



HM Revenue  
& Customs

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# TERMS AND CONDITIONS



OFFICIAL - SENSITIVE - COMMERCIAL

OFFICIAL

**DATED**

**2022**

**(1) *THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS***

**and**

**(2) *CAPGEMINI UK PLC***

**AGREEMENT**

relating to

the provision of 'Securing our Technical  
Future' ("SOTF") project services

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**THIS AGREEMENT** is made on the latest date of its execution

**BETWEEN:**

- (1) **THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS** of [Redacted] (the "**Authority**"); and
  - (2) **CAPGEMINI UK PLC** a company registered in England and Wales under company number [Redacted] whose registered office is at [Redacted] (the "**Supplier**"),
- (each a "**Party**" and together the "**Parties**").

## **INTRODUCTION**

- (A) The Authority is responsible for the UK's tax administration and ensures that tax revenue is available to fund the UK's public services. The Authority wishes to procure a supplier of services for the provision of SOTF projects.
- (B) The Supplier is a leading provider of consulting, technology, outsourcing and related services and is suitably qualified and experienced to provide SOTF project services.
- (C) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED** as follows:

## SECTION A | PRELIMINARIES

### **1 DEFINITIONS AND INTERPRETATION**

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

has effect from time to time):

- (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day, as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal Act) 2018 as modified by domestic law from time to time; and
- (ii) any reference to any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- (f) the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (g) references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (i) unless otherwise provided and save for references in Annexes 1 and 2 of Schedule 5 (*IPR*):
  - (i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;
  - (ii) references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;
- (j) any reference to a time of day (unless expressly specified otherwise) is to London time; and
- (k) references to this Agreement are references to this Agreement as amended from time to time.

- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.

- 1.4 If there is any conflict or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
  - (b) Schedule 2.1 (*Services Description*) and its Annexes;
  - (c) Schedule 2.8 (*Data Processing and List of Sub-processors*), if such Schedule is used;
  - (d) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);
  - (e) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and
  - (f) any other document referred to in this Agreement or any other document attached to this Agreement.
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement the Authority is acting as part of the Crown.
- 1.7 Each Party agrees to act in good faith with the other Party in connection with this Agreement, such as when exercising any discretion it may have under the Agreement, when making any requests of the other Party, when considering whether or not to give any consent or approval and, subject to Schedule 8.3 (*Change Control Procedure*), when agreeing any matters required to be agreed under the Agreement.

## **2 DUE DILIGENCE**

- 2.1 The Supplier acknowledges that:
- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
  - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
  - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
    - (i) the Authority Requirements;
    - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;



- (iii) the operating processes and procedures and the working methods of the Authority;
  - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
  - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Authority in writing of:
- (i) each aspect (if any) of the Operating Environment that in the Supplier's knowledge as at the Effective Date is not suitable for the provision of the Services;
  - (ii) the actions needed to remedy each such unsuitable aspect;
  - (iii) if necessary, a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

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

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

- (a) any unsuitable aspects of the Operating Environment;
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 Notwithstanding Clauses 2.1 and 2.2 above the Parties acknowledge that under this Agreement the Authority intends to describe its detailed Project requirements under a Request for Work. Thereafter the Supplier will set out within its Supplier Response the relevant details, actions or costs that it needs to make the Authority aware of in order to comply with the obligations of Clause 2.1 above. The Project Work Order will then reflect the position agreed between the Parties in relation to any issues that may have arisen in relation to Clauses 2.1 and 2.2 above.

### **3     WARRANTIES**

#### **3.1   The Authority represents and warrants that:**

- (a)     it has full capacity and authority to enter into and to perform this Agreement;
- (b)     this Agreement is executed by its duly authorised representative;
- (c)     there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (d)     its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law); and
- (e)     it shall comply with all applicable law.

#### **3.2   The Supplier represents and warrants that:**

- (a)     it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b)     it has full capacity and authority to enter into and to perform this Agreement;
- (c)     this Agreement is executed by its duly authorised representative;
- (d)     it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this Agreement;
- (e)     it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f)     its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g)     its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement

is sought in a proceeding in equity or law);

- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- (i) in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;
- (j) subject to clause 15A, it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;
- (k) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (l) the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- (m) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (n) it is not aware of any other matters relating to itself or its Affiliates which are likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (o) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date;
- (p) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress

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

- (q) neither the Supplier nor any of its officers, employees or Sub-contractors:
  - (i) has been convicted of any offence involving slavery and human trafficking; and
  - (ii) having made reasonable enquiries and to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) and throughout the Term by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall promptly notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## SECTION B | THE SERVICES

### 4 TERM

#### 4.1 This Agreement shall:

- (a) come into force on the Effective Date; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 34 (*Termination Rights*), terminate:
  - (i) at the end of the Initial Term; or
  - (ii) if the Authority elects to extend the Initial Term in accordance with Clause 4.2, at the end of the Extension Period.

#### 4.2 Subject to the provisions of Clause 4.3, the Authority shall have the right, at its sole discretion, to extend the Initial Term for a further period of 12 months ("**Extension Period**") by giving to the Supplier not less than 12 months' written notice before the end of the Initial Term.

#### 4.3 The Authority may only extend the Initial Term by a maximum of one (1) Extension Period (so that the Term shall not, in any circumstances, when taken in total with any extension made by the Authority pursuant to this Agreement, exceed three (3) years from the Effective Date).

#### 4.4 The Supplier shall provide the Authority (upon the Authority's request) with reasonable assistance to inform the Authority's decision as to whether to exercise its option to extend the Term of this Agreement, including assistance with any benchmarking that the Authority may wish to carry out to establish whether the Services represent value for money. The Supplier also agrees to assist the Authority with ascertaining the potential impact of any proposed extension on this Agreement including potential adjustments to the Charges (if applicable).

#### 4.5 The duration of any extension to the Term of this Agreement made in accordance with Clause 4.2 and the effect of extending the Initial Term for the Extension Period shall be considered, documented and agreed by the Parties in accordance with the Change Control Procedure. Unless the Parties agree otherwise in writing, the Extension Period will take effect on the terms of this Agreement that subsist immediately prior to the Extension Period taking effect.

## 5 **SERVICES**

### **Standard of Services**

#### 5.1 The Supplier shall ensure that:

- (a) the Services:
  - (i) comply in all respects with the Services Description; and
  - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement and, without prejudice to Clause 1.4 (order of precedence), for the avoidance of doubt, where the Supplier Solution imposes obligations or requirements on the Supplier that are in excess of, or more onerous, than the Services Description, the Supplier shall perform those obligations and comply with those requirements in addition to the obligations and requirements set out in the Services Description; and
- (b) where:
  - (i) the Services to be provided from the Effective Date are similar to services that the Authority (or a Service Recipient or a Service Beneficiary, as appropriate) was receiving immediately prior to the Effective Date (such similar services being “**Preceding Services**”); and
  - (ii) the standard and level of service received by the Authority (or a Service Recipient or a Service Beneficiary, as appropriate) in respect of any of the Preceding Services in the 12 month period immediately prior to the Effective Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being “**Relevant Preceding Services**”),
- (c) the Services to be provided from the Effective Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority (or a Service Recipient or a Service Beneficiary, as appropriate) in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the Effective Date.

#### 5.2 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:
  - (i) all applicable Law;
  - (ii) Good Industry Practice;

- (iii) the Standards;
  - (iv) the Baseline Security Requirements;
  - (v) the Quality Plan;
  - (vi) the Authority IT Strategy; and
  - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2(a)(i) to 5.2(a)(vi);
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and
  - (c) comply with its obligations under Schedule 11 (*Collaboration*).

5.3 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.2(a)(i) to 5.2(a)(vi), the Supplier shall promptly notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

#### **Supplier covenants**

5.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
  - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
  - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description;

- (iii) it advises the Authority of all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier that are not currently supported versions of that Software or that do not perform in all material respects in accordance with the relevant specification; and
  - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements;
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's or any Other Suppliers' operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority and Other Suppliers are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) without limitation to its obligations under Schedule 11 (*Collaboration*), co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (g) to the extent it is legally and contractually able to do so, hold on trust for the joint benefit with the Authority, all warranties and indemnities provided by third parties or any Subcontractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (h) to the extent it is legally and contractually able to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.4(g) ;
- (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and cooperation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (k) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (l) notify the Authority in writing within ten (10) Working Days of their



occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;

- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority; and
- (n) manage closure or termination of Services to take account of the Authority disposals requirements, including recycling and scope for re-use, and all applicable Standards.

#### 5.5 NOT USED.

#### 5.6 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 5.4(b) to 5.4(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clause 5.4(a) and Clauses 5.4(e) to 5.4(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work, and any failure of the Supplier to comply with its obligations under Clause 5.6(a) or Clause 5.6(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

#### **Specially Written Software warranty**

#### 5.7 Without prejudice to Clauses 5.4 and 5.6 (*Supplier Covenants*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation;
- (c) deliver the agreed functionality and interoperability; and
- (d) not infringe any Intellectual Property Rights.

### **Continuing obligation to provide the Services**

- 5.8 The Supplier shall continue to perform all of its obligations under this Agreement, and shall not suspend the supply of the Services, notwithstanding:
- (a) the existence of an unresolved Dispute; and/or
  - (b) any failure by the Authority to pay any Charges,
  - (c) unless the Supplier is entitled to terminate this Agreement under Clause 34.6(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

### **Power of attorney**

- 5.9 By way of security for the performance of its obligations under Clauses 5.4(g) and 5.4(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses to the extent that they are for the benefit of the Authority, and to delegate one or more of the powers conferred on it by this Clause 5.9 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

### **Authority Responsibilities**

- 5.10 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).
- 5.11 The Authority shall, on or before the Effective Date (and on or before the effective date(s) of any services added to this Agreement after the Effective Date), notify the Supplier of any laws that relate exclusively to the Authority or its sector that are relevant to the Services including reasonable detail of what is required in order to comply.

### **Retained Supplier Status - Not Used**

- 5.12 Not used
- 5.13 Not used

### **Conflicts of Interest**

- 5.14 The Supplier shall take appropriate steps to ensure that, to the best of its knowledge, neither the Supplier nor any Supplier Personnel 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 Supplier or any member of the Supplier Personnel and the duties owed

to the Authority under the provisions of this Agreement. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.

