity and Disaster Recovery Provisions).
- 39.2 The Contractor shall ensure that it is able to implement the IT Service Continuity and Disaster Recovery Plan at any time in accordance with its terms.
- 39.3 Where a Disaster or Business Continuity Event affects the Customer Authority and other Customers, the Contractor shall comply with instructions from the Framework Authority as to the order of priority in which the services should be restored.
- 39.4 The Contractor shall undertake regular risk assessments in relation to the provision of the Services not less than once every six (6) months (or such other period as the Parties agree in writing) (commencing from the Commencement Date) and shall provide the results of, and any recommendations in relation to, those risk assessments to the Customer Authority promptly in writing following each review.
- 39.5 The Contractor shall establish, maintain and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

40. FORCE MAJEURE

- 40.1 Subject to the remaining provisions of this Clause 40, either Party may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event. In particular, the Contractor shall be relieved from its Delay Payments obligation to the extent that the Achievement of any Milestone is affected by the Force Majeure Event, its Service Credits obligation to the extent that the Services are affected by the Force Majeure Event and the Charges shall be reduced to the extent that the Customer Authority does not receive the Services as a result of the Force Majeure Event.
- 40.2 A Party cannot claim relief if the Force Majeure Event is attributable to its Default or breach of this Agreement, wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Contractor cannot claim relief if the Force Majeure Event is attributable to its breach of the GCN Service Agreements, Codes or agreements with Other PSN Services Contractors.
- 40.3 The Contractor cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the IT Service Continuity Plan and/or Disaster Recovery Plan but has failed to do so (except to the extent that this failure is also due to a Force Majeure Event affecting the operation of the IT Service Continuity Plan and/or Disaster Recovery Plan).
- 40.4 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 40.5 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event

together with evidence of its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

- 40.6 As soon as practicable following after the Affected Party's notification and in any event within five (5) Working Days, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Contractor 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.
- 40.7 The Affected Party shall notify the other Party in writing as soon as practicable (and in any event within five (5) Working Days) after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.

SECTION J - INDEMNITIES, LIABILITY AND INSURANCE

41. INDEMNITY

- 41.1 The Contractor shall at all times, during and after the Term, on written demand indemnify the Customer Authority and keep the Customer Authority indemnified against all Losses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer Authority arising from:
- 41.1.1 an IPR Claim; and/or
 - 41.1.2 an Other PSN Services Contractor Claim.
- 41.2 The Customer Authority shall:
- 41.2.1 notify the Contractor in writing of any IPR Claim and Other PSN Services Contractor Claim of which it is aware;
 - 41.2.2 allow (subject to Clause 41.3) the Contractor to conduct all negotiations and proceedings and shall provide the Contractor with such reasonable assistance required by the Contractor, each at the Contractor's cost, regarding the IPR Claim and/or Other PSN Services Contractor Claim; and
 - 41.2.3 not, without first consulting with the Contractor, make an admission relating to the IPR Claim and/or Other PSN Services Contractor Claim.
- 41.3 The Contractor shall consider and defend the IPR Claim and Other PSN Services Contractor Claim diligently using competent counsel and in such a way as not to bring the Customer Authority into disrepute.
- 41.4 The Contractor shall not settle or compromise any IPR Claim or Other PSN Services Contractor Claim without the Customer Authority's Approval (not to be unreasonably withheld or delayed).

- 41.5 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor shall promptly, at its own expense and sole option, either:
- 41.5.1 procure for the Customer Authority the right to continue using the relevant item which is subject to the IPR Claim; or, if it is not possible to do so at commercially reasonable cost, shall:
 - 41.5.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - 41.5.2.1 the performance and functionality of the replacement or modified item is at least equivalent to the performance and functionality of the original item;
 - 41.5.2.2 the replacement or modified item does not have an adverse effect on any other Services, the Overall Services or the ICT Environment;
 - 41.5.2.3 there is no additional cost to the Customer Authority; and
 - 41.5.2.4 the terms of this Agreement shall apply to the replacement or modified item.
- 41.6 If:
- 41.6.1 the Contractor's attempts to modify or replace an item pursuant to Clause 41.5.2 or to procure a licence in accordance with Clause 41.5.1, are not successful and does not fully avoid or resolve the IPR Claim; or
 - 41.6.2 the Customer Authority and/or any of its Indirect Customers or End Users become subject to a binding court order arising in connection with the IPR Claim to cease using all or any part of the Services and/or ICT Environment and the Contractor does not obtain the discharge of such order within ten (10) Working Days (or such other period as the Customer Authority is prepared to agree to in writing),
- then this shall be an irremediable material Default for the purposes of Clause 45.4.2 and, without prejudice to the indemnity set out in Clause 41.1 or the Customer Authority's other rights and remedies, the Contractor shall be liable during the remainder of the Term 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 and/or services.
- 41.7 Clause 41.1 shall not apply in respect of any IPR Claim caused by the use by the Customer Authority of the Software:
- 41.7.1 in combination with any item not supplied pursuant to this Agreement;
 - 41.7.2 in a manner not reasonably to be inferred from the other provisions of this Agreement; or
 - 41.7.3 otherwise than in accordance with Clause 30.5.

42. LIMITATIONS ON LIABILITY

42.1 Neither Party excludes or limits its liability for:

- 42.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- 42.1.2 Fraud or fraudulent misrepresentation by it or its employees;
- 42.1.3 the wilful abandonment by the Contractor of its obligations in relation to the provision of the Services or Exit Management; or
- 42.1.4 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.

Financial Limits

42.2 Subject to Clause 42.1, the Contractor's total aggregate liability:

- 42.2.1 in respect of the indemnities in Clause 16.2 (Tax), Clause 27 (Employment Indemnity), Clause 41 (IPR Indemnity) (excluding Clause 41.1.2) and Schedule 7.1 (Staff Transfer) shall be unlimited;
- 42.2.2 for all loss of or damage to the Customer Authority Premises, property or assets (including technical infrastructure, Customer Authority Assets or equipment but excluding any loss or damage to the Customer Authority Data or any other data) of the Customer Authority caused by the Contractor's Default shall be limited to ten million pounds sterling (£10,000,000);
- 42.2.3 for all loss, destruction, corruption, degradation, inaccuracy or damage to the Customer Authority Data or any other data, or any copy of such Customer Authority Data or other data, caused by the Contractor's Default shall be limited to fifty percent (50%) of the aggregate annual Charges paid, due or which would have been payable under this Agreement in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months) and prior to the calculation of any reduction to those Charges pursuant to this Agreement;
- 42.2.4 in respect of Delay Payments and Service Credits shall be limited in each Contract Year to twenty five percent (25%) (of the aggregate annual Charges payable to the Contractor under this Agreement (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months) and prior to the calculation of any reduction to those Charges pursuant to this Agreement; and
- 42.2.5 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall be limited to an amount equivalent to one hundred and twenty five percent (125%) (of the aggregate annual Charges paid, due or which would have been payable under this

Agreement in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months) and prior to the calculation of any reduction to those Charges pursuant to this Agreement.

