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| 0.3 | 8 November 2016 | First draft based on existing OMNI Agreement | Sharpe Pritchard |
| 0.4 | 10 Nov 2016 | Updates following meeting on 9/11/16 | Sopra Steria |
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| 0.17 | 12 Dec 2016 | Further minor updates | Sharpe Pritchard |
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| 1.0 | 14 Dec 2016 | Final version for completion | Sharpe Pritchard |

**THE SECRETARY OF STATE FOR JUSTICE**

**- and -**

**SOPRA STERIA LIMITED**

# PROBATION ICT SERVICES AGREEMENT

**FOR THE NATIONAL OFFENDER MANAGEMENT SERVICE**

Ministry of Justice
102 Petty France
London
SW1H 9AJ

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THIS AGREEMENT is made the day of 2016

BETWEEN:

(1) The Secretary of State for Justice, whose principal place of business is at 102 Petty France, London, SW1H 9AJ ("the **AUTHORITY**"); and

(2) Sopra Steria Limited whose registered office is at Three Cherry Trees Lane, Hemel Hempstead HP2 7AH, and whose registered number is 04077975 ("**the PROVIDER**").

WHEREAS:

(a) The AUTHORITY and the PROVIDER entered into an agreement for the provision of Offender Management National Infrastructure (OMNI) services on 30 September 2005, with reference 3368393.12 (the "**OMNI Services Agreement**").

(b) The Parties subsequently entered into a supplementary agreement which took effect from 1 January 2016, following the expiry of the OMNI Services Agreement (the "**Supplementary Agreement**"). The Supplementary Agreement enabled the continued provision to the AUTHORITY of certain services which had previously been provided by the PROVIDER under the OMNI Services Agreement. The purpose of the Supplementary Agreement was to facilitate and work towards the conclusion of the exit of all services from the OMNI Services Agreement.

(c) Certain of the services being provided under the Supplementary Agreement have not as yet been delivered in full or to completion and there is therefore a continuing requirement for such services to continue to be provided by the PROVIDER beyond 31 December 2016. There is also a requirement to refresh certain of the technology assets being used in the provision of services by the PROVIDER to the AUTHORITY.

(d) As a result, and following a period of negotiation between the Parties in accordance with Regulation 32 of the Public Contracts Regulations 2015, on 7 December 2016 the AUTHORITY submitted a voluntary transparency notice to the Official Journal of the European Union (OJEU), expressing its intention to enter into this Agreement. The purpose of this Agreement is to facilitate and conclude the completion and exit of all of the Services and to enable the refresh of certain technology assets where required.

(e) This Agreement documents the contractual basis on which the PROVIDER will deliver the Services to the AUTHORITY from 1 January 2017 onwards. The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

## 1. Interpretations

1.1 As used in this Agreement:

1.1.1 the terms and expressions set out in Schedule 1, shall have the meanings ascribed therein;

1.1.2 words importing the masculine include the feminine and the neuter; and

1.1.3 words importing the singular include the plural and vice versa.

1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 A reference to any document other than as specified in Clause 1.2 shall be construed as a reference to the document as at the date of execution of this Agreement.

1.4 Each Party shall comply with any express obligation in this Agreement to comply with any document statute, enactment, order, regulation or other similar instrument that is referenced in this Agreement.

1.5 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.6 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

1.7 In the event and to the extent only of any conflict between the Clauses together with Schedule 1 (Definitions) and the remainder of the Schedules,

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the Clauses together with Schedule 1 (Definitions) shall prevail. The priority of the Schedules to this Agreement shall be in accordance with Clause 2.1.

1.8 Nothing in this Agreement shall be construed as creating a partnership, a contract of employment or (except as expressly provided for under the terms of this Agreement) a relationship of principal and agent between the AUTHORITY and the PROVIDER.

1.9 Except as otherwise expressly provided in this Agreement, all remedies available to the PROVIDER or to the AUTHORITY for Default under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

1.10 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 provided and to the extent that, the affected Party notifies the other Party of such failure or delay within thirty (30) days of the date the affected Party became aware or ought reasonably to have become aware of its occurrence and of its likely impact.

1.11 In this Agreement, the AUTHORITY is acting on behalf of the Crown.

## 2. The Services

2.1 In consideration of the payment of the Charges, the PROVIDER shall supply the Services in accordance with Schedule 3 (PROVIDER's Solution). In the event and to the extent only of any conflict between the Schedules, the order of precedence (highest to lowest) for the purpose of construction shall be:

2.1.1 Schedule 3 (PROVIDER's Solution);
2.1.2 Schedule 7 (Security);
2.1.3 Schedule 6 (Performance Management);
2.1.4 Schedule 5 (Payment Mechanism);
2.1.5 Schedule 12 (AUTHORITY's Responsibilities); and

2.1.6 of equal importance, all remaining Schedules.

2.2 The AUTHORITY shall perform the AUTHORITY's Responsibilities as specified in Schedule 12 (AUTHORITY's Responsibilities). Notwithstanding and in addition to the remedies available to either Party at Clause 1.10 the PROVIDER shall not be liable for any Default of its obligations under this Agreement to the extent that such Default is directly caused by a failure or delay by the Authority to meet its obligations in Schedule 12 (AUTHORITY's Responsibilities).

2.3 The PROVIDER shall supply the Services set out in Schedule 3 (PROVIDER's Solution):

2.3.1 to the Locations set out in Schedule 10 (Locations, Assets and Volumes); and

2.3.2 at such other PROVIDER premises as from time to time agreed in writing by the AUTHORITY (such agreement not to be unreasonably withheld or delayed).

2.4 For the avoidance of doubt, the Parties acknowledge and agree that the AUTHORITY shall be entitled to notify the PROVIDER of new Locations required by the AUTHORITY in accordance with the procedure set out in Schedule 20 (Change Control Procedures).

2.5 The Services shall only be varied by application of the Change Control Procedures.

2.6 Without prejudice to the PROVIDER's right to terminate this agreement pursuant to Clause 18, notwithstanding any failure by the AUTHORITY to comply with any of the obligations imposed by this Agreement or otherwise on the AUTHORITY, including the breach of any obligation which would, but for this Clause 2.6, entitle the PROVIDER to elect to treat the Agreement as terminated the PROVIDER shall at all times be responsible for the provision of the Services and shall, to the extent lawful and possible, continue to

provide the Services in accordance with this Agreement. This obligation shall apply unless:

2.6.1 the AUTHORITY is in Default; and

2.6.2 the PROVIDER is unable to perform its obligations without incurring additional costs; and

2.6.3 the PROVIDER, promptly after the AUTHORITY's Default, notifies the AUTHORITY of any additional costs directly relating to performing its obligations; and

2.6.4 the AUTHORITY fails within five (5) days of receipt of the PROVIDER's notice to agree to bear those additional costs.

2.7 The AUTHORITY shall have the power to inspect and examine the performance of the Services at the Locations or PROVIDER premises at any reasonable time or, provided that the AUTHORITY gives reasonable notice to the PROVIDER, at any other premises where any part of the Services is being performed.

2.8 In providing the Services, the PROVIDER shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

2.9 If the AUTHORITY informs the PROVIDER that the AUTHORITY considers any part of the Services to be inadequate or in any way differing from this Agreement, and this is other than as a result of default or negligence on the part of the AUTHORITY, the PROVIDER shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the AUTHORITY.

2.10 The AUTHORITY (or the AUTHORITY's SIAM Supplier acting on the AUTHORITY's behalf) shall maintain and update from time to time a Product and Services Catalogue listing services that a User may order from the PROVIDER in accordance with Schedule 22 (Product and Service Catalogue).

2.11 The AUTHORITY (or the AUTHORITY's SIAM Supplier acting on the AUTHORITY's behalf) may from time to time request the PROVIDER to add specific Products or services to the Product and Services Catalogue. If agreed by the AUTHORITY and the PROVIDER (such agreement not to be unreasonably withheld or delayed) the PROVIDER will arrange for such services and Products to be fully acceptance tested and integrated. The AUTHORITY (or the AUTHORITY's SIAM Supplier acting on the AUTHORITY's behalf) will add such services and Products to the Product and Services Catalogue.

2.12 The charges for new Products or services included within the Product and Services Catalogue from time to time in accordance with Clause 2.11 shall be agreed with the AUTHORITY prior to inclusion.

2.13 The PROVIDER shall supply the WIP Services in accordance with Schedule 4 (Work in Progress).

2.14 The PROVIDER shall deliver the Technology Refresh Projects in accordance with Schedule 16 (Technology Refresh).

## 3. Term of this Agreement

3.1 This Agreement shall be effective from the 1st January 2017 and subject to the rights of termination contained herein shall continue until 23:59 on 31st December 2018.

3.2 Not Used.

3.3 Blackberry devices are each provided with a 24 month support contract from Vodafone. Some of these individual 24 month contracts may be part-way

through their term when the Agreement ends. In such cases the Authority will have the choice of (a) terminating such individual contracts early and paying associated Charges; or (b) agreeing to transfer the remaining term of such contracts to the Authority (or a Successor Provider) and continuing to pay Vodafone directly.

## 4. Transfer of Assets

4.1 Both Parties shall perform all their obligations under this Agreement from the start of the Term without any break in the Services.

4.2 Ownership of the Assets is recorded in the Configuration Management Database ('**CMDB'**) which for the purposes of this Agreement shall constitute the Asset Register. The Parties agree that the CMDB that applied to the Previous Contract shall automatically transfer to this Agreement on the Commencement Date and that the ownership of the Assets recorded therein shall be unchanged by this transfer.

4.3 The PROVIDER shall provide the necessary information (in a format reasonably required by the AUTHORITY) to enable maintenance of the CMDB, including (without limitation) providing updates to the CMDB in respect of those Assets which are managed and maintained by the PROVIDER. The PROVIDER shall allow (or shall confirm that the AUTHORITY's SIAM Supplier allows) the AUTHORITY (without additional charge) on line read only access to the CMDB. For the avoidance of doubt, the CMDB is maintained on the PROVIDER's behalf by the AUTHORITY's SIAM Supplier.

## 5. Not Used

## 6. Hosting Facility

6.1 Unless otherwise specified in Schedule 10 (Locations Assets and Volumes) or otherwise in this Agreement, the AUTHORITY shall be responsible for ensuring that the Hosting Facilities within the Locations are suitable for the

operation of the Infrastructure and meet the provisions of Schedule 15 (Environmental Conditions).

6.2 Where the PROVIDER becomes aware that any part of any Hosting Facility is not suitable or may shortly become not suitable for the operation of the Infrastructure or does not meet the provisions of Schedule 15 (Environmental Conditions), it shall promptly advise the AUTHORITY in writing or orally, followed by confirmation in writing, of such deficiencies and of its proposed remedies to rectify such deficiencies and any impact on Service Levels until such deficiencies are rectified.

6.3 The PROVIDER acknowledges that it is not entitled to recover any additional costs from the AUTHORITY which arise from any matter or aspect of the Hosting Facility which has not been notified to the AUTHORITY in accordance with Clause 6.2 and which is inadequate or unsuitable for operating the Infrastructure or supplying the Services.

## 7. Service Levels

7.1 The PROVIDER shall perform the Services in accordance with the relevant Service Levels. The PROVIDER shall perform all necessary routine and remedial maintenance required for the Services to operate in accordance with the Service Levels.

7.2 This Clause 7.2 applies to Services for which no Service Level is specified. The PROVIDER shall, where required by the AUTHORITY, at a minimum, agree to:

7.2.1 the establishment of Service Levels: which

(a) are set at a level which meets the AUTHORITY's specified business requirements; and

(b) to which a process of measurement can be applied either directly or indirectly.

7.3 The AUTHORITY shall permit the PROVIDER such access to the Infrastructure as is reasonably required for the PROVIDER to comply with its obligations under Clause 7.1.

7.4 Performance Measurement Principles

7.4.1 The Parties agree that, as at the Commencement Date, the Parties have not yet agreed a detailed set of Performance Measures (KPIs and PIs) or a Service Credit Mechanism to operate in the course of this Agreement.

7.4.2 Consequently, the Parties have agreed to retain Schedule 6 (Performance Management) and Annex A thereto (Performance Measures) from the Previous Contract for the purposes set out below only, until such time as updated versions of this Schedule 6 and its Annex can be agreed through the Change Control Procedures and in accordance with Clause 7.4.6 below.

7.4.3 An initial draft of the 'updated' Schedule 6 and its Annexes is included within Schedule 6 and the Parties agree to use this as the basis for finalising the updated versions of Schedule 6 and its Annexes.

7.4.4 Until such time as updated versions of them are agreed, Schedule 6 and its Annex shall be interpreted and applied to the Services in accordance with the following principles:

7.4.4.1 Table 7.1 set out below details the subset of those Performance Measures (extracted from the full set specified in the Annex to Schedule 6) that are measurable across the Services.

7.4.4.2 The OMNI Service Model (OMNI Overview V2.0 issued April 2015) includes assessment of the impact of termination of individual services on the Performance Measures.

7.4.4.3 Where a transition has resulted, or will result, in the removal of and/or inability to measure a Performance Measure then that Performance

Measure will no longer apply subject to agreement through the Change Control Procedures.

7.4.4.4 Where a transition has affected, or will affect, a Performance Measure on a primary or secondary basis, for example a reduction in volumetrics impacting on attainability of a Performance Measure Target Level, the measurement and reporting will continue. The achieved performance against that Performance Measure will be reviewed at the Service Management Board or such other board appointed by the Supplier Governance Board. Any proposed Changes to the Performance Measures will be subject to agreement through the Change Control Procedures.

7.4.4.5 Achievement of Target Levels may be affected by End of Support components (as detailed in Schedule 3 Annex A (Heatmap)) and the ability to source appropriate maintenance and support required. Such issues are to be discussed at the Service Management Board.

7.4.4.6 Where achieved performance for any measurable Performance Measure is below the relevant Target Level, the attainability of that Target Level will be discussed at the Service Management Board and reviewed in the light of the Transition States achieved and/or End of Life impacts. Where continued measurement is agreed as feasible, appropriate actions will be agreed to endeavour to bring the performance of that Performance Measure back to an agreed level.

7.4.5 Until such time as updated versions of Schedule 6 and its Annex are agreed (such agreement not to be unreasonably withheld or delayed) and subject to Clause 7.4.7.3:

7.4.5.1 no Service Credit Mechanism shall apply to any Services provided under this Agreement; and

7.4.5.2 no other remedies related to non-achievement of Target Levels (as set out in Sections 5 & 6 of Schedule 6) shall apply other than the right of the

AUTHORITY to treat persistent failure to achieve Target Levels as a material Default and the right to terminate the Agreement for material Default.

7.4.6 The Parties agree that, during the period of 3 months starting from the Commencement Date, they will work together to jointly develop and agree appropriate revised Performance Measures and a revised Service Credit Mechanism based on a points based system to be agreed. Once agreed, these revisions will be incorporated into Schedule 6 and its Annex (using the initial draft of the 'updated' Schedule 6 and its Annexes included within Schedule 6 as the basis for concluding such agreement) through the Change Control Procedures by the 31st March 2017.

7.4.7 The underlying principles under which the Parties will collaborate to agree the revisions referred to above are as follows:

7.4.7.1 Revised Performance Measures and associated Target Levels should be based as closely as is practical to the current Performance Measures where they are still applicable and measureable unless the Parties agree otherwise.

7.4.7.2 Reporting of the actual performance achieved for the relevant Performance Measures should be based as closely as is practical to the current reporting process (unless the Parties agree otherwise).

7.4.7.3 The Service Credit Mechanism will only apply to those services where either, the underlying Platform and Infrastructure has been subject to Technology Refresh (as detailed in Schedule 16), or, the Parties agree that no Technology Refresh is required because the service relies on Software, Hardware or other components that are not End of Life or End of Support. For the avoidance of doubt, the Service Credit Mechanism will not be applied to any service where such service relies on Software, Hardware or other components that are either End of Life or End of Support.

