

DATED

2014

SECURITY INDUSTRY AUTHORITY (1)

and

BRITISH TELECOMMUNICATIONS (2)
PLC

AGREEMENT
relating to

Future Supply and Delivery Provision

Contents

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THIS AGREEMENT is made on

2014 **BETWEEN:**

BETWEEN:

- (1) **SECURITY INDUSTRY AUTHORITY** of 90 High Holborn, London WC1V 6LJ ("**Authority**"); and
- (2) **BRITISH TELECOMMUNICATIONS PLC** a company registered in England and Wales under company number 1800000 whose registered office is at 81 Newgate Street, London, EC1A 7AJ ("**Contractor**").

Together the "Parties"

Introduction

- (A) The Authority sought proposals to design, build, implement, test, manage, provide and maintain an IT Managed Service to meet the requirements of the regulator operating the regulatory regime (the Future Supply and Delivery Provision Project).
- (B) The Authority undertook a competition to appoint a new service provider and selected a number of organisations, including the Contractor, to submit responses to an invitation to tender issued by the Authority.
- (C) The Contractor responded to the Authority's request and, based on a proposal supplied by the Contractor and subsequent clarifications, the Authority selected the Contractor as its supplier of choice to provide the services specified in this Agreement.
- (D) Accordingly, the Contractor has agreed to supply services, on the terms set out in this Agreement.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 Definitions and interpretation

- 1.1 In this Agreement the definitions set out in schedule 1 (Definitions) shall apply.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it. The impact of any such amendment, extension or re-enactment on this Agreement shall be dealt with in accordance with clause 48 (Change in Law); and
 - 1.2.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

- 1.2.5 the headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.2.6 references to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement.
- 1.2.7 reference to any person shall include company, corporation, other body corporate, natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and wherever and however incorporated, established or constituted and their successors and permitted assigns or transferees;
- 1.2.8 references to “approval” shall (unless the context otherwise requires) be interpreted as meaning the Authority’s prior written approval (which the Authority shall have the sole and absolute right to refuse) unless otherwise provided in this Agreement;
- (i) without prejudice to clauses 10.4 and 13.2, if there is any conflict 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:
 - (ii) the clauses and schedule 1 (Definitions);
 - (iii) schedules 2.1 (Services Description) and 2.2 (Service Levels);
 - (iv) any other schedules and their annexes (except for schedule 4.1);
 - (v) any other document referred to in this Agreement or any other document attached to this Agreement; and
 - (vi) schedule 4.1 (Contractor Solution).
- 1.3 Save in respect of the Charges (which shall be adjusted in accordance with schedule 7.1 (Charges and Invoicing)), if an amount or sum is expressed to be "subject to indexation" at a point in time, it shall be adjusted by reference to the percentage change in the Consumer Price Index over the most recent 12 months for which published data is available at that point in time.
- 1.4 Subject to the provisions of 6 - 9 (inclusive), neither Party to this Agreement shall be liable for any Default of its obligations under this Agreement to the extent that such Default is caused by a failure or delay by the other Party in performing its obligations under this Agreement, provided and to the extent that the affected Party notifies the other Party of such failure or delay within 30 days of the affected Party becoming aware of its occurrence and of its likely impact.

2 Conditions precedent

- 2.1 This Agreement is conditional upon and shall not come into force (save as provide in this clause 2) until the following Conditions have been satisfied:
- 2.1.1 the Contractor has executed the Interface Agreements;
 - 2.1.2 not used.

2.2 The Contractor shall use all reasonable endeavours to procure that the Condition is satisfied as soon as practicable and in any event no later than 6.00 pm:

2.2.1 on the date three months from and including the Effective Date; or

2.2.2 where a later date has been agreed in writing by the Authority and the Contractor, on that date.

2.3 The Condition may only be waived by the Authority in writing.

2.4 If at any time either Party becomes aware of a fact or circumstance that might prevent a Condition being satisfied it shall immediately inform the other Party.

If the Condition has not been satisfied by the date specified in clause 2.2.1 above or the Authority has not waived the Condition or granted an extension of time for completion of the Condition in accordance with clause 2.2.2:

2.4.1 The Authority shall notify the Contractor that the Condition in clause 2.1 has not been satisfied;

2.4.2 The Contractor shall submit a draft Correction Plan for the Authority's approval as soon as possible and in any event not later than 10 Working Days (or such other period as the Authority may permit and notify to the Contractor in writing) after the initial notification under clause 2.4.1.

2.4.3 The draft Correction Plan shall identify the steps that the Contractor proposes to take to satisfy the outstanding Condition.

2.4.4 The Authority shall not withhold its approval of a draft Correction Plan unreasonably. If the Authority does not approve the draft Correction Plan it may at its sole discretion inform the Contractor of its reasons promptly following its decision to withhold approval and allow the Contractor to resubmit the Correction Plan within such period as the Authority may notify to the Contractor in writing.

2.4.5 The Contractor shall comply with its Correction Plan following its approval by the Authority.

2.4.6 If within 10 Working Days of the notification in clause 2.4.1 (or such later date as is notified by the Authority to the Contractor):

(i) a Correction Plan has not been submitted for approval; or

(ii) the Authority does not approve the proposed Correction Plan,

the Authority shall have the right to terminate this Agreement by serving a Termination Notice on the Contractor such termination to take effect on the date specified in the Termination Notice except for the following clauses which shall continue after the date specified in any Termination Notice issued in accordance with clause 2.4:

(i) clause 1 (interpretation);

(ii) this clause (Conditions);

(iii) clause 17 (Charging and Invoicing);

- (iv) clause 44 (Confidentiality);
- (v) clause 64 (Variation and Waiver);
- (vi) clause 58 (Consequences of Expiry or Termination);
- (vii) clause 59 (Payments made on Termination);
- (viii) clause 60 (Exit Management);
- (ix) clause 68 (Severance);
- (x) clause 70 (Whole Agreement);
- (xi) clause 72 (Notice);
- (xii) clause 73 (Governing Law and Jurisdiction);
- (xiii) schedule 7.1 (Charges and Invoicing); and
- (xiv) any rights or liabilities that have accrued under this Agreement.

2.5 If the Condition has not been satisfied by the date three months from and including the Effective Date or such later date as is agreed by the Authority in writing and the Authority has not waived the Condition the Authority may require the payment of Delay Payments, which shall be payable by the Contractor on demand. The Delay Payments will accrue on a daily basis from the date three months from and including the Effective Date (or such later date as the Authority shall notify the Contractor in writing) and will continue to accrue until the date when the Condition is satisfied in accordance with clause 2.1.

3 Due diligence

3.1 The Contractor acknowledges that it:

- 3.1.1 has entered into this Agreement in reliance on its own due diligence alone;
- 3.1.2 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
- 3.1.3 has raised all relevant due diligence questions with the Authority before the Effective Date and has satisfied itself that it has received such answers from the Authority to enable it to enter into this Agreement with all reasonable expectation of being able to fulfil its obligations hereunder.

3.2 The Contractor acknowledges that it has inspected the Operating Environment and has advised the Authority of any aspect of the Operating Environment that is not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of the Agreement for the Pre-Operational Phase.

- 3.3 If the Contractor has either failed to inspect the Operating Environment or failed to notify the Authority of any required remedial actions in accordance with clause 3.2 or the remedial actions required in accordance with clause 3.2 relate to a Site which is not owned or controlled by the Authority, then the Contractor shall not be entitled to recover any additional costs or charges from the Authority relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the Authority Premises. The onus shall be on the Contractor to prove to the Authority that any work to the Authority Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Contractor shall not incur such additional costs or charges without obtaining the Authority's prior written consent.
- 3.4 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure.