- 5.15 Where, in the reasonable opinion of the Authority, there is or may be a material actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Agreement and such conflict is not remedied within ten Working Days after the Authority gives the Supplier written notice specifying the conflict and requiring its remedy, then the Authority reserves the right to treat this as a Supplier Termination Event.

## **6 QUALITY PLAN, PROJECTS AND IN-FLIGHT PROJECTS**

### **Quality Plan**

- 6.1 The Supplier shall:

- (a) within twenty (20) Working Days of the Effective Date, submit to the Authority for approval a quality plan for Services set out in Schedule 2.1 (*Services Description*),

the purpose of which is to ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plan**").

- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plan before implementing it. If the Authority does not approve the Quality Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then within ten (10) Working Days revise the Quality Plan taking those reasons into account and shall re submit the revised plan to the Authority for the Authority's approval. The Authority shall not unreasonably withhold or delay its approval of the Quality Plan.

- 6.3 The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plan and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.

- 6.4 Following the approval by the Authority of the Quality Plan:

- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plan; and
- (b) any Changes to the Quality Plan shall be agreed in accordance with the Change Control Procedure.

### **Delays**

- 6.5 Not used

- 6.6 The Supplier shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.7 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
    - (i) notify the Authority in accordance with Clause 27.1 (*Rectification Plan Process*); and
    - (ii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
  - (b) if the Delay or anticipated Delay relates to a Key Milestone, it shall:
    - (i) comply with the Rectification Plan Process to address the impact of the Delay or anticipated Delay; and
    - (ii) the provisions of Clause 28 (*Delay Payments*) shall apply.
- 6.8 If the Supplier becomes aware that there is, or there is reasonably likely to be, an Other Ecosystem Supplier Delay, it shall:
- (a) notify the Authority as soon as practicable but in any event within two (2) Working Days of becoming aware of the Other Ecosystem Supplier Delay; and
  - (b) use reasonable endeavours to eliminate or mitigate the consequences of the Other Ecosystem Supplier Delay or anticipated Other Ecosystem Supplier Delay.

### **Testing and Achievement of Milestones**

- 6.9 The Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.
- 6.10 No Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued.

### **Projects**

- 6.11 If requested by the Authority, the Supplier shall provide any Project as agreed with the Authority in accordance with Schedule 6.3 (*Projects and Ordering*).

### **In-flight Projects**

- 6.12 If requested by the Authority, the Supplier shall provide all In-flight Projects as set out in Schedule 6.4 (*In-flight Projects*).

## **7 PERFORMANCE INDICATORS**

7.1 The Supplier shall:

- (a) perform the Services and its other activities under this Agreement in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator and, where relevant, from the Effective Date; and
- (b) comply with the provisions of Schedule 6.3 (*Projects and Ordering*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

### **Performance Failures**

7.2 If in any Service Period:

- (a) a Target Performance Level is not met, the Supplier shall comply with the Project Performance measures in accordance with the provisions of paragraph 13 of Schedule 6.3 (*Projects and Ordering*).

## **8 SERVICES IMPROVEMENT**

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the strategic board at least once every six (6) months (or more frequently in the event that the Supplier identifies or is made aware of significant improvements in or in connection with the Services prior to the next report which is due to be provided pursuant to this Clause 8.1) on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority reasonably requests.
- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

## **9 ASSETS, EQUIPMENT, MAINTENANCE AND ACCOMMODATION**

### **Assets**

- 9.1 The Parties shall comply with the provisions of Schedule 4.5 (*Assets*).

### **Supplier Equipment**

- 9.2 Where it is agreed that Supplier Equipment is required to be installed at any Site and/or Authority Premises, the Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading; removal, safe disposal or storage (as appropriate) of all packaging; and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements.
- 9.3 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.4 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason other than a Force Majeure Event of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including any provisions outlined in Schedule 6.3, Paragraph 13 (*Project Performance*).
- 9.5 NOT USED
- 9.6 NOT USED
- 9.7 NOT USED

## 9.8 NOT USED

### **Accommodation**

- 9.9 Where, in the course of providing the Services, any Supplier Personnel are to be based at Authority Premises, the Parties shall comply with the provisions of Schedule 2.6 (*Accommodation*).
- 9.10 Notwithstanding anything to the contrary in the Agreement, the Services may (at the Supplier's discretion) be performed by Supplier Personnel working from their homes and/or any Supplier offices and/or the offices of the Supplier's Sub-contractors or suppliers in the UK, and the Authority agrees that any rights of access it or third parties may have to the premises where the Services are provided from do not extend to people's homes.
- 9.11 Where the Authority provides any equipment to the Supplier, the Supplier shall be responsible for returning such equipment (including such equipment as may be in the possession of any Supplier Personnel) to the Authority upon expiry or termination of the Agreement or where the equipment is no longer required to provide the Services.

## SECTION C | PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

### 10 FINANCIAL AND TAXATION MATTERS

#### **Charges and Invoicing**

- 10.1 Subject to Clause 10.2, in consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Without prejudice to the generality of the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*), the Supplier shall procure a purchase order number from the Authority (not to be unreasonably withheld or delayed) prior to the commencement of any Services (including Projects) and the Supplier acknowledges and agrees that should it commence Services without a purchase order number:
- (a) the Supplier does so at its own risk; and
  - (b) the Authority shall not be obliged to pay the Charges without a valid purchase order number having been provided to the Supplier.
- 10.3 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.9 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Transparency and Freedom of Information*) and 23 (*Protection of Personal Data*).
- 10.4 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### **Set-off and Withholding**

- 10.5 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.6 If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.5 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.



## **Value For Money**

- 10.7 The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*) in relation to the benchmarking of any or all of the Services.

## **Financial Distress**

- 10.8 The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

## **Promoting Tax Compliance**

- 10.9 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.10 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 10.11 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor. Subject to Clause 15A, upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or Sub-contractor where the Authority has concerns about such parties' Tax affairs.
- 10.12 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.
- 10.13 Subject to clause 15A, if, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:
- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - (b) promptly provide to the Authority:
    - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

- 10.14 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.14 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 10.15 The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 10.16 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.9 to 10.15 (inclusive) and such failure is not capable of being remedied or is not remedied within ten Working Days after the Authority gives the Supplier written notice specifying the failure and requiring its remedy then this shall constitute a Supplier Termination Event.
- 10.17 The Authority may internally share any information which it receives under Clauses 10.11 to 10.13 (inclusive) and 10.15, for the purpose of the collection and management of revenue for which the Authority is responsible.

#### **Use of Off-shore Tax Structures**

- 10.18 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and it shall ensure that its Connected Companies, Key Sub-contractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of offshore companies or other offshore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Sub-contractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Sub-contract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 10.19 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow

the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.

- 10.20 In the event of a Prohibited Transaction being entered into in breach of Clause 10.18 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 10.18 and 10.19, the Parties (and the Supplier shall procure that the Key Sub-contractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.
- 10.21 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 where such failure is not capable of being remedied or is not remedied within ten Working Days after the Authority gives the Supplier written notice specifying the failure and requiring its remedy shall constitute a Supplier Termination Event.

## SECTION D | CONTRACT GOVERNANCE

### 11 GOVERNANCE

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

#### **Representatives**

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

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

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

11.5 Each party shall notify the other of their relevant representative attending the boards described in Annex 1 to Schedule 8.1 (*Governance*) prior to the first meeting of each board and the Parties shall then update Annex 1 to Schedule 8.1 (*Governance*) accordingly.

### 12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

- (a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records; and
- (b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

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

## 13 CHANGE

### Change Control Procedure

- 13.1 Any requirement for a Change shall be subject to the Change Control Procedure set out in Schedule 8.3 (*Change Control Procedure*).

### Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 13.3 Without prejudice to clause 5.2(a)(i), each Party shall monitor and shall keep the other Party informed in writing of any Change in Law which may impact the Services and/or Deliverables. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.
- 13.4 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
    - (i) whether any Change is required to the Services, the Charges, this Agreement; and
    - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve the Milestone provisions outlined in Schedule 6.3, Paragraph 13 (Project Performance) ; and
  - (b) provide the Authority with evidence:
    - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
    - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of

Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

- 13.5 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

## SECTION E | SUPPLIER PERSONNEL AND SUPPLY CHAIN

### 14 **SUPPLIER PERSONNEL**

#### 14.1 The Supplier shall:

- (a) provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);
  - (iii) comply with all relevant policies and reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*); and
  - (iv) meet the training and awareness requirements set out in Clause 23.2 (e);
- (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

14.2 If the Authority reasonably believes that any of the Supplier Personnel (being a natural person) are unsuitable to undertake work in respect of this Agreement, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

### **Key Personnel**

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

- (a) requested to do so by the Authority;
- (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
- (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
- (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

14.6 The Supplier shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death,

unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;

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

### **Employment Indemnity**

14.7 The Parties agree that, subject to Schedule 9.1 (*Staff Transfer*):

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

### **Income Tax and National Insurance Contributions**

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

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and



- (c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.8(a) or why Clause 14.8(a) does not apply to the Supplier (including such specific information as the Authority may request),

and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.8 and such failure is not remedied within ten Working Days after the Authority gives the Supplier written notice specifying the failure and requiring its remedy then this shall constitute a Supplier Termination Event.

- 14.9 The Authority may internally share any information which it receives under Clause 14.8(c).