7.4.7.4 A 'baselining period' will apply from the point at which the revised Performance Measures and Service Credit Mechanism have been agreed and the relevant services (as detailed in the preceding paragraph) have entered into live service. The duration of the baselining period will typically be 2 months where sufficient historic data exists to determine appropriate Target Levels, however, if a Performance Measure is unchanged from the Previous Contract and sufficient historic data exists to confirm it is still valid then no baselining period will be required. In such instances the Service Credit Mechanism will apply from the 1st April 2017. In cases where such historic data does not exist the Parties will agree appropriate baselining periods on a case by case basis. During this period, actual performance against the relevant Performance Measures will be reported upon but no Service Credits will be due.

7.4.7.5 It is proposed that a simplified Service Credit Mechanism should be adopted using a 'points based' system whereby failure to achieve the Target Level for a specific Performance Measure accrues an agreed number of points and, on a Monthly basis, the total number of points accrued is translated into a monetary sum (the Service Credit for that Month).

7.4.7.6 The revised Service Credit Mechanism will need to account for the continuing Exit and Service Transfer programme such that it should be designed to facilitate the removal of Performance Measures without having to re-design the Service Credit Mechanism.

7.4.7.7 Service Credits shall be payable on a Monthly basis as a deduction from the following Month's invoice. The maximum amount of Service Credits payable in any given Month shall be capped at 12.5% of the Monthly Service Charge for that Month.

7.4.7.8 The Parties agree to review and, if appropriate, reinstate any agreed additional remedies in respect of failure to achieve Target Levels based on those set out in Sections 5 and 6 of Schedule 6. For

example: convening a meeting with the PROVIDER's CEO, issuing a press release or declaring a material default.

7.4.8 In the event that the Parties fail to agree revised Performance Measures and/or a revised Service Credit Mechanism by the end of the 3 Month period specified in Clause 7.4.6 above, the Parties shall meet in good faith to agree either an extension of that period or to take such other actions as the Parties acting reasonably shall agree (including escalation of the matter through the Dispute Escalation process detailed in Clause 40).

Table 7.1 - Table of relevant Performance Measures

Note that the Target Levels specified in the table below will be reviewed and, if agreed, updated as part of the 3 Month period specified in Clause 7.4.6 above.

| KPI/PI | KPI/PI | Green Target | Yellow Target | Amber Target | Red Target |
|---|---|---|---|---|---|
| A1-1 E-mail Availability (Core Hours) | KPI | 99.80% | 98.00% | 90.00% | <90.00% |
| A2-1 Office Automation Availability (Core Hours) | KPI | 99.80% | 98.00% | 90.00% | <90.00% |
| Q5 Incorrectly Closed Incidents by Service Desk | KPI | 5.00% | | 55.00% | >55.00% |
| R1-1 Service Desk Response Time (Calls 15 seconds) | KPI | 96.00% | | 0.00% | |
| R1-2 Service Desk Response Time (Calls 30 seconds) | KPI | 98.00% | | 0.00% | |
| R11-4 Average Time to Deliver Email | KPI | 0H:00M:30S | | 8H:00M:00S | >8H:00M:00S |
| R15 Office Automation Performance | KPI | 0H:00M:07S | | 0H:00M:11S | >0H:00M:11S |
| R20 Processing Requests for Service * | KPI | 80.00% | | 60.00% | <60.00% |
| R3-1 Time to Resolve Severity 1 (4hr non WAN/ADSL) | KPI | 96.00% | | 60.00% | <60.00% |

| | | | | | |
|---|---|---|---|---|---|
| R3-2 Time to Resolve Severity 1 Incidents (6hr non WAN/ADSL) | KPI | 98.00% | | 70.00% | <70.00% |
| R4-1 Time to Resolve Severity 2 Incidents (8 Hours) | KPI | 96.00% | | 60.00% | <60.00% |
| R4-2 Time to Resolve Severity 2 Incidents (12 Hours) | KPI | 98.00% | | 70.00% | <70.00% |
| R5-1 Time to Resolve Severity 3 Incidents (16 Hours) | KPI | 96.00% | | 60.00% | <60.00% |
| R5-2 Time to Resolve Severity 3 Incidents (24 Hours) | KPI | 98.00% | | 70.00% | <70.00% |
| R6-1 Time to Resolve Severity 4 Incidents (40 Hours) | KPI | 96.00% | | 60.00% | <60.00% |
| R6-2 Time to Resolve Severity 4 Incidents (60 Hours) | KPI | 98.00% | | 70.00% | <70.00% |
| R8 Maximum Percentage of Abandoned Calls | KPI | 1.00% | | 10.00% | >10.00% |
| S1 - Time to install Anti-Virus Updates | KPI | 20H:00M:00S | | 150H:00M:00S | >150H:00M:00S |
| S3 - Time to Resolve a Security Breach | KPI | 12H:00M:00S | 24H:00M:00S | 72H:00M:00S | >72H:00M:00S |

## 8. Service Levels and Additional Resources

8.1 If at any time the PROVIDER does not perform the Services in accordance with the relevant Service Levels, the PROVIDER shall, without prejudice to any other rights and remedies of the AUTHORITY:

8.1.1 Not used

8.1.2 immediately arrange all such additional resources as are necessary to restore the Services to the standards specified in the Service Levels at no additional charge to the AUTHORITY; and

8.1.3 promptly notify the AUTHORITY of the failure and of the steps the PROVIDER has taken or will take to remedy or prevent its recurrence; and

8.1.4 at the request of the AUTHORITY, promptly remedy any default or perform any non-conforming Services at no additional charge to the AUTHORITY.

8.2 If any of the Service Levels are not met as a result of the act or omission of any Sub-Contractor, person, firm or company with which the PROVIDER shall have entered into any contract, supply arrangement, sub-contract licence or otherwise, the PROVIDER shall (without limiting the AUTHORITY's other rights and remedies) arrange all such additional resources as are necessary and take all necessary remedial action to remedy such failure as soon as practicable thereafter and at no additional charge to the AUTHORITY.

## 9. Liquidated Damages for Specified Technology Refresh Projects

9.1 In the event that delivery of either of the two milestones for the two Technology Refresh Projects set out in the table below is late by more than 7 calendar days (the '**Grace Period'**) and the cause of such delay can be demonstrated by the AUTHORITY to be wholly and solely attributable to the acts and/or omissions of the PROVIDER and/or its suppliers, Sub-contractors or agents, then the PROVIDER agrees that, at the AUTHORITY's request, representatives from the Parties shall negotiate and agree the value of a payment of compensation by the PROVIDER to the AUTHORITY ('**Compensation Payment'**) based on the following terms.

9.2 Such a Compensation Payment shall relate exclusively to the AUTHORITY's direct costs, (including expenses, damages and any other liabilities which may arise directly out of the delay) and shall expressly exclude:

9.2.1 any indirect and consequential loss; and

9.2.2 the following losses: loss of anticipated savings (except where such savings are explicitly identified in the AUTHORITY's business case for the PICTS programme), damage to goodwill or reputation (apart from direct costs incurred by the AUTHORITY to mitigate such damage caused by the delay) and loss of business.

9.3 The AUTHORITY shall provide evidence of the costs incurred directly as a result of the delay and shall demonstrate that it took reasonable steps to mitigate those costs.

9.4 Irrespective of the above, the PROVIDER shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting directly from the default of the PROVIDER.

9.5 Without prejudice to the AUTHORITY's other rights and remedies under the Agreement, the size of such a Compensation Payment for each of the two milestones shall be limited in any circumstance on a sliding scale as follows:

9.5.1 at the completion of the Grace Period the limit shall be 1% of the price of the relevant Technology Refresh Project set out in the table below, this limit shall increase by 1% for each additional calendar week (pro rata daily) of delay for 8 calendar weeks and shall then increase by 2% in the 9th calendar week of delay (resulting in a maximum Compensation Payment of 10% of the price of the relevant Technology Refresh Project for each of the two milestones identified).

9.6 At the point that each of the two milestones is delivered, the AUTHORITY shall pay the value of the milestone subject to the agreed acceptance criteria set out in Schedule 16 Annex A less any agreed Compensation Payment no later than 30 calendar days from the day of agreement of the Compensation Payment.

9.7 The Parties agree to use reasonable endeavours to agree the Compensation Payment as promptly as possible. In the event that the Compensation Payment in respect of either milestone listed in the table below is not agreed

within 30 calendar days of acceptance of the relevant milestone by the AUTHORITY, then the AUTHORITY shall pay the PROVIDER the value of the milestone less the maximum possible Compensation Payment as determined by reference to the sliding scale set out in Clause 9.5.1.

9.8 Should such a Compensation Payment be agreed then the Parties agree that such a Compensation Payment is not a penalty but represents a genuine agreement of the direct costs incurred by the AUTHORITY in respect of the delay to delivery of the relevant milestone. In addition, any such Compensation Payment shall be the AUTHORITY's sole and exclusive financial remedy for the delay during the period of the delay (up to a maximum of 9 weeks), but at the end of that period, the AUTHORITY shall be entitled to exercise such other rights and remedies as may be available to it under the Agreement, including recovery of the actual losses it has suffered as a result of that delay, provided that any liability the PROVIDER may have to the AUTHORITY under the Agreement shall be reduced to the extent of the amount of the Compensation Payment made by the PROVIDER to the AUTHORITY. For milestones other than those set out in the table below, where a Compensation Payment is not provided, the AUTHORITY reserves its rights.

9.9 A number of dependencies upon the AUTHORITY are identified in Schedule 16 Annex D. In the event that the AUTHORITY fails to fully deliver any dependency that is related to either of the two Technology Refresh Projects that are the subject of this Clause by the date stated in Schedule 16 Annex D (or, if no date is stated, in accordance with the latest agreed project schedule) for any reason except the PROVIDER default, the Parties agree that the Grace Period shall be extended by a period equivalent to the delay in delivery of the dependency. This shall be without prejudice to the PROVIDER's rights and the PROVIDER will invoke the Change Control Procedures to capture the cost and time impacts upon the Technology Refresh programme of any such delay to the delivery of dependencies or any other failure by the AUTHORITY to meet its obligations.

9.10 Any dispute with respect to the operation and application of the terms detailed within this Clause (including any dispute regarding the value of the Compensation Payment) shall be resolved in accordance with the Dispute escalation and Dispute resolution procedures set out in Clauses 40 & 41 of this Agreement.

| Project | Milestone | Project Value | Maximum Compensation Payment | Milestone Date |
|---|---|---|---|---|
| PICTS 005 – 3 Core Cloud Platform | Complete | [REDACTED] | [REDACTED] | 30/05/17 |
| PICTS 018 – 3 Citrix | Complete | [REDACTED] | [REDACTED] | 19/09/17 |

## 10. Charges

10.1 In consideration of the performance of the Services in accordance with the terms of this Agreement, the AUTHORITY shall pay the Charges in accordance with the invoicing procedure specified in Schedule 11 (Invoicing Procedures) and the payment details specified in Schedule 5 (Payment Mechanism).

10.2 In the event that the cost to the PROVIDER of performing its obligations under this Agreement increases or decreases as a result of any new legislation or regulation being made after the commencement of this Agreement, any variation to the Charges will be assessed on an individual basis subject and without prejudice to Clause 12.1. Such variation will not be allowed in relation to legislation or regulations enacted after the commencement of this Agreement which were made public prior to the commencement of this Agreement. The impact of any such variation on the PROVIDER'S costs will be deemed to have been included in the Charges.

10.3 Payment shall be made within thirty (30) days of receipt by the AUTHORITY (at its nominated address for invoices) of a valid invoice, in accordance with

the provisions of Schedule 11 (Invoicing Procedures), from the PROVIDER for work completed to the satisfaction of the AUTHORITY.

10.4 The Charges are exclusive of Value Added Tax. The AUTHORITY shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law, from time to time.

10.5 Not Used.

10.6 The PROVIDER shall submit invoices to the AUTHORITY denominated in sterling.

10.7 A Party may claim interest on any late payments under this Agreement at the lower of:

10.7.1 the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998; or

10.7.2 the Bank of England base rate plus (2) per cent,

from the due date for payment of a valid invoice until the date of actual payment.

10.8 The Charges may be varied only in accordance with the Change Control Procedure and/or the Charges Variation Procedure.

10.9 Charges for subsequently ordered Hardware, Software, Documentation and Services which are not part of the Services at the Commencement Date shall be as agreed by the AUTHORITY and the PROVIDER but should not exceed:

10.9.1 the charge for the same or similar Hardware, Software, documentation or services supplied by the PROVIDER to any other public body; or

10.9.2 the charge for the same or similar Hardware, Software, documentation or services supplied by any reputable supplier to the general public,

and shall be under similar terms and conditions of supply as those in this

Agreement.

10.10 In the event that:

10.10.1 the PROVIDER's proposed Charges for subsequently ordered Hardware, Software, Documentation or Services exceed the thresholds set out in Clause 10.9; or

10.10.2 the Hardware, Software, Documentation or Services are of a lower quality than those available from third party suppliers or supplied by the PROVIDER to any other public body; or

10.10.3 the Hardware, Software, Documentation or Services cannot be provided by the PROVIDER within the required timescales,

then at the AUTHORITY's discretion, the AUTHORITY may purchase Hardware, Software, documentation or services from third party suppliers. The PROVIDER agrees to make reasonable endeavours to support Hardware, Software or documentation purchased from third party suppliers on the same terms that the PROVIDER supports equivalent items which the PROVIDER has supplied. The addition of any third party Hardware, Software, documentation or services to the PROVIDER's support responsibilities shall be undertaken in accordance with the provisions of the Change Control Procedure.

10.11 Wherever under this Agreement any sum of money is recoverable from or payable by the PROVIDER (including any sum which the PROVIDER is liable to pay to the AUTHORITY in respect of any breach of this Agreement), the AUTHORITY may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the PROVIDER under this Agreement or under any other agreement or contract with the AUTHORITY or with any department, agency or authority of the Crown.

10.12 Any overpayment by the AUTHORITY to the PROVIDER, whether of the Charges or of Value Added Tax, shall be a sum of money recoverable by the Authority from the PROVIDER.

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

## 11. Rights of Third Parties

11.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the AUTHORITY or the PROVIDER) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 11.1. This Clause 11.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## 12. Legislative Change

12.1 The PROVIDER shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are expressly referenced in this Agreement and any amendments thereto except that where any such amendment necessitates a change to the Infrastructure and/or Services and provided that such amendment could not have reasonably been foreseen by the PROVIDER at the date hereof the Parties shall enter good faith negotiations to make such adjustments to the Charges as may be necessary to compensate the PROVIDER for such additional costs as are both reasonably and necessarily incurred by the PROVIDER in accommodating such amendments.

## 13. Promoting Tax Compliance

13.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the PROVIDER shall:

(a) notify the AUTHORITY in writing of such fact within 5 Working Days of its occurrence; and

(b) promptly provide to the AUTHORITY:

a. details of the steps which the PROVIDER is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

b. such other information in relation to the Occasion of Tax Non-Compliance as the AUTHORITY may reasonably require.