SECTION B - SERVICE IMPLEMENTATION

4 Implementation plan

- 4.1 The Contractor shall provide the Services in accordance with the Implementation Plan.
- 4.2 Based on the draft Detailed Implementation Plan provided with the Tender Response, the Contractor shall discuss and agree a Detailed Implementation Plan with the Authority within 5 Working Days of the Effective Date. The Detailed Implementation Plan should be sufficiently detailed as is necessary to manage the implementation projects effectively. Once agreed with the Authority (agreement not to be unreasonably delayed or withheld), the Contractor shall monitor the performance against the Implementation Plan.
- 4.3 The Detailed Implementation Plan shall only be varied in accordance with the process set out in paragraphs 4.8 and 4.9 of schedule 6.1 (Implementation Plan).

5 Acceptance and testing

- 5.1 When the Contractor has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for acceptance and the Parties shall follow the applicable provisions of the Acceptance & Testing Procedures.
- 5.2 Each Party shall bear its own costs in respect of the Acceptance and Testing Procedures. However, if a Milestone does not Achieve the Acceptance Test Criteria the Authority shall be entitled to recover from the Contractor, any reasonable additional costs it may incur as a direct result of further review or re-Testing of any Deliverable and/or Milestone to Achieve the Acceptance Test Criteria.
- 5.3 If the Contractor Achieves the requisite Tests, the Authority shall issue a Milestone Achievement Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Milestone Achievement Certificate, the Contractor shall remain solely responsible for ensuring that the Contractor Solution as designed and developed is suitable for the delivery of the Services, for ensuring that the Services are implemented in accordance with this Agreement and that the Service Levels are achieved during the Operational Phase. No rights of estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate (or conditional Milestone Achievement Certificate pursuant to clause 7.2.1 (Delays Due To Contractor Default)).
- 5.4 If the Contractor does not Achieve any Test, the provisions of clauses 6 (Implementation Delays - General Provisions), 7 (Delays Due To Contractor Default), 8 (Delays To Milestones Due To Authority Cause) and 9 (Delays Not Due To One Party) shall apply as appropriate.

5.5



5.6

6 Implementation delays - general provisions

- 6.1 If, at any time, the Contractor becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date it shall as soon as reasonably practicable notify the Authority of the fact of the Delay and summarise the reasons for it and the likely impact on the Implementation Plan.
- 6.2 The Contractor shall, as soon as reasonably practicable and in any event not later than 10 Working Days after the initial notification under clause 6.1, give the Authority full details in writing of:
- 6.2.1 the reasons for the Delay;
 - 6.2.2 the consequences of the Delay; and
 - 6.2.3 if the Contractor claims that the Delay is due to an Authority Cause, the reason for making that claim.
- 6.3 Whether the Delay is due to an Authority Cause or not, the Contractor shall make all reasonable endeavours to eliminate or mitigate the consequences of the Delay.
- 6.4 Where the Contractor considers that a Delay is being caused or contributed to by an Authority Cause the Authority shall not be liable to compensate the Contractor for Delays to which clauses 8 or 9 apply unless the Contractor has fulfilled its obligations set out in, and in accordance with, clauses 6.1, 6.2 and 6.3.
- 6.5 Any Disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties shall continue to work to resolve the causes of, and mitigate the effects of, the Delay.

Correction Plan

- 6.6 The Contractor shall submit a draft Correction Plan where:
- 6.6.1 it becomes aware that it will not Achieve a Milestone by the Milestone Date; or
 - 6.6.2 it has failed to Achieve a Milestone by its Milestone Date, whether that failure arises because of:
 - (i) a failure to submit any or all Deliverables in respect of that Milestone;
 - (ii) the failure of the Milestone successfully to complete or Achieve any Test;
or
 - (iii) where there are no Tests in respect of the relevant Milestone, any non-conformance in respect of that Milestone.

- 6.7 The draft Correction Plan shall identify the issues arising out of the Delay and the steps that the Contractor proposes to take to Achieve the Milestone in accordance with this Agreement.
- 6.8 The draft Correction Plan shall be subject to prior written approval by the Authority. The Contractor shall submit the draft Correction Plan to the Authority for its approval as soon as possible and in any event not later than 10 Working Days (or such other period as the Authority may permit and notify to the Contractor in writing) after the initial notification under clause 6.1 or the issue of a Non-conformance Report.
- 6.9 The Authority shall not withhold its approval of a draft Correction Plan unreasonably. If the Authority does not approve the draft Correction Plan it shall inform the Contractor of its reasons promptly following its decision to withhold approval and the Contractor shall take those reasons into account in the preparation of a further draft Correction Plan, which shall be resubmitted to the Authority for approval within five Working Days of the rejection of the first draft.
- 6.10 The Contractor shall comply with its Correction Plan following its approval by the Authority.

7 Delays due to contractor default

- 7.1 If a Deliverable does not satisfy the Acceptance Test Criteria and/or a Milestone is not Achieved due to the Contractor's Default, the Authority shall promptly issue a Non-conformance Report to the Contractor categorising the Test Issues as described in the Acceptance and Testing Procedures or setting out in detail the non-conformities of the Deliverable where no testing has taken place, including any other reasons for the relevant Milestone not being Achieved and the consequential impact on any other Milestones. The Authority will then have the options set out in clause 7.2.
- 7.2 The Authority may at its sole and absolute discretion (without waiving any rights in relation to the other options) choose to:
- 7.2.1 issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues, or the non-conformities of the Deliverable where no testing has taken place, in accordance with an agreed Correction Plan; and/or
 - 7.2.2 if the Test Issue is a Material Test Issue, refuse to issue a conditional Milestone Achievement Certificate as specified in clause 7.2.1 and the Authority may escalate the matter in accordance with the Dispute Resolution Procedure and if the matter cannot be resolved may exercise any right it may have under clause 57.1 (Termination for Cause by the Authority); and/or
 - 7.2.3 if the Test Issue is a Material Test Issue, refuse to issue a Milestone Achievement Certificate until the remediation of the Test Issues in accordance with an agreed Correction Plan and if the matter cannot be resolved exercise any right it may have under clause 57.1 (Termination for Cause by the Authority); and/or
 - 7.2.4 if there is a material non-conformity of the Deliverable (where no testing has taken place), refuse to issue a Milestone Achievement Certificate until the remediation of the non-conformities of the Deliverable in accordance with an agreed Correction Plan and if the matter cannot be resolved exercise any right it may have under clause 57.1 (Termination for Cause by the Authority).
- 7.3 The Authority may require the payment of Delay Payments, which shall be payable by the Contractor on demand in accordance with schedule 7.1 (Charging and Invoicing) where:

- 7.3.1 the Contractor fails to Achieve ATP on or before the relevant date set out in clause 5.5; or
- 7.3.2 the Contractor fails to Achieve CPP on or before the relevant date set out in clause 5.6.
- 7.4 Any Delay Payments which are payable under clause 7.3 will accrue on a daily basis from the relevant date in clause 7.3.1 or clause 7.3.2 and will continue to accrue until ATP or CPP is Achieved in accordance with the Correction Plan and the Authority provides the Contractor with a Milestone Achievement Certificate for the relevant Milestone.
- 7.5 The right to receive Delay Payments under this clause shall be without prejudice to any rights the Authority may have:
 - 7.5.1 to terminate this Agreement for the Contractor's Default or for Force Majeure; or
 - 7.5.2 to terminate this Agreement for:
 - (i) the Contractor failing to Achieve ATP on or before the relevant date set out in clause 5.5; or
 - (ii) the Contractor failing to Achieve CPP on or before the relevant date set out in clause 5.6.
- 7.6 Where the Authority issues a conditional Milestone Achievement Certificate as specified in clause 7.2.1, it can choose (but does not have to) to revise the failed Milestone Date and any subsequent Milestone Date.
- 7.7 Any Correction Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority is willing to agree otherwise. In the latter case the Contractor shall submit a Correction Plan for approval by the Authority within 10 Working Days of receipt of the Non-conformance Report.