### **Staff Transfer**

14.10 The Parties agree that:

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

## **15 SUPPLY CHAIN RIGHTS AND PROTECTIONS**

**“Flowdown Provisions”** means the Clauses and Schedules of this Agreement.

- 15A.1 The Parties acknowledge and agree that all Day 1 Subcontractors have been engaged in the provision of services similar to the Services prior to the Effective Date and the Subcontracts/contracts which relate to such Day 1 Subcontractors have not been entered into by the Supplier with the prior knowledge of the terms of this Agreement.
- 15A.2 As a result of the position described in 15A.1, the Supplier shall use reasonable endeavours to:
- 15A.2.1 flow down relevant Flowdown Provisions to Day 1 Subcontractors as follows:
- 15A.2.1.1 in relation to those Day 1 Subcontractors who are Subcontractors as listed in Schedule 4.3 (*Notified Sub-contractors and Key Sub-contractors*), within four (4) weeks after the Effective Date and where not achieved within four (4) weeks as soon as reasonably practicable thereafter;
- 15A.2.1.2 for all other Day 1 Subcontractors (including those who are suppliers listed in Schedule 4.4 (*Third Party Contracts*)), within 12 weeks after the Effective Date and where not achieved within twelve (12) weeks as soon as reasonably practicable thereafter.
- 15A.3 The Authority acknowledges and agrees that provided that the Supplier continues to comply with clause 15A.2, the Authority shall, subject to clause 15A.7, not treat the Supplier as being in breach of this Agreement or exercise the remedies set out in this Agreement to the extent that flow down of the provisions referred to in clause 15A.2 have not been applied to the appropriate Day 1 Subcontractors unless the Authority was entitled to enforce similar such rights in similar such circumstances under the Incumbent Agreement (**"Flowdown Waiver"**).
- 15A.4 To the extent that Supplier is able to agree a flow down of the Flowdown Provisions in accordance with clause 15A.2 above with any particular Day 1 Subcontractor, the Parties acknowledge and agree that the Flowdown Waiver shall no longer apply in respect of that Day 1 Subcontractor.
- 15A.5 To the extent that Supplier is unable to agree a flow down of the Flowdown Provisions in accordance with clause 15A.2 above with any particular Day 1 Subcontractor or where having complied with clause 15A.2 such flowdown is only agreeable subject to additional conditions (such as an increase in costs relating to such flow down contract), then the Supplier shall raise this with the Authority at the next meeting of the Quarterly Partnership Review Board and the Parties shall (acting in good faith) discuss and agree on how to proceed with securing such flow down and where:
- 15A.5.1 the parties are able to agree a course of action to implement such flow downs, any resulting changes to this Agreement (such as any variation to Charges) shall be implemented in accordance with the Change Control Procedure;

15A.5.2 the parties are unable to agree a course of action to implement such flow downs and the Authority has concerns with the continued use of such Day 1 Subcontractor in the provision of the Services, the Authority may raise a Change Request seeking to remove such Day 1 Subcontractor and the Parties shall (acting in good faith) agree the implications of such removal via the Change Control Procedure.

15A.6 For the avoidance of doubt, the provisions of this clause 15A shall not apply in respect of Subcontractors or any other supplier of the Supplier who are not Day 1 Subcontractors.

15A.7 The Parties acknowledge and agree that the Flowdown Waiver shall not apply to the Authority's ability to recover Delay Payments as agreed under any Project Work Order in accordance with this Agreement.

### **Advertising Sub-contract Opportunities**

15.1 The Supplier shall:

- (a) subject to clause 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of [Redacted] that arise during the Term;
- (b) within 90 days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at clause 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities in relation to new Business Requirements arising after the contract award date or where a Day 1 Sub-contractor is to be replaced.

15.4 Notwithstanding clause 15.1, the Authority may by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

## Appointment of Sub-contractors

- 15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Agreement in the delivery of the Services; and
  - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
  - (b) the scope of any Services to be provided by the proposed Subcontractor including, except in the case of the Day 1 Sub-contractors, contract value (provided that this exception shall not apply to any supplier intended to replace any Day 1 Sub-contractor); and
  - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:
- (a) a copy of the proposed Subcontract (provided that, with respect to this Clause 15.7(a) and Clauses 15.11(a), 15.13(b), 15.15 and 15.18(a), the Supplier shall be entitled to redact commercially sensitive information from the copies of contracts it provides to the Authority); and
  - (b) any further information reasonably requested by the Authority.
- 15.8 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
  - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;

- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.34;

in which case, the Supplier shall not proceed with the proposed appointment.

15.9 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of five Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause 15.6; and
  - (ii) any further information requested by the Authority pursuant to Clause 15.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.12 (*Appointment of Key Sub-contractors*)),

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

15.10 The Supplier shall record details of all Sub-contractors it has appointed in Schedule 4.3 (*Notified Sub-contractors and Key Sub-contractors*).

15.11 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:

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

#### **Appointment of Key Sub-contractors**

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

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.34.

15.13 In making a request pursuant to Clause 15.12, the Supplier shall provide the Authority with the following information about the proposed Key Sub-contractor:

- (a) its name, registered office and company registration number;
- (b) a copy of the proposed Key Sub-contract;
- (c) the purposes for which the proposed Key Sub-contractor will be employed, including the scope of any services to be provided by the proposed Key Sub-contractor;
- (d) if relevant, confirmation that the Key Sub-contract requires the proposed Key Sub-contractor to comply with any relevant service levels;
- (e) where the proposed Key Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-contract has been agreed on "arms-length" terms; and
- (f) any further information reasonably requested by the Authority.

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

15.15 The Supplier shall notify the Authority if and to the extent to which any Key Sub-contractor has or intends to sub-contract to a third party any of the services it provides to the Supplier under the terms of the Key Sub-contract. Upon such notification, the Authority may request, and the Supplier shall procure that the Key Sub-contractor provides to the Authority, a copy of the contract between the Key Sub-contractor and the third party.

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

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any

Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;

- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
  - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
  - (ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.4(m) (*Services*);
  - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data;
  - (v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
  - (vi) the reporting requirement set out in Paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);
  - (vii) the tax compliance requirements set out in Clauses 10.9 to 10.17 (inclusive) (*Promoting Tax Compliance*);
  - (viii) the use of off-shore tax structures set out in Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
  - (ix) the disclosure of Confidential Information set out in Clause 21 (*Confidentiality*); and
  - (x) the slavery and human trafficking compliance requirements set out in Clause 36.5 (*Modern Slavery*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 34.1(a) (*Termination by the Authority*) and 35.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) Not used
- (i) Not used

- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Related Third Party Dispute Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Related Third Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
  - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
    - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
    - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,
  - (ii) and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
  - (iii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

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

15.18 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:

- (a) a copy of any Key Sub-contract; and
- (b) any further information relating to that Key Sub-contract as reasonably requested by the Authority.

### **Supply chain protection**

15.19 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- (a) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;



- (b) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;
- (c) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (d) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;
- (e) granting the Supplier a right to terminate the Sub-contract if the relevant Sub-contractor fails to comply, in the performance of its Sub-contract, with legal obligations in the fields of environmental, social or labour law and a requirement that the Sub-contractor includes a provision having the same effect in any sub-contract which it awards;
- (f) requiring the Sub-contractor to provide reports which contain the information referred to in paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);
- (g) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.9 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement; and
- (h) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of data protection requirements set out Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*) and in respect of the slavery and human trafficking compliance requirements set out in Clause 36.5 (*Modern Slavery*).

15.20 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the reports produced by it pursuant to Schedule 8.2 (*Reports and Records*) a summary of its compliance with Clause 15.20(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.21 Not used

15.22 [Redacted]

15.23 The Action Plan shall be certificated by a director of the Supplier.

15.24 Where the Supplier fails to pay any sums due to any Sub-contractor in accordance with the terms set out in the relevant Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

15.25 Not used

15.26 [Redacted]

15.27 Subject to clause 15A, the Supplier shall, and shall ensure that any of its Sub-Contractors shall, grant to the Authority and its Authorised Agents the right of access to any of the Supplier Premises and/or Supplier Personnel as the Authority may reasonably require during normal business hours in order to observe the activities of the Supplier and any of its Sub-Contractors for the purposes of monitoring and/or better understanding of the Services.

### **Termination and Amendment of Sub-contracts**

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

15.29 The Authority, at its sole discretion, may require the Supplier to terminate:

- (a) a Sub-contract where:
  - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 34.1(b) (*Termination by the Authority*);
  - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
  - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;
  - (iv) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.9 to 10.17 (inclusive) (*Promoting Tax Compliance*); and/or
  - (v) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.34; and

- (b) a Key Sub-contract where:
  - (i) there is a change of Control of the relevant Key Sub-contractor, unless:
    - (A) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
    - (B) the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control; and/or
  - (ii) the relevant Key Sub-contractor has failed to comply with the terms of the Key Sub-contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*).

#### **Competitive Terms – Not Used**

15.30 Not used

15.31 Not used

15.32 Not used

#### **Retention of Legal Obligations**

15.33 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

#### **Exclusion of Sub-contractors**

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

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

#### **Reporting SME/VCSE Sub-contracts**

15.35 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate

and complete Supply Chain Transparency Information Reports to the Authority thirty days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.2 (*Reports and Records*) Annex 5 and in accordance with any reasonable guidance issued by the Authority from time to time.

- 15.36 The Authority may reasonably update the Supply Chain Transparency Information Template from time to time (including the date required and/or format) by issuing a replacement version with a least thirty (30) days' notice and specifying the date from which it must be used.

## SECTION F | INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

### 16 **INTELLECTUAL PROPERTY RIGHTS**

16.1 Except as expressly set out in this Agreement:

- (a) subject to Clause 17.5, the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
  - (i) the Supplier Software;
  - (ii) the Third Party Software;
  - (iii) the Third Party IPRs; and
  - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
  - (i) the Authority Software;
  - (ii) the Authority Data; and
  - (iii) the Authority Background IPRs.
- (c) Specially Written Software and Project Specific IPRs (except for any Supplier Know-How or trade-secrets, Supplier Confidential Information or Supplier Background IPR) shall be the property of the Authority.

16.2 Without prejudice to Clauses 16.6 and 17.7, where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

16.4 Unless the Authority otherwise agrees in advance in writing:

- (a) all Specially Written Software and Project Specific IPRs (which are in the nature of software) shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as Open Source software; and
- (b) where the Specially Written Software and Project Specific IPRs (which are in the nature of software) are written in a format that requires conversion before publication as Open Source software, the Supplier shall also provide the converted format to the Authority.