- 42.3 Subject to Clause 42.1 the Customer Authority's total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment:
- 42.3.1 for all Defaults by the Customer Authority resulting in loss of or damage to the property or assets (including technical infrastructure, Contractor Assets or equipment) of the Contractor shall be limited to seven hundred and fifty thousand pounds sterling (£750,000);
 - 42.3.2 in respect of the indemnities in Schedule 7.1 (Staff Transfer) shall be unlimited;
 - 42.3.3 in respect of compensation payments due under this Agreement in respect of Customer Authority Cause shall be limited to thirty five percent (35%) of the aggregate annual Charges paid, due or which would have been payable under this Agreement in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months) and prior to the calculation of any reduction to those Charges pursuant to this Agreement;
 - 42.3.4 for the Termination Payment for the Services shall not exceed one hundred percent (100%) of the aggregate annual Charges paid, due or which would have been payable under this Agreement in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months) and prior to the calculation of any reduction to those Charges pursuant to this Agreement; and
 - 42.3.5 in respect of all other Defaults (taken together) by the Customer Authority (including Clause 42.3.3 but not Clauses 42.3.1 and 42.3.4) shall be limited to an amount equivalent to one hundred percent (100%) of the aggregate annual Charges paid, due or which would have been payable under this Agreement in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months) and prior to the calculation of any reduction to those Charges pursuant to this Agreement.
- 42.4 Subject to Clauses 42.1 and 42.5, neither Party shall be liable to the other Party for any:
- 42.4.1 indirect loss or damage;
 - 42.4.2 special loss or damage;
 - 42.4.3 consequential loss or damage;

- 42.4.4 loss of profits (whether direct or indirect);
- 42.4.5 loss of turnover (whether direct or indirect);
- 42.4.6 loss of business opportunities (whether direct or indirect); and/or
- 42.4.7 damage to goodwill (whether direct or indirect),

and in each case, even if that Party was aware of the possibility of such loss or damage to the other.

- 42.5 Subject to Clauses 42.1 and 42.2, the provisions of Clause 42.4 shall not be taken as limiting the right of the Customer Authority to, amongst other things, recover as a direct loss:
- 42.5.1 any additional operational and/or administrative costs and expenses arising from the Contractor's Default;
 - 42.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer Authority arising from the Contractor's Default; and/or
 - 42.5.3 the additional cost of procuring Replacement Services for the remainder of the Term.
- 42.6 If any limitation or provision contained or expressly referred to in this Clause 42 is held to be invalid under any Law, it shall be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability shall be subject to the remaining limitations and provisions set out in this Clause 42.
- 42.7 Nothing in this Clause 42 shall affect a Party's general duty to mitigate its loss.
- 42.8 In accordance with Clause 1.6, where certain obligations in the Framework Agreement are intended to benefit and may be enforced by the Customer Authority (including those clauses listed in Clause 1.4 of the Framework Agreement), any breach of such obligations shall, in the context of this Agreement, be subject to the terms of this Agreement rather than the Framework Agreement including this Clause 42 (Limitations on Liability).

43. INSURANCE

Without prejudice to Clause 35.3.3, the Contractor shall ensure that throughout the Term it is an insured party in accordance with Schedule 11 (Insurance Requirements) of the Framework Agreement, provided that the Required Insurances referred to in Paragraph 2 of that Schedule shall, for the purpose of this Agreement, comprise the minimum sums insured in the table below:

Class	Minimum Sum Insured
Public Liability	£20 million per occurrence or series of occurrences from a single cause
Employer's Liability	£10 million per occurrence or series of

	occurrences from a single cause
Professional Indemnity	£10 million per claim
Product Liability	£10 million per annum
Property Risks	£10 million per occurrence or series of occurrences from a single cause

SECTION K - TERM, TERMINATION AND EXIT MANAGEMENT

44. TERM

44.1 This Agreement shall begin on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with Clause 45, shall terminate at:

- 44.1.1 the end of the Initial Term; or
- 44.1.2 if the Customer Authority elects to extend the Initial Term, at the end of any Extension Period.

45. TERMINATION RIGHTS

Termination for Cause by the Customer Authority

- 45.1 The Customer Authority may terminate this Agreement by giving written notice of termination to the Contractor if one or more of the circumstances set out in Clause 45.4 exist.
- 45.2 Where the Customer Authority is terminating this Agreement for a material Default of this Agreement or one of the specific provisions in Clause 45.4 it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.
- 45.3 Circumstances where a Default shall be deemed not capable of remedy include where the Contractor has already failed to resolve the relevant Default in accordance with a Correction Plan pursuant to Clauses 5 (Implementation Delays - General Provisions) or 10 (Service Levels, Performance Monitoring and Warning Notices).
- 45.4 The circumstances giving rise to the Customer Authority's right to terminate are:
- 45.4.1 the Contractor is in material Default which it has failed to remedy within twenty (20) Working Days of written notice to do so (a material Default shall include the Contractor failing to comply, in whole or in part, with Clause 38.7);
 - 45.4.2 the Contractor commits a material Default of this Agreement which is irremediable;
 - 45.4.3 the Contractor's failure to:

- 45.4.3.1 Achieve a Milestone and/or Test by its associated Milestone Date (where it did not receive relief under Clause 7 (Delays To Milestones Due To Customer Authority Cause)); and
- 45.4.3.2 comply with a Correction Plan for a Milestone, Test or Service Failure because:
 - 45.4.3.2.1 the Contractor does not submit or resubmit a Correction Plan for Approval within the timescales required or at all;
 - 45.4.3.2.2 the Customer Authority acting reasonably does not Approve the proposed Correction Plan on the second occasion of seeking Approval; or
 - 45.4.3.2.3 the Contractor does not comply with an Approved Correction Plan;
- 45.4.4 the Contractor's failure to Achieve a Milestone and/or Test within two (2) months of its associated Milestone Date (or such other period as may be agreed under a Correction Plan) or (if earlier) the specified Fail Date;
- 45.4.5 if, in respect of a Service which is required by the Customer Authority to be a PSN Service, the Contractor ceases to be a PSN Service Provider or the Service in question ceases to maintain PSN Compliance Certification;
- 45.4.6 if the Contractor is in material Default (whether or not subsequently remedied) of:
 - 45.4.6.1 Clause 32 (Protection of Personal Data);
 - 45.4.6.2 Clause 34 (Confidentiality and Publicity);
 - 45.4.6.3 the Security Requirements; and/or
 - 45.4.6.4 the obligation to implement the IT Service Continuity Plan and/or Disaster Recovery Plan under Schedule 6.5 (IT Service Continuity and Disaster Recovery Provisions);
- 45.4.7 the Contractor's level of performance constitutes a Critical Service Failure;
- 45.4.8 an Insolvency Event affecting the Contractor, the Guarantor (if a Guarantee has been given) or any Holding Company of either of them occurs;
- 45.4.9 the occurrence of a Trigger Event;
- 45.4.10 as a result of the Contractor's Default the Customer Authority suffers damages that exceed seventy five percent (75%) of the aggregate value of one (1) or more relevant liability caps as set out in Clause 42.2. If the Contractor wishes to put forward proposals to increase its liability caps set out in Clause 42.2 so as to avoid this Agreement being terminated in accordance with this Clause 45.4.10, it shall notify the Customer Authority in writing and put forward increased liability caps within two (2) Working