8 Delays to milestones due to authority cause

- 8.1 Without prejudice to clause 6.3 and subject to clause 6.4, if the Contractor would have been able to Achieve the Milestone by its Milestone Date but has failed to do so as a result of an Authority Cause the Contractor will have the rights and relief set out in this clause 8.
- 8.2 8.2 Subject to clause 8.3, the Contractor shall:
 - 8.2.1 be allowed an extension of time equal to the Delay caused by that Authority Cause;
 - 8.2.2 not be in breach of this Agreement as a result of the failure to Achieve the relevant Milestone by its Milestone Date to the extent that the failure to Achieve results directly from the Authority Cause;
 - 8.2.3 have no liability for Delay Payments in respect of the relevant Milestone to the extent that the Delay results directly from the Authority Cause; and
 - 8.2.4 be entitled to compensation as set out in clause 8.4.
- 8.3 The Authority Contract Manager, acting reasonably, shall consider whether it accepts that the Delay has been due to the Authority Cause and, if so, it shall:

- 8.3.1 consider the duration of the Delay, the nature of the Authority Cause and the effect of the Delay and the Authority Cause on the Contractor's ability to comply with the Implementation Plan and Milestones contained therein;
 - 8.3.2 consult with the Contractor Contract Manager in determining the effect of the Delay;
 - 8.3.3 fix a Revised Milestone Date and specify any further effort required by the Contractor; and
 - 8.3.4 if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan and any further effort required by the Contractor.
- 8.4 If the Contractor has incurred any direct loss and/or expense as a result of a Delay due to an Authority Cause, the Contractor shall be entitled to compensation to the extent that it cannot mitigate that loss or expense in accordance with the principles set out in paragraph 2 of schedule 7.1 (Charges and Invoicing). The Contractor shall provide the Authority with any information the Authority may require in order to assess the validity of the Contractor's claim to compensation.
- 8.5 Any Change that is required to the Implementation Plan pursuant to clause 8.3 or the Charges pursuant to clause 8.4 shall be implemented in accordance with the Change Control Procedure. If the Contractor's analysis of the effect of the Delay in accordance with clause 6.2 permits a number of options, then the Authority shall have the right to select which option shall apply.
- 8.6 The Authority shall not delay unreasonably when considering and determining the effect of a Delay under this clause 8 or in agreeing a resulting Change pursuant to the Change Control Procedure.
- 8.7 The Contractor shall and shall procure that each Sub-contractor shall take and continue to take all reasonable steps to eliminate or mitigate any losses and/or expenses that it incurs as a result of an Authority Cause.

9 Delays not due to one party

- 9.1 Without prejudice to clause 6.3 and subject to clause 6.4, where a Delay is attributable in part to the Contractor's Default and in part to an Authority Cause the Parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. The Parties agree that Delay Payments and compensation payable pursuant to clause 8.4 (Delays to Milestones Due to Authority Cause) shall be recoverable subject to reductions to reflect the extent to which the Authority or the Contractor respectively has contributed to the Delay. If necessary, the Parties may escalate the matter in accordance with the Dispute Resolution Procedure and if the matter cannot be resolved by agreement then either Party may refer the matter to an expert for determination.

SECTION C - SERVICE SUPPLY

10 Services

- 10.1 The Contractor shall provide the Services from the Effective Date and shall ensure that the Services:
- 10.1.1 comply in all respects with the Services Description as set out in schedule 2.1 (Services Description); and

- 10.1.2 are supplied in accordance with the Contractor Solution and the terms of this Agreement.
- 10.2 Without prejudice to clause 10.1, the Contractor shall supply the Operational Services:
 - 10.2.1 from receipt of a Milestone Achievement Certificate in respect of Authority to Proceed; and
 - 10.2.2 in accordance with clause 11 .
- 10.3 The Contractor shall perform its obligations under this Agreement including those in relation to the Services in accordance with:
 - 10.3.1 Good Industry Practice;
 - 10.3.2 the Contractor's own established procedures and practices;
 - 10.3.3 the Security Policy and the Security Policy Framework; and
 - 10.3.4 the Quality Plans.
- 10.4 The Contractor shall draw any conflict between any of the requirements of clause 10.1 and the requirements of clause 10.3 to the attention of the Authority and shall comply with the Authority's decision on the resolution of that conflict.
- 10.5 The Contractor shall ensure that the Services and the Contractor System integrate with the Authority System as set out in schedule 2.1 (Service Description).
- 10.6 In the event of the Contractor's failure to provide the Services or to comply with its obligations in accordance with this Agreement, the Authority may, without prejudice to its other rights, require the Contractor to re-perform the Services or to comply with its obligations.

11 Service levels

- 11.1 The Contractor shall provide the Operational Services to meet or exceed the Service Levels from the ATP Milestone Date. The remaining provisions of this clause 11 are subject to the provisions of clause 12 (Effect of Authority Cause in the Operational Phase).
- 11.2 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, the Contractor shall notify the Authority promptly of the Service Failure or likely Service Failure;
- 11.3 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, which takes the Service Levels below the Service Notification Threshold the Contractor shall:
 - 11.3.1 provide the Authority with a Correction Plan of the action that it will take to rectify the Service Failure or to prevent the Service Failure from taking place or recurring, within 5 Working Days from the day the Contractor notifies the Authority under clause 11.2 and the Correction Plan shall include the following information:
 - (i) identification of the root cause of the Service Failure;
 - (ii) the effects of the Service Failure;

- (iii) details of the Service Failure;
 - (iv) details of the affected process;
 - (v) the start date of the first occurrence of the Service Failure;
 - (vi) any relevant supporting information as necessary; and
 - (vii) a plan to rectify the cause including the actions to be taken by the Contractor, Authority and any third parties and estimated dates and times of when the Correction Plan will be implemented; and
- 11.3.2 within 2 Working Days of the Correction Plan being issued to the Authority under clause 11.3.1 or such other period that is agreed by the Authority, the Authority will either confirm its agreement to the Correction Plan provided by the Contractor or require that the Parties shall meet to:
 - (i) agree the plan;
 - (ii) make any changes agreed by the Parties;
 - (iii) if appropriate, agree a set of acceptance criteria to assess whether the reason behind the Service Failure has been resolved; and
 - (iv) if applicable, agree the dates and times of meetings to monitor the progress of the Correction Plan;
- 11.3.3 issue a formal Correction Plan within 1 Working Day of the meeting attended by the Parties in accordance with sub-clause 11.3.2
- 11.3.4 take all remedial action that is reasonable to rectify or to prevent the Service Failure from taking place or recurring; and
- 11.3.5 carry out the Correction Plan agreed under clause 11.3.1 to 11.3.3 in accordance with its terms.
- 11.4 If the Correction Plan fails to satisfactorily resolve the reason behind the Service Failure within the next Service Period, the Contractor shall immediately notify the Authority of such failure in writing.
- 11.5 The Parties shall meet within 3 Working Days of a notification by either Party that the Correction Plan has failed in order to discuss any appropriate further action to be taken by the Parties and agree any necessary changes to the Correction Plan.
- 11.6 Subject to clauses 11.7 and 11.8, if the Correction Plan as amended by the Parties under clause 11.5 fails to resolve the Service Failure then the Service Failure may be escalated by either Party in accordance with schedule 8.1 (Governance) and schedule 8.3 (Dispute Resolution Procedure).
- 11.7 If the Service Failure constitutes a Critical Service Failure as defined in schedule 2.2 the Authority may terminate this Agreement in accordance with the termination provisions set out in clause 57.
- 11.8 Subject to the annual Service Credit limit in clause 54.2.4, where applicable the Contractor shall automatically credit the Authority with Service Credits in accordance with schedule 7.1 (Charges and Invoicing). Service Credits shall be shown as a deduction from the amount due

from the Authority to the Contractor in the next invoice then due to be issued under this Agreement. If no invoice is due to be issued then the Contractor shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Contractor as a debt within 10 Working Days of issue.