## 14. Warranties and Representations

14.1 The PROVIDER warrants and represents that, throughout the term of this Agreement:

14.1.1 the PROVIDER has full capacity and authority and all necessary consents and licences (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the PROVIDER;

14.1.2 to the extent that it is reasonable and practicable during the Term taking into account the scope and nature of the Services, the Infrastructure shall be supported and maintained such that it will operate in accordance with the specification specified in Schedule 3 (PROVIDER's Solution);

14.1.3 to the extent that it is reasonable and practicable during the Term taking into account the scope and nature of the Services, the Infrastructure shall operate and the Services shall be performed in accordance with the Service Levels;

14.1.4 the PROVIDER has the full capacity and authority to perform the Services;

14.1.5 the Services shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel;

14.1.6 the PROVIDER shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 14) in accordance with its own established internal procedures;

14.1.7 that any and all information supplied:

(a) in writing prior to the Commencement Date by or on behalf of the PROVIDER to the AUTHORITY or to any of its advisors in connection with the award to the PROVIDER of this Agreement; and

(b) in Schedule 3 (PROVIDER's Solution),

was, at the time it was provided, to the best of the PROVIDER's knowledge, information and belief, true and accurate;

14.1.8 that at all times the Services shall be Date Independent; and

14.1.9 the PROVIDER is not in default in the payment of any due and payable Taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement;

14.1.10 the PROVIDER shall comply fully with all Taxation laws, regulations and requirements which apply in the United Kingdom in respect of the paying and reporting of Tax on the income profits or gains derived directly or indirectly from the provision of Services under this Agreement. The PROVIDER further warrants and undertakes that it shall not enter into or become a party to any arrangements which

are entered into specifically in relation to this Agreement or in respect of the income profits or gains derived solely or indirectly from the provision of the Services under this Agreement, with the purpose of avoiding the paying of Tax in the United Kingdom;

14.1.10A as at the Commencement Date, the PROVIDER has notified the AUTHORITY in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance;

14.1.11 all Software developed, amended, modified or enhanced by the PROVIDER as part of the Services shall comply with the specifications agreed by the AUTHORITY and the PROVIDER and in any event be of satisfactory quality and fit for purpose;

14.1.12 all components and equipment supplied or used in the course of the provision of the Services shall be used and maintained in accordance with good industry practice;

14.1.13 the Services shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments; and

14.1.14 the PROVIDER shall comply with the Directive on waste electrical and electronic equipment (recast) (2012/19/EU) and the Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) (2011/65/EU).

14.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common-law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

## 15. Limitation of Liability

15.1 Neither Party excludes or limits liability to the other Party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

15.2 Subject to Clause 15.1 and 15.3, the PROVIDER shall indemnify the AUTHORITY and keep it indemnified against any and all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses or damages arising from or incurred by reason of any claim (including but not limited to the defence of such claim) for direct loss by any third party resulting from a Default by the PROVIDER.

15.3 Subject always to Clause 15.1, the liability of each Party for Defaults shall be subject to the financial limits set out in this Clause 15.3 as follows:

15.3.1 the aggregate liability for all Defaults for direct loss of or damage to the tangible property of the other shall in no event exceed - [REDACTED]; and

15.3.2 the aggregate liability (including, without limitation, the Service Credits, Liquidated Damages and Indemnities set out in Clauses 16 and 42.3) for all Defaults arising in the first year of this Agreement (except any liability in respect of which Clause 15.3.1 applies) shall in no event exceed the greater of [REDACTED] of the total Charges paid or payable by the AUTHORITY to the PROVIDER in the twelve month period immediately preceding the time when the cause of action arose. The aggregate liability (including, without limitation, the Service Credits, Liquidated Damages and Indemnities set out in Clauses 16 and 42.3) for all Defaults arising after the first year of this Agreement (that is, for all Defaults arising on or after 1 January 2018) (except any liability in respect of which Clause 15.3.1 applies) shall in no event exceed the greater of [REDACTED] of the total Charges paid or payable by the AUTHORITY to the PROVIDER in the twelve month

period immediately preceding the time when the cause of action arose.

15.4 Subject always to Clauses 15.1, 15.5 and 15.6 in no event shall either Party be liable to the other for:

15.4.1 indirect or consequential loss or damage howsoever arising; and/or

15.4.2 indirect or direct loss of profits, business or goodwill, howsoever arising.

15.5 Subject always to the liability limits as specified in Clauses 15.3 the provisions of Clause 15.4 shall not be taken as limiting the right of either Party to claim from the other Party for:

15.5.1 additional operational and administrative costs and expenses; and/or

15.5.2 any costs or expenses rendered nugatory; and/or

15.5.3 loss or corruption of data or the rectification thereof; and/or

15.5.4 reimbursement or settlement of any legitimate claim made against the AUTHORITY by any third party resulting from a Default by the PROVIDER and any expenses of the AUTHORITY or nugatory costs in connection with the settlement of such claim or reimbursement, providing always that the AUTHORITY has consulted with the PROVIDER prior to such reimbursement or settlement and the PROVIDER has been afforded an opportunity to make representations to the AUTHORITY concerning the appropriateness of such reimbursement or settlement; and/or

15.5.5 loss of revenue (including money earned or income properly due) to the AUTHORITY or any other part of the Crown,

resulting directly from the Default of the other Party.

15.6 The Parties expressly agree that should any limitation or provision contained in this Clause 15 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

15.7 The PROVIDER shall effect and maintain with a reputable European insurance company or an underwriter of good repute at Lloyds a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the PROVIDER, arising out of the PROVIDER's performance of this Agreement, including death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the PROVIDER.

15.8 The PROVIDER shall hold employer's liability insurance in respect of its employees in accordance with any legal requirement for the time being in force.

15.9 The PROVIDER shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such insurance to be held by the PROVIDER or by any Sub-Contractor, agent, sub-contractor or consultant involved in the provision of the Services with a limit of indemnity of not less than [REDACTED]; in aggregate for any and all occurrences. Such insurance shall be maintained for a minimum of 12 (twelve) years following expiration or earlier termination of this Agreement.

15.10 The PROVIDER shall produce to the AUTHORITY, on request, brokers' letters or other evidence confirming the existence and extent of the cover given by those insurance policies referred to in this Clause 15, together with evidence of payment of the latest premiums due under those policies.

15.11 The policy or policies referred to in this Clause 15 shall be in an amount not less than [REDACTED] but this amount shall not be construed in any way as

a limit of liability of the PROVIDER or as constituting acceptance by the AUTHORITY of responsibility for financial liabilities in excess of that amount. The terms of any insurance or the amount of cover shall not relieve the PROVIDER of any liabilities under this Agreement. It shall be the responsibility of the PROVIDER to determine the amount of insurance cover that will be adequate to enable the PROVIDER to satisfy any liability referred to in Clause 15.2.

15.12 Nothing in this Clause 15 shall be taken as in any way reducing or affecting the general duty owed at law to mitigate loss suffered by a Party.

**16. Intellectual Property Rights**

16.1 The PROVIDER shall procure that the receipt of the Services by or on behalf of the AUTHORITY shall not infringe any Intellectual Property Rights of any third party.

16.2 Subject always to the limitation of liability set out in Clause 15, the PROVIDER shall indemnify the AUTHORITY against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right in connection with the receipt of the Services by or on behalf of the AUTHORITY, except to the extent that such liabilities have resulted from the AUTHORITY's failure properly to observe its obligations under this Clause 16.

16.3 The PROVIDER shall promptly notify the AUTHORITY if any claim or demand is made or action brought against the PROVIDER for infringement or alleged infringement of any Intellectual Property Right which may affect the receipt of the Services by or on behalf of the AUTHORITY.

16.4 The AUTHORITY shall promptly notify the PROVIDER if any claim or demand is made or action brought against the AUTHORITY to which Clause 16.1 or 16.2 may apply. The PROVIDER shall at its own expense conduct any

litigation arising therefrom and all negotiations in connection therewith and the AUTHORITY hereby agrees to grant to the PROVIDER exclusive control of any such litigation and such negotiations.

16.5 The AUTHORITY shall at the request of the PROVIDER afford to the PROVIDER all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the AUTHORITY to which Clause 16.2 may apply or any claim or demand made or action brought against the PROVIDER to which Clause 16.3 may apply. The PROVIDER shall reimburse the AUTHORITY for all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.

16.6 The AUTHORITY shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 16.2 may apply or any claim or demand made or action brought against the PROVIDER to which Clause 16.3 may apply.

16.7 If a claim or demand is made or action brought to which Clause 16.2 may apply or in the reasonable opinion of the PROVIDER is likely to be made or brought, the PROVIDER may at its own expense and within a reasonable time either:

16.7.1 modify any or all of the Services without reducing the performance and functionality of the same, or substitute alternative system support services of equivalent performance and functionality for any or all of the Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted system support services shall be acceptable to the AUTHORITY, such acceptance not to be unreasonably withheld; or

16.7.2 procure a licence to use the Services on terms which are acceptable to the AUTHORITY.

16.8 The foregoing provisions of this Clause 16 shall not apply insofar as any such claim or demand or action is in respect of:

16.8.1 any use by or on behalf of the AUTHORITY of the Services in combination with any item not supplied by the PROVIDER where such use of the Services directly gives rise to the claim, demand or action; or

16.8.2 any modification carried out by or on behalf of the AUTHORITY to any item supplied by the PROVIDER under this Agreement if such modification is not authorised by the PROVIDER in writing; or

16.8.3 any use by the AUTHORITY of the Services in a manner not reasonably to be inferred from the specification or requirements of the AUTHORITY.

16.9 If the PROVIDER has availed itself of its rights to modify the Services or to supply substitute systems and system support services pursuant to Clause 16.7.1 or to procure a licence under Clause 16.7.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the PROVIDER shall have no further liability thereafter under this Clause 16 in respect of the said claim, demand or action.

16.10 If a modification or substitution in accordance with Clause 16.7.1 above is not possible so as to avoid the infringement or the PROVIDER has been unable to procure a licence in accordance with Clause 16.7.2:

16.10.1 the AUTHORITY shall be entitled to terminate the Agreement pursuant to Clause 18.1.1; and

16.10.2 the PROVIDER shall be liable for the value of replacement Services or part thereof together with additional costs incurred in implementing and maintaining such replacements.

16.11 Clause 16.2 sets out the entire financial liability of the PROVIDER with regard to the infringement of any Intellectual Property Right by the receipt of the Services by or on behalf of the AUTHORITY.

16.12 The AUTHORITY warrants that the PROVIDER's use in providing the Services, of third party items supplied directly or indirectly by the AUTHORITY in accordance with any instructions given by it, shall not cause the PROVIDER to infringe any third party's Intellectual Property Rights in such item.

16.13 All rights, title and interest in any Intellectual Property Rights in any Software or Documentation specifically developed by the PROVIDER, or developed by any of its employees, Sub-Contractors or agents and subsequently acquired by the PROVIDER, in the course of its provision of the Services shall belong to and be the absolute property of the AUTHORITY and automatically vest in the AUTHORITY without further formality on its coming into existence. The PROVIDER shall promptly provide to the AUTHORITY, at no cost to the AUTHORITY, the source code for any such developed Software and Documentation, and any updates to that source code as it is developed. The AUTHORITY shall not acquire title to any pre-existing Intellectual Property Rights of the PROVIDER.

16.14 In the case of the PROVIDER’s employees, Sub-Contractors or agents, the PROVIDER shall use best endeavours to ensure that, at all times and from time to time, such employees, Sub-Contractors or agents assign all Intellectual Property Rights generated or acquired by them in the course of provision of the Services either:

16.14.1 direct to the AUTHORITY; or

16.14.2 to the PROVIDER to enable the PROVIDER to comply with its obligations under Clause 16.13.

16.15 The PROVIDER hereby grants to the AUTHORITY a non-exclusive, perpetual and irrevocable licence to use all those pre-existing Intellectual Property

Rights owned or acquired by the PROVIDER which are necessary for the receipt of the Services (or for the receipt of services which are substantially similar to such services) by the AUTHORITY and which are not assigned to the AUTHORITY pursuant to Clause 16.13.

16.16 The AUTHORITY hereby grants to the PROVIDER a personal non-transferable and non-exclusive licence to use, modify, adapt and enhance the Intellectual Property assigned to the AUTHORITY pursuant to Clause 16.13 for the purposes of the provision of the Services and for no other purpose. Additionally the PROVIDER may, on a case by case basis, request the AUTHORITY's consent to grant a sub-licence of such Intellectual Property Rights as may be necessary for the purposes of the provision of the Services, to any Sub-Contractor, such consent not to be unreasonably withheld or delayed.

16.17 If the AUTHORITY is in Default of Clause 16.12, or the AUTHORITY reasonably believes it may become in Default of Clause 16.12, the AUTHORITY may at its own expense and within a reasonable time either:

16.17.1 modify any or all of the items referred to in Clause 16.12; or

16.17.2 procure a licence for the PROVIDER to use such items,

so that the AUTHORITY is no longer in Default of Clause 16.12 or does not become in Default of Clause 16.12.

16.18 If the AUTHORITY has availed itself of its rights to modify the items referred to in Clause 16.12 in accordance with Clause 16.17.1, or to procure a licence under Clause 16.17.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the AUTHORITY shall have no further liability thereafter under this Clause 16 in respect of a breach of warranty set out in Clause 16.12, or the said claim, demand or action referred to in Clause 16.12.

16.19 The PROVIDER shall itself keep master copies of all Source Code, AUTHORITY's Third Party Software and Third Party Software, other than Commercial Off the Shelf Software, in a secure place ("**Deposited Software**").

16.20 At the Commencement Date there is no Deposited Software. In the event that Deposited Software comes into being during the Term, the PROVIDER shall place the Source Code of the Deposited Software in escrow with the NCC Group Escrow Limited on terms as provide the AUTHORITY access to that Deposited Software, free of charge, at any time and from time to time during the term of this Agreement and at any time following the termination or expiry of this Agreement.

16.21 The PROVIDER hereby grants (or shall procure the grant of) to the AUTHORITY a licence to (and right to sub-license) the Source Code version of the Deposited Software to the same extent as it is licensed to (and permitted to sub-license) the Executable Code version of the Deposited Software, such licence (and right to sub-license) to become effective only from the time that the AUTHORITY becomes entitled to obtain access to that Source Code under the escrow agreement referred to in Clause 16.20.

16.22 The PROVIDER shall at all times keep all Deposited Software held in escrow up to date to correspond with the Executable Code version of that Software then in use.

## 17. Confidentiality

17.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the PROVIDER acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.

17.2 Both Parties hereby warrant that:

17.2.1 any person employed or engaged by the Parties (in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Agreement;

17.2.2 any person employed or engaged by either the PROVIDER or the AUTHORITY (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other Party;

17.2.3 both Parties shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by their employees, servants, agents or Sub-Contractors; and

17.2.4 without prejudice to the generality of the foregoing, neither Party nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or by their servants or consultants or by any third party.

17.3 The PROVIDER may only disclose the AUTHORITY's Confidential Information to the PROVIDER's Personnel who are directly involved in the provision of the Services and who need to know the information and shall ensure that its employees are aware of the arrangements for discharging the obligations at Clause 17.2 before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

17.4 The provisions of Clauses 17.1 and 17.2 shall not apply to any information which:

17.4.1 is or becomes public knowledge other than by breach of this Clause 17; or

17.4.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or

17.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

17.4.4 is independently developed without access to the Confidential Information; or

17.4.5 is subject to disclosure under a requirement of law placed upon the Party making the disclosure, including any requirement for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 25 (Freedom of Information).

17.5 Nothing in this Clause 17 shall be deemed or construed to prevent the AUTHORITY from disclosing any Confidential Information obtained from the PROVIDER:

17.5.1 to any other department, office or agency of the Crown, provided that the AUTHORITY has required that such information is treated as confidential by such departments, offices or agencies, and their servants or agents, including requiring servants or agents to enter into a confidentiality undertaking where appropriate;

17.5.1.A to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

17.5.1.B to the extent that the AUTHORITY (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

17.5.2 to any consultant, contractor or other person engaged by the AUTHORITY in connection herewith, provided that the AUTHORITY shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as

are contained in this Clause 17 and the AUTHORITY shall notify the PROVIDER of the identity of such consultant, contractor or other person as soon as practicable;

17.5.3 to those of its employees, agents or consultants who have a need to know such Confidential Information or if termination of this Agreement is seriously being considered or in reasonable anticipation of the expiration of this Agreement to a potential or intended Successor Provider where disclosure is reasonably necessary to ensure fair and open competition in connection with a retender of the Services or where required by Government in the public interest;

17.5.4 for the purpose of:

(a) the examination and certification of the AUTHORITY'S accounts; or

(b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the AUTHORITY has used its resources; and

17.5.5 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of Clause 17.5.5, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 17.