Days (or such other period as the Customer Authority is prepared to agree to in writing within that two (2) Working Day period) of receipt of the Customer Authority's notice. The decision as to whether to accept the proposed increased liability caps shall be determined solely by the Customer Authority and its decision shall be final and conclusive;

- 45.4.11 where the Contractor commits a Default (other than as a consequence of a Default by the Customer Authority) which results in the criminal investigation, prosecution and conviction of the Contractor or any Sub-contractor under the Health and Safety Regime where it would be reasonable and proportionate to do so in the light of the gravity and other circumstances of any offence;
 - 45.4.12 the Contractor makes any public announcement or a director of the board of directors of the Contractor advises an officer of the Customer Authority that the Contractor is no longer going to (or is unsure whether it is going to) continue to develop or to offer the provision of services similar to the Services and there is evidence that such announcement shall materially adversely impact the ability of the Contractor to provide the Services; and/or
 - 45.4.13 the Framework Authority suspends the Contractor pursuant to the Framework Agreement (or any part thereof); or
 - 45.4.14 the occurrence of any of the grounds set out in Clauses 55.2, 55.4 or 55.5 (Prevention of Fraud).
- 45.5 The rights of the Customer Authority (to terminate or otherwise) under this Clause 45 are in addition (and without prejudice) to any other right or remedy which the Customer Authority may have, including to claim the amount of Losses suffered by the Customer Authority on account of the acts or omissions of the Contractor (subject to the limitations of liability set out in Clause 42 (Limitations on Liability)).
- 45.6 Any termination by the Customer Authority under Clause 45.1 shall be deemed to be termination for breach of condition, and the Customer Authority shall, subject to Clause 42 (Limitations on Liability), be entitled to claim for the loss and damage that has been suffered as flowing from such breach of condition.
- 45.7 The Customer Authority may exercise any right of termination under Clause 45.1 without first instigating the Dispute Resolution Procedure or without awaiting its final outcome. Where the Customer Authority does not do so, the Parties' obligations under Clause 25 (Disputes) shall continue to apply. The foregoing does not preclude the Contractor from disputing that the Customer Authority is entitled to terminate this Agreement.

Termination for Convenience by the Customer Authority

- 45.8 The Customer Authority may terminate this Agreement (or individual Services provided under it including where the provisions of Schedule 5.3 (Value for Money) arise) for convenience at any time on giving written notice to the Contractor. If the Customer Authority exercises its right to terminate the Agreement for convenience under this Clause 45.8, the Contractor shall be entitled to a Termination Payment pursuant to Clause 47.3 (Payments made on Termination). The parties agree that an exercise of the Customer Authority's rights to amend the volume of the Services in

Schedule 5.1 (Charges and Invoices) is not a termination in whole or part for the purposes of this clause. The parties acknowledge that all such costs of those rights in Schedule 5.1 (Charges and Invoices) are included in the Charges already and no further charges or fees shall be payable for the exercise or resulting from those rights.

- 45.9 Subject to any obligation to provide the Services in accordance with the Exit Plan, the Contractor's obligation to provide the Services shall end on the date set out in the Customer Authority's Termination Notice.
- 45.10 Without prejudice to Clause 45.9 and unless otherwise stipulated by the Customer Authority in its Termination Notice, any Services that have not commenced at the date of the Customer Authority's Termination Notice shall be cancelled automatically and no payment shall be due from the Customer Authority in relation to such cancellation. This payment shall apply only to Services where at the relevant time, implementation pursuant to Clause 3.1 has not begun and where the Contractor has not entered into any binding commitments with Sub-contractors in relation to such Services.
- 45.11 This right of termination is in addition to any other rights of the Customer Authority under this Agreement and its exercise shall be without prejudice to any claim, remedy or right of action that either Party may have in relation to this Agreement.

Termination for Change of Ownership

- 45.12 The Customer Authority may terminate this Agreement by written notice without any obligation to pay monies arising if there is an Ultimate Holding Company Change to which the Customer Authority objects except where the Customer Authority:
- 45.12.1 has given its Approval to the particular Ultimate Holding Company Change, which subsequently takes place as proposed; or
- 45.12.2 has not served its notice within three (3) months of the later of the date the Ultimate Holding Company Change took place or the date on which the Customer Authority was given written notice of the Ultimate Holding Company Change.
- 45.13 The Contractor shall notify the Customer Authority in writing within one (1) month of any Change of Ownership taking place.

Partial Termination

- 45.14 Where the Customer Authority exercises a right of termination under Clauses 45.1, 45.4, 45.8 or 45.22, it may, at its option, terminate in respect of part of the Services only, in which case the Parties' obligations in respect of the remaining Services shall continue unaffected subject to Clause 45.15. The parties agree that an exercise of the Customer Authority's rights to amend the volume of the Services in Schedule 5.1 (Charges and Invoices) is not a termination in whole or part for the purposes of this clause. The parties acknowledge that all such costs of those rights in Schedule 5.1 (Charges and Invoices) are included in the Charges already and no further charges or fees shall be payable for the exercise or resulting from those rights.
- 45.15 The Parties shall agree the effect of any Change made necessary to this Agreement by the Partial Termination, including the effect the Partial Termination may have on

any other Services and the Charges, in accordance with Schedule 6.2 (Change Control Procedure), provided that:

- 45.15.1 the Contractor shall not be entitled to an increase in the Charges if the Partial Termination arises pursuant to Clauses 45.1, 45.4, 45.8 or 45.22;
 - 45.15.2 any revision to the Charges (if any) shall not be unreasonable and in any event shall be calculated in accordance with Clauses 24.5 to 24.7 (inclusive); and
 - 45.15.3 the Contractor may not reject the Change.
- 45.16 Termination in accordance with Clause 45.14 shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

Termination of a Project

- 45.17 The Customer Authority may, by written notice, require the partial termination of the Agreement in respect of a Project to be delivered under a Project Work Order, if:
- 45.17.1 one or more of the circumstances set out in Clauses 45.4.1 to 45.4.4 or 45.4.7 (inclusive) exist in relation to the performance of the Services that relate to the Project;
 - 45.17.2 the Customer Authority is entitled to terminate any element of the Services which relates to or interface with the Services to be provided as part of the Project; or
 - 45.17.3 one or more of the circumstances set out in Clause 45.4.5, 45.4.6 or 45.4.8 to 45.4.13 (inclusive) exist.
- 45.18 If a Project Work Order is terminated by the Customer Authority pursuant to Clause 45.17 before the CPP for that Project, the Contractor shall return to the Customer Authority on demand the aggregate sum of all Milestone Payments paid to the Contractor in respect of the Achievement of Milestones prior to that CPP.
- 45.19 Termination in accordance with Clause 45.17 shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

Termination by the Contractor

- 45.20 The Contractor may terminate this Agreement only if the Customer Authority is in material breach of its obligation to pay undisputed Charges (and notwithstanding that the Customer Authority may have informed the Contractor of any delay in payment in accordance with paragraph 18 of Part B of Schedule 5.1 (Charges and Invoices)) by giving the Customer Authority at least three (3) months' written notice specifying the breach and requiring its remedy. The Contractor's right of termination under this Clause 45.20 shall not apply to non-payment of the Charges by the Customer Authority where such non-payment is due to the Customer Authority exercising its rights under Clause 17 (Recovery of Sums Due). If the Contractor terminates this Agreement for material breach by the Customer Authority pursuant to this Clause

45.20, the Contractor shall be entitled to a Termination Payment pursuant to Clause 47.3 (Payments made on Termination).