- 11.9 Where Service Credits are provided as a remedy for Service Failure in respect of the relevant Services it shall be the Authority's exclusive financial remedy except where:
- 11.9.1 the aggregate number of Service Failures (whether the Service Failure relates to the same or to different parts of the Services) exceeds three over a period of three consecutive Service Periods;
 - 11.9.2 any Service Failure exceeds the Service Threshold;
 - 11.9.3 the failure to perform the Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, or wilful default; or
 - 11.9.4 the Service Failure results in:
 - (i) corruption or loss of data;
 - (ii) a Critical Service Failure;
 - (iii) a compensation payment to any third party;
 - 11.9.5 the Authority is otherwise entitled to or does terminate this Agreement for the Contractor's Default pursuant to clauses 57.1 and 57.2.
- 11.10 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Authority, then the Authority may, on written notice to the Contractor, withhold a proportionate amount of the Service Charges for those Services until such time as the relevant Services are restored. Provided that the relevant Services are restored, the Authority shall resume payment of the relevant part of the Service Charges, including payment of the amount retained.
- 11.11 The Authority and the Contractor shall review the Service Levels every six months throughout the Term and make any Changes in accordance with the Change Control Procedure to reflect changes in the Authority's requirements.
- 11.12 Not more than bi-annually during the Term the Authority may, on at least three months written notice, change the Service Credits applicable to one or more Service Levels provided that:
- 11.12.1 the principal purpose of this change is to reflect changes in the Authority's business requirements and priorities, or to reflect changing industry standards;
 - 11.12.2 the change is not specifically intended to penalise the Contractor for poor performance in relation to any particular Service Levels; and
 - 11.12.3 there is no increase in the total value of Service Credits potentially payable.
- 11.13 If the Contractor reasonably believes that any proposed change, which is requested by the Authority under clause 11.2, would materially and adversely increase Costs, the Contractor shall be entitled to submit a price variation request (supported by appropriate evidence, which

should include but not be limited to an updated Financial Model) within 10 Working Days of the date of receiving the Authority's written notice.

- 11.14 The Authority shall then review the Contractor's price variation request submitted under clause 11.13 and, within 10 Working Days shall respond to the Contractor and do one of the following:

11.14.1 accept the Contractor's price variation request and make any required changes in accordance with the Change Control Procedure; or

11.14.2 decide not to proceed with the change.

12 Effect of authority cause in the operational phase

- 12.1 If the Contractor would have provided the Operational Services in accordance with the Service Levels and/or this Agreement but has failed to do so as a result of an Authority Cause the Contractor will have the rights and relief set out in clause 12.2.

- 12.2 The Contractor shall:

12.2.1 (in measuring the performance of any affected Service) be treated as though the relevant Service had met the relevant Service Level to the extent that the Service Failure is due to any Authority Cause; and

12.2.2 not be treated as being in breach of this Agreement to the extent that non performance or breach is due to any Authority Cause; and

12.2.3 be entitled to the Charges for the relevant Services affected by the Authority Cause as if it had not occurred.

- 12.3 If the Contractor claims that clause 12.1 applies, and in order to claim the rights and reliefs in clause 12.2, it shall provide the Authority with details of the Authority Cause as part of the management information that it is obliged to provide at the end of the relevant Service Period.

- 12.4 Any Disputes about or arising out of whether an Authority Cause applies to the Contractor's failure to provide the Services in accordance with the Service Levels and/or this Agreement shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties shall continue to resolve the causes of, and mitigate the effects of such failure.

13 Standards

- 13.1 The Contractor shall comply with the Standards in performing its obligations under this Agreement.

- 13.2 The Contractor shall discuss with the Authority any conflict that the Contractor reasonably believes that there is or will be between any of the Standards or between any of the Standards and any other obligation under this Agreement, and shall comply with the Authority's decision on the resolution of that conflict.

14 Quality assurance and performance monitoring

Quality Plans

- 14.1 The Contractor shall develop, within 40 Working Days of the Effective Date, Quality Plans that:

- 14.1.1 ensure that all aspects of the Services are the subject of quality management systems; and
 - 14.1.2 are consistent with ISO 9001:2008 or any equivalent standard which is generally recognised as having replaced it.
- 14.2 The Contractor shall obtain the Authority Contract Manager's written approval of the Quality Plans developed pursuant to clause 14.1 before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Contractor acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 14.3 The Contractor shall procure that the Services are carried out in compliance with the Quality Plans.
- 14.4 Any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Quality Monitoring

- 14.5 The Authority Contract Manager may carry out audits of the Contractor's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) at regular intervals. The Parties anticipate that these audits will be carried out at intervals of approximately twelve months, but the Authority Contract Manager may carry out other periodic monitoring or spot checks at any other time. In each case, the Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority Contract Manager, including by providing the Authority Contract Manager with all information and documentation, and access to any relevant Contractor Personnel and/or to any relevant Site, which he reasonably requires in connection with his rights under this clause 14.5 at no additional charge to the Authority.

Performance Monitoring

- 14.6 The Authority may monitor the performance of the Services by the Contractor.
- 14.7 The Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 14.6 including by providing the Authority Contract Manager with all information and documentation, and access to any relevant Contractor Personnel and/or to any relevant Site, which he reasonably requires in connection with his rights under this clause 14.7, at no additional charge to the Authority.
- 14.8 If the Contractor believes that the Authority's monitoring of the Services is unreasonable the Contractor may escalate the issue with the Authority using the Escalation Process.

Warning Notices and Increased Monitoring

- 14.9 Without prejudice to the other rights or remedies of the Authority, if at any time the Contractor has:
 - 14.9.1 committed any Material Default of its obligations under this Agreement; or
 - 14.9.2 in respect of its performance of the Services, fallen to or below a Service Threshold;

14.9.3 accrued two (2) or more Service Failures in any three (3) month period;

14.9.4 failed to Achieve any Milestone by its associated Milestone Date,

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

14.10 Without prejudice to the other rights or remedies of the Authority, if the Contractor receives two (2) or more Warning Notices in any period of three (3) calendar months in respect of any Services (or any part thereof), the Authority may, by written notice to the Contractor, reasonably increase the level of its monitoring of the Contractor, and/or (at the Authority's option) require the Contractor to increase the level of its monitoring of its own performance of its obligations under this Agreement, in respect of the Services (or relevant part thereof) to which the Warning Notices relate until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it shall perform (and is capable of performing) its obligations under this Agreement, in which case, the following provisions shall apply:

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

14.10.2 if the Contractor (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Authority in writing within five (5) Working Days of the receipt of the notice referred to in clause 14.10.1 of the measures objected to (and of any changes necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Agreement);

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

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

14.11 Subject to clauses 57.1.3 and 57.1.4 if at any time the Contractor is in Default such that any element of the Services has become materially unfit for purpose such that the Contractor cannot deliver a material part of that Service the Authority shall notify the Contractor that it requires a Remedial Plan which should be prepared in accordance with the Remedial Plan Process detailed in clause 58 (Remedial Plan Process).