17.6 Nothing in this Clause 17 shall prevent the PROVIDER or the AUTHORITY from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the AUTHORITY or the PROVIDER of any Intellectual Property Right.

17.7 Neither Party shall be in breach of this Clause 17 where it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation (including without limitation the AUTHORITY's obligations pursuant to FOIA).

17.7A The PROVIDER hereby gives its consent to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted), including from time to time agreed Changes to this Agreement, to the general public.

17.8 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of this Agreement, the PROVIDER undertakes to maintain security systems approved by the AUTHORITY.

17.9 The PROVIDER will immediately notify the AUTHORITY of any breach of security in relation to Confidential Information and all data obtained in the performance of this Agreement and will keep a record of such breaches. The PROVIDER will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the PROVIDER'S obligations under Clause 17.8. The PROVIDER will co-operate with the AUTHORITY in any investigation that the AUTHORITY considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

17.10 The AUTHORITY may require the PROVIDER to alter any security systems at any time during the duration of this Agreement.

17.11 In the event that the PROVIDER fails to comply with this Clause 17, the AUTHORITY reserves the right to terminate this Agreement by notice in writing with immediate effect.

17.12 At the written request of the AUTHORITY, and subject to the Change Control Procedures to agree any necessary adjustment to the Charges, the PROVIDER shall procure that those members of the PROVIDER Personnel

identified in the AUTHORITY's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

## 18. Termination

18.1 The AUTHORITY may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

18.1.1 any of the circumstances detailed in Clauses 16.10, 27.6.2, 28.5, 43.3 or 51.4 arise;

18.1.2 there is a change of Control, in the PROVIDER or its Parent Company provided that:

(a) the AUTHORITY shall only be permitted to exercise its rights pursuant to this Clause 18.1.2 for six (6) months after each such change of control and where such a change is in the reasonable opinion of the AUTHORITY prejudicial to the AUTHORITY's interests; and

(b) the AUTHORITY shall not be permitted to exercise such rights where the AUTHORITY has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or

18.1.3 the PROVIDER, being a company, passes a resolution, or the Court makes an order that the PROVIDER or its Parent Company be wound-up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator (whether out of court or otherwise) is appointed in respect of the business or any part thereof of the PROVIDER or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the PROVIDER or its Parent Company is for the purposes of Section 123 of the Insolvency Act 1986 (on the basis that the words "proved to the satisfaction of the court" are

deemed omitted from Sections 123(1)(e) and 123(2) of that Act) deemed unable to pay its debts (except where the claim is made under Section 163, 1(a) and is for an amount of less than ten thousand pounds (£10,000)) or a moratorium comes into force in respect of the PROVIDER or its Parent Company or any similar event occurs under the law of any other jurisdiction;

18.1.4 the PROVIDER, being an individual, or where the PROVIDER is a firm, any partner or partners in that firm who together are able to exercise direct or indirect Control, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction;

18.1.5 in relation to an Occasion of Tax Non-Compliance:

(a) the warranty given by the PROVIDER pursuant to Clause 14.1.10A is materially untrue; or

(b) the PROVIDER commits a material breach of its obligation to notify the AUTHORITY of any Occasion of Tax Non-Compliance as required by Clause 13; or

(c) the PROVIDER fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable; or

18.1.6 this Agreement should not have been awarded to the PROVIDER in view of a serious infringement of the obligations under the Treaties and the Public Contracts Regulations 2015 that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union.

18.2 Without prejudice to Clause 18.1, the AUTHORITY may at any time by notice in writing terminate this Agreement forthwith, if the PROVIDER is in material Default of any obligation under this Agreement (including, without limitation, any obligation under Schedule 16 (Technology Refresh)) and:

18.2.1 the material Default is capable of remedy and the PROVIDER shall have failed to remedy the material Default within thirty (30) days of written notice from the AUTHORITY to the PROVIDER specifying the material Default and requiring its remedy. Should the PROVIDER fail to remedy the material Default within the 30 days or consider the material Default is incapable of remedy within 30 days, the PROVIDER may provide to the AUTHORITY a plan to remedy the material Default. The plan shall include clear and measurable planned milestones and shall not exceed 90 days. Agreement to the plan shall be at the AUTHORITY's discretion not to be unreasonably withheld. Should the AUTHORITY agree to the plan it shall be subject to review by the AUTHORITY at each checkpoint; or

18.2.2 the material Default is not capable of remedy.

18.2b For the avoidance of doubt in Clause 18.2.1:

18.2b.1 if the PROVIDER and AUTHORITY are unable to agree that the AUTHORITY is acting reasonably in refusing the plan, then the Parties shall escalate the matter in accordance with Clause 40 (Dispute Escalation); and

18.2b.2 in preparing the plan the PROVIDER shall ensure that the timing of the remedying of the material Default minimises the impact on the AUTHORITY's business to the maximum extent possible and the plan is prepared as promptly as is reasonably possible.

18.3 In the event that the PROVIDER has represented itself to the AUTHORITY as a consortium (including without limitation where the PROVIDER is contracting on behalf of other companies or entities) and the AUTHORITY has accepted such a representation as a basis of doing business with the PROVIDER, the AUTHORITY may at any time and from time to time by notice in writing terminate this Agreement if there is a change in membership or the consortium or a material change in the roles of the various members of the consortium which in either case in the reasonable opinion of the AUTHORITY is prejudicial to the AUTHORITY's interests.

18.4 Not Used.

18.5 Not Used.

18.6 Without prejudice to Clause 18.1, the AUTHORITY may at any time by notice in writing terminate this Agreement forthwith, if:

18.6.1 the PROVIDER commits a persistent breach of any undertaking or obligation on its part in or pursuant to the Agreement where such breach does not give rise to a right of termination under Clause 18.2. Without limiting the generality of the foregoing, it is agreed that a breach will be deemed persistent in relation to any Service if a breach is allowed by the PROVIDER to continue for a duration which in the reasonable opinion of the AUTHORITY prejudices the proper provision of the Services; or

18.6.2 any material governmental or other licence, consent or authority required by the PROVIDER to enable it to observe or perform any of its obligations under this Agreement or perform any of its operations or activities or responsibilities envisaged by this Agreement ceases to be in full force and effect or at any time it becomes unlawful for the

PROVIDER to observe or perform any of its obligations thereunder or any of the activities or operations envisaged thereby except to the extent that the foregoing is a direct result of any negligent act or omission of the AUTHORITY.

18.7 Subject to Clauses 18.8 and 18.9, the AUTHORITY may by notice in writing at any time with effect on and from the date of such notice, or such other later date as may be specified in the notice, terminate this Agreement in so far as it relates to the provision of any element of the Services ("**Terminated Service**") at any time.

18.8 The PROVIDER shall be consulted by the AUTHORITY as to the separability of the Terminated Service from the other remaining Services having due regard to technical, operational and commercial implications. Any implications arising from a Partial Termination proposed by the AUTHORITY shall be resolved by the Parties in accordance with the Change Control Procedure whether they are technical, operational or commercial implications or implications for any of the remaining Services not subject to the Partial Termination. The Charges payable for the provision of remaining Services after Partial Termination shall be calculated in accordance with the provisions of Schedule 5 (Payment Mechanism). For the avoidance of doubt, necessary adjustments to the Service Levels and KPIs for the remaining Services not subject to Partial Termination shall be agreed between the Parties in accordance with the Change Control Procedures.

18.9 With regards solely to the Technology Refresh Projects detailed in Schedule 16, the AUTHORITY's right of Partial Termination as set out in Clause 18.7 above shall only apply in the event that one or more of the circumstances detailed in Clauses 18.1, 18.2, 18.3 or 18.6 arise or the AUTHORITY is otherwise entitled to terminate this Agreement by law.

## 19 NOT USED

## 20. Consequences of Termination

20.1 The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

20.1.A Notwithstanding any Partial Termination of this Agreement, the remainder of this Agreement and the remaining Services (or relevant part(s) thereof) shall otherwise continue in full force and effect in accordance with the terms of this Agreement, unless otherwise agreed in accordance with the Change Control Procedure pursuant to clause 18.8.

20.2 If the AUTHORITY terminates this Agreement pursuant to Clauses 18.1, 18.2, 18.3, 18.4 or 18.6 and subject to Clause 15.3, the PROVIDER shall indemnify the AUTHORITY in respect of all costs, expenses and losses, whether direct or indirect, incurred or suffered by the AUTHORITY resulting from, or arising out of or in any way in connection with such termination including all expenditure properly incurred by the AUTHORITY exercising its rights under such Clauses.

20.3 In the event of expiry or termination of this Agreement, the PROVIDER shall:

20.3.1 to the extent not already provided as part of the Termination Assistance (either under this Agreement or the Previous Contract), offer all reasonable assistance to the AUTHORITY and/or any third party engaged by the AUTHORITY to support the Infrastructure to the extent necessary to effect an orderly assumption of support services for the Infrastructure and in any event in accordance with its obligations under this Agreement and Schedule 14 (Exit Management). To the extent that such assistance is not already provided as part of the Termination Assistance, the PROVIDER shall be entitled to a reasonable remuneration in respect of such assistance, such reasonable remuneration to be agreed with the AUTHORITY (based on the appropriate day rates specified in Schedule 5 (Payment Mechanism));

20.3.2 at the direction of the AUTHORITY, provide the AUTHORITY and/or the Replacement Provider(s) with a complete and uncorrupted version of the AUTHORITY's Data in electronic form in the formats and on media reasonably required by the AUTHORITY, together with all training manuals and other related Documentation and any other information and all copies thereof owned by the AUTHORITY;

20.3.3 cease to use the AUTHORITY's Data and, at the request of the AUTHORITY, destroy all copies of the AUTHORITY's Data then in its possession;

20.3.4 return to the AUTHORITY all Government Property in its possession;

20.3.5 where possible, assign or novate in favour of the AUTHORITY, or a third party engaged by the AUTHORITY to support the Infrastructure, (without any charge payable for such assignment or novation) any equipment leases, maintenance agreements and support agreements and all other subcontracts or agreements between the PROVIDER and third parties as the AUTHORITY may designate which are relevant and necessary for the provision of support services for the Infrastructure;

20.3.6 where possible, assign or novate in favour of the AUTHORITY, or a third party engaged by the AUTHORITY to support the Infrastructure, any licence and maintenance agreements as the AUTHORITY may designate relating to any Third Party Software to which the PROVIDER is a party and which are relevant and necessary for the provision of the Services; and

20.3.7 subject to Clause 17.5.2, provide the AUTHORITY, or a third party engaged by the AUTHORITY to support the Infrastructure, with copies of all information in the PROVIDER's possession relating to the use and operation of the Infrastructure.

20.4 The PROVIDER shall comply with the provisions of Schedule 14 (Exit Management).

20.5 Not used.

20.6 In the event of expiry or termination of this Agreement, the AUTHORITY will provide written notice to the PROVIDER setting out:

20.6.1 which Assets used exclusively for the provision of the Services the AUTHORITY requires to be transferred to the AUTHORITY and/or its Replacement Provider(s); and

20.6.2 which software licences and other agreements used exclusively for the provision of the Services the AUTHORITY requires to be assigned or novated to the AUTHORITY and/or its Replacement Provider(s) (the "**Transferring Contracts**").

Where requested by the AUTHORITY and/or its Replacement Provider(s), the PROVIDER will provide all reasonable assistance to the AUTHORITY and/or its Replacement Provider(s) to enable it to determine which Assets and Transferring Contracts the AUTHORITY and/or its Replacement Provider(s) requires in order to provide the replacement services.

20.6.A With effect from the expiry or termination of this Agreement, or such other date as agreed between the Parties, the PROVIDER shall assign to the AUTHORITY (and/or its nominated Replacement Provider(s)), free from all liens, charges, options, encumbrances and third party rights, title to and all rights and interests in those Assets identified by the AUTHORITY pursuant to Clause 20.6.1 above.

20.6.B Where possible, the PROVIDER shall assign or procure the novation to the AUTHORITY (or its Replacement Provider(s), as appropriate) of the Transferring Contracts. The PROVIDER shall execute such documents and provide such other assistance as the AUTHORITY reasonably requires to effect this novation or assignment.

20.6.C The PROVIDER shall indemnify the AUTHORITY (and/or the Replacement Provider(s), as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a licence or agreement which is assigned or novated to the AUTHORITY (and/or Replacement Provider(s)) pursuant to Clause 20.6.B above in relation to any matters arising prior to the date of assignment or novation of such licence or agreement.

20.6.D If the cost of any Asset has not been fully paid for at the time of expiry or termination of this Agreement, the AUTHORITY shall pay the PROVIDER the Net Book Value of any such Asset that the AUTHORITY elects to have transferred to it (or any Replacement Provider(s)) in accordance with Clause 20.6.1. If the cost of any Asset has been fully paid for at the time of expiry or termination of this Agreement, the AUTHORITY shall not pay any additional sums to the PROVIDER for any such Asset that the AUTHORITY elects to have transferred to it (or any Replacement Provider(s)).

20.7 The PROVIDER shall take all reasonable steps and co-operate fully with the AUTHORITY and any potential Replacement Provider(s) tendering for any re-competition for the Services and with any Replacement Provider(s) subsequently selected by the AUTHORITY so that the transfer of responsibility for the provision of the Service is achieved with the minimum of disruption and so as to prevent or mitigate any inconvenience to the AUTHORITY, any other AUTHORITY body or any Related Organisation. In particular:

20.7.1 not used;

20.7.2 If so required by the AUTHORITY the PROVIDER shall continue to provide the Services beyond the expiry or termination of the Agreement until such later time as the AUTHORITY confirms in writing to the PROVIDER that the Services are no longer required (for example because services from a Replacement Provider have been accepted by the Authority), in which event the AUTHORITY shall reimburse the PROVIDER for such part of the Services as are

provided beyond the due expiry or termination date of the Agreement on a pro rata basis (as far as possible) using the Charges set out in Schedule 5 (Payment Mechanism). The PROVIDER will use reasonable endeavours to minimise any Charges resulting from its Sub-Contractors and suppliers during such a period but where any Sub-Contractor or supplier is unwilling to contract for a short term and/or increases their charges to the PROVIDER, then the Parties will meet and agree an appropriate level of reimbursement or alternative approach(es) as applicable. In no event shall the PROVIDER be required to provide the Services beyond 30 June 2019.

20.8 The PROVIDER shall repay forthwith to the AUTHORITY any advance payment made by the AUTHORITY relating to any Services not performed by the PROVIDER in accordance with this Agreement as at the date of termination or expiry of this Agreement.

20.9 In the event of termination or expiry of this Agreement, the provisions of this Clause 20 and Clauses 1, 11, 15, 16, 17, 21, 25, 26, 34, 35, 36, 39, 40, 41, 42, 43, 56 and Schedules 1, 14 and 24 shall survive the termination or expiry of this Agreement.

20.10 Where the PROVIDER is required to provide the Services (or any element(s) thereof) beyond expiry or termination of this Agreement (including pursuant to Clause 20.7.2 above), the provisions of this Agreement shall survive termination or expiry to the extent that such provisions are necessary to enable the PROVIDER to provide the Services (or any element(s) thereof) to the standards set out within this Agreement and to continue the Parties' rights and/or obligations associated with such provision of the Services (or element(s) thereof) including (without limitation) those provisions identified at Clause 20.9 above and Schedules 3, 5, 6, 7, 12 and 16.

## 21. Recovery of Sums Due

21.1 If any sum of money shall be due from the PROVIDER, the same may be deducted from any sum then due or which at any time thereafter may become

due to the PROVIDER under this Agreement or any agreement with the AUTHORITY.