## 16.5 Not used

**Specially Written Software and Project Specific IPRs**

16.6 Subject to Clause 17.17(Patents), the Supplier hereby assigns to the Authority, with full title guarantee, as of the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate title to and all rights and interest in the Project Specific IPRs and the Specially Written Software or shall procure that the first owner of the Project Specific IPRs and the Specially Written Software assigns them to the Authority on the same basis, including (without limitation):

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

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

## 16.7 The Supplier:

- (a) shall:
  - (i) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs (which are in the nature of software) in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
  - (ii) without prejudice to Clause 17.11 (Third Party Software and Third Party IPRs), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or Project Specific IPRs (which are in the nature of software);
- (b) acknowledges and agrees that the ownership of the media referred to in Clause 16.7(a)(i) shall vest in the Authority upon their receipt by the Authority; and
- (c) shall without charge to the Authority, execute all assignments, in accordance with Clause 16.6, as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the

Authority.

## **17 LICENCES GRANTED BY THE SUPPLIER**

### **Supplier Software and Supplier Background IPRs**

17.1 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 5 (*Intellectual Property Rights*) or in a Project Work Order or has been approved by the Authority following a review by the technical board.

17.2 The Supplier hereby grants to the Authority:

- (a) subject to the provisions of Clause 17.17 (Patents), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
  - (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services or for any purpose relating to the exercise of the Authority's (or any other applicable Service Recipients' and/or Service Beneficiaries') business or function; and
  - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services or for any purpose relating to the exercise of the Authority's (or any other applicable Service Recipients' and/or Service Beneficiaries') business or function;
- (b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Intellectual Property Rights*) and signed by or on behalf of the Parties on or before the Effective Date or on or before the effective date of a Project Work Order, provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.7 and 17.8 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
- (c) a perpetual royalty-free non-exclusive licence to use without limitation any Supplier Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

17.3 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.2(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.2(a)(ii) by giving thirty (30) days' notice in writing (or such other

period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 17.7 (*Authority's right to sub-licence*) commits any material breach of the terms of Clause 17.2(a)(i) or 17.2(a)(ii) or 17.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within forty (40) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

17.4 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.3, the Authority shall:

- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

17.5 The Supplier hereby grants, or shall procure that the owner or an authorised licensor grants, to the Authority a perpetual, royalty-free, non-exclusive, transferable (including the ability to sub-licence) licence to use (including but not limited to the right to load, execute, store, transmit, display and copy), develop, modify (including reverse engineer and decompile) and maintain the Concealed IPR.

17.6 Where the Supplier wishes to use Concealed IPR in the delivery of the Services, not already set out in Schedule 5 (*IPR*) or a Project Work Order, it shall notify the Authority of the same and the Parties may agree to update Schedule 5 (*IPR*) or the relevant Project Work Order in accordance with the Change Control Procedure.



**Authority's right to sub-license**

17.7 Subject to Clause 17.17 (Patents) and without prejudice to Clause 17.5, the Authority may sub-license:

- (a) the rights granted under Clause 17.2(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-license is on terms no broader than those granted to the Authority;
  - (ii) the sub-license authorises the third party to use the rights licensed in Clause 17.2(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services or for any purpose relating to the exercise of the Authority's (or any applicable Service Recipients' and/or Service Beneficiaries') business or function; and
  - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (*IPR*); and
- (b) the rights granted under Clause 17.2(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
  - (i) the sub-license is on terms no broader than those granted to the Authority; and
  - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*IPR*) duly executed by the Approved Sub-Licensee.

**Authority's right to assign/novate licences**

17.8 Without prejudice to Clause 17.5, the Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.2(a) (*Supplier Software and Supplier Background IPRs*) to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

17.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to

be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*).

- 17.10 If a licence granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*) is assigned, novated or transferred under Clause 17.8 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Clause 17.9, the rights acquired on that assignment, novation, transfer or change of status shall not extend beyond those previously enjoyed by the Authority.

### **Third Party Software and Third Party IPRs**

- 17.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.2(a) and 17.3 (*Supplier Software and Supplier Background IPRs*) and Clause 17.8 (*Authority's right to assign/novate licences*); or
- (b) complied with the provisions of Clause 17.12.

- 17.12 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.1117.11(a), the Supplier shall:

- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.

- 17.13 The Supplier shall:

- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause 17.13(a) , use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

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

### **Termination and Replacement Suppliers**

- 17.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

- 17.16 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*):

- (a) grant (or procure the grant) to any Replacement Supplier of:
  - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software in accordance with the terms for post-termination use set out in Schedule 5 (*IPR*) or the relevant Project Work Order and in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*IPR*) duly executed by the Replacement Supplier;
  - (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party,

and any associated charges that will be levied on the Replacement Supplier by the Supplier shall be agreed by the Parties and such agreed charges shall be provided as part of the Exit Information in accordance with Paragraph 4 of Schedule 8.5 (*Exit Management*).

### **Patents**

- 17.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs or Concealed IPR by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the

Replacement Supplier a non-exclusive, irrevocable, royalty free, worldwide patent licence to use the infringing methods, material or software solely for the purpose for which they were delivered under this Agreement.

## **Escrow**

- 17.18 The Supplier shall where relevant and on request by the Authority, have the Supplier Software, and use reasonable endeavours to have the Third Party Software, used exclusively for providing Services to the Authority placed in escrow with the escrow agent NCC Group, its successor or such other comparable organisation on terms and conditions which are not materially adversely different to the standard NCC tripartite escrow agreement terms and conditions at all times on the Authority's request and at the cost of the Authority.
- 17.19 The Supplier agrees that trigger events to be included in the agreement with the escrow agent referred to in Clause 17.18 shall include the following:
- (a) a Supplier breach has created a material interruption or disruption in the provision of the Services;
  - (b) a regulator advises that step in is necessary or desirable; and
  - (c) the Supplier suffering an Insolvency Event.
- 17.20 On the occurrence of a "trigger event", the Supplier shall grant to the Authority a perpetual, royalty free, transferable, irrevocable licence to transfer an instance of the Software on to the Authority System and to use, copy, modify and adapt (with a right to sub licence such rights to Service Recipients and/or Service Beneficiaries or other third parties engaged) such Software. Such licence shall last only for such period as is reasonable for the Authority to put in place an alternative service delivery solution, whether provided by the Authority itself or a third party. If a third party will not permit the transfer of an instance of the Software to the Authority System as envisaged by this Clause 17.20, the Authority may procure a licence itself at the cost of the Authority.

## **18 LICENCES GRANTED BY THE AUTHORITY**

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
  - (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other

than the Authority.

18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

- (a) immediately cease all use of the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs (as the case may be);
- (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs, Authority Data, the Specially Written Software and the Project Specific IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs, Authority Data, the Specially Written Software and/or the Project Specific IPRs.

## **19 IPRs INDEMNITY**

19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

- (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
- (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
- (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:

- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
- (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19.4 The Authority shall at all times, during and after the Term, on written demand indemnify the Supplier, and keep the Supplier indemnified, against all Losses incurred by, awarded against or agreed to be paid by the Supplier arising from any claim against the Supplier of infringement or alleged infringement (including the defence of such infringement or alleged infringement) relating to use by or on behalf of the Supplier of any Authority Software and/or Authority Background IPRs (other than Legacy IPR) provided and/or licensed by the Authority (or to which the Authority has provided access) to the Supplier, save for any such claim to the extent that it is caused by any use by or on behalf of the Supplier of any such software or IPRs:

- (a) in combination with any item not supplied by the Authority pursuant to this Agreement; or
- (b) that is not in accordance with the Authority's instructions and the provisions of this Agreement.

## **20 AUTHORITY DATA AND SECURITY REQUIREMENTS**

20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

20.2 Save as permitted by Clause 23.2(a), the Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).
- 20.4 The Supplier shall implement appropriate technical and organisational measures to preserve the integrity, confidentiality and accessibility of Authority Data and prevent the unauthorised access, interception, corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Subcontractor.
- 20.5 Not used
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 15 Working Days (or as otherwise agreed by the Parties) from the date of receipt of the Authority's notice; and/or
  - (b) itself restore or procure the restoration of Authority Data and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority promptly and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 Not used
- 20.10 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 20.11 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.12 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken

to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

- 20.13 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.12 the Supplier shall continue to perform the Services in accordance with its existing obligations.

### **Malicious Software**

- 20.14 The Supplier shall, as an enduring obligation throughout the Term and at no cost to the Authority, use the latest versions of antivirus definitions and software available from an industry accepted antivirus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the Supplier System (or as otherwise agreed by the Parties). The Supplier may be required to provide details of the version of antivirus software being used in certain circumstances, e.g. in response to a specific threat.
- 20.15 Notwithstanding Clause 20.14, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 20.16 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.15 shall be borne by the Parties as follows:
- (a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 20.14) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and
  - (b) otherwise by the Authority.

### **Obligations under the Finance Act 1989, the Commissioners for Revenue and Customs Act 2005 and the Social Security Administration Act 1992**

- 20.17 The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub-contractors and Supplier Personnel shall duly observe:
- (a) the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and



Customs Act 2005; and

- (b) Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

20.18 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 20.17 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

20.19 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

## **21 CONFIDENTIALITY**

21.1 For the purposes of this Clause 21, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.

21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) promptly notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
  - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply. If the Supplier is required to disclose any Confidential Information pursuant to non-UK law or non-UK binding order provided by a non-UK governmental body or court, the Supplier shall where legally possible and unless the Parties agree otherwise:

- (a) promptly notify the Authority of such requirement, the full circumstances, the affected Confidential Information and extent of the required disclosure, in each case as far in advance as possible; and
- (b) use reasonable endeavours to object to any such demands that it deems overbroad or otherwise inappropriate.

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

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement and to its ultimate parent company;

- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

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

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

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 21.

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

### **Other Ecosystem Suppliers**

21.8 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, where the Supplier receives or obtains directly or indirectly any Confidential Information of an Other Ecosystem Supplier, the Supplier shall:

- (a) treat the Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the Authority's prior written consent;
- (c) not use or exploit the Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) promptly notify the Authority and the relevant Ecosystem Supplier if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information.