45.21 The Contractor shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

Termination for Continuing Force Majeure Event

45.22 Either Party may, by written notice to the other, terminate this Agreement (or the Customer Authority may require the Partial Termination of any part of the Services on the occurrence in relation to that part), if a Force Majeure Event occurs which affects:

45.22.1 all or a substantial part of the Services for a continuous period of more than three (3) months; or

45.22.2 a part but not a substantial part of the Services for a continuous period of more than four (4) months.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

46.1 The provisions of Clauses 23 (Audits, Notifications and Record Keeping), 30 (Intellectual Property Rights), 32 (Protection of Personal Data), 33 (Freedom of Information), 34 (Confidentiality and Publicity), 41 (Indemnity), 42 (Limitations on Liability), 46 (Consequences of Expiry or Termination), 47 (Payments made on Termination), 53 (Relationship of the Parties and Indirect Customers), 57 (Severance), 59 (Entire Agreement), 60 (Third Party Rights) and 62 (Governing Law and Jurisdiction) and the provisions of Schedules 1 (Definitions), 6.4 (Exit Management), 6.6 (Records Provisions), 7.1 (Staff Transfer) shall survive the termination or expiry of this Agreement.

46.2 In the event the Contractor suffers any Insolvency Event and/or this Agreement is terminated by the Customer Authority pursuant to Clause 45.4.8, the Contractor (or a liquidator or provisional liquidator acting on behalf of the Contractor) shall at its own cost and at no cost to the Customer Authority;

46.2.1 conduct a full and thorough search for any electronic and paper records held by the Contractor (or any Sub-contractor) which contain Customer Authority Data in accordance with the Customer Authority's instructions;

46.2.2 return all such records to the Customer Authority in accordance with the Customer Authority's instructions;

46.2.3 permanently destroy all copies of any relevant electronic records; and

46.2.4 provide written confirmation to the Customer Authority that the actions outlined above in this paragraph have been completed.

46.3 In the event of a Sub-contractor being subject to an Insolvency Event, the Contractor shall be responsible for recovering any records (and any Customer Authority Data therein) held by the Sub-contractor, and provide assurance to the Customer Authority that such records have been recovered, on the same basis as set out under Clause 46.2 above.

46.4 In the event the Contractor is subject to an event described in Paragraph (b) of the definition of Insolvency Event, the Customer Authority will work closely with any administrator appointed in respect of the Contractor to ensure the Contractor is able to maintain Customer Authority and other records created and held by the Contractor pursuant to its obligations under this Agreement and ensure that such records are stored and maintained in accordance with all applicable Standards relating to information security.

47. PAYMENTS MADE ON TERMINATION

47.1 If the cost of any Contractor Assets has not been fully paid for through Milestone Payments or otherwise amortised at the time of expiry or termination of this Agreement, then on such termination or expiry the Customer Authority shall pay the Contractor the Net Book Value of any Contractor Assets that the Customer Authority elects to have transferred to it in accordance with Schedule 6.4 (Exit Management). For the avoidance of doubt, the Net Book Value for the Exclusive Assets shall be zero at the end of the Initial Term.

47.2 Save for any payments in respect of any Contractor Assets made in accordance with Clause 47.1 and Schedule 6.4 (Exit Management), the Customer Authority shall not make a payment to the Contractor:

47.2.1 on the expiry of the Term;

47.2.2 for termination for Customer Authority Cause in accordance with Clauses 45.1 and 45.4 or for Partial Termination arising out of rights under Clause 45.14 (except in relation to the right under Clause 45.8); or

47.2.3 for termination for Change of Ownership in accordance with Clause 45.12.

47.2.4 for termination due to a change in the financial standing or credit rating of the Contractor in accordance with Clause 45.4.13.

47.3 The Customer Authority shall pay the Contractor the Termination Payment in respect of the Services which are being terminated only if this Agreement is terminated by the Customer Authority pursuant to Clause 45.8 (Termination for Convenience by the Customer Authority) or by the Contractor pursuant to Clause 45.20 (Termination by the Contractor).

47.3A The Contractor hereby confirms that any Termination Payment required to be paid to the Contractor in accordance with Clause 47.3, once paid, shall be sufficient to enable the Customer Authority to re-purchase the Financed Assets from the Financed Assets Assignee at no additional cost, and that the Contractor will be obliged to make and/or procure such a re-purchase of the Financed Assets for the benefit of the Customer Authority, should this be required by the Customer Authority (at the Customer Authority's sole option). If the Termination Payment is not made, and any amounts set out in the table in Paragraph 12.1 of the Call-Off Form (Encumbrances) remain properly due, then the Financed Assets Assignee shall be entitled to receive said payments directly from the Customer Authority pursuant to Clause 51.2.3.2. If there is a subsequent Default by the Customer Authority to make said direct payments, then the Financed Assets Assignee shall be entitled to recover the Financed Assets and the Customer Authority shall permit such persons appointed by the Financed Assets Assignee to enter any premises where Financed Assets are believed to be located and remove the Financed Assets.

- 47.4 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement pursuant to Clause 45.22 (Termination for Continuing Force Majeure Event).

Payments made by the Contractor

- 47.5 If this Agreement is terminated by the Customer Authority pursuant to Clause 45.1 (Termination for Cause by the Customer Authority) before the CPP, the Contractor shall return to the Customer Authority on demand the aggregate sum of all Milestone Payments paid to the Contractor in respect of the Achievement of Milestones prior to that CPP (or the aggregate sum of all Milestone Payments paid to the Contractor in respect of the Achievement of Milestones relating to all outstanding CPP(s) if there is more than one).
- 47.6 If a Project is terminated by the Customer Authority pursuant to Clause 45.17 (Termination of a Project) before the CPP applicable to that Project, the Contractor shall return to the Customer Authority on demand the aggregate sum of all Milestone Payments paid to the Contractor in respect of the Achievement of Milestones relating to that Project prior to that CPP (or the aggregate sum of all Milestone Payments paid to the Contractor in respect of the Achievement of Milestones relating to all outstanding CPP(s) for that Project if there is more than one).
- 47.7 In the event of termination (however arising) or expiry, the Contractor shall repay to the Customer Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of such expiry or termination (save to the extent that such Services are provided after such date pursuant to Schedule 6.4 (Exit Management)).