## 22. AUTHORITY's Data

22.1 The PROVIDER acknowledges that the AUTHORITY's Data is the property of the Crown and the AUTHORITY hereby reserves all Intellectual Property Rights which may subsist in the AUTHORITY's Data. The PROVIDER shall not delete or remove any copyright notices contained within or relating to the AUTHORITY's Data.

22.2 Upon receipt or creation by the PROVIDER of the AUTHORITY's Data and during any collection, processing, storage and transmission by the PROVIDER of the AUTHORITY's Data the PROVIDER shall take all necessary precautions to preserve the integrity of the AUTHORITY's Data and to prevent any corruption or loss of the AUTHORITY's Data including, without limiting the PROVIDER's obligation under this Clause 22.2, such precautions as are specified in any relevant Service and in Schedule 7 (Security).

22.3 The AUTHORITY shall ensure that a back-up copy of the AUTHORITY's Data contained in the AUTHORITY's Hosting Facilities is made no less frequently than specified in Schedule 12 (AUTHORITY's Responsibilities) and that such copy is recorded on media from which the AUTHORITY's Data can be re-loaded in the event of any corruption or loss of the AUTHORITY's Data.

22.4 In the event that the AUTHORITY's Data is corrupted or lost as a result of any Default by the PROVIDER the AUTHORITY shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:

22.4.1 the AUTHORITY may require the PROVIDER at its own expense to restore or procure the restoration of the AUTHORITY's Data using the back-up copy referred to in Clause 22.3; or

22.4.2 the AUTHORITY may itself restore or procure restoration of the AUTHORITY's Data using the back-up copy referred to in Clause 22.3, and shall be repaid by the PROVIDER any reasonable expenses so incurred.

22.5 The PROVIDER shall at all times maintain up-to-date Virus protection on all Systems used in the provision of the Services, including the measures set out in Schedule 7 (Security).

22.6 The PROVIDER shall be responsible for any and all loss, damage, claims, demands, actions, costs, Charges, expenses or liabilities of whatsoever nature incurred or suffered by the AUTHORITY which results from a breach by the PROVIDER of its obligations under Clause 22.5.

22.7 If the AUTHORITY's Data is corrupted or lost or sufficiently degraded as to be unusable otherwise than due to a Default by the PROVIDER, the PROVIDER shall nevertheless carry out all such remedial actions as may be necessary to restore the AUTHORITY's Data and the cost of the said actions shall be borne by the AUTHORITY.

22.8 The PROVIDER shall not store, copy, disclose, or use the AUTHORITY's Data except as necessary for the performance by the PROVIDER of its obligations under this Agreement or as otherwise expressly authorised in writing by the AUTHORITY.

22.9 To the extent that the AUTHORITY's Data is held and/or processed by the PROVIDER, the PROVIDER shall supply such AUTHORITY Data to the AUTHORITY as requested by the AUTHORITY in the format specified. If this results in a change in any aspect of the PROVIDER's Services it shall be subject to the Change Control Procedure.

## 23. Progress Reports

23.1 Where a progress report, or other information pertaining to the progress of the performance of either Party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and

acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Agreement.

## 24. Health and Safety Hazards

24.1 The PROVIDER shall promptly notify the AUTHORITY of any health and safety hazards which may arise in connection with the performance of this Agreement.

24.2 The AUTHORITY shall notify the PROVIDER of any health and safety hazards which may exist or arise at the Premises and which may affect the PROVIDER in the performance of this Agreement. The PROVIDER shall draw these hazards to the attention of its employees and Sub-Contractors or any persons engaged by the PROVIDER in the performance of this Agreement at the Premises.

24.3 The PROVIDER shall inform all persons engaged in the performance of this Agreement at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

24.4 Both Parties shall comply with their respective obligations under The Construction (Design and Management) Regulations 2015.

24.5 While on the AUTHORITY'S Premises, the PROVIDER shall comply with any health and safety measures implemented by the AUTHORITY in respect of employees and Sub-Contractors working on those Premises.

24.6 The PROVIDER shall notify the AUTHORITY immediately in the event of any incident occurring in the performance of the AGREEMENT on the AUTHORITY'S Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

24.7 The PROVIDER shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety,

which may apply to employees or Sub-Contractors and other persons working on the Premises in the performance of the Agreement.

24.8 The PROVIDER shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the AUTHORITY on request.

## 25. Protection of Personal Data and Freedom of Information

### Personal Data

25.1 Each Party shall comply with its respective obligations under the provisions of the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the other Party to breach any of its applicable obligations under the Data Protection Legislation.

25.2 Where the PROVIDER or any of its Sub-Contractors, as part of the services under this Agreement, processes personal data as a data processor on behalf of the AUTHORITY, the PROVIDER shall, and shall procure its Sub-Contractors to:

25.2.1 act only on instructions from the AUTHORITY as a data controller; and

25.2.2 comply with the AUTHORITY's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the AUTHORITY; and

25.2.3 at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss destruction alteration or disclosure of, or damage to, personal data (these measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the personal data and having regard to the nature of the personal data which is to be protected); and

25.2.4 process the personal data only to the extent, and in such a manner, as is necessary for the provision of the Services or as is required by law or any relevant regulatory or statutory body.

25.3 The PROVIDER shall:

25.3.1 obtain prior written consent from the AUTHORITY in order to transfer the personal data to any Sub-contractors or Affiliates for the provision of the Services; and

25.3.2 ensure that none of PROVIDER's Personnel publish, disclose or divulge any of the personal data to any third party unless directed in writing to do so by the AUTHORITY; and

25.3.3 notify the AUTHORITY (within five Working Days) if it receives:

25.3.3.1 a request from a data subject to have access to that person's personal data; or

25.3.3.2 a complaint or request relating to the AUTHORITY's obligations under the Data Protection Legislation; and

25.3.4 provide the AUTHORITY with full co-operation and assistance in relation to any complaint or request made, including by:

25.3.4.1 providing the AUTHORITY with full details of the complaint or request;

25.3.4.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the AUTHORITY's instructions;

25.3.4.3 providing the AUTHORITY with any personal data it holds in relation to a data subject (within the timescales reasonably required by the AUTHORITY); and

25.3.4.4 providing the AUTHORITY with any information requested by the AUTHORITY; and

25.3.5 permit the AUTHORITY or the AUTHORITY representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 36 (Audits Access), the PROVIDER's data processing activities relevant to the Services (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the AUTHORITY to enable the AUTHORITY to verify and/or procure that the PROVIDER is in full compliance with its obligations under this Agreement; and

25.3.6 provide on the request of the AUTHORITY a written description of the technical and organisational methods employed by the PROVIDER for processing personal data relevant to the Services (within the timescales reasonably required by the AUTHORITY); and

25.3.7 not process personal data outside the European Economic Area without the prior written consent of the AUTHORITY and, where the AUTHORITY consents to a transfer, to comply with:

25.3.7.1 the obligations of a data controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act by providing an adequate level of protection to any personal data that is transferred; and

25.3.7.2 any reasonable instructions notified to it by the AUTHORITY.

25.4 The AUTHORITY may from time to time serve on the PROVIDER an information notice requiring the PROVIDER, within such time and in such form as is specified in the information notice, to furnish to the AUTHORITY such information as the AUTHORITY may reasonably require relating to:

25.4.1 compliance by the PROVIDER or by its Sub-Contractors with the PROVIDER's obligations to the AUTHORITY under this Agreement in connection with the processing of personal data; and/or

25.4.2 the rights of data subjects, including but not limited to subject access rights.

**Freedom of Information**

25.5 The PROVIDER shall and shall procure that the Sub-Contractors shall in relation to the Services:

25.5.1 comply with all requests made by the AUTHORITY; and

25.5.2 provide all such assistance as may reasonably be required by the AUTHORITY,

so as to enable the AUTHORITY to comply with its obligations under FOIA.

25.6 The PROVIDER acknowledges that the AUTHORITY is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations (together, the "**Information Requirements**") and shall assist and co-operate with the AUTHORITY to enable the AUTHORITY to comply with its obligations to disclose information pursuant to them.

25.7 The PROVIDER shall and shall procure that its Sub-contractors shall:

25.7.1 transfer to the AUTHORITY all requests made pursuant to the Information Requirements (a "**Request**") that it receives as soon as

practicable and in any event within two (2) Working Days of receiving such a Request;

25.7.2 provide the AUTHORITY with a copy of all information in its possession, or power in the form that the AUTHORITY requires within five (5) Working Days (or such other period as the AUTHORITY may specify) of the AUTHORITY's Request; and

25.7.3 provide all necessary assistance as reasonably requested by the AUTHORITY to enable the AUTHORITY to respond to the Request within the time for compliance set out in Section 10 of FOIA or regulation 5 of the Environmental Information Regulations.

25.8 The AUTHORITY shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Exempt Information or any other information is exempt from disclosure in accordance with the provisions of the Information Requirements.

25.9 In no event shall the PROVIDER respond directly to a Request for Information unless expressly authorised to do so by the AUTHORITY.

25.10 The PROVIDER acknowledges that (notwithstanding the provisions of this Clause 25) the AUTHORITY may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA to disclose information (including Confidential Information) concerning the PROVIDER or the Services:

25.10.1 in certain circumstances without consulting or obtaining consent from the PROVIDER; or

25.10.2 following consultation with the PROVIDER and having taken the PROVIDER'S views into account,

provided always that where Clause 25.10.1 applies the AUTHORITY shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the PROVIDER advanced notice, or failing that, to draw the disclosure to the PROVIDER's attention after any such disclosure.

25.11 The PROVIDER acknowledges that the Exempt Information listed in Schedule 24 (Freedom of Information) is of indicative value only and that the AUTHORITY may be obliged to disclose it in accordance with Clause 25.

## 26. Publicity

26.1 Except with the written consent, not to be unreasonably withheld or delayed, of the other Party neither Party shall make any press announcements or publicise this Agreement in any way.

26.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 26.1 by all their servants, employees, agents and consultants. The PROVIDER shall take all reasonable steps to ensure the observance of the provisions of Clause 26.1 by its Sub-Contractors.

26.3 Notwithstanding the provisions of Clause 26.1, the AUTHORITY shall be entitled to publicise this Agreement in accordance with any legal obligation upon the AUTHORITY, including any examination of this Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

26.4 The PROVIDER is aware of and will comply with the publicity requirements placed upon it and the AUTHORITY under the ESF programme as detailed in Schedule 13 (European Social Fund Requirements).

## 27. Prevention of Fraud and Bribery

27.1 The PROVIDER represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Commencement Date:

27.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

27.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

27.2 The PROVIDER shall not during the term of this Agreement:

27.2.1 commit a Prohibited Act; and/or

27.2.2 do or suffer anything to be done which would cause the AUTHORITY or any of the AUTHORITY's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

27.3 The PROVIDER shall during the term of this Agreement:

27.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

27.3.2 keep appropriate records of its compliance with its obligations under Clause 27.3.1 and make such records available to the Authority on request.

27.4 The PROVIDER shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 27.1 and/or 27.2, or has reason to believe that it has or any of the Personnel have:

27.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

27.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

27.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

27.5 If the PROVIDER makes a notification to the AUTHORITY pursuant to Clause 27.4, the PROVIDER shall respond promptly to the AUTHORITY's enquiries, co-operate with any investigation, and allow the AUTHORITY to audit any books, Records and/or any other relevant documentation in accordance with Clause 36 (Audit Access).

27.6 If the PROVIDER is in Default under Clauses 27.1 and/or 27.2, the AUTHORITY may by notice:

27.6.1 require the PROVIDER to remove from performance of this Agreement any Personnel whose acts or omissions have caused the Default; or

27.6.2 immediately terminate this Agreement.

27.7 Any notice served by the AUTHORITY under Clause 27.6 shall specify the nature of the Prohibited Act, the identity of the party who the AUTHORITY believes has committed the Prohibited Act and the action that the AUTHORITY has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## 28. PROVIDER's Staff

28.1 The AUTHORITY reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Crown and/or the AUTHORITY any person employed or engaged by the PROVIDER, or by a

Sub-Contractor, or any person employed or engaged by a sub-contractor, agent or servant of the PROVIDER, whose admission or continued presence would be, in the opinion of the AUTHORITY, undesirable.

28.2 If and when directed by the AUTHORITY, the PROVIDER shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Crown, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the AUTHORITY may reasonably require. In addition, the PROVIDER shall provide to the AUTHORITY in relation to such persons, such specific and relevant Documentation as the AUTHORITY may require. The PROVIDER shall use reasonable endeavours to obtain all necessary consents for the release of any personal data to the AUTHORITY, but for the avoidance of doubt, the PROVIDER shall not be obliged to act in breach of the Data Protection Legislation when providing such information or documentation.

28.3 If and when directed by the AUTHORITY, the PROVIDER shall secure that any person employed or engaged by the PROVIDER or by a Sub-Contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of this Agreement.

28.4 The PROVIDER's representatives, engaged within the boundaries of a Government establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

28.5 If the PROVIDER shall fail to comply with Clause 28.2 and if the AUTHORITY (whose decision shall be final and conclusive) shall decide that such failure is prejudicial to the interests of the State and if the PROVIDER does not comply with the provisions of Clause 28.2 within a reasonable time of written notice so to do then the AUTHORITY may terminate this Agreement pursuant to

Clause 18.1.1 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the AUTHORITY.

28.6 The decision of the AUTHORITY as to whether any person is to be refused admission to any premises occupied by or on behalf of the Crown and as to whether the PROVIDER has failed to comply with Clause 28.2 shall be final and conclusive.

28.7 Key Personnel

28.7.1 The PROVIDER shall use its reasonable endeavours to ensure continuity of personnel.

28.7.2 The Parties have agreed to the appointment of the Key Personnel listed in Schedule 3 as at the Commencement Date. The PROVIDER shall and shall procure that any Sub-contractor shall obtain the prior consent of the AUTHORITY before removing or replacing any Key Personnel during the Term (including when carrying out Exit Management), and, where possible, at least 1 month's written notice must be provided by the PROVIDER of its intention to replace Key Personnel, excepting where the Key Personnel have resigned of their own volition.

28.7.3 The PROVIDER acknowledges that the Key Personnel are essential to the proper provision of the Services to the AUTHORITY. The PROVIDER shall ensure that the role of any Key Personnel is not vacant for any longer than:

(a) 5 Working Days, within which period the PROVIDER will appoint a temporary replacement; and

(b) 55 Working Days from the appointment of a replacement, within which period the PROVIDER will appoint a permanent replacement, unless agreed otherwise with the AUTHORITY,

and that any replacement shall be appropriately qualified and experienced and fully competent to carry out the tasks assigned to the person whom he or she has replaced.

28.7.4 To the extent that it can do so without disregarding its statutory and contractual obligations, the PROVIDER shall take all reasonable steps to ensure that it retains the services of all the Key Personnel. During the Term of the Agreement the Parties may agree to amend the full or part-time role of Key Personnel in accordance with the provisions of Schedule 3.

## 29. Non Discrimination

29.1 The PROVIDER shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, sex, gender, reassignment, age, religion or belief, disability, sexual orientation, pregnancy, maternity or otherwise). The PROVIDER shall take all reasonable steps to ensure that it complies with the objectives and provisions of the AUTHORITY's equality and diversity scheme (as provided to the PROVIDER by the AUTHORITY from time to time) and will provide any necessary information to the AUTHORITY to enable the AUTHORITY to meet its duties under the Equality Act 2010.

29.2 The PROVIDER shall take all reasonable steps to ensure the observance of the provisions of Clause 29.1 by all servants, employees, agents and consultants of the PROVIDER and all Sub-Contractors.

## 30. Force Majeure

30.1 For the purpose of this Agreement, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventive action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring

within the PROVIDER's organisation or within any sub-contractor's organisation.