21.9 The Supplier shall be entitled to disclose Confidential Information of an Other Ecosystem Supplier where:

- (a) the Supplier is required to disclose the Confidential Information by Law; or
- (b) the Supplier has reasonable grounds to believe that the relevant Ecosystem Supplier is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

21.10 If the Supplier is required by Law to make a disclosure of Confidential Information, the Supplier shall as soon as reasonably practicable and to the extent permitted by Law notify the Authority of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

21.11 Without prejudice to Clause 21.9, the Supplier may disclose Confidential Information of an Other Ecosystem Supplier on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement and to its ultimate parent company;
- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- (d) Where the Supplier discloses Confidential Information pursuant to this Clause 21.11, it shall notify the Authority and shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

21.12 Nothing in this Clause 21 shall prevent the Supplier from using any techniques, ideas or know how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of an Other Ecosystem Supplier's Confidential Information or an infringement of Intellectual Property Rights.

## **22 TRANSPARENCY AND FREEDOM OF INFORMATION**

22.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any Changes to this Agreement agreed from time to time except for:
  - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
  - (ii) Commercially Sensitive Information.

(together the "**Transparency Information**") are not Confidential Information.

22.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA [redacted]). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

22.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.2 (*Reports and Records*).

22.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

22.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

22.6 The Supplier agrees that any Information it holds that is not included in the

Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re-use of Public Sector Information Regulations 2015 and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority reasonably requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

22.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

## **23 PROTECTION OF PERSONAL DATA**

23.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that, subject to Clause 23A, the Authority is the Controller and that the Supplier is the Processor, and that the Processing may not be determined by the Supplier.

## 23.2 The Supplier shall:

- (a) not Process or transfer the Personal Data other than in accordance with the Authority's written instructions, as set out in Schedule 2.8 (*Data Processing and List of Sub-processors*) or a Project Work Order, unless required by EU or member state law or UK Law to which the Supplier is subject, in which case the Supplier shall promptly inform the Authority of that legal requirement before Processing or transferring that Personal Data, unless prohibited by law;
- (b) acknowledge that the provision of the Services involves the Processing of the types of Personal Data and categories of Data Subject set out in Part A of Schedule 2.8 (*Data Processing and List of Sub-processors*) or in a Project Work Order, and shall, with the Authority's written consent, update the details in Schedule 2.8 (*Data Processing and List of Sub-processors*) or the relevant Project Work Order from time to time as necessary;
- (c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data, Personal Data Breaches and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements*) and having regard to the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Personal Data Breach;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (d) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party (other than Supplier Personnel), obtain the prior written consent of the Authority (not to be unreasonably withheld or delayed) (save where such disclosure or transfer is specifically authorised under this Agreement);
- (e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause 23 and Clauses 20 (*Authority Data and Security Requirements*) and 21 (*Confidentiality*);
  - (ii) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise

- permitted by this Agreement;
- (iv) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Relevant Data Protection Laws); and
  - (v) retain evidence of the steps taken in respect of Clauses 23.2(e)(i) to 23.2(e)(iv) above for the Authority's inspection;
- (f) notify the Authority promptly upon becoming aware of a reasonably suspected, "near-miss" or actual Personal Data Breach or circumstances that may give rise to a Personal Data Breach, providing the Authority with sufficient information and in a timescale which allows the Authority to meet its obligations to report a Personal Data Breach within 72 hours under Article 33 of the UK GDPR. Such notification shall as a minimum:
- (i) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
  - (ii) communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;
  - (iii) describe the likely consequences of the Personal Data Breach; and
  - (iv) describe the measures taken or proposed to be taken to address the Personal Data Breach;
- (g) co-operate with the Authority and take such reasonable commercial steps as are directed by it to mitigate or remedy the consequences of a reasonably suspected, "near-miss" or actual Personal Data Breach including but not limited to:
- (i) documenting any such Personal Data Breaches and reporting them to any supervisory authority;
  - (ii) taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and
  - (iii) conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly;



- (h) notify the Authority promptly if it receives:
  - (i) from a Data Subject (or third party on their behalf):
    - (A) a Data Subject Request (or purported Data Subject Request);
    - (B) a request to rectify any inaccurate Personal Data;
    - (C) a request to have any Personal Data erased;
    - (D) a request to restrict the Processing of any Personal Data;
    - (E) a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any Third Party;
    - (F) an objection to any Processing of Personal Data;
    - (G) any other request, complaint or communication relating to the Authority's obligations under the Relevant Data Protection Laws;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (i) not, without the Authority's prior written consent, and subject also to Clause 24.1, make or permit any announcement in respect of a Personal Data Breach or respond to any request, communication or complaint of the kind listed at Clause 23.2(h)(i)-(iii);
- (j) taking into account the nature of the processing, provide the Authority with reasonable assistance in relation to either Party's obligations under the Relevant Data Protection Laws and any complaint, communication or request as listed at clause 23.2(h) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Relevant Data Protection Laws;
  - (iii) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

- (iv) assistance as reasonably requested by the Authority following any Personal Data Breach;
- (v) assistance as reasonably requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office;
- (k) without prejudice to Clause 23.2(a) , not without the prior written consent of the Authority:
  - (i) convert any Personal Data for "big data" analysis or purposes; or
  - (ii) match or compare any Personal Data with or against any other Personal Data (whether the Supplier's or any third party's);

and in each case the Supplier shall only take the steps set out in (i) to (ii) above strictly to the degree required to fulfil its obligations under this Agreement.

- 23.3 The Supplier's obligation to notify under Clauses 23.2(f) and 23.2(h) shall include the provision of further information to the Authority in phases, as details become available.
- 23.4 Insofar as the Supplier processes Sanitised Personal Data, the Supplier shall not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived.
- 23.5 The Supplier must obtain the prior written consent of the Authority before appointing any Sub-contractor or other Third Party to Process any Personal Data ("**Sub-processor**") and the Supplier shall remain fully liable to the Authority and any other applicable Service Recipient and/or Service Beneficiary for any failure by a Sub-processor to fulfil its obligations in relation to the Processing of any Personal Data. Such consent shall be conditional upon:
  - (a) the use of any Sub-processor being otherwise in accordance with clause 15 and 23.7; and
  - (b) the Supplier entering into a continuing obligation to provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 23.6 In accordance with clause 23.5, the Authority consents to the use by the Supplier as at the Effective Date of the Sub-processors listed in Part B of Schedule 2.8 (*Data Processing and List of Sub-processors*) which shall be updated as required with the written consent of the Authority.

23.7 The Supplier shall procure that all Sub-processors:

- (a) prior to commencing the Processing of any Personal Data enter into a written contract in relation to the Processing with either the Authority or the Supplier which shall include substantially the same data protection obligations on the Sub-processor as are imposed on the Supplier by this Clause 23 and which shall set out the Sub-processor's agreed Processing activities in the same or substantially similar form as provided at Part A of Schedule 2.8 (*Data Processing and List of Sub-processors*); or
- (b) insofar as the contract referred to at paragraph (a) above involves the transfer of Personal Data to any Off-shore Location in accordance with Clause 23.8, it shall incorporate the Standard Contractual Clauses or such other mechanism as reasonably directed by the Authority to ensure the adequate protection of the transferred Personal Data;
- (c) act in accordance with Clauses 15 and 23.

23.8 The Supplier shall not Process or otherwise transfer any Personal Data in or to any Offshore Location without the prior written consent of the Authority.

23.9 The Supplier shall not perform its obligations under this Agreement in such a way as to knowingly cause the Authority to breach any of the Authority's obligations under the Relevant Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations. In connection with this obligation, the Supplier shall:

- (a) promptly inform the Authority if, in its opinion, any instruction infringes, or might reasonably be considered to infringe, the Relevant Data Protection Laws;
- (b) provide reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing, such assistance including, at the discretion of the Authority:
  - (i) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- (c) implement, review and maintain organisational and technical security measures to ensure the security of Personal Data in accordance with Articles

32 to 34 of the UK GDPR, which may include:

- (i) pseudonymising or encrypting Personal Data, where appropriate;
  - (ii) ensuring the on-going confidentiality, integrity and availability of Processing systems and services;
  - (iii) ensuring a means to restore the availability of and access to Personal Data in a timely manner following any physical or technical incident; and
  - (iv) having in place a process for regularly testing, assessing and evaluating the effectiveness of the organisational and technical security measures;
- (d) at the written direction of the Authority, promptly and securely delete or return to the Authority or transfer to any Replacement Supplier Personal Data (and any copies of it) in such format as is reasonably requested by the Authority, unless the Supplier is required by Law to retain the Personal Data.

23.10 The Supplier shall not knowingly cause the Authority to breach any obligation under the Relevant Data Protection Laws and shall itself comply fully with its obligations under the Relevant Data Protection Laws including by:

- (a) adhering to any relevant codes of conduct published pursuant to Article 40 of the UK GDPR;
- (b) designating a Data Protection Officer if required by the Relevant Data Protection Laws;
- (c) maintaining complete and accurate records of its Processing of Personal Data containing the information set out in Article 30(2) of the UK GDPR, this requirement applying only where the Supplier employs 250 or more staff, unless:
  - (i) the Processing is not occasional;
  - (ii) the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
  - (iii) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and
- (d) reporting any suspected non-compliance or actual non-compliance with this Clause 23 to the Authority promptly upon becoming aware of such non-compliance.

23.11 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor, and make available to the Authority or the Authority's

designated auditor all information necessary to demonstrate compliance with this Clause 23.

23.12 In the event that the Supplier Processes Personal Data of any Other Ecosystem Supplier in the performance of this Agreement, the Supplier shall enter into an appropriate data processing agreement with the relevant Other Ecosystem Supplier meeting the requirements of Article 28(3) of the UK GDPR.

23.13 For the avoidance of doubt, nothing in this Clause 23 relieves the Supplier of its own direct responsibilities and liabilities under the UK GDPR.

**23A** Where the Supplier transfers Supplier Personal Data to the Authority both Parties will be acting as independent Controllers and the provisions of Clause 23 above shall not apply. The following provisions of this Clause 23A shall apply:

23A.1 Each of the Parties, including the Supplier Personnel and the Authority personnel (which shall include directors, officers, employees, servants, agents, consultants and professional advisers) shall:

comply with all of its applicable requirements under Relevant Data Protection Laws in relation to the provision and processing of Supplier Personal Data;  
and

not knowingly or negligently by any act or omission, place the other Party in breach, of Relevant Data Protection Laws.