15 Services improvement

15.1 The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 15 and schedule 2.4 (Continuous Improvement). As part of this obligation the Contractor shall identify and report to the Business Improvement Group with such frequency as agreed under paragraph 7.2 of schedule 8.1 (Governance) on:

- 15.1.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the Services, and those technological advances potentially available to the Contractor and the Authority which the Parties may wish to adopt; and/or
 - 15.1.2 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; and/or
 - 15.1.3 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; and/or
 - 15.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority; and/or
 - 15.1.5 changes to the ICT environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the delivery of Services.
- 15.2 The Contractor 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 Contractor shall provide any further information that the Authority requests.
- 15.3 The Authority shall at all times be responsible for determining its own ICT strategy. The Authority may notify the Contractor of any changes to the Authority's ICT strategy and request the Contractor to consider, review and respond to that strategy. If, in the Contractor's opinion, any notified change to the Authority ICT strategy would impact upon the provision of the Services, the Contractor shall refer the matter to the Service Management Board.
- 15.4 If the Authority wishes to incorporate any improvement identified by the Contractor the Contractor shall send the Authority a Change Request and the Contractor shall:
- 15.4.1 develop a plan for the implementation of the improvement within 20 Working Days of the Change Request which shall be subject to the approval of the Authority;
 - 15.4.2 implement the improvement in accordance with the provisions of an implementation plan approved by the Authority; and
 - 15.4.3 submit the improvements to testing in accordance with the provisions of clause 5 (Acceptance and Testing).
- 15.5 An improvement once accepted in accordance with clause 5 and schedule 6.2 (Acceptance and Testing) will be subject to the gain share provisions as detailed in schedule 7.3 (Value for Money) unless it is explicitly stated on the agreed Change Request that the improvement is excluded from such gain share provisions.

16 Equipment

- 16.1 Unless otherwise agreed in writing by the Authority, all Contractor Equipment will be used by the Contractor solely for the purposes of providing the Services to the Authority and will not be used for the Contractor's own purposes or in providing any other services to third parties.

- 16.2 The Contractor shall be solely responsible for the cost of carriage of Contractor Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry the Contractor shall be responsible for the removal of all relevant Contractor Equipment from the Authority Premises, including the cost of packing, carriage and making good the Authority Premises following removal.
- 16.3 All the Contractor's property located on the Sites, including Contractor Equipment, shall remain at the sole risk and responsibility of the Contractor, except that the Authority shall be liable for loss of or damage to any of the Contractor's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 16.4 Subject to any express provision of the Business Continuity and Disaster Recovery Plan to the contrary, the loss or destruction for any reason of the Contractor Equipment held on any Site shall not relieve the Contractor of its obligation to supply the Services in accordance with the Service Levels.

SECTION D - PAYMENT AND VALUE FOR MONEY PROVISIONS

17 Charging and invoicing

- 17.1 In consideration of the Contractor carrying out its obligations, including the provision of the Services under this Agreement, the Authority shall pay the Charges to the Contractor in accordance with the payment profile and the invoicing procedure specified in schedule 7.1 (Charges and Invoicing).
- 17.2 The Contractor shall ensure that a term is included in any Sub-contract permitted under this Agreement which requires the Contractor to pay any undisputed sums due to the relevant Sub-contractor within a specified period that does not exceed 30 days from the date the Contractor receives the Sub-contractor's invoice.
- 17.3 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Agreement under clause 57.5 for failure to pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with the Bank of England base rate applicable at the time.
- 17.4 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under clauses 5.2 (Acceptance and Testing), 14 (Quality Assurance and Performance Monitoring), 25 (Audits), 42 (Protection of Personal Data), 43 (Freedom of Information) and, to the extent specified therein, clause 62 (Step-In Rights).

18 Tax

- 18.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 18.2 The Contractor shall at all times during and after the Term indemnify the Authority and keep the Authority indemnified from and against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this clause 18.2 shall be paid in cleared funds by the Contractor to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

- 18.3 If a payment is due from the Contractor under clauses 29.9, 30, 31, 42.4, 52 and 53 the Authority shall be entitled to receive from the Contractor such amounts as shall ensure that the net receipt, after tax, to the Authority in respect of payment is the same as it would have been were the payment not subject to tax.

19 Recovery of sums due

- 19.1 The Authority may retain or set off any amount owed to it by the Contractor against any amount due to the Contractor under this Agreement or under any other agreement between the Contractor and the Authority.

20 Value for money

- 20.1 The Parties shall comply with their obligations set out in schedule 7.3 (Value for Money Provisions).

21 Financial model

- 21.1 The provisions of schedule 7.5 (Financial Model) shall apply in relation to the Financial Model and the Parties shall comply with their respective obligation in schedule 7.5.

SECTION E - CONTRACT GOVERNANCE

22 Authority and contractor contract managers

- 22.1 Each Party appoints the persons named as such in the Appendix to schedule 8.1 (Governance) as the Authority Contract Manager and the Contractor Contract Manager. The Authority Contract Manager and the Contractor Contract Manager shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement. Either Party may, by further written notice to the other Party, revoke or amend the authority of its Contract Manager or appoint a new Contract Manager.
- 22.2 The respective Contract Managers shall be sufficiently senior within the organisation of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Agreement.
- 22.3 The Authority may require the Contractor to replace the Contractor Contract Manager in accordance with clause 29.8 (Key Personnel).

23 Governance

- 23.1 The Parties agree to manage this Agreement through the governance structure detailed in schedule 8.1 (Governance).

24 Supply chain rights

Sub-contracting

- 24.1 The Contractor shall not sub-contract any of its obligations under this Agreement without the Authority's prior written consent, which, subject to clause 24.2, shall not be unreasonably withheld or delayed.
- 24.2 The Authority may withhold or delay its consent where it considers that:
- 24.2.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority; and/or

- 24.2.2 the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or
 - 24.2.3 the proposed Sub-contractor employs unfit persons and/or
 - 24.2.4 the Sub-contract transfers any of the rights or obligations of the Contractor under this Agreement relating to the Processing of Relevant Personal Data.
- 24.3 Subject to clause 24.4, in making a request pursuant to clause 24.1 the Contractor shall provide the Authority with the following information about the proposed Sub-contractor:
- 24.3.1 its name, registered office and company registration number;
 - 24.3.2 a copy of the proposed Sub-contract relating to each Key Sub-contractor;
 - 24.3.3 the purposes for which the proposed Sub-contractor will be employed, including the scope of any services to be provided by the proposed Sub-contractor;
 - 24.3.4 if relevant, confirmation that the Sub-contract requires the Key Sub-contractor to comply with any relevant Service Levels;
 - 24.3.5 where the proposed Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arms-length" terms; and
 - 24.3.6 any further information reasonably requested by the Authority.
- 24.4 If the supply of information required pursuant to clause 24.3 would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing and/or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.
- 24.5 The Authority has consented to the engagement of the Sub-contractors listed in schedule 4.3 (Notified Sub-contractors) subject to the provision by the Contractor of the information listed in clause 24.3 within 20 Working Days of the Effective Date (or such other period that the Authority may permit and notified to the Contractor in writing).
- 24.6 The Contractor shall not make use of a pre-existing contract with any material Sub-contractor, listed as such in Schedule 4.3 (Notified Sub-contractors), without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 24.7 Except where the Authority has given its prior written consent under clause 24.5, the Contractor shall ensure that each Key Sub-contract shall include:
- 24.7.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce the terms of that Key Sub-contract as if it were the Contractor;
 - 24.7.2 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority;
 - 24.7.3 a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Authority on the same terms as set out in clause 44 (Confidentiality);