30.2 For the avoidance of doubt, both Parties agree that any acts, events, omissions, happenings or non-happenings resulting from the invocation of Article 50 of the European Union Treaty of Lisbon, or further action related to the United Kingdom leaving the European Union, by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement.

30.3 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of three (3) months, either Party may terminate the Agreement by notice in writing with immediate effect.

30.4 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

30.5 Any failure or delay by the PROVIDER in performing its obligations under this Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the PROVIDER.

30.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of this Agreement shall be any event qualifying for Force Majeure hereunder.

## 31. Transfer and Sub-contracting

31.1 This Agreement is personal to the PROVIDER. The PROVIDER shall not assign, novate, Sub-Contract or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the AUTHORITY.

31.2 The PROVIDER may, with the prior written consent of the AUTHORITY (such consent not to be unreasonably withheld), assign its obligations under this Agreement to an Affiliate of the PROVIDER. The AUTHORITY may, as a condition of any such consent, require the PROVIDER to deliver to the AUTHORITY a guarantee of such Affiliate's obligations executed by a guarantor acceptable to the AUTHORITY and in a form agreed by the Parties.

31.3 The AUTHORITY hereby consents to the PROVIDER's Sub-Contracting of its obligations specified in Schedule 3 (PROVIDER's Solution) to the respective Sub-Contractors specified in Schedule 18 (Sub-Contractors). Notwithstanding any Sub-Contracting permitted hereunder, the PROVIDER shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

31.4 Subject to Clause 31.6, the AUTHORITY shall be entitled to assign, novate, subcontract or otherwise dispose of its rights and obligations under this Agreement or any part thereof to:

31.4.1 any Contracting Authority; or

31.4.2 to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the AUTHORITY,

provided that where such assignment, novation or other disposal increases the burden of the PROVIDER's obligations pursuant to this Agreement, the PROVIDER shall be entitled to such additional Charges as may be agreed between the Parties to compensate for such additional burdens.

31.5 Any change in the legal status of the AUTHORITY such that it ceases to be a Contracting Authority shall not, subject to Clause 31.6, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the AUTHORITY.

31.6 If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 31.4.2 or if a successor body which is not a Contracting Authority becomes the AUTHORITY pursuant to Clause 31.5 (in the remainder of this Clause both such bodies are referred to as the "**transferee**"):

31.6.1 the rights of termination of the AUTHORITY in Clause 18.1.3, Clause 18.1.4 and 18.2 shall be available, mutatis mutandis, to the PROVIDER in the event of the bankruptcy, insolvency or Default of the transferee;

31.6.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the PROVIDER; and

31.6.3 the rights of the AUTHORITY under Clause 28 shall cease.

31.7 The AUTHORITY shall be entitled to disclose to any transferee any Confidential Information of the PROVIDER which relates to the performance of the Services by the PROVIDER. In such circumstances the AUTHORITY shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by the confidentiality undertaking contained herein in relation to such Confidential Information.

31.8 A change to the Services resulting from the operation of this Clause 31 shall not constitute a circumstance of Force Majeure.

31.9 Notwithstanding the provisions of this Clause 31, and in accordance with the provisions and aims of Clause 58, the AUTHORITY may require the

PROVIDER to use specific Sub-Contractors to provide elements of the Services where such Sub-Contractors are performing services for programmes or entities as described in Clause 58.

31.10 The PROVIDER shall ensure that all Sub-Contracts contain a provision:

31.10.1 requiring the PROVIDER to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and

31.10.2 a right for the AUTHORITY to publish the PROVIDER's compliance with its obligation to pay undisputed invoices within the specified payment period.

31.11 The PROVIDER shall pay any undisputed sums which are due from it to a Sub-Contractor within 30 days from the receipt of a valid invoice.

**32. Amendments to this Agreement**

32.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in accordance with the Change Control Procedure.

**33. Communications**

33.1 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the AUTHORITY or as the case may be by or on behalf of the PROVIDER.

33.2 Any notice or other communication whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile or email transmission confirmed by post, addressed to the other Party in the manner referred to in Clause 33.3 below and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two Working Days for a letter

delivered by post or four Working Hours for a facsimile transmission or email transmission. However, as an exception to the provisions of this Clause, the procedure for agreeing a binding contractual order (that constitutes an amendment to this Agreement) between the Parties for the provision of Services shall be by an exchange of e-mails, as detailed in Schedule 20 (Change Control Procedures).

33.3 For the purposes of Clause 33.2 above the address of each Party shall be:

33.3.1 For the AUTHORITY:

Ministry of Justice
102 Petty France
London SW1H 9AJ

For the attention of: [REDACTED]

Telephone: [REDACTED]

Email: [REDACTED];

33.3.2 For the PROVIDER:

The Company Secretary,
Sopra Steria Limited
Three Cherry Trees Lane
Hemel Hempstead
Herts HP2 7AH

Email: [REDACTED];

with a copy to;

Sopra Steria Limited
Sixth Floor
120 Holborn
London
EC1N 2TD

For the attention of: [REDACTED]

Telephone: [REDACTED]

Email: [REDACTED]

33.4 Either Party may change its address for service by notice as provided in this Clause 33.

**34. Severability**

34.1 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 and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the AUTHORITY and the PROVIDER shall immediately commence good faith negotiations to remedy such invalidity.

**35. Waiver**

35.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

35.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

35.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 33.

35.4 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

**36. Audit Access**

36.1 The PROVIDER shall comply with the provisions of this Clause 36 in relation to audit access requirements.

36.2 The PROVIDER shall keep or cause to be kept full and accurate financial and other performance records (including but not limited to timesheets) of all products used and services performed (including but not limited to services performed in respect of any Technology Refresh Project, Change or Operational Change) in connection with this Agreement ("**the Records**"). The PROVIDER shall use its reasonable endeavours to procure that any Sub-Contractor or other representative engaged by it during the term hereof in connection with the performance of the Services shall also keep or cause to be kept full and accurate Records and shall grant and allow the same rights of access and accept the same obligations to provide information as are granted, allowed and/or accepted by the PROVIDER under this Clause 36.2.

36.3 The PROVIDER shall grant to the AUTHORITY, any statutory auditors of the AUTHORITY and their respective authorised agents the right of reasonable access to the Records and/or any sites and/or premises and/or personnel connected with the provision of the Services and shall provide all reasonable assistance at all times during the currency of this Agreement and for seven (7) years following the expiry or termination of this Agreement for the purposes of allowing the AUTHORITY to obtain such information as is necessary to:

36.3.1 fulfil the AUTHORITY's obligations to supply information for parliamentary, judicial or other administrative purposes including without limitation HM Inspectorate of Probation ("**HMIP**"); and/or

36.3.2 audit the PROVIDER's compliance with this Agreement including all activities, Charges, performance, security and integrity in connection therewith; and/or

36.3.3 audit all activities, security and integrity in connection with the provision of the Services.

36.4 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by the PROVIDER or any third party the AUTHORITY reserves for itself, any statutory auditors of the AUTHORITY and their respective authorised agents or any Crown Body the right of immediate access to the Records described in Clause 36.2 and Clause 36.3 above and the PROVIDER agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of this Agreement or at any time thereafter. For the avoidance of doubt, the PROVIDER shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this Clause 36.4 in the event that the result of such investigation reveals no fraudulent activity or other impropriety by the PROVIDER, its servants, agents or Sub-Contractors.

36.5 For the purposes of:

36.5.1 the examination and certification of the accounts of the AUTHORITY; and/or

36.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the AUTHORITY has used its resources; and/or

36.5.3 any examination pursuant to a request by HMIP; and/or

36.5.4 any examination or internal audit of the National Offender Management Service and/or the Ministry of Justice;

the National Audit Office, the Comptroller and Auditor General and/or his representatives ("**C & AG**"); shall have the right to examine the Records and all such documents and other information owned, maintained or held by, or otherwise in the control of, the PROVIDER (including computerised records or Data) as the C & AG may reasonably require or consider necessary. The PROVIDER shall provide access (and shall procure that any person acting on the PROVIDER's behalf who has such documents and/or other information shall also provide access) to such documents and/or other information for the

C & AG for such purposes. Further, the PROVIDER shall furnish to the C & AG such oral or written explanations as he requires for such purposes. The C & AG shall bear the costs incurred by himself of such examination and clarification.

36.6 Except where specifically provided in this Clause 36 neither the PROVIDER nor its Sub-Contractors or other representatives shall be entitled to reimbursement by the AUTHORITY for any costs or expenses incurred as a result of compliance with their respective obligations hereunder.

36.7 The PROVIDER is aware of and will comply with the audit requirements placed upon it and the AUTHORITY under the ESF programme as detailed in Schedule 13 (European Social Fund Requirements). The AUTHORITY will cover the costs of compliance with these audit requirements.

## 37. Access to Premises

37.1 Any land or Premises (including temporary buildings) made available to the PROVIDER by the AUTHORITY in connection with this Agreement shall be made available to the PROVIDER free of charge and shall be used by the PROVIDER solely for the purpose of performing this Agreement. The PROVIDER shall have the use of such land or Premises as licensee and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the AUTHORITY may determine. In the event the AUTHORITY determines that the PROVIDER must vacate the Premises or land prior to the termination or expiry of this Agreement (other than in relation to a breach by the PROVIDER of the AUTHORITY's security requirements), and the PROVIDER can demonstrate to the AUTHORITY's reasonable satisfaction that it is unable to perform, or its ability to perform is reduced, any specific obligation under this Agreement as a direct result of the AUTHORITY's determination, then:

37.1.1 the PROVIDER's liability to the AUTHORITY will be reduced to the extent that its performance of any obligation is dependent on accessing such Premises or land, and for such period of time as is reasonable in all the circumstances; and

37.1.2 notwithstanding Clause 37.1.1, the PROVIDER will use all reasonable endeavours to perform its obligations under this Agreement notwithstanding the AUTHORITY's determination.

37.2 The AUTHORITY shall be responsible for maintaining the security of such land or Premises in accordance with its standard security requirements. The PROVIDER shall comply with all reasonable security requirements of the AUTHORITY while on the Premises, and shall procure that all of its employees, agents and Sub-Contractors shall likewise comply with such requirements. The AUTHORITY shall provide the PROVIDER upon request copies of its written security procedures and shall afford the PROVIDER upon request with an opportunity to inspect its physical security arrangements.

**38. Provisions Applicable to Related Organisations**

38.1 At the direction of the AUTHORITY the PROVIDER shall within a reasonable time from such direction:

38.1.1 provide to any Related Organisation such of the Services as the AUTHORITY shall from time to time direct in accordance with the provisions of this Agreement. Where the PROVIDER can show that it will incur additional cost in complying with the AUTHORITY’s direction, the Change Control Procedure will apply; and

38.1.2 enter into an agreement with any Related Organisation willing to do so for the provisions of service equivalent to such of the Services as the AUTHORITY shall from time to time direct to that Related Organisation in accordance with the Charging Method and on terms comparable with the provisions of this Agreement (taking into account the underlying cost of providing the services to that Related Organisation) and the PROVIDER shall provide to the AUTHORITY a copy of the terms of such agreement and any amendment from time to time to it. If the Related Organisation is a private sector company, then before commencement of any services to that Related Organisation, the AUTHORITY shall agree appropriate safeguards as

to the disclosure of detailed pricing information and Confidential Information, and the payment of any charges due to the PROVIDER under that agreement.

38.2 If the AUTHORITY exercises its right under Clause 38.1.1 in favour of any Related Organisation the arrangements entered into in accordance with Clause 38.1.1 shall subsist only for the term of this Agreement.

**39. Law and Jurisdiction**

39.1 This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

39.2 This Agreement is binding on the AUTHORITY and its successors and assignees and the PROVIDER and the PROVIDER's successors and permitted assignees.

**40. Dispute Escalation**

40.1 All Disputes shall be referred by either Party to the Parties' respective programme and project management teams for resolution.

40.2 If any Dispute cannot be resolved by the programme and project management teams within fourteen (14) days after it has been referred under Clause 40.1, that Dispute shall be referred to the appropriate Board (as more particularly described in Schedule 9 (Governance)) for resolution.

40.3 If the Dispute cannot be resolved by the relevant Parties' representatives nominated under Clause 40.2 within 14 (fourteen) days after it has been referred to them either Party may, within that 14 (fourteen) day period, propose to the other in writing that the Dispute may be referred under Clause 41 (Dispute Resolution) and the other Party may accept or reject such an option. If that option is rejected, either Party may refer the matter to the courts.

40.4 Notwithstanding any other provision of this Agreement, in the event of any Dispute or any other dispute between the Parties, the PROVIDER shall nevertheless continue to provide the Services and the AUTHORITY shall continue to pay the Charges (except any Charges as are in dispute) and the PROVIDER shall perform and comply with all the other provisions of this Agreement including, but not limited to, (where applicable) the Services (or other obligations) that form the subject matter of the Dispute.

40.5 Where any Dispute relates to the fair market value for all or part of the Services which the AUTHORITY elects to purchase pursuant to this Agreement the AUTHORITY may elect to pay the PROVIDER's net book value for such Services and, where the AUTHORITY so elects, the Dispute shall be deemed to have been resolved, the AUTHORITY shall pay the net book value rather than the fair market value and the AUTHORITY may refer the issue to an expert appointed by the President for the time being of the BCS who shall act as an expert and determine the fair market value for such Services and whose decision shall be final and binding on both Parties. The AUTHORITY shall promptly pay or, as the case may be, the PROVIDER shall promptly reimburse the difference between the net book value and the fair market value determined by that expert.

## 41. Dispute Resolution

41.1 Subject always to Clauses 39 and 40, in the event of any Dispute arising between the Parties in connection with this Agreement which cannot be resolved pursuant to Clause 40, the AUTHORITY's Deputy Director Technology and Digital Commercial and Contract Management Directorate and the PROVIDER's Justice Account Director as the senior representatives of the AUTHORITY and PROVIDER on the appropriate Boards (as more particularly described in Schedule 9 (Governance), shall within twenty-one (21) days of a written request from either Party to the other communicated in accordance with Clause 33 meet in good faith to attempt to resolve the Dispute.

41.2 Subject always to Clauses 39 and 40 and 41.1 in the event of any Dispute arising between the Parties in connection with this Agreement which cannot be resolved pursuant to Clause 41.1 the AUTHORITY's Chief Financial Officer and the PROVIDER's Government Sector Managing Director shall, within seven (7) days of a written request from either Party to the other communicated in accordance with Clause 33, meet in good faith to attempt to resolve the Dispute without recourse to legal proceedings.

41.3 If the Dispute is not resolved as a result of such meeting, either Party may (at such meeting or within 21 days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a mediator, proposing a person who is willing to act (the "**Mediator**") and the other Party may accept or reject such an option. If that option is rejected, either Party may refer the matter to the courts.

41.4 If the Parties agree to enter into structured negotiations pursuant to Clause 41.3 but are unable to agree on a Mediator either Party may, with the agreement of the other, apply to the Centre for Effective Dispute Resolution, 70 Fleet Street, London (or such other body as the Parties may agree from time to time) to appoint a Mediator. If the Parties are unable to agree, the Dispute may be referred to the courts by either Party.

41.5 The Parties shall, within fourteen (14) days of the appointment of the Mediator, meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the Parties may, at any stage, seek assistance from any recognised dispute resolution body to provide guidance on a suitable procedure.

41.6 The Mediator shall procure recommendations based upon a review of information provided by the Parties.

41.7 If the Parties accept the Mediator's recommendations or otherwise reach agreement on the resolution of the Dispute, such agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the Parties. The Parties shall bear their own costs in

connection with this Clause 41 but shall share equally the costs of the Mediator.

41.8 Unless concluded by the written binding agreement referred to in Clause 41.7, all negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

41.9 Failing agreement on the basis referred to in Clause 41.7, either of the Parties may invite the Mediator to provide a non-binding opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings commenced pursuant to the terms of this Agreement without the prior written consent of both Parties.