23A.2 Where a Party is acting as Controller, it shall comply with the Controller obligations specified in Relevant Data Protection Laws and shall implement appropriate technical and organisational measures to ensure and be able to demonstrate that Processing of Supplier Personal Data is performed in accordance with the Relevant Data Protection Laws.

23A.3 The Authority shall:

- (a) ensure that it has all necessary requirements in place to process the disclosed Supplier Personal Data;
- (b) save where disclosure or transfer of data containing Supplier Personal Data to another party is provided for elsewhere under the Agreement, not disclose or allow access to the Supplier Personal Data to anyone other than the Authority personnel as set out in Clause 23A.1 above and notify and seek prior written explicit consent of the Supplier, no later than five (5) business days prior to the Authority disclosing the Supplier Personal Data (in part or in full or in aggregated form) to any party other than the Authority's personnel as set out at Clause 23A.1 and such party entering into appropriate confidentiality undertakings that are no less onerous than those agreed by the Parties under the Agreement;
- (c) ensure that it has in place appropriate technical and organisational measures which may include pseudonymising and encrypting the Supplier Personal Data, ensuring confidentiality, integrity, availability and resilience of systems

and services, ensuring that availability of and access to Supplier Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by the Authority to protect against any unauthorised or unlawful Processing of Supplier Personal Data and Personal Data Breaches;

- (d) not transfer any Supplier Personal Data outside of the UK unless the Authority has put in place appropriate safeguard for such transfer as required by Relevant Data Protection Laws and has executed any appropriate agreement, for example standard contractual clauses to ensure the protection of Supplier Personal Data; and
- (e) to the extent that the Supplier discloses Supplier Personal Data to the Authority for the purposes of this Agreement, at the written direction of the Supplier, delete Supplier Personal Data and copies thereof and confirm the same in writing to the Supplier on the later of:-
  - (a) the Termination of this Agreement unless required by law to store the Supplier Personal Data; and
  - (b) the date when the Supplier Personal Data is no longer required to be retained by the Authority in order to comply with its internal policies or policies of the UK Government to which the Authority adheres subject to compliance with Relevant Data Protection Laws.

23A.4 Where a Party receives a Data Subject Rights Request or complaint or communication from the Information Commissioner's Office and other relevant supervisory authorities or regulators, which relates to the other Party's Processing of Supplier Personal Data, then unless prohibited by applicable law, the Party in receipt of such request, complaint or communication shall inform that other Party and provide any reasonable assistance to the other Party as necessary for such other Party to respond to the request, complaint or communication and the other Party shall not disclose or release any Supplier Personal Data in response to a request, complaint or communication without first advising the Party who received such request, complaint or communication wherever possible.

23A.5 In the event the Authority suffers a Personal Data Breach relating to Supplier Personal Data which it is required to notify to the regulator and/or the Data Subjects in compliance with the Relevant Data Protection Laws, it shall as soon as reasonably practicable inform the Supplier and provide any reasonable information requested by the Supplier, unless prevented from doing so by Relevant Data Protection Laws.

23A.6 The Supplier acknowledges that this Clause 23A satisfies all requirements in respect of both Party's compliance with the Relevant Data Protection Laws as at the Effective Date in order to facilitate the transfer of Supplier Personal Data to the Authority as provided for under this Agreement where both parties are acting as independent Controllers and shall apply where Supplier Personal Data is sent to the Authority pursuant to the provisions of this Agreement.

## **24 PUBLICITY AND BRANDING**

24.1 The Supplier shall not:

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

without the prior written consent of the Authority.

24.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## SECTION G | LIABILITY, INDEMNITIES AND INSURANCE

### 25 LIMITATIONS ON LIABILITY

#### Unlimited liability

25.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability for:
  - (i) death or personal injury caused by its negligence, or that of its employees, officers, agents or sub-contractors (as applicable);
  - (ii) fraud or fraudulent misrepresentation by it or its employees;
  - (iii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (iv) any liability to the extent it cannot be limited or excluded by Law;
- (b) the Supplier's liability in respect of the indemnities in Clause 10.14 (*Promoting Tax Compliance*), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*); or
- (c) the Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Clause 19.4 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*).

#### Financial and other limits

25.2 Subject to Clause 25.1 (*Unlimited Liability*) and Clauses 25.5 and 25.6 (*Consequential losses*):

[Redacted]

25.3 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clauses **Error! Reference source not found.**, 25.2(b) and **Error! Reference source not found.**.

25.4 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.5 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to



Clause 34.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 34.6(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:

- (i) Not used
- (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and
- (b) the Authority's aggregate liability in respect of all other Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority or claims arising pursuant to Clause 32.9 (*Ecosystem Failures*) shall in no event exceed:
  - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
  - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
  - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

### Consequential Losses

25.5 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.6, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.6 Notwithstanding Clause 25.5 but subject to Clause 25.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier which are deemed to be a non-exhaustive list of direct and recoverable Losses:

- (a) notwithstanding clauses 25.6(b) and 25.6(g), any operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;
- (b) any additional operational and/or administrative costs and expenses incurred

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

- (c) any wasted expenditure or charges;
- (d) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (e) any compensation or interest paid to a third party by the Authority;
- (f) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;
- (g) without prejudice to Clause 20 (*Authority Data and Security Requirements*), any losses associated with corruption, loss or degradation to Authority Data;
- (h) any Losses incurred by (an) Other Ecosystem Supplier(s) pursuant to the applicable Ecosystem Agreement for which the Authority is liable, to the extent that such Losses arise as a result of a Default by the Supplier and are not otherwise excluded under Clause 25.5 (and the Authority shall procure that a clause similar to Clause 25.6(h) (*mutatis mutandis*) is included in the Ecosystem Agreements with the Other Ecosystem Suppliers).

### **Conduct of indemnity claims**

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

### **Mitigation**

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

- 25.9 The Supplier acknowledges that:

- (a) its sole remedy against any Other Ecosystem Suppliers shall be through a claim against the Authority for its Losses under Clause 32.9 (*Ecosystem Failures*); and
- (b) it shall have no right or remedies other than in respect of injunctive relief or equitable remedies relating to intellectual property and confidential information against the Other Ecosystem Suppliers either under this

Agreement or through a direct claim in tort or on any other legal ground against such Other Ecosystem Suppliers in respect of any matters that could have been encompassed in a claim under Clause 32.9 (*Ecosystem Failures*).

25.10 Notwithstanding anything to the contrary in the Agreement, where:

- (a) the Supplier suffers any losses as a result of or relating to the Supplier's provision of the Services;
- (b) such losses referred to above are directly caused by an Other Ecosystem Supplier in the provision of services to the Authority; and
- (c) the Supplier cannot recover such losses due to the operation of Clauses 25.9 and 32.9 to 32.12,

then the Authority shall indemnify the Supplier in respect of such losses provided that the Supplier can reasonably evidence the losses involved together with evidence of the mitigation of such losses.

## **26 INSURANCE**

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

## SECTION H | REMEDIES AND RELIEF

### 27 RECTIFICATION PLAN PROCESS

27.1 Without limitation to this Clause 27 and without prejudice to the Authority's rights under this Agreement, if the Supplier fails to perform its obligations under this Agreement, the Supplier will:

- (a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;
- (b) advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;
- (c) minimise the impact of and correct the problem and thereafter recommence performance in accordance with its obligations under this Agreement; and
- (d) take appropriate preventative measures so that the problem does not reoccur.

#### Notification

27.2 In the event that:

- (a) there is, or is reasonably likely to be, a Delay that relates to a Key Milestone; and/or
- (b) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default); and/or
- (c) following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a material Default;

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

- (d) Any notice provided pursuant to Clause 27.2 must detail the actual or anticipated effect of the Notifiable Default.

27.3 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.2 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, subject to Clauses 6.7 and 7.2, unless the Notifiable Default also constitutes:

- (c) a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice; or
- (d) an Escalation Process Trigger Event and the Authority serves an Escalation Notice,

the Supplier shall comply with the Rectification Plan Process as referenced within Schedule 6.3.

27.4 The “**Rectification Plan Process**” shall be as set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to 27.10 (*Agreement of the Rectification Plan*).

#### **Submission of the draft Rectification Plan**

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

27.6 The draft Rectification Plan shall set out:

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

27.7 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier’s root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either

Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.4 (*Dispute Resolution Procedure*).

### **Agreement of the Rectification Plan**

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

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

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

27.10 If the Authority consents to the Rectification Plan:

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

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

## **28 DELAY PAYMENTS**

28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

28.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

- (a) the Authority is entitled to or does terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*);
- (b) the Delay exceeds the Delay Deduction Period; or

- (c) an Other Ecosystem Supplier has suffered loss or damage as a result of the Supplier's failure to Achieve a Key Milestone by its Milestone Date.

## **29 ESCALATION PROCESS**

- 29.1 Where an Escalation Process Trigger Event occurs, without prejudice to any other rights or remedies under this Agreement, the Authority may give not less than five (5) Working Days' notice ("**Escalation Notice**") to the Supplier requiring a meeting(s) between the Supplier Executive and the Authority ("**Escalation Meeting(s)**").
- 29.2 The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).
- 29.3 The Parties agree and acknowledge that the Escalation Meeting(s) shall take place on Authority Premises and at times and durations as the Authority may reasonably determine.
- 29.4 Subject to Clause 29.5, the Escalation Meeting(s) shall continue until such time as the Escalation Process Trigger Event has been resolved to the reasonable satisfaction of the Authority.
- 29.5 Where the Escalation Meeting(s) have continued for more than five (5) Working Days, either of the Parties may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 29.6 If the Supplier is in Default of any of its obligations under Clause 29 ("**Escalation Process Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to Clause 34.1(b) (Termination by the Authority).