- 24.7.4 a provision requiring the Key Sub-contractor to comply with protection of data requirements pursuant to clauses 41 (Authority Data) and 42 (Protection of Personal Data);
- 24.7.5 a provision requiring the Key Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to clause 66 (Prevention of Corruption);
- 24.7.6 a provision restricting the ability of the Key Sub-contractor to further Sub-contract elements of the service provided to the Contractor without first seeking the consent of the Authority; and
- 24.7.7 a provision enabling the Contractor, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in clause 62 (Step-in Rights); and
- 24.7.8 a provision requiring the Key Sub-contractor to notify the Authority promptly in writing of any material non-payment or late payment of any sums properly due to the Key Sub-contractor from the Contractor under the Key Sub-contract, under a specified valid invoice and not subject to a genuine dispute ;
- 24.7.9 a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Contractor and the Authority in writing of a Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Sub-contractor Financial Distress Event (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 the Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause the Sub-contractor Financial Distress Event); and
 - (ii) co-operate with the Contractor and the Authority in order to give full effect to the provisions of paragraph 3.3 of schedule 7.4 (Financial Distress), including meeting with the Contractor and the Authority to discuss and review the effect of the Sub-contractor Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.
- 24.8 As a condition of its consent under clause 24.1, the Authority may require that the relevant Key Sub-contractor enters into a direct agreement with the Authority, in which case the Contractor shall procure that such Key Sub-contractor enters into a direct agreement with the Authority as soon as reasonably practicable and on such terms as may be reasonably requested by the Authority.

Termination of Sub-contracts

- 24.9 The Contractor 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.
- 24.10 The Authority may require the Contractor to terminate a Key Sub-contract where the acts or omissions of the relevant Key Sub-contractor have given rise to the Authority's right of termination pursuant to clause 57.1 (Termination for Cause by the Authority).
- 24.11 Not used.

- 24.12 The Authority may require the Contractor to terminate the relevant Sub-contract if there is a Change of Control of a Key Sub-contractor on the same terms as those set out in clause 57.3 (Termination for Change of Control).

Competitive Terms

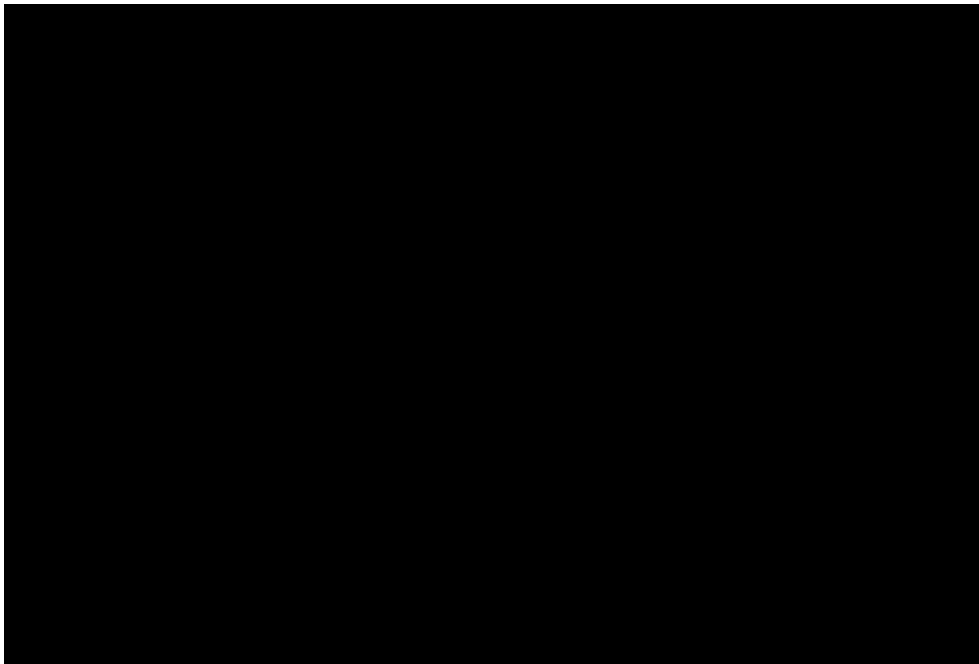
- 24.13 If the Authority is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Contractor or the Contractor Personnel in the supply of the Services, then the Authority may:
- 24.14 require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- 24.15 subject to clause 24.16, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 24.16 If the Authority exercises either of its options pursuant to clause 24.14, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 24.17 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 24.18 the Authority making the relevant item available to the Contractor where this is necessary for the Contractor to provide the Services; and
- 24.19 any reduction in the Charges taking into account any unavoidable costs payable by the Contractor in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 24.20 Despite the Contractor's right to sub-contract pursuant to this clause 24, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those agents, consultants, servants and other persons employed or engaged by the Sub-contractors as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