48. EXIT MANAGEMENT

- 48.1 The Customer Authority and the Contractor shall comply with the Exit Management requirements set out in Schedule 6.4 (Exit Management) and any current Exit Plan. Notwithstanding any other provision of this Agreement the Customer Authority shall have the rights set out in Clause 48.3.
- 48.2 If an Insolvency Event occurs, the Customer Authority's rights under Clause 48.3 shall be exercisable by the Customer Authority;
- 48.2.1 at any time before the winding up of the Contractor or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;
- 48.2.2 in the event of termination of this Agreement for any reason; and/or
- 48.2.3 upon the expiry of this Agreement.
- 48.3 The Contractor shall not, without the Customer Authority's Approval, encumber any Contractor Assets in any way which would require the consent of a third party to the exercise by the Customer Authority of its rights under Schedule 6.4 (Exit Management) which would in some other way restrict the exercise by the Customer Authority of its rights under those Schedules. For the purposes of this Clause 48.3 "encumber" shall include any leasing agreement, any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or

arrangement (except for a floating charge attaching generally to the assets and undertaking of the Contractor which has not crystallised) or which otherwise restricts the Contractor's ability to use and deal with the relevant Contractor Asset.

- 48.4 Unless the Customer Authority otherwise requires, during the time between service of a Termination Notice and such termination or exercise taking effect, the Contractor shall take all steps which are necessary and consistent with its continuing obligations, to mitigate any losses which the Contractor may incur as a result of the termination, including to:
- 48.4.1 cancel all capital and recurring cost commitments in connection with the Implementation Plan and/or the provision of Services on the most cost-effective terms;
 - 48.4.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Customer Authority whether such contracts are required to be transferred to the Customer Authority or Replacement Contractor instead;
 - 48.4.3 reduce labour costs by the redeployment or release of Contractor Personnel other than Key Personnel to the extent possible in the circumstances; and
 - 48.4.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in Clauses 48.4.1 to 48.4.3 (inclusive).
- 48.5 If the Contractor does not fulfil its obligations in accordance with Clause 48.4, the Customer Authority shall not pay any sums in excess of those which the Customer Authority would have paid had such action been taken.

49. STEP-IN RIGHTS

- 49.1 The Customer Authority may take action under this Clause 49 in the following circumstances:
- 49.1.1 the Customer Authority is entitled to terminate in accordance with Clause 45.4 (Termination for Cause by the Customer Authority);
 - 49.1.2 there is a Default by the Contractor that is materially preventing or materially delaying the performance of the Services or any part thereof;
 - 49.1.3 there is a Delay that has or the Customer Authority reasonably anticipates will result in the Contractor's failure to Achieve a Milestone in respect of Authority to Proceed or CPP by its Milestone Date;
 - 49.1.4 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part thereof;
 - 49.1.5 the Contractor has accrued Service Credits in relation to any Service in any period of six (6) months in excess of fifteen percent (15%) of the

Charges payable over that period for such Service, calculated before Service Credit deductions;

- 49.1.6 the Contractor has accrued Delay Payments in excess of thirty percent (30%) of the value of the Milestone Payment associated with the Milestone against which Delay Payments are being incurred or, where there is no Milestone Payment associated with the Milestone against which Delay Payments are being incurred, the Contractor has accrued Delay Payments relating to the Milestone in question in excess of two calendar months;
 - 49.1.7 where the Contractor is not in Default of its obligations under this Agreement but the Customer Authority considers that the circumstances constitute an emergency;
 - 49.1.8 where a Regulatory Body has advised the Customer Authority that the exercise by the Customer Authority of its rights under this Clause 49 is necessary;
 - 49.1.9 because a serious risk exists to the health or safety of persons, property or the environment;
 - 49.1.10 to discharge a statutory duty;
 - 49.1.11 on the occurrence of an Insolvency Event in respect of the Contractor; and/or
 - 49.1.12 where it is required to do so by the PSNA or the Framework Authority.
- 49.2 If the Customer Authority wishes to exercise any of the rights in this Clause 49 in relation to elements of the Services which are Shared Services, it shall require the prior written consent of the Framework Authority. In considering whether to give consent, the Framework Authority shall consider whether (without limitation) such step-in would affect or impact any other Direct Customers and/or Indirect Customers receiving such Standard Services. If the Framework Authority consents to step-in in relation to Shared Services (or any parts thereof), this Clause 49 shall apply Mutatis Mutandis to such Shared Services (or any parts thereof).

Action to be taken before the exercise of the right of Step-in

- 49.3 Before the Customer Authority exercises its right of step-in under this Clause 49 it shall permit the Contractor the opportunity to demonstrate to the Customer Authority's reasonable satisfaction within ten (10) Working Days of the step in right arising that the Contractor is still able to provide the Services in accordance with the terms of this Agreement and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Customer Authority to take action.
- 49.4 If the Customer Authority is not satisfied with the Contractor's demonstration pursuant to Clause 49.3, the Customer Authority may:
 - 49.4.1 where the Customer Authority considers it expedient to do so, require the Contractor by notice in writing to take those steps that the Customer Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rise to the Customer Authority's right to step-in;

- 49.4.2 appoint any person to work with the Contractor in performing all or a part of the Services (including those provided by any Sub-contractor); or
 - 49.4.3 take the steps that the Customer Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-contractor).
- 49.5 The Contractor shall cooperate fully and in good faith with the Customer Authority, or any other person appointed in respect of Clause 49.4.2, and shall adopt any reasonable methodology in providing the Services recommended by the Customer Authority or that person.

Exercise of the right of Step-in

- 49.6 If the Contractor fails to:
- 49.6.1 confirm within three (3) Working Days of a notice served pursuant to Clause 49.4.1 that it is willing to comply with that notice;
 - 49.6.2 work with a person appointed in accordance with Clause 49.4.2; or
 - 49.6.3 take the steps notified to it by the Customer Authority pursuant to Clause 49.4.3,
- then the Customer Authority may take action under this Clause 49 either through itself or with the assistance of any Other PSN Services Contractors, provided that the Contractor may require any Other PSN Services Contractors to comply with a confidentiality undertaking equivalent to Clause 34 (Confidentiality and Publicity).
- 49.7 If the Customer Authority takes action pursuant to Clause 49.6, the Customer Authority shall serve written notice ("**Step-In Notice**") on the Contractor. The Step-in Notice shall set out the following:
- 49.7.1 the action the Customer Authority wishes to take and in particular the Services it wishes to control (or appoint any Other PSN Services Contractors to control);
 - 49.7.2 the reason for and the objective of taking the action and whether the Customer Authority reasonably believes that the primary cause of the action is due to the Contractor's Default;
 - 49.7.3 the date it wishes to commence the action;
 - 49.7.4 the time period which it believes will be necessary for the action;
 - 49.7.5 whether the Customer Authority will require access to the Contractor's premises and/or the Sites; and
 - 49.7.6 to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period the action is being taken.
- 49.8 Following service of a Step-in Notice, the Customer Authority shall:

- 49.8.1 take the action, or procure that any Other PSN Services Contractor takes the action, set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**");
 - 49.8.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 49.8.3 cooperate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide any Services in relation to which the Customer Authority is not assuming control; and
 - 49.8.4 take such steps as are reasonably open to it to limit the amount of the cost that the Contractor shall incur as a result of the exercise of the Customer Authority's rights under this Clause 49 (provided that this does not prejudice achievement of the Customer Authority's objectives).
- 49.9 For so long as and to the extent that the Required Action is continuing, then the Contractor shall:
- 49.9.1 cooperate fully with the Customer Authority and any Other PSN Services Contractor appointed by the Customer Authority to facilitate the steps taken;
 - 49.9.2 suspend performance of the Services subject to the step-in rights (the "**Step-In Services**") to the extent that the Customer Authority so requests for the purposes of its exercise of step-in rights, provided always that the exercise of the step-in right shall not excuse the Contractor from its obligation to provide the Services (excluding the Step-In Services for the period only of exercise of the step-in right) in accordance with this Agreement or be deemed to frustrate or waive performance of that obligation;
 - 49.9.3 grant and procure that any Sub-contractor or relevant third party grants such licences and permissions as are reasonably required provided that these are no more expensive than the charges that would have been payable by the Contractor; and
 - 49.9.4 afford (and procure that its Sub-contractors afford as applicable) to the Customer Authority such cooperation, access to and use of (as applicable):
 - 49.9.4.1 the Contractor Assets and Customer Authority Assets used to provide the Services and other goods and services used to provide the Services;
 - 49.9.4.2 all necessary and associated documentation relating to those Contractor Assets and Customer Authority Assets used by the Contractor to provide the Services to the Customer Authority and any other goods and services used to provide the Services so as to enable the same to be operated;
 - 49.9.4.3 the Contractor's Intellectual Property Rights used in relation to the Services; and

49.9.4.4 premises, equipment, personnel, documents, information or other items as are reasonably required.

49.10 For so long as and to the extent that the Required Action is continuing, then:

49.10.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

49.10.2 subject to Clauses 49.11 and 49.15, the Customer Authority shall pay to the Contractor the Charges after deduction of any applicable Service Credits, Delay Payments and the Customer Authority's reasonable and direct costs of taking the Required Action. If the Contractor retains partial responsibility for a Service under Clause 49.10.1, then the reduction in Charges shall be proportionate to the reduction in the Contractor's responsibility.

49.11 If the Required Action results in:

49.11.1 the degradation of any Services not subject to the Required Action; or

49.11.2 the non-Achievement of a Milestone,

beyond that which would have been the case had the Customer Authority not taken the Required Action, then the Contractor shall be entitled to an agreed adjustment of the Charges, provided that the Contractor can demonstrate to the reasonable satisfaction of the Customer Authority that the Required Action has led to the degradation or non-Achievement.

49.12 Before ceasing to exercise its step-in rights under this Clause 49 the Customer Authority shall deliver a written notice to the Contractor ("**Step-Out Notice**"), specifying:

49.12.1 the Required Action it has actually taken; and

49.12.2 the date on which the Customer Authority plans to end the Required Action ("**Step-Out Date**") subject to the Customer Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with Clause 49.13.

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

49.14 If the Customer Authority does not Approve the draft Step-Out Plan, the Customer Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Customer Authority for the Customer Authority's Approval. The Customer Authority shall not withhold or delay its Approval of the draft Step-Out Plan unnecessarily.

49.15 The Contractor shall bear its own costs in connection with any step-in by the Customer Authority under this Clause 49 provided that the Customer Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Customer Authority under:

49.15.1 Clauses 49.1.4 or 49.1.7; or

49.15.2 Clauses 49.1.8, 49.1.9 and 49.1.10 provided that the primary cause of the Customer Authority serving the Step-In Notice was not a Contractor's Default.

50. GUARANTEE

50.1 Where the Customer Authority has requested a Guarantee pursuant to Clause 28.2 of the Framework Agreement and under Paragraph 7 of the Call-Off Form, Clauses 28.2 and 28.3 of the Framework Agreement shall apply.

50.2 Where the Contractor has procured a Guarantee, the Customer Authority may terminate this Agreement with immediate effect if:

50.2.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

50.2.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

50.2.3 any of the events set out in Clauses 45.4.8, 45.4.9, or 45.12 occurs in respect of the Guarantor; or

50.2.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever.

SECTION L - MISCELLANEOUS AND GOVERNING LAW

51. ASSIGNMENT AND NOVATION

51.1 Subject to Clause 22.2, the Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the Approval of the Customer Authority.

51.2 Notwithstanding Clause 51.1, the Contractor may assign to a third party (the "**Assignee**" or "**Financed Assets Assignee**") the right to receive payment of the Charges or any part thereof due to the Contractor under this Agreement. Any assignment under this Clause 51.2 shall be subject to:

51.2.1 deduction of any sums in respect of which the Customer Authority exercises its right of recovery under Clause 17 (Recovery of Sums Due); and

51.2.2 all related rights of the Customer Authority under this Agreement in relation to the recovery of sums due but unpaid.

51.2.3 the Customer Authority receiving prior written notification:

51.2.3.1 of the proposed assignment and the date upon which the proposed assignment shall become effective; and

51.2.3.2 of the Assignee's or Financed Assets Assignee's contact information and bank account details to which the Customer Authority shall make payment.

51.2A For the purposes of Clause 51.2 and (to the extent applicable) with reference to Clause 14.8 (Assets and Customer Authority Assets), the Customer Authority hereby gives Approval to the Contractor to assign to the Financed Assets Assignee the right to receive payment of the Charges or any part thereof due to the Contractor under this Agreement in relation to the Assets listed in the table in Paragraph 12.1 of the Call-Off Form (Encumbrances) (such Assets being the "**Financed Assets**").

51.3 The Customer Authority may:

51.3.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any other Contracting Authority; or

51.3.2 novate this Agreement and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Customer Authority, or a Replacement Contractor as required to secure a smooth transition to any Replacement Services. If this transfer increases the burden of the Contractor's obligations under this Agreement the Contractor shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through Schedule 6.2 (Change Control Procedure).

51.4 A change in the legal status of the Customer Authority shall not (subject to Clause 51.5) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Customer Authority.