41.10 If the Parties fail to reach agreement in the structured negotiations within twenty-one (21) days of the Mediator giving such an opinion, then any Dispute between them may be referred to the courts unless within such period or a further period of seven (7) days the Parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

41.11 For the avoidance of doubt, and in accordance with Clause 1.7, if there is any conflict between the Clauses (including without limitation Clauses 40 and 41) and the Schedules (including without limitation Schedule 9 (Governance) then the Clauses together with Schedule 1 shall prevail.

## 42. Government Property

42.1 All Government Property shall remain the property of the AUTHORITY and shall be used only for the purposes of this Agreement.

42.2 Any Government Property made available or otherwise received by the PROVIDER shall be deemed to be in good condition when received by or on behalf of the PROVIDER unless the PROVIDER notifies the AUTHORITY otherwise within seven days of receipt.

42.3 The PROVIDER undertakes the security and safe custody of and the due return of all Government Property whilst in the PROVIDER'S possession, either on its premises or elsewhere during the performance of this Agreement, in accordance with the AUTHORITY'S reasonable security requirements from time to time, and shall be responsible for all loss thereof from whatever cause and shall indemnify the AUTHORITY against such loss.

42.4 The PROVIDER shall maintain all Government Property in good order and shall be responsible for any deterioration in the Government Property 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.

42.5 Neither the PROVIDER, nor any Sub-Contractor nor any other person shall have a lien on any Government Property for any sum due to the PROVIDER, Sub-Contractor or other person and the PROVIDER shall take all reasonable steps to ensure that the title of the AUTHORITY and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other persons dealing with any Government Property.

## 43 Official Secrets Acts, Section 182 of the Finance Act 1989

43.1 The PROVIDER shall comply with the Official Secrets Acts 1911 to 1989 and Section 182 of the Finance Act 1989 in connection with the performance of this Agreement and shall take all reasonable steps to ensure such compliance by its employees, agents, consultants and Sub-Contractors. In particular, and without prejudice to the generality of the foregoing, the PROVIDER shall take all reasonable steps to ensure that all persons engaged on any work in connection with this Agreement have notice that these statutory provisions apply to them and will continue so to apply after the expiry or termination of this Agreement.

43.2 Notwithstanding the generality of Clause 43.1, the provisions of Clause 17 shall operate without prejudice to and be read subject to the application of the Official Secrets Acts 1911 to 1989.

43.3 In the event that the PROVIDER and its employees, agents, consultants or Sub-Contractors fail to comply with this Clause 43, the AUTHORITY reserves the right to terminate the Agreement by giving notice in writing to the PROVIDER.

## 44. Staff Pension Arrangements

44.1 The PROVIDER shall, in the pensions arrangements comply with the provisions of section 258 of the Pensions Act 2004 and any applicable regulations thereunder.

44.2 The PROVIDER agrees that the rights of each employee of a provider of STEPS1 Services that transferred to the PROVIDER pursuant to the Previous Contract ("**Secondary TUPE Personnel**") shall continue to persist and that the PROVIDER shall, to the extent that any such personnel remain employed by the PROVIDER, continue to comply with any obligations of such person's employer to provide access and employer contributions to any personal pension scheme, including without limitation a group personal pension scheme and a contract based stakeholder pension scheme.

44.3 The PROVIDER agrees to indemnify the AUTHORITY and the Crown against all liabilities, damages, losses, costs and expenses arising out of any claim by:

44.3.1 any person employed in the provision of the Services that the provision of (or failure to provide) early, normal, late or ill-health retirement, death or life assurance benefits after the Commencement Date, or the level of such benefit provided, constitutes a breach of his employment rights; or

44.3.2 by the trustees or managers of any retirement benefits scheme for any payment of employer contributions or debt.

44.4 Where after the Commencement Date, any Secondary TUPE Personnel is transferred under the Transfer Regulations from the PROVIDER to another

employer (the "**New Employer**"), the PROVIDER agrees to indemnify the AUTHORITY and the Crown against all liabilities, damages, losses, costs and expenses arising out of any claim by:

44.4.1 any person employed in the provision of the Services that the provision of (or failure to provide) early, normal, late or ill-health retirement, death or life assurance benefits before that person's transfer of employment to the New Employer, or the level of such benefit provided, constitutes a breach of his employment rights; or

44.4.2 by the trustees or managers of any retirement benefits scheme for any payment of employer contributions or debt.

44.5 This Clause 44 is without prejudice to any remedy from or recourse to any person other than the AUTHORITY or the Crown which the PROVIDER may otherwise have.

## 45. Conflicts of Interest

45.1 The PROVIDER shall take appropriate steps to ensure that neither the PROVIDER nor any employee, servant, agent, supplier or Sub-Contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the PROVIDER or such persons and the duties owned to the AUTHORITY under the provisions of this Agreement. The PROVIDER will disclose to the AUTHORITY full particulars of any such conflict of interest which may arise.

## 46. Fraud

46.1 The PROVIDER shall safeguard the AUTHORITY'S funding of this Agreement against fraud generally and, in particular, fraud on the part of the PROVIDER'S staff, or the PROVIDER'S directors and suppliers. The PROVIDER shall notify the AUTHORITY immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## 47. Security

47.1 The Contractor shall implement all security measures specified in this Agreement including without limitation those specified in Schedule 7 (Security).

**48. Further Assurance**

48.1 The PROVIDER shall execute all such deeds and documents and perform all such acts and things as the AUTHORITY may reasonably require to assure the AUTHORITY the rights and benefits agreed to be granted under this Agreement.

**49. Environmental Requirements**

49.1 The PROVIDER shall, when working on the AUTHORITY'S Premises, perform the Contract in accordance with the AUTHORITY'S environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**50. Time of Performance**

50.1 The PROVIDER shall begin performing the Services or delivering on the Commencement Date. Subject to Clause 50.5 below, time of performance is of the essence of this Agreement. The AUTHORITY may by written notice require the PROVIDER to execute the Services in such order and (subject to Clause 50.3) in such manner as the AUTHORITY may decide. In the event that such a notice requires a Change to the Agreement then this shall be agreed in accordance with the Change Control Procedure. In the absence of such notice the PROVIDER shall submit such detailed programmes of work and progress reports as the AUTHORITY may from time to time require.

50.2 Without prejudice to any other rights and remedies the AUTHORITY may have pursuant to this Agreement and subject to Clause 15.3, the PROVIDER shall reimburse the AUTHORITY for all reasonable costs incurred by the AUTHORITY which have arisen as a direct consequence of the PROVIDER'S

delay in the performance of this Agreement which the PROVIDER had failed to remedy after being given reasonable notice by the AUTHORITY.

50.3 The AUTHORITY may from time to time require the PROVIDER to deliver the Services in such manner as the AUTHORITY in its sole discretion determines. Prior to giving any direction to the PROVIDER to deliver the Services in a particular manner, the AUTHORITY may consult the PROVIDER and consider any written response provided by the PROVIDER as to how the PROVIDER would advise delivering the Services. Any such written response shall be prepared and submitted by the PROVIDER acting reasonably and in good faith. In the event that, having considered any written response from the PROVIDER, the AUTHORITY directs the PROVIDER in writing that the Services, or any part of the Services, should be delivered in a manner which is inconsistent with the PROVIDER's written response, the AUTHORITY shall, subject to Clause 50.4:

50.3.1 pay any additional costs incurred by the PROVIDER resulting from such direction; and

50.3.2 indemnify the PROVIDER against any losses suffered or damages incurred by the AUTHORITY or the PROVIDER to the extent that such losses or damages arise directly as a result of the AUTHORITY's directed course of action.

50.4 Where the PROVIDER incurs any additional costs in accordance with Clause 50.3.1 or suffers any losses or incurs any damages in accordance with Clause 50.3.2, the AUTHORITY shall be liable to pay such costs, losses or damages to the PROVIDER where those costs, losses or damages are incurred or suffered as a result of the AUTHORITY's directed course of action and:

50.4.1 are proven, reasonable and not capable of recovery; and

50.4.2 are not otherwise payable by the AUTHORITY to the PROVIDER under any other provision of this Agreement.

50.5 In the event that the AUTHORITY exercises its rights under Clause 50.3 and subsequently, at any time during the lifetime of the Agreement (including any period required under Clause 20.7.2), the PROVIDER is late in performing its obligations, fails to perform any obligations or is otherwise in breach of the terms of this Agreement, then, provided that the PROVIDER can demonstrate to the AUTHORITY's reasonable satisfaction that such delay, failure or breach is a result of the AUTHORITY exercising its rights under Clause 50.3, the following shall apply:

50.5.1 time of performance shall not be of the essence in respect of that delay, failure or breach;

50.5.2 any Service Credits that would have been payable as a result of that delay, failure or breach shall be waived by the AUTHORITY; and

50.5.3 any Liquidated Damages or any other forms of delay payment that would have been payable as a result of that delay, failure or breach shall be waived by the AUTHORITY.

50.6 For the avoidance of doubt, any direction on behalf of the AUTHORITY in accordance with Clause 50.3 shall only be valid if issued in writing by the Contract Manager. The PROVIDER shall only be required to act in accordance with any such direction, and shall only be entitled to the remedies and relief set out in Clauses 50.4 and 50.5, where such direction is issued in writing by the Contract Manager. The Parties acknowledge and agree that such directions are expected to arise in exceptional circumstances only.

## 51. Disruption

51.1 The PROVIDER shall, working together with the Authority, take reasonable care to ensure that in the execution of this Agreement it does not disrupt the operations of the AUTHORITY, its employees or any other contractor employed by the AUTHORITY.

51.2 The PROVIDER shall immediately inform the AUTHORITY of any actual or potential industrial action, whether such action be by their own employees or

others, which affects or might affect its ability at any time to perform its obligations under this Agreement.

51.3 In the event of industrial action by the Staff or the PROVIDER'S Sub-Contractors and/or suppliers the PROVIDER shall seek the AUTHORITY'S approval to its proposals to perform its obligations under this Agreement.

51.4 If the PROVIDER'S proposals referred to in Clause 51.3 are considered insufficient or unacceptable by the AUTHORITY, then this Agreement may be terminated by the AUTHORITY by notice in writing with immediate effect.

51.5 If the PROVIDER is temporarily unable to fulfill the requirements of this Agreement owing to disruption of normal business by direction of the AUTHORITY, an appropriate allowance by way of extension of time will be approved by the AUTHORITY. In addition, the AUTHORITY will reimburse any additional expense incurred by the PROVIDER in fulfilling the provisions of this Agreement as a result of such disruption.

**52. Locations and Premises**

52.1 The PROVIDER acknowledges and agrees that:

52.1.1 the PROVIDER Locations are suitable for the installation, operation and performance of the Services; or

52.1.2 the PROVIDER has advised the AUTHORITY in writing prior to the Commencement Date of any matter or aspect of those Locations and Premises which is inadequate or not suitable for the installation, operation and performance of the Services;

52.1.3 the PROVIDER shall inspect any Locations and Premises relevant to the Services to be provided under that Service and either:

(a) satisfy itself that those Locations and Premises are suitable for the installation and operation of the Service or the performance of the Services relevant to that Service; or

(b) advise the AUTHORITY of any matter or aspect of those Locations and Premises which is inadequate or not suitable for installing or operating or performing the Services.

52.2 The PROVIDER acknowledges that it is not entitled to recover any additional costs from the AUTHORITY which arise from any matter or aspect of Locations which has not been notified to the AUTHORITY in accordance with Clause 52.1.2 or 52.1.3(b) and which is inadequate or unsuitable for installing, operating or performing the Services.

52.3 The AUTHORITY shall provide the PROVIDER with such access to the Premises as is reasonably necessary for the performance of the obligations of the PROVIDER under this Agreement subject to the PROVIDER's compliance with Schedule 7 (Security).

52.4 The use of AUTHORITY Locations and Premises by the PROVIDER in connection with this Agreement shall be in accordance with the provisions of Schedule 10 (Locations, Assets and Volumes).

**53. Mistakes in Information**

53.1 The PROVIDER shall be responsible for the accuracy of all drawings, documentation and information supplied to the AUTHORITY by the PROVIDER and shall pay the AUTHORITY any extra costs occasioned by any discrepancies, errors or omissions therein.

**54. Status of PROVIDER**

54.1 In carrying out the Services the PROVIDER shall, except as expressly permitted in Clause 55 or as specified under Schedule 11 (Invoicing Procedures), be acting as principal and not as the agent of the AUTHORITY.

54.2 The PROVIDER shall not (and shall procure that its employees and Sub-Contractors do not) except as expressly permitted in Clause 55 or as specified under Schedule 11 (Invoicing Procedures) say or do anything that might lead any other person to believe that the PROVIDER is acting as the agent of the AUTHORITY.

54.3 Nothing in this Agreement shall impose any liability on the AUTHORITY in respect of any liability incurred by the PROVIDER to any other person but this shall not be taken to exclude or limit any liability of the AUTHORITY to the PROVIDER that may arise by virtue of either a breach of this Agreement or by negligence on the part of the AUTHORITY, the AUTHORITY'S employees, servants or agents.

## 55. Purchasing on Behalf of the AUTHORITY

55.1 If expressly required to do so by the AUTHORITY in accordance with the Change Control Procedure where the PROVIDER procures services or equipment from third parties on behalf of the AUTHORITY then it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the PROVIDER were a Contracting Authority within the meaning of the said Regulations.

## 56. Offers of Employment

56.1 Without prejudice to the application of the Transfer Regulations, for the duration of this Agreement and for the period of six (6) months thereafter, neither Party shall, without the prior written consent of the other Party, actively solicit or entice away (or seek or attempt to solicit or entice away) from the employment of the other Party or any Connected Person any person employed in the provision or the receipt or administration of the Services provided by the PROVIDER (or any person who has been so employed in the preceding six (6) months).

56.2 Clause 56.1 shall not apply to restrict either Party from employing (or offering to employ) any employee of the other Party who has responded (without solicitation by the first Party) to general recruitment advertising issued by or on behalf of the first Party and shall be subject to the terms of Schedule 14 (Exit Management).

## 57. TUPE

57.1 The Parties agree that the Transfer Regulations are not anticipated to apply at the Commencement Date and therefore the Parties do not expect any undertaking (or part of any undertaking) to transfer to the PROVIDER at the Commencement Date pursuant to the Transfer Regulations.

57.2 The PROVIDER warrants and represents that, as at the Commencement Date, it has fully and accurately disclosed to the AUTHORITY for the purposes of the Transfer Regulations all information relating to its employees engaged in providing Services under this Agreement, in particular, but not necessarily restricted to, the following:

57.2.1 the total number of Staff whose employment with the PROVIDER is liable to be terminated at the expiry of this Agreement but for any operation of law; and

57.2.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and

57.2.3 full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found; and

57.2.4 details of pensions entitlements, if any; and

57.2.5 job titles of the members of Staff affected and the qualifications required for each position.

57.3 The PROVIDER shall update the information referred to in Clause 57.2 from time to time in accordance with Schedule 14 (Exit Management) and shall permit the AUTHORITY to use the information for the purposes of the Transfer Regulations, re-tendering (if any) and Exit. The PROVIDER will co-operate with any re-tendering of this Agreement and during Exit by allowing the Successor Provider(s) to communicate with and meet the affected employees and/or their representatives.

57.4 The PROVIDER agrees to indemnify the AUTHORITY fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 57.2.

57.5 The PROVIDER agrees to indemnify the AUTHORITY from and against all actions, proceedings, causes of action, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which this Agreement is terminated and/or transferred to any third party ("**Relevant Transfer Date**") arising out of their employment or its termination before the Relevant Transfer Date.

57.6 In the event that the information provided by the PROVIDER in accordance with Clause 57.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the PROVIDER becoming aware that the information originally given was inaccurate, the PROVIDER shall notify the AUTHORITY of the inaccuracies and provide the amended information.