## **30 NOT USED**

## **31 NOT USED**

## **32 AUTHORITY CAUSE AND ECOSYSTEM FAILURES**

### **Authority Cause**

- 32.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:
  - (a) Achieve a Milestone by its Milestone Date; and/or
  - (b) comply with its obligations under this Agreement,
 (each a "**Supplier Non-Performance**"),

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

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
  - (A) to terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*); or
  - (B) to take action pursuant Clauses 27 (Rectification Plan Process); and/or
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
  - (B) if the Authority, acting reasonably, considers it appropriate, the relevant Project Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
  - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and
  - (D) in relation to a Key Milestone, the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*).

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

- (a) the Supplier Non-Performance;



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

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

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

32.5 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

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

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

32.6 Any Change that is required to the relevant Project Plan or to the Charges pursuant to Clauses 32.1 to 32.5 shall be implemented in accordance with the Change Control Procedure.

32.7 The Parties may from time to time agree and record in Schedule 6.3 (Projects and Ordering) in accordance with the Change Control Procedure Performance Indicators designated as shared and whether or not the Supplier shall be entitled to any relief or compensation for a Supplier Non-Performance which relates to Performance Indicators designated as shared in Schedule 6.3 (Projects and Ordering).

### **Ecosystem Failures**

32.8 Subject to Clause 25 (*Limitations on Liability*), but notwithstanding any other provision of this Agreement, if the Supplier can demonstrate that a Supplier Non-Performance would not have occurred but for an Ecosystem Failure, then subject to the Supplier

fulfilling its obligations under this Agreement with respect to that Ecosystem Failure:

- (a) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Ecosystem Failure;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
  - (i) to terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*); or
  - (ii) to take action pursuant Clause 27 (Rectification Plan Process); and
- (c) where the Supplier Non-Performance constitutes a failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Ecosystem Failure;
  - (ii) if the Authority, acting reasonably, considers it appropriate, the relevant Project Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Ecosystem Failure; and
  - (iii) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Ecosystem Failure.

32.9 Subject to Clause 25 (*Limitations on Liability*) and Clause 32.10, if the Supplier incurs any Losses as a result of an Ecosystem Failure caused by a default by an Other Ecosystem Supplier under the applicable Ecosystem Agreement, then the Supplier will be entitled to claim against the Authority for such Losses. To the extent that the Authority acting reasonably either accepts or compromises the Supplier's claim or is found liable for all or part of the claim at the conclusion of the Ecosystem Dispute Resolution Procedure then the Authority shall be obliged to:

- (a) use reasonable endeavours to enforce its rights to recover those Losses from the relevant Other Ecosystem Supplier under the terms of the applicable Ecosystem Agreement; and
- (b) pay to the Supplier in full satisfaction of its Losses the net amount recovered by the Authority from that Other Ecosystem Supplier as provided for in Clause 32.10 below.

32.10 Any compensation recoverable by the Supplier pursuant to Clause 32.9 shall not in any event exceed the net amount recovered by the Authority (after deducting the

Authority's costs of making such recovery) from the relevant Other Ecosystem Supplier(s) as a result of the Ecosystem Failure. If:

- (a) multiple Ecosystem Suppliers have suffered Losses as a result of an Ecosystem Failure and have been joined in a single Dispute; and
- (b) the net amount recovered by the Authority pursuant to Clause 32.9 above (and the equivalent provisions under the other relevant Ecosystem Agreement(s)) is or is likely to be less than the value of the total settled or otherwise determined claims brought by the relevant Ecosystem Suppliers,

then any written settlement made between the parties, or any determination given in the course of the Ecosystem Dispute Resolution Procedure, shall apportion the total amount to be recovered by the Authority on its own account and in respect of each Ecosystem Supplier's Losses.

32.11 Without prejudice to the Supplier's obligations under Paragraph 5.6 of Schedule 11 (*Collaboration*), in order to claim any of the rights and/or relief referred to in Clause 32.8 to 32.10 above, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Ecosystem Failure has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a **"Claim Notice"**) setting out details of:

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

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

32.13 The Supplier shall use reasonable endeavours to eliminate or mitigate the consequences and impact of an Ecosystem Failure, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

32.14 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a

Dispute arises as to:

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

either Party may refer the Dispute to the Ecosystem Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to work together to resolve as promptly and effectively as possible the causes of, and mitigate the effects of, the Supplier Non-Performance without prejudice to who may be liable for the additional costs associated with such remedial action and whether that requires a Contract Change to be agreed.

32.15 Any Change that is required to the relevant Project Plan or to the Charges pursuant to Clauses 32.8 to 32.14 shall be implemented in accordance with the Change Control Procedure.

### **33 FORCE MAJEURE**

- 33.1 Subject to the remaining provisions of this Clause 33 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 33.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 33.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated, but the Supplier has failed to do so; or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or

- (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 33.4 Subject to Clause 33.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 33.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 33.6 Where, as a result of a Force Majeure Event:
  - (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
    - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 34.1(c) (*Termination by the Authority*) or Clause 34.6(b) (*Termination by the Supplier*); and
    - (ii) neither Party shall be liable for any Default arising as a result of such failure;
  - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
    - (i) the Authority shall not be entitled to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
    - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 33.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 33.7.

## SECTION I | TERMINATION AND EXIT MANAGEMENT

### 34 TERMINATION RIGHTS

#### **Termination by the Authority**

34.1 The Authority may terminate this Agreement (in whole or in part) by issuing a Termination Notice to the Supplier:

- (a) for convenience in whole or in part at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU, provided that unless the Agreement is being terminated because it should not have been entered into in view of a serious infringement of obligations under European Law, the Authority shall give at least 90 days' notice to terminate for convenience;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

34.2 Where the Authority:

- (a) is terminating this Agreement under Clause 34.1(b) due to the occurrence of either limb (c) and/or (j) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 34.1(b) or Clause 34.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the Partial Termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

#### **Termination for Persistent Breach**

34.3 If a Default (not being an immaterial Default) by the Supplier has occurred on more than one occasion then without prejudice to any other right of the Authority to

terminate this Agreement, the Authority may serve a notice ("**Termination Warning Notice**") on the Supplier:

- (a) specifying that it is a formal Termination Warning Notice;
- (b) giving reasonable details of the Default; and
- (c) stating that if such Default recurs or continues, it may result in termination of this Agreement for Persistent Breach.

34.4 If the Default specified in the Termination Warning Notice recurs within 12 months after the date of service of the relevant Termination Warning Notice then the Authority may serve a further notice on the Supplier ("**Final Termination Warning Notice**"):

- (a) specifying that it is a Final Termination Warning Notice;
- (b) stating that the specified Default has been the subject of a Termination Warning Notice served within the twelve (12) month period prior to the date of the Final Termination Warning Notice; and
- (c) stating that if such Default continues or recurs on one or more occasion within the six (6) month period following the date of the Final Termination Warning Notice the Authority may serve written notice on the Supplier to terminate this Agreement for Persistent Breach (termination to take effect from the date set out in the notice).

34.5 Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

### **Termination by the Supplier**

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

- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds [Redacted] (one million) and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 34.6(b) would result in a Partial Termination, the provisions of Clause 34.7 (*Partial Termination*) shall apply.

## Partial Termination

- 34.7 If the Supplier notifies the Authority pursuant to Clause 34.6(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 34.7, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 34.8 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
  - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
  - (c) the Supplier shall not be entitled to reject the Change.

## 35 CONSEQUENCES OF EXPIRY OR TERMINATION

### General Provisions on Expiry or Termination

- 35.1 The provisions of Clauses 5.7 (*Specially Written Software warranty*), 10.9 and 10.14 (*Promoting Tax Compliance*), 10.5 and 10.6 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 35 (*Consequences of Expiry or Termination*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 47 (*Disputes*) and 48 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.2 (*Reports and Records*), 8.4 (*Dispute Resolution Procedure*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

### Exit Management

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



### Payments by the Authority

- 35.3 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clause 34.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 34.6(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).
- 35.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 34.1(b), 34.1(c), 34.1(d) and/or 34.2 (*Termination by the Authority*) or by the Supplier pursuant to Clause 34.6(b), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
  - (b) payments in respect of unpaid Charges for Services received up until the Termination Date.
- 35.5 Not used

### Payments by the Supplier

- 35.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 35.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 34.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within three (3) months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each Project to which the Milestone Adjustment Payment Notice relates.
- 35.8 A Milestone Adjustment Payment Notice shall specify:
- (a) each Project to which it relates;
  - (b) in relation to each such Project, all Deliverables relating to that Project (each such Deliverable being a "**Retained Deliverable**"); and
  - (c) those Retained Deliverables the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification, but taking into account, where relevant, that the Parties have agreed the deliverable has benefit or lasting use to the Authority or Replacement Supplier in which case the adjusting payment shall

be so adjusted (such adjusting payment being an **“Allowable Price Adjustment”**),

and may form part of a Termination Notice.

35.9 The Supplier shall within 45 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

- (a) notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier’s proposed amount of the Allowable Price Adjustment and the basis for its approval;
- (c) provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each Project that is the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
  - (i) all relevant Project Charges and Milestone Payments; and
  - (ii) the Allowable Price of each Retained Deliverable; and
- (d) provide the Authority with such supporting information as the Authority may require.

35.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 30 Working Days of the Supplier’s receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

35.11 Not used

## SECTION J | MISCELLANEOUS AND GOVERNING LAW

### 36 **COMPLIANCE**

#### **Health and Safety**

36.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Authority Premises.

36.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **Equality and Diversity**

36.3 The Supplier shall:

- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
  - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### **Official Secrets Act**

36.4 The Supplier shall comply with the provisions of the Official Secrets Acts 1911 to 1989.

#### **Modern Slavery**

36.5 The Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking law, statutes and regulations from time to time in force including the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015;
- (c) make reasonable enquiries to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offences;
- (d) in its contracts with Sub-contractors include anti-slavery and human trafficking provisions that are substantially the same as the provisions in this contract;
- (e) notify the Authority promptly upon becoming aware of any actual or suspected breach of its obligations under Clause 36.5(a) and/or (b), details of the breach and the mitigation action it has taken or intends to take in order to:
  - (i) remedy the breach; and
  - (ii) ensure future compliance.

36.6 The Supplier shall prepare and deliver to the Authority an annual slavery and human tracking report setting out the steps it has taken to ensure that human trafficking is not taking place in any of its supply chains or in any part of its business and a certificate of compliance.