51.5 If this Agreement is novated to a body which is not a Contracting Authority, or a body which is not a Contracting Authority succeeds the Customer Authority, (both "transferee" in the rest of this Clause 51.5):

51.5.1 the Contractor shall be entitled to exercise a right of termination if:

51.5.1.1 the transferee suffers an Insolvency Event; or

51.5.1.2 the transferee commits:

51.5.1.2.1 a material Default which Default is not remedied within forty (40) Working Days after notice of Default from the Contractor to the transferee requiring its remedy; or

51.5.1.2.2 a material Default which is irremediable;

51.5.2 the transferee may assign, novate or otherwise dispose of its rights and obligations under this Agreement (or any part) only with the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed); and

- 51.5.3 from the date of the novation or the date of the Customer Authority's change of status (as appropriate), as if this Agreement had been amended by the Parties in accordance with Schedule 6.2 (Change Control Procedure), the definition of "Crown Body" in Schedule 1 (Definitions) shall be deleted and Clause 34.9.1 shall be deleted.
- 51.6 If the Customer Authority assigns, novates or otherwise disposes of any or all of its rights and obligations under this Agreement pursuant to Clauses 51.3 and/or 51.5 and such transfer includes the assignment, novation and/or disposal of Services or other rights or obligations in relation to which the Financed Assets are utilised by the Contractor, then the Contractor shall be obliged to notify the Financed Assets Assignee of such transfer. If the Financed Assets Assignee has reasonable grounds to object to the transfer then the Contractor shall be entitled to re-purchase the Financed Assets from the Financed Assets Assignee, following which title in the Financed Assets (to the extent such title has transferred to the Financed Assets Assignee in accordance with Clause 14.5A) shall transfer to the Contractor and this Call-Off Contract shall be amended by the Parties in accordance with the Change Control Procedure to the extent required in order to reflect the impact of such change, including (without limitation) in respect of:
- 51.6.1 Paragraph 12 of the Call-Off Form;
- 51.6.2 Clauses 14 (Assets and Customer Authority Assets), 34 (Confidentiality and Publicity), 47 (Payments made on Termination) and 51 (Assignment and Novation) of the Call-Off Terms; and
- 51.6.3 Schedule 1 (Definitions).

52. WAIVER AND CUMULATIVE REMEDIES

- 52.1 The rights and remedies provided by this Agreement may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 52.2 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies provided at law or in equity or otherwise under this Agreement. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 52.3 A waiver by either Party of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

53. RELATIONSHIP OF THE PARTIES AND INDIRECT CUSTOMERS

- 53.1 Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or, save as expressly agreed in writing, to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

- 53.2 The Customer Authority may appoint any third party or third parties (including the SIAM Service Tower Provider, any Other PSN Services Contractor or Wider PSN Contractor) to act on its behalf in carrying out its obligations and exercising its rights under this Agreement. The Customer Authority shall give the Contractor written notice of such appointment(s), and relevant contact details, and the Contractor shall:
- 53.2.1 cooperate in good faith with each such third party and use reasonable endeavours to resolve any failures, provide products, services, information, guidance, support and/or assistance that the Customer Authority expects the third party to provide without the need to involve the Customer Authority; and
 - 53.2.2 treat completion by each such third party of any task, activity or responsibility that is specified in this Agreement as a "Customer Authority Responsibility", as completion of that Customer Authority Responsibility by the Customer Authority.
- 53.3 Where an Other PSN Services Contractor or Wider PSN Contractor has been appointed by the Customer Authority to represent or act on behalf of the Customer Authority in relation to performance of the Contractor's obligations under this Agreement, the Contractor shall not accept the instructions of such Other PSN Services Contractor or Wider PSN Contractor in circumstances where it reasonably believes that the Other PSN Services Contractor or Wider PSN Contractor has: (i) exceeded the scope of the authority granted to the Other PSN Services Contractor or Wider PSN Contractor by the Customer Authority as disclosed to the Contractor by the Customer Authority; and (ii) notified the Customer Authority that it has received such unauthorised instruction.
- 53.4 The Contractor shall provide the Services for the benefit of both the Customer Authority and/or the other third parties who are designated as Indirect Customers.
- 53.5 An Indirect Customer may, through the Customer Authority, acting as its agent and trustee, enforce the benefit of this Agreement under the Contracts (Rights of Third Parties) Act 1999 to the extent that the Services are being provided to that Indirect Customer.
- 53.6 For avoidance of doubt:
- 53.6.1 the Contractor shall be liable only to the Customer Authority and shall deal only with the Customer Authority (and not any Indirect Customer);
 - 53.6.2 no consent of any Indirect Customer shall be required for any variation or termination of this Agreement;
 - 53.6.3 if any breach arises out of any act or omission of an Indirect Customer, any claim by the Contractor shall be brought only against the Customer Authority and not against any Indirect Customer; and
 - 53.6.4 the Customer Authority may recover all losses suffered by any Indirect Customer as though it had suffered such loss itself, provided that in no event may the Customer Authority recover twice in respect of the same loss (so that a loss recovered by an Indirect Customer may not also be recovered by the Customer Authority and vice versa).

53.7 The Indirect Customers' rights under Clause 53.5 and the Customer Authority's rights under Clause 53.6.3 shall not increase the limitations on liability in Clause 42.2.

53.8 The Customer Authority shall procure that all Indirect Customers shall comply with the terms of this Agreement to the extent that those obligations are relevant to that Indirect Customer.

54. CORRUPT GIFTS

54.1 In this Clause 54, the expression "**Prohibited Act**" shall mean any offer or agreement to give any person working for or engaged by the Customer Authority or any other Crown Body any commission, gift or other consideration of any kind, which could act as an inducement or a reward for any act or failure to act connected to this Agreement or any other agreement between the Contractor and the Customer Authority and/or any other Crown Body including:

54.1.1 the award of this Agreement to the Contractor or any other agreement to the Contractor or a Sub-contractor; and

54.1.2 any award of the rights and obligations contained within this Agreement or another agreement with a Crown Body or the showing of any favour or disfavour to any person in relation to this Agreement or any other agreement with a Crown Body.

54.2 The Contractor warrants, represents and undertakes on a continuing basis throughout the Term that it has not entered into this Agreement knowing (or in circumstances in which it ought reasonably to have known) that a Prohibited Act has been committed in connection with this Agreement.

54.3 The Contractor shall not (and shall procure that the Sub-contractors shall not) enter into any agreement knowing (or in circumstances in which it ought reasonably to have known) that in connection with that agreement any Prohibited Act has been committed.

54.4 Any:

54.4.1 commission by the Contractor or its Sub-contractors of a Prohibited Act or any other breach of this Clause 54; or

54.4.2 commission of an offence by the Contractor or its Sub-contractors under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 in relation to this Agreement or any other agreement with the Customer Authority or any other Crown Body,

shall, without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Customer Authority, entitle the Customer Authority to terminate this Agreement by written notice with immediate effect. The Contractor shall indemnify the Customer Authority from and against any other loss sustained by it in consequence of any breach of this Clause 54, whether or not this Agreement has been terminated.

54.5 For the purposes of Clause 54.4, the Contractor shall be taken to have 'commissioned' a Prohibited Act or offence where it has done such act and also

where it has attempted to do a Prohibited Act or offence or has aided, abetted, counselled, procured or conspired with any person to do a Prohibited Act or offence.

54.6 Notwithstanding Clause 25 (Disputes), any dispute relating to:

54.6.1 the interpretation of Clauses 54.1 to 54.5 (inclusive); or

54.6.2 the amount or value of any gift, consideration or commission,

shall be determined by the Customer Authority and the decision shall be final and conclusive.