## 58. Other Providers Engaged by the AUTHORITY

58.1 The PROVIDER acknowledges that the Services include, where reasonable, assisting and, where required by the AUTHORITY, managing other contractors providing services to the AUTHORITY or the Crown at no additional cost to the AUTHORITY.

58.2 Notwithstanding Clause 58.1, the PROVIDER shall, where directed by the AUTHORITY, provide all reasonable assistance, information and co-operation to any other third party with which the AUTHORITY has a relationship, either as part of a Government modernisation programme or otherwise.

58.3 The PROVIDER acknowledges that the Services are part of a wider programme of change taking place within Government and that other services are to be provided to the AUTHORITY by other contractors or other third parties. The PROVIDER shall, where directed by the AUTHORITY, liaise and co-operate with such parties providing services to the AUTHORITY and provide all reasonable assistance, information and co-operation to such third parties in support of the objectives of the "joined up Government".

**59. Service Compliance**

59.1 The PROVIDER shall provide the Services such that they are Date Independent.

59.2 Subject to Clause 59.1, the PROVIDER shall ensure that all Software written by the PROVIDER under this Agreement for use by the AUTHORITY, and all Software and Hardware procured by the PROVIDER under this Agreement for use by the AUTHORITY, is Date Independent.

**60 Not Used**

**61. Currency of Technology**

61.1 The provisions of Schedule 5 (Payment Mechanism) shall apply. For the avoidance of doubt:

61.1.1 other than as explicitly specified in Schedule 16 (Technology Refresh) no Technology Refresh has been allowed for within this Agreement or included within the Charges;

61.1.2 replacement of any end-of-life Infrastructure other than that set out in Schedule 16 (Technology Refresh) will only occur through the Change Control Procedure; and

61.1.3 the provisions of this Clause 61 shall take precedence over any obligations or requirements upon the Provider specified in Schedule 7 (Security) of the Agreement that require the Provider to upgrade and/or refresh any part of the Platform and Infrastructure at its own cost in order to meet the obligations in that schedule.

## 62. Not Used

## 63. Delivery, Packaging and Installation of Deliverables

63.1 No charges shall be made for delivery of Hardware or Software Deliverables to the Premises or elsewhere for the AUTHORITY's use, or for the packaging used by the PROVIDER, other than as expressly provided in this Agreement.

63.2 The PROVIDER shall supply where requested by the AUTHORITY complete electronic sets of operating manuals and sufficient electronic operating instructions for all Hardware and Software Deliverables.

63.3 The PROVIDER shall, promptly following delivery of each Hardware or Software Deliverable and at no additional cost to the AUTHORITY:

63.3.1 following the completion of all appropriate integration testing, install the Deliverable (including, when appropriate, installation on the AUTHORITY's network) at the Premises or other location agreed by the AUTHORITY;

63.3.2 submit the Deliverable to the standard installation tests of the manufacturer or supplier of the Deliverable to ensure that the Deliverable is in working order and ready for use by the AUTHORITY;

63.3.3 when appropriate, submit the Deliverable to acceptance tests in accordance with Clause 63.3.2;

63.3.4 supply the AUTHORITY with copies of the test specification and test results of the installation tests referred to in Clauses 63.3.2 and Clause 63.3.3 above;

63.3.5 confirm to the AUTHORITY in writing that the PROVIDER has complied with all of its obligations under Clauses 63.3.1 to Clause 63.3.4 above and that the Deliverable is ready for user acceptance testing if required.

## 64. Hardware Not to be Encumbered

64.1 The PROVIDER shall not encumber in any way any Assets used for the provision of the Services. This obligation does not restrict the PROVIDER from using Assets in the provision of services to persons other than the AUTHORITY provided always that the PROVIDER has obtained the prior written consent of the AUTHORITY.

64.2 For the purposes of this Clause 64 “encumber” shall exclude reference to any agreement by which an asset is leased to the PROVIDER, but include reference to any interest or equity of any person (including without limitation any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, title retention or any other security agreement or arrangement.

## 65. Consumables

65.1 The PROVIDER shall notify the AUTHORITY of the functional specifications (that is, generic descriptions, not specific branded models) for consumables to

be used with the Hardware. The PROVIDER shall use with the Hardware only consumables which comply with those specifications.

**66. Marking of Hardware Deliverables**

66.1 The PROVIDER shall ensure that each Hardware Deliverable is clearly marked with:

66.1.1 a unique and human-readable identification mark; and

66.1.2 a security mark (as a bar code or in another scannable form).

66.2 The PROVIDER shall log appropriate details of the Hardware Deliverable, its unique identification mark, its functional title or code so that it can be readily identified in the relevant Documentation, and its security mark in the Asset Register immediately after installation of the Deliverable.

**67. Packaging**

67.1 The PROVIDER shall (at no additional charge) remove all packaging to a location designated by the AUTHORITY immediately that packaging becomes unnecessary for the provision of the Services.

67.2 The AUTHORITY shall be responsible for the disposal of packaging from the locations designated in accordance with Clause 67.1.

**68. Removal**

68.1 Subject to the terms set out in Annex 5 of Schedule 5 (Payment Mechanism):

68.1.1 the PROVIDER or the AUTHORITY may from time to time designate Assets as surplus to the AUTHORITY's requirements. The PROVIDER shall with the prior written agreement of the AUTHORITY and as directed by the AUTHORITY (at no additional charge) remove such items from the Premises; and

68.1.2 the PROVIDER shall (using techniques agreed with the AUTHORITY) thoroughly remove all of the Data from such Assets before parting with possession of them, and until the complete removal of the Data shall retain such Assets in a secure place. In particular the PROVIDER shall, without limitation, comply with the AUTHORITY's security requirements.

**69. Damage to Equipment**

69.1 Subject to Clause 69.2, any equipment used by or on behalf of the PROVIDER shall stand at the risk and be in the sole charge of the PROVIDER. The PROVIDER shall remove all such equipment which it brings to any of the Premises forthwith upon that equipment no longer being required. The PROVIDER shall ensure that all such equipment shall meet minimum safety standards required by law.

69.2 The AUTHORITY shall be liable for loss or damage to equipment provided by or on behalf of the PROVIDER where that loss or damage directly results from the negligence of the AUTHORITY's staff, employees or third parties engaged by the AUTHORITY and at the time the loss or damage occurred, that equipment was required on the AUTHORITY's Premises.

69.3 The PROVIDER shall be liable for loss or damage to equipment provided by or on behalf of the AUTHORITY where that loss or damage directly results from the negligence of the PROVIDER's staff, employees or third party contractors engaged by the PROVIDER.

**70. Methods and Standards**

70.1 Subject to Clause 52.1.2, the PROVIDER shall comply at all times with Schedule 15 (Environmental Conditions) in the provision of the Services.

**71. Relationship Development**

71.1 Within one month of the Commencement Date, the Parties shall meet in good faith to discuss and agree a behavioural charter which sets out certain principles as to how the Parties shall engage with each other and act in

respect of this Agreement and the delivery of the Services throughout the Term.

71.2 In order to meet the principles set out in Clause 71.3**,** the PROVIDER shall, where required by the AUTHORITY from time to time, negotiate with the AUTHORITY in good faith to establish or enhance the description of processes to form part of this Agreement in order to agree or alter provisions relating to the following:

71.2.1 the agreement of appropriate Service Levels;

71.2.2 performance monitoring; and

71.2.3 invoice validation.

71.3 The principles to which Clause 71.2 applies are as follows:

71.3.1 commercial transparency during the term of this Agreement (including information regarding costs, margins, resource usage, risk and financing costs); and

71.3.2 the AUTHORITY's ability to maintain and demonstrate Value For Money throughout the term of this Agreement.

## 72. Open Book/Statement of Profitability

72.1 Six months after the Commencement Date and at six (6) monthly intervals thereafter during the Term or upon any material variation to the Charges, the PROVIDER shall provide to the AUTHORITY a statement setting out the PROVIDER's actual charges in providing the Services for the preceding six (6) monthly period. Such statements shall be signed by the PROVIDER's approved representative as being true and accurate and compiled using the PROVIDER's standard accounting policies and shall include, an explanation of prices for the Services including without limitation:

72.1.1 actual capital expenditure, including capital replacements costs;

72.1.2 actual operating expenditure relating to the provision of the Services, with an analysis showing the costs of staff, consumables, sub-contracted and bought-in services;

72.1.3 all interest, expenses and other third party financing costs incurred in relation to the provision of any of the Services;

72.1.4 details of the overhead recoveries that have been made in relation to the Services;

72.1.5 the profit which the PROVIDER has achieved in the provision of the Services, including any profit element forming any part of the overhead recoveries disclosed by reason of Clause 72.1.4 above;

72.1.6 the details populating the Charges Model as set out in Schedule 5 (Payment Mechanism);

72.1.7 the details of each unit price for each price element where any pricing is driven by units and volumes;

72.1.8 the volume of units for each price element where any pricing is driven by units and volumes;

72.1.9 the calculated prices of those price elements that are driven by price units and volumes;

72.1.10 details of the cost of bought in products or services to the PROVIDER including details of any mark-up on these costs by the PROVIDER, and where available the same details on Sub-Contractors to the PROVIDER as required by the AUTHORITY of the PROVIDER under this Clause 72.1;

72.1.11 a breakdown of the number and roles of PROVIDER's staff required for each service, project, Change or Operational Change over time;

72.1.12 financing charges for deferred payments as agreed with the PROVIDER, if any;

72.1.13 a descriptive table of the types of risk and the overall charge for risk associated with the provision of services;

72.1.14 the amount of each item of bought in cost and/or the amount of any mark-up which makes up any price;

72.1.15 the amount of each item of bought in cost and/or the amount of any mark-up which make up the cost to the PROVIDER of any:

(a) PROVIDER's software;

(b) third party Software licence; or

(c) item of Hardware provided by a third party;

72.1.16 a description of the elements used to make up any overhead charge included;

72.1.17 such other items of capital expenditure as not detailed above; and

72.1.18 such other items of charge as not covered above as the AUTHORITY may reasonably require and as may be specified within the Charging Method.

## 73. Documentation

73.1 The PROVIDER shall supply to the AUTHORITY the Documentation and upon request by the AUTHORITY such other documents, diagrams and other materials as may be necessary in connection with the provision of the Services, by the PROVIDER and/or to enable the AUTHORITY to make use of the Services, that it has the right to supply and such third party documentation as it has been supplied with.

73.2 The PROVIDER warrants that the Documentation comprises a complete set of operating manuals and technical handbooks necessary for the use and understanding of the Services and that the Documentation is, to the best of the PROVIDER's belief, accurate.

## 74. Step In Rights

74.1 The AUTHORITY may by notice in writing appoint a management team or third party to manage the Services or any part of the Services where:

74.1.1 there is or is reasonably likely to be breach of this Agreement or other event which is likely to have a material adverse effect on the AUTHORITY;

74.1.2 the AUTHORITY advises the PROVIDER by notice in writing or otherwise confirms to the PROVIDER the termination of this Agreement or any part of it or otherwise exercises the AUTHORITY's step in rights pursuant to this clause;

74.1.3 a Force Majeure Event occurs;

74.1.4 the PROVIDER or any party who controls the PROVIDER undergoes a direct or indirect Change of Control; or

74.1.5 either Party has served a notice of termination in accordance with the terms of this Agreement for any reason.

74.2 In the event that the AUTHORITY exercises its right to appoint a management team or third Party to manage the Services on the occurrence of any of the events in Clause 74.1, the PROVIDER shall not be liable for meeting the Service Levels relating to the Services to the extent they are affected by the AUTHORITY'S exercise of its step in rights for the period during which the AUTHORITY exercises its step in right. The PROVIDER

shall be liable to pay any additional costs directly incurred by the AUTHORITY as a result of the exercise of this right.

74.3 While the AUTHORITY or any third party is providing any element of the Services pursuant to Clause 74.1, the AUTHORITY shall not be obliged to pay for that element of the Services in relation to which it has exercised the step in right and shall be obliged to pay for that element of the Services in relation to which it has not exercised the step in right and that are still being performed by the PROVIDER.

74.4 Subject to Clause 74.7 the AUTHORITY'S rights under this Clause 74 will cease on the earlier of the cessation or resolution of the event giving rise to the step in right or the date ninety (90) days from the exercise of the step in right.

74.5 Before ceasing to exercise its step in rights in accordance with Clause 74.4 the AUTHORITY shall deliver written notice ("**Step Out Notice")** to the PROVIDER, specifying in reasonable detail (to the extent that it is reasonably practicable in the circumstances):

74.5.1 the action it has taken; and

74.5.2 the date it plans to conclude such action.

74.6 The PROVIDER shall, following receipt of a Step Out Notice, develop a plan and devote sufficient resources to ensure that delivery of the affected Services is restored to the Service Levels from the date specified in the Step Out Notice or as otherwise agreed by the Parties.

74.7 Where the AUTHORITY serves a notice of termination (or on expiration of the Term) of this Agreement, for any reason, the AUTHORITY'S right to appoint a management team or third party to manage the Services under this Clause 74 will continue for the duration of the termination period.

74.8 The exercise by the AUTHORITY of its rights under this Clause 74 shall be without prejudice to any other rights or remedies of the AUTHORITY, including any right of termination of the Services (or any part of them) under Clause 18.

**75. Not used.**

**76. Financial Capability**

76.1 If:

76.1.1 the PROVIDER becomes aware of or announces publicly any event giving rise to an actual or potential financial loss either to itself or to a Connected Person which is material to that person; or

76.1.2 [REDACTED],

the PROVIDER shall notify the AUTHORITY as soon as reasonably possible and in any event within five (5) days after it becomes aware of such an event (save where it is prohibited by law or by the rules of any stock exchange or similar body, in which case it shall do so as soon as permitted so to do by law or by the rules of such stock exchange or similar body), and, if so requested by the AUTHORITY, shall meet with the AUTHORITY as soon as is practicable to review the event in question and, where such event has, or is likely to have, a material impact on the Services or the provision of the Services, the Parties, acting in good faith, shall use all reasonable endeavours to agree an outcome to ensure the performance or continued performance of the Services in a form and manner satisfactory to the PROVIDER and to the AUTHORITY.

76.2 If:

76.2.1 the PROVIDER becomes aware of any such event as it is under an obligation to notify to the AUTHORITY in accordance with Clause 76.1 but fails to do so in the manner or at the time prescribed in Clause 76.1; or

76.2.2 the PROVIDER has notified the AUTHORITY and the AUTHORITY has requested a meeting with the PROVIDER with a view to reaching an outcome in accordance with Clause 76.1 but the PROVIDER either fails to agree to such a meeting or does not act in good faith and use all reasonable endeavours to agree an outcome; or

76.2.3 the PROVIDER and the AUTHORITY have reached an agreement in accordance with Clause 76.1 and the PROVIDER fails fully and promptly to implement such agreement (other than through the fault of a third party or due to a Force Majeure Event);

then any such event shall be deemed to be a material Default.

76.3 For the purposes of Clause 76.1, where the relevant event relates to a Connected Person, the Parties shall be deemed to have agreed an outcome in accordance with that Clause where the PROVIDER identifies an alternative source of supply of the products or services provided by that Connected Person and includes an undertaking by the PROVIDER to use that alternative source of supply (which, if an alternative Sub-Contractor, shall be subject to approval by the AUTHORITY under Clause 31).

## 77. Entire Agreement

77.1 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

77.2 In the event that the Parties are unable to agree the precise scope of any Services, the AUTHORITY and the PROVIDER shall have regard to the following documents, to inform their understanding of the scope of the said Service:

77.2.1 correspondence between the Parties and agreed minutes of meetings;

77.2.2 the SCoP;

77.2.3 the Previous Contract.

Signed for and on behalf of the AUTHORITY

By .....

Name .....

Title .....

Date .....

Signed for and on behalf of the PROVIDER

By .....

Name .....

Title .....

Date .....