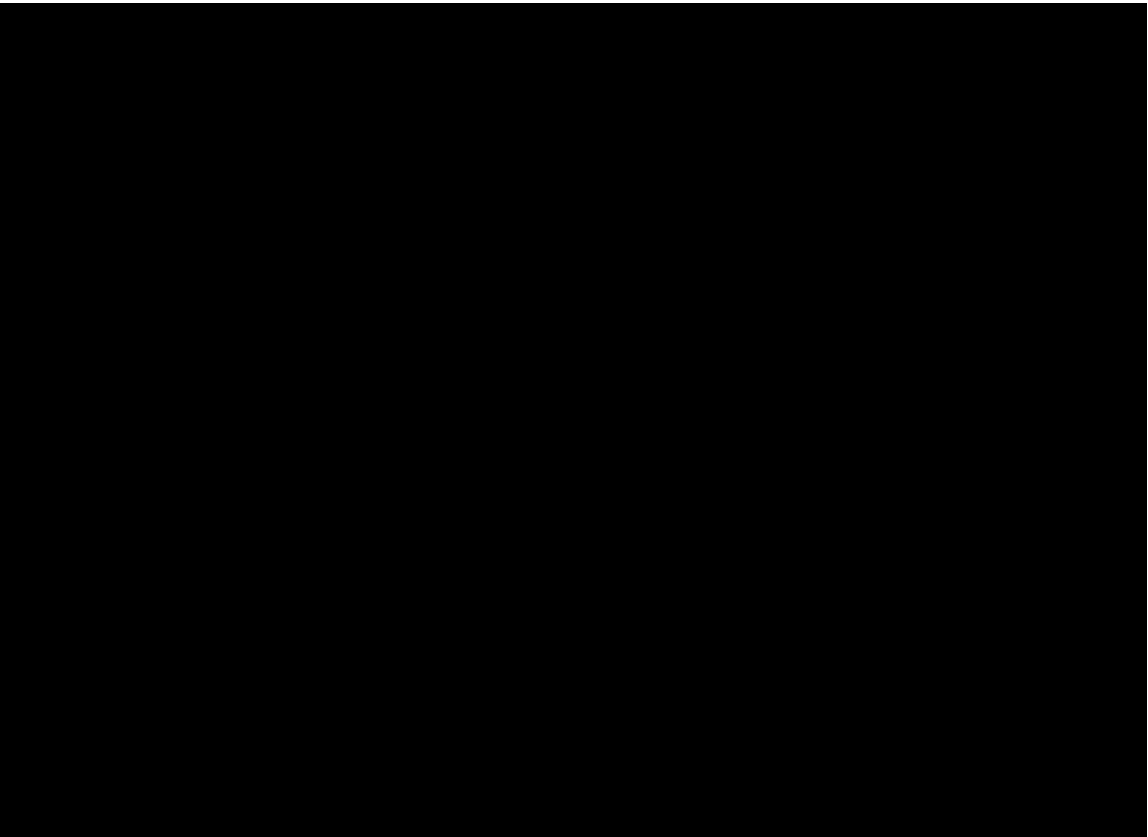
25 Audits

- 25.1 The Authority and the Contractor shall agree a schedule of audits no later than 20 Working Days prior to the Operational Service Commencement Date and shall review and agree an updated schedule of audits annually thereafter. The Authority shall be permitted to conduct the audits listed in the agreed schedule of audits.
- 25.2 Except where an audit is imposed on the Authority by a Regulatory Body and/or where an audit is listed in the agreed schedule of audits, the Authority may not conduct an audit more than twice in any Contract Year and for a period of 12 months following the Term. The Authority shall use reasonable endeavours to (but is not obliged to) provide at least 15 Working Days notice of its intention to conduct such audit.
- 25.3 Audits will be undertaken by the Authority for any or all of the following purposes:

- 25.3.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement), any cost reduction and income generation initiatives carried out pursuant to clause 15 (Services Improvement), and/or the costs of all suppliers (including Sub-contractors) of the Services at the level of detail agreed in schedule 7.5 (Financial Model);
- 25.3.2 to review the integrity, confidentiality and security of the Authority Data;
- 25.3.3 to review the Contractor's compliance with the Data Protection Legislation, the Freedom of Information Act 2000 in accordance with clauses 42.2.10 (Protection of Personal Data) and 43 (Freedom of Information) and any other Law applicable to the Services;
- 25.3.4 to review the Contractor's compliance with its obligations under clauses 10.1 and 10.3 (Services) and 14 (Quality Assurance and Performance Monitoring);
- 25.3.5 to review the Contractor's compliance with its obligations set out in schedule 7.3 (Value for Money Provisions);
- 25.3.6 to review any records created during the design and development of the Contractor's System and pre-operational environment such as information relating to Acceptance and Testing;
- 25.3.7 
- 25.3.8 to carry out the audit and certification of the Authority's accounts;
- 25.3.9 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 25.3.10 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- 25.3.11 to inspect the ICT Environment (or any part of it);

- 25.3.12 to inspect the Authority's Assets, including the Authority's IPRs, equipment, facilities and maintenance, for the purposes of ensuring that the Authority's assets are secure and that any register of assets is up to date; and/or
- 25.3.13 to ensure that the Contractor is complying with the Standards;
- 25.3.14 to review the accuracy and completeness of the Registers.

25.4



- 25.5 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 25.6 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives):
 - 25.6.1 all information requested by the Authority within the permitted scope of the audit;
 - 25.6.2 reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 25.6.3 access to the Contractor System;
 - 25.6.4 access to Contractor Personnel: and
 - 25.6.5 with all reasonable co-operation and assistance in relation to each audit.
- 25.7 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

- 25.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a Material Default by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 25.9 If an audit identifies that:
- 25.9.1 the Contractor has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a Remedial Plan. If the Contractor's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Contractor's costs, then the Remedial Plan shall include a requirement for the provision of all such information;
 - 25.9.2 the Authority has overpaid any Charges, the Contractor shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and
 - 25.9.3 the Authority has underpaid any Charges, the Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Contractor in relation to invoicing within 20 Working Days.

26 Records and reports

- 26.1 The Parties shall comply with the provisions of schedule 8.4 (Records Provisions) in relation to the keeping of records and schedule 8.1 (Governance) in respect of the making of reports.

27 Change control

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

28 Disputes

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

SECTION F - PERSONNEL

29 Contractor personnel

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

Relevant Convictions

- 29.3 The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in the provision of any part of the Services without the Authority's prior and express written consent.

Key Personnel

- 29.4 The Parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Contractor shall provide to the Authority, curriculum vitae for all proposed Key Personnel and proposed replacement Key Personnel. The Contractor shall and shall procure that any Sub-contractor shall obtain the prior written consent of the Authority before removing or replacing any member of the Key Personnel from their corresponding role during the Term (including when carrying out Exit Management), and, where possible, at least three months written notice must be provided by the Contractor of its intention to replace any member of Key Personnel from their corresponding role.
- 29.5 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of Key Personnel by the Contractor or Sub-contractor. The Authority may interview the candidates for Key Personnel roles before such candidate is appointed to such role.
- 29.6 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than 10 Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 29.7 The Contractor shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Authority otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Contractor shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 29.8 The Authority may identify any of the roles performed by Contractor Personnel as Key Personnel, who will then be included on the list of Key Personnel by the Contractor. The Authority may also require the Contractor to remove any member of the Key Personnel that the Authority considers in any respect unsatisfactory.
- 29.9 The Authority shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Contractor shall, at all times during and after the Term, fully indemnify the Authority and keep indemnified the Authority from and against all Employee Liabilities that may arise in this respect.

Staffing Security

- 29.10 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Personnel employed or engaged in the provision of the Services. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures as set out in the Security Aspects Letter in schedule 2.5.

29.11 The Contractor shall provide training on a continuing basis for all Contractor Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

29.12 Not Used

30 Employment indemnity

30.1 The Contractor shall, at all times during and after the Term, fully indemnify and keep indemnified the Authority from and against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any of the Authority's employees or former employees and/or any of the Contractor Personnel where such claim arises from any act or omission of the Contractor or any Contractor Personnel.

31 Staff transfer

31.1 The Parties acknowledge that the commencement of the provision of the Services by the Contractor may be a Relevant Transfer under this Agreement for the purposes of the Employment Regulations. The provisions of schedule 9.1 (Staff Transfer) will apply on such expiry or termination.

31.2 The Parties acknowledge that the expiry or termination of this Agreement may constitute a Relevant Transfer for the purposes of the Employment Regulations. The provisions of schedule 9.1 (Staff Transfer) will apply on such expiry or termination.

32 Health and safety

32.1 The Contractor acknowledges that it has been supplied with a copy of the Authority's rules regarding health and safety. The Contractor agrees to comply with these rules, and any additional rules made known to the Contractor from time to time by the Authority together with all applicable statutory rules and regulations regarding these matters. The Authority will be responsible for procuring that its employees and agents also comply with these rules and regulations.

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

33 Equality and diversity

33.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, gender, sex or sexual orientation, religion or religious belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of any Law including the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

33.2 The Contractor shall take all reasonable steps to secure the observance of clause 33.1 by all Staff and all suppliers and Sub-Contractors employed in the execution of this Contract.

33.3 The Contractor shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by its Staff on the grounds of discrimination arising in connection with the provision of the Services under this Contract.

34 Non-solicitation

- 34.1 Except in respect of any Staff Transfer, the Authority and the Contractor shall not, and the Contractor shall procure that any Sub-contractor shall not, during the Term and for 12 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 in the provision of the Services or (in the case of the Authority) in the receipt and/or administration of the Services.

SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

35 Intellectual property rights

- 35.1 Except as expressly set out in this Agreement:

35.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, including:

- (i) the Contractor Software;
 - (ii) the Third Party Software;
 - (iii) the Contractor's Background IPRs,
- and

35.1.2 the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- (i) the Authority Software;
- (ii) the Authority Data;
- (iii) the Database;
- (iv) the Project Specific IPRs;
- (v) the Specially Written Software;
- (vi) Documentation;
- (vii) the Authority's documentation, processes and procedures; and
- (viii) the Authority's Know-How

- 35.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 35.1, 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).