55. PREVENTION OF FRAUD

55.1 The Customer Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Agreement. Contractors and Sub-contractors are required to:

55.1.1 have an established system that enables Contractor Personnel and Sub-contractor staff to report inappropriate behaviour by colleagues in respect of agreement performance claims;

55.1.2 ensure that Contractor or Sub-contractors performance management systems do not encourage individual staff (including the Contractor Personnel) to make false claims regarding achievement of agreement performance targets;

55.1.3 ensure a segregation of duties within the Contractor's or Sub-contractors operation between those individuals directly involved in delivering the Services and those reporting achievement of agreement performance to the Customer Authority;

55.1.4 ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) monthly intervals, to ensure effective and accurate recording and reporting of agreement performance.

55.2 The Contractor shall use its best endeavours to safeguard the Customer Authority's funding of the Agreement against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or Sub-contractors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Customer Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

55.3 If the Contractor, its Contractor Personnel or its Sub-contractors commits Fraud in relation to this or any other contract with any Crown Body (including the Customer Authority) the Customer Authority may:

55.3.1 terminate this Agreement and recover from the Contractor the amount of any loss suffered by the Customer Authority resulting from the termination, including the cost reasonably incurred by the Customer Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer Authority throughout the remainder of the Term; or

- 55.3.2 recover in full from the Contractor any other loss sustained by the Customer Authority in consequence of any breach of this Clause 55.
- 55.4 Any act of fraud committed by the Contractor or its Sub-contractors (whether under this Agreement or any other contract with any other Contracting Authority) shall entitle the Customer Authority to terminate this Agreement, and any other contract the Customer Authority has with the Contractor, by serving written notice on the Contractor.
- 55.5 If the Customer Authority finds that the Contractor has deliberately submitted false claims for Agreement payments with the knowledge of its senior officers the Customer Authority shall be entitled to terminate this Agreement, or any other contract the Customer Authority has with the Contractor, with immediate effect.

56. MACHINERY OF GOVERNMENT CHANGE

- 56.1 If there is a restructuring of the Customer Authority and/or its provision of services or fulfilment of functions, such that either:
- 56.1.1 the delivery of services or fulfilment of functions provided or fulfilled by the Customer Authority becomes the responsibility of another Government department, agency or other Indirect Customer public body;
 - 56.1.2 the delivery of services or fulfilment of functions provided or fulfilled by another Government department, agency or other public body becomes the responsibility of the Customer Authority;
 - 56.1.3 the Customer Authority is required to take on new services or fulfil new functions; or
 - 56.1.4 any of the services or functions provided or fulfilled by the Customer Authority cease to be provided or fulfilled by the Customer Authority without being provided or fulfilled by any Government department, agency or other public body in place of the Customer Authority,

then the Parties shall (subject to Clause 56.3) negotiate in good faith in accordance with Schedule 6.2 (Change Control Procedure) to agree Changes to this Agreement that appropriately reflects the amended obligations of the Parties in the light of the restructuring.

- 56.2 Where there is a restructuring pursuant to Clause 56.1.1, the Contractor shall offer to deliver PSN Services to the other Government department, agency or public body which takes on responsibility for the services or functions previously the responsibility of the Customer Authority, on terms broadly equivalent to those terms set out in this Agreement.
- 56.3 When considering the impact of a restructuring pursuant to Clauses 56.1.1, 56.1.2, 56.1.3 or 56.1.4 in accordance with Clause 56.1 and Schedule 6.2 (Change Control Procedure), the following principles shall apply when agreeing the Change and (as applicable) calculating any increase or decrease to the total amount of charges payable by the Customer Authority to the Contractor:

- 56.3.1 the Contractor must use all reasonable endeavours to minimise any increase in costs it may suffer and maximise the reduction in costs that it can achieve as a result of the restructuring;
- 56.3.2 the Contractor must limit or avoid to the fullest extent possible, any capital or other expenditure which it planned to incur (for example to replace or maintain assets) which shall no longer be necessary or appropriate as a result of the restructuring;
- 56.3.3 in the case of any restructuring pursuant to Clause 56.1.2 or 56.1.3 the Contractor shall only be entitled to proceed with the Change to the extent that it can demonstrate to the Customer Authority that the Change is reasonable; and
- 56.3.4 in the case of any restructuring pursuant to Clause 56.1.1 the Contractor must demonstrate that it has complied with its obligations pursuant to Clause 56.2 and where the Contractor enters into an agreement for provision of continuing PSN Services with another Government department, agency or public body under that clause: (i) the Contractor shall demonstrate that it has used reasonable endeavours to structure those arrangements so as to mitigate any costs associated with the restructuring of the Services under this Agreement (for example, by redeploying assets) and (ii) the Contractor shall not be entitled to recover as a cost or charge under this Agreement, amounts for which it is separately recovering a charge under those alternate arrangements for any equivalent replacement service.

Co-Party Rights

- 56.3.5 The Customer Authority reserves the right at any time (at its sole option) to require the Cabinet Office (including without limitation the Efficiency Reform Group and/or the Crown Commercial Service) to become a party to this Agreement and/or to manage the rights available to the Customer Authority under this Agreement in whole or in part.

57. SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions hereof which shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Parties shall immediately commence good faith negotiations to remedy that invalidity.

58. FURTHER ASSURANCES

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

59. ENTIRE AGREEMENT

- 59.1 This Agreement, together with a completed, signed and dated Call-Off Form and the other documents referred to in them, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, any previous agreement between the Parties in relation to such matters.
- 59.2 Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to in it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 59.3 Nothing in this Clause 59 shall operate to exclude any liability for Fraud.

60. THIRD PARTY RIGHTS

- 60.1 Subject to Clauses 9.10, 34.9 and 53 (Relationship of the Parties and Indirect Customers) and Paragraph 6 of Schedule 7.1 (Staff Transfer), a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 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.
- 60.2 Any rights created under Clause 60.1 may be altered or extinguished by the Parties without notice to or the consent of the third party beneficiaries.

61. NOTICES

- 61.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, airmail, recorded delivery or by fax or email to the address and for the attention of the relevant Party notified for such purpose or to such other address as that Party may have stipulated in accordance with Clause 61.4.
- 61.2 A notice shall be deemed to have been received:
- 61.2.1 if delivered personally, at the time of delivery or, if delivered after 16:00 hours, on the next Working Day;
 - 61.2.2 in the case of pre-paid first class post, recorded delivery or airmail, three (3) Working Days from the date of posting (or in the case of recorded delivery, the date the notice is signed if this is earlier);
 - 61.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
 - 61.2.4 in the case of email, at the time that the email enters the information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further

that within twenty four (24) hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery or airmail, or delivered personally, to the intended recipient.

- 61.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party in writing) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery or airmail, or that the notice was transmitted by fax to the fax number of the relevant Party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party in writing).
- 61.4 Addresses are set out in paragraph 14 of the Call-Off Form. Any changes to any service of notice details such as designated service address, number, or named person shall only be changed by service of a written notice setting out the changes, which must be agreed between the Parties acting reasonably. Neither Party shall object to or refuse to accept any such proposed changes except on reasonable grounds including where the changes would require notices to be served outside of the jurisdiction of England and Wales. Methods of service cannot be changed except through Schedule 6.2 (Change Control Procedure).

62. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.