36.7 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 36.5 and such failure is not remedied within ten Working Days after the Authority gives the Supplier written notice specifying the failure and requiring its remedy then this shall constitute a Supplier Termination Event.

### **37 ASSIGNMENT AND NOVATION**

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

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

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

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to

exercise its rights pursuant to this Clause 37.2.

- 37.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 37.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 37.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a “**Successor Body**”), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (m) of the definition of Supplier Termination Event (as if references in that limb (m) to the Supplier and references to a person in the definition of Insolvency Event were references to the Successor Body).

### **38 WAIVER AND CUMULATIVE REMEDIES**

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

### **39 RELATIONSHIP OF THE PARTIES**

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

### **40 PREVENTION OF FRAUD AND BRIBERY**

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

grounds of a Prohibited Act.

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

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

40.3 The Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in Sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 40.3(a) and make such records available to the Authority on request; and
- (d) comply with any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

40.4 The Supplier shall promptly notify the Authority in writing if it becomes aware of any breach of Clause 40.1 and/or 40.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any

investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).

- 40.6 If the Supplier is in Default under Clauses 40.1 and/or 40.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
  - (b) if the Default is not remedied within ten Working Days after the Authority gives the Supplier written notice specifying the Default and requiring its remedy, immediately terminate this Agreement.
- 40.7 Any notice served by the Authority under Clause 40.6 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).

#### **41 SEVERANCE**

- 41.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 41.2 In the event that any deemed deletion under Clause 41.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 41.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 41.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 41.3.

## **42     FURTHER ASSURANCES**

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

## **43     ENTIRE AGREEMENT**

- 43.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 43.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 43.3 Nothing in this Clause 43 shall exclude any liability in respect of misrepresentations made fraudulently.

## **44     THIRD PARTY RIGHTS**

- 44.1 The provisions of Clause 19.1 (*IPRs Indemnity*), Clause 25.9 (*Limitations on Liability*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 9.12 of Schedule 8.5 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA. The Authority shall use reasonable endeavours to procure that each contract with a Replacement Supplier shall include a right under CRTPA for the Supplier to enforce any provisions in Part E of Schedule 9.1 (*Staff Transfer*) which are capable of conferring a benefit upon the Supplier.
- 44.2 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 44.3 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 44.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

### **Service Recipients and Service Beneficiaries**

- 44.4 Subject to Clause 44.1 and Clauses 44.5 to 44.10, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.



- 44.5 With effect from the Effective Date, the Supplier shall provide the Services to the Service Recipients and/or Service Beneficiaries listed in Schedule 2.7 (*Service Recipients and Service Beneficiaries*) in accordance with, and subject to, the terms of this Agreement. In addition, the Supplier shall provide the Services to such other Service Recipients and Service Beneficiaries (in addition to those listed in Schedule 2.7 (*Service Recipients and Service Beneficiaries*) as at the Effective Date) as the Authority may designate during the Term subject to the Change Control Procedure (and such third parties shall become "Service Recipients" or "Service Beneficiaries" (as appropriate) for the purposes of this Agreement).
- 44.6 The provision of any of the Services for the benefit of a Service Recipient or a Service Beneficiary shall be without prejudice to the terms and conditions of any existing agreement which may have been entered into by the Supplier and such Service Beneficiary and/or Service Recipient (as appropriate).
- 44.7 Nothing in this Agreement shall create or be deemed to create a supplier - customer relationship between the Supplier and any Service Beneficiary and/or Service Recipient at a contractual or management level but, without prejudice to that position, in providing services and dealing with service-related issues, at the level of the end user, the Supplier may deal directly with the end users or their relevant representatives in the Service Recipient or Service Beneficiary.
- 44.8 If there is a Default by the Supplier, any liability of the Supplier as a result of such Default shall be dealt with as between the Supplier and the Authority under the terms of this Agreement, provided that:
- (a) if any Service Recipient and/or Service Beneficiary suffers or incurs any losses and/or damages as a direct result of any such Default or is entitled to make a claim under Clause 19 (*IPRs Indemnity*), such losses and/or damages shall be recoverable from the Supplier, and such claim shall be made against the Supplier, under this Agreement by the Authority (and not by the Service Recipient or Service Beneficiary) and shall be subject to Clause 25 (*Limitations on Liability*); and
  - (b) the Authority shall procure the agreement of the Service Recipient and/or Service Beneficiary to the provisions of this Clause 44 prior to the commencement of provision of any services to that Service Recipient or Service Beneficiary.
- 44.9 Where compliance with any obligation or responsibility of the Authority is necessary in order to enable the Supplier to supply the benefit of a Service to a Service Recipient and/or Service Beneficiary, responsibility for compliance shall remain with the Authority but compliance by the Service Recipient and/or Service Beneficiary shall be deemed to be compliance by the Authority.
- 44.10 Other terms and conditions applicable to the provision of Services to any Service

Recipient and/or Service Beneficiary are as follows:

- (a) the maximum period for which the Service Recipient and/or Service Beneficiary may enjoy the benefit of the Services shall be the duration of this Agreement;
- (b) to the extent that the Service Recipient and/or Service Beneficiary receives the benefit of the Services, the term "Authority Data" shall be deemed to extend to any data of the Service Recipient and/or Service Beneficiary;
- (c) to the extent that the Service Recipient and/or Service Beneficiary receives the benefit of the Services, the Services received by the Service Recipient and/or Service Beneficiary shall be treated as though provided to the Authority and references to the Authority in Clause 17 (*Licences Granted by the Supplier*) shall be deemed to include references to the relevant Service Recipient and/or Service Beneficiary;
- (d) to the extent that the Service Recipient and/or Service Beneficiary receives the benefit of the Services, a right, indemnity or any limitation or exclusion of liability in favour of the Authority, is intended by the Parties to be a right or benefit of such relevant Service Recipients and/or Service Beneficiary, as if such Service Recipients and/or Service Beneficiary had been parties to this Agreement;
- (e) the Authority shall ensure that any relevant Service Recipients and/or Service Beneficiary shall comply with the Dispute Resolution Procedure in respect of any Disputes regarding the Services which involve such Service Recipients and/or Service Beneficiary. In respect of any such Disputes, the Authority shall participate in and manage the Dispute Resolution Procedure on the relevant Services Recipient's and/or Service Beneficiary's behalf and the Supplier agrees that such Disputes may be so managed by the Authority;
- (f) the Parties agree that no consent from any Service Recipient and/or Service Beneficiary is required for the Parties to vary or terminate this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such Service Recipients and/or Service Beneficiary); and
- (g) during the Term, the Authority shall be entitled to remove any Service Recipient and/or Service Beneficiary from the scope of this Agreement in accordance with Clauses 44.12 and 44.13 below.

44.11 Not used

#### **Addition and/or removal of Service Recipients and/or Service Beneficiaries**

44.12 From time to time, the Authority may decide that it requires a new Service Recipient and/or Service Beneficiary to receive the Services or part of the Services or that a Service Recipient and/or Service Beneficiary will no longer receive the Services or part

of the Services. In such circumstances:

- (a) the Authority shall provide written notice to the Supplier to add or remove that Service Recipient and/or Service Beneficiary (as appropriate) from the scope of this Agreement as of the date specified by the Authority subject to the Change Control Procedure;
- (b) the Parties shall, if necessary, adjust the Charges on an equitable basis to reflect the increased/reduced scope and/or volume of the Services subject to the Change Control Procedure;
- (c) the Authority may request that the Supplier provide Termination Assistance (including continuing the benefit of any licences granted to the said Services Recipient and/or Service Beneficiary under this Agreement) in relation to the removed Services Recipient and/or Service Beneficiary; and
- (d) if a Service Recipient and/or Service Beneficiary is removed from the scope of this Agreement pursuant to this Clause 44.12 as a result of any UK Government reorganisation, the Supplier shall, if requested by the Authority, provide Services to any new UK Government entity designated by the Authority under the terms of this Agreement for a reasonable period designated by the Authority, which may include Termination Assistance; and
- (e) any assistance or Services provided under Clauses 44.12(c) or (d) shall be at additional charge in accordance with Schedule 7.1 (*Charges and Invoicing*).

44.13 The Authority may partially add or remove a Service Recipient and/or Service Beneficiary from the scope of any Services based upon the principles of Clause 44.12 subject to the Change Control Procedure and, upon so doing, the Parties shall comply with the other provisions of Clause 44.12.

## 45 **NOTICES**

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

45.2 Subject to Clause 45.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>
Email	On the Working Day of sending provided this is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.

Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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

	Supplier	Authority
<b>Contact</b>	[Redacted]	[Redacted]
<b>Address</b>	[Redacted]	[Redacted]
<b>Email</b>	[Redacted]	[Redacted]

- 45.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 45.2:

- (a) Force Majeure Notices;
- (b) notices issued by the Supplier pursuant to Clause 34.6 (*Termination by the Supplier*);
- (c) Termination Notices; and

(d) Dispute Notices.

- 45.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 45.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 45.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 45.6 This Clause 45 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.4 (*Dispute Resolution Procedure*)).

**46 NON-SOLICITATION**

- 46.1 Except in respect of implementing any Relevant Transfer, the Authority and the Supplier shall not, and the Supplier shall procure that any Sub-contractor shall not, during the Term and for 6 months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other party any person employed by such other party, or employed by Revenue and Customs Digital Technology Services (RCDS), in the provision of the Services or (in the case of the Authority and/or RCDS) in the receipt and/or administration of the Services.

**47 DISPUTES**

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

**48 GOVERNING LAW AND JURISDICTION**

- 48.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 48.2 Subject to Clause 47 (*Disputes*) and Schedule 8.4 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

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

**SIGNED** for and on behalf of )  
**Capgemini UK plc** by an authorised )  
signatory: ) Signature:  
 ) [Redacted]

Name (block  
capitals):

[Redacted]

**Authorised Signatory**

Position: [Redacted]

**SIGNED** for and on behalf of )  
**The Commissioners for His Majesty's** )  
**Revenue and Customs:** ) Signature:  
 ) [Redacted]

Name (block  
capitals): [Redacted]

Position: [Redacted]