36 Licences granted by the contractor

- 36.1 The Contractor hereby grants to the Authority a licence of the Contractor Software and Contractor Background IPRs on the Standard Licence Terms.

- 36.2 The Contractor shall procure that the owners or the authorised licensors of any Third Party Software hereby grants a direct licence to the Authority on the Standard Licence Terms.
- 36.3 The Contractor shall, if requested by the Authority in accordance with schedule 8.5 (Exit Management), grant or procure the grant to the Replacement Contractor of a licence to Use any Contractor Software, Contractor's Background IPRs or Third Party Software on the Standard Licence Terms subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor on terms no more onerous than the Authority is subject under this Agreement.

37 Licences granted by the authority

- 37.1 The Authority hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use:
- 37.1.1 the Authority Software but excluding iBase, Moodle and Microsoft Dynamics CMS;
 - 37.1.2 the Authority Assets;
 - 37.1.3 the Database;
 - 37.1.4 the Authority's documentation, processes and procedures; and
 - 37.1.5 the Authority's Know-How;
 - 37.1.6 the Specially Written Software from the date the relevant rights are transferred to the Authority in accordance with clause 39.2; the Project Specific IPRs from the date the relevant rights are transferred to the Authority in accordance with clause 39.2;
 - 37.1.7 the Authority Data; and
 - 37.1.8 Documentation.
- 37.2 The licence granted in clause 37.1:
- 37.2.1 includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Contractor on the same terms as set out in clause 44 (Confidentiality); and
 - 37.2.2 is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Contractor shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 37.3 Neither Party shall have any right to use any of the other Party's names, logos nor trade marks on any of its products or services without the other Party's prior written consent.
- 37.4 In the event of the termination or expiry of this Agreement, the licence referred to in clause 37.1, any sub-licence granted in accordance with clause 37.2.1 and any licence granted in accordance with clause 37.3 shall terminate automatically and the Contractor shall deliver to the Authority all material licensed to the Contractor pursuant to clause 37.1 or clause 37.3 in the Contractor's possession or control and shall procure that the Sub-contractor shall deliver to

the Authority all material licensed to the Sub-contractor pursuant to clause 37.2 in the Sub-contractor's possession or control.

38 Assignment of IPR in databases

- 38.1 The Contractor hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Database or shall procure that the first owner of the Database assigns it to the Authority on the same basis.
- 38.2 The assignment under clause 38.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Database, as appropriate.
- 38.3 The Contractor shall waive or procure a waiver of any moral rights in the Database assigned to the Authority under this Agreement.
- 38.4 To the extent that it is necessary for the Authority to obtain the full benefits of ownership of the Database, the Contractor hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Contractor's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Database.

39 Project specific IPR and specially written software

- 39.1 The Contractor hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software 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.
- 39.2 The assignment under clause 39.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate.
- 39.3 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.
- 39.4 If requested to do so by the Authority, the Contractor shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under clause 39.1 or shall procure that the owner of the Project Specific IPRs and the Specially Written Software and Documentation does so on the same basis.
- 39.5 The Authority shall grant to the Contractor a non-exclusive, non-transferable licence of the Project Specific IPRs and the Specially Written Software and Documentation to enable:
 - 39.5.1 the Contractor to provide the Services; and
 - 39.5.2 the creation of works for other customers that are adapted or derived from the Project Specific IPRs and the Specially Written Software
- 39.6 Subject to clause 39.7 and to the extent only that this is necessary to enable the Authority to obtain the full benefits of ownership of the Specially Written Software as an integrated product and the Documentation, the Contractor hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license

and/or commercially exploit any Contractor's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Specially Written Software and Documentation, provided that, where the Specially Written Software consists of customisation of Contractor Software and/or Third Party Software, this clause 39.6 shall not have the effect of granting to the Authority any greater rights over the Contractor Software and/or the Third Party Software than the Standard Licence Terms.

- 39.7 The Contractor shall provide the Authority with access to the Specially Written Software in both Source Code and binary code forms and any updates of the Source Code on each new release of the Specially Written Software as described in schedule 4.1 (Contractor Solution).

40 Escrow

- 40.1 The Contractor shall procure that its Key Sub-Contractor shall deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with the Escrow Agent in accordance with Schedule 5.3 (Escrow).

41 Authority Data

- 41.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 41.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 41.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Information Assets Register as set out in schedule 2.1 (Services Description).
- 41.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 41.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan.
- 41.6 The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority on request at no less than three (3) months written notice.
- 41.7 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 41.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 41.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in schedule 8.6 (Business Continuity and Disaster Recovery Plan) and the Contractor shall do so as soon as practicable but not later than the period stated and agreed in schedule 8.6 (Business Continuity and Disaster Recovery Plan; and/or

- 41.8.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in schedule 8.6 (Business Continuity and Disaster Recovery Plan).
- 41.9 If at any time the Contractor 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 Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- 41.10 The Contractor shall ensure that Authority Data, including back up data, is only stored and/or accessed on systems located in the United Kingdom unless the prior written consent of the Authority has been obtained by the Contractor.

42 Protection of personal data

- 42.1 With respect to the Parties' rights and obligations and the Processing of Personal Data under this Agreement (the "Relevant Personal Data"), the Parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.
- 42.2 The Contractor shall:
- 42.2.1 Process the Relevant Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Contractor during the Term);
 - 42.2.2 Process the Relevant Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law;
 - 42.2.3 implement appropriate technical and organisational measures to protect the Relevant Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction, damage, alteration to or disclosure of the Relevant Personal Data and having regard to the nature of the Relevant Personal Data which is to be protected;
 - 42.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Relevant Personal Data and that the Contractor Personnel receive adequate training in the care, protection and handling of the Relevant Personal Data;
 - 42.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates of the Contractor or any third party for the provision of the Services subject to clause 24.3;
 - 42.2.6 ensure that all Contractor Personnel required to access the Relevant Personal Data are informed of the confidential nature of the Relevant Personal Data and comply with the obligations set out in this clause 42;
 - 42.2.7 ensure that none of Contractor Personnel publish, disclose or divulge any of the Relevant Personal Data to any third party unless directed in writing to do so by the Authority;

- 42.2.8 notify the Authority (within two Working Days) if it receives:
- (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 42.2.9 provide the Authority with full cooperation and assistance in relation to any complaint or request made under clause 42.2.8, including by:
- (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority;
- 42.2.10 permit the Authority or the Authority Contract Manager (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 25 (Audits), the Contractor's data Processing activities including all data files and documentation (and/or those of its agents, subsidiaries Affiliates and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;
- 42.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
- 42.2.12 not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Effective Date, the Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
- (i) the Contractor shall submit a Change Request to the Authority which shall be dealt with in accordance with the Change Control Procedure and clauses 42.2.12(ii) to 42.2.12(iv) below;
 - (ii) the Contractor shall set out in its Change Request and/or Impact Assessment details of the following:
 - (A) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (B) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;

- (C) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (D) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Authority's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- (iii) in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Law and Authority, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
- (iv) the Contractor shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (A) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Agreement or a separate data processing agreement between the Parties; and
 - (B) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Authority on such terms as may be required by the Authority, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation)."

42.3 The Contractor shall:

- 42.3.1 comply at all times with the Data Protection Legislation;
- 42.3.2 provide full cooperation and assistance to the Authority to enable the Authority to comply with the Authority's obligations under the Data Protection Legislation;
- 42.3.3 not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

42.4 The Contractor shall, at all times during and after the Term, indemnify the Authority and keep the Authority fully indemnified against all losses, damages, fine or penalty, costs or expenses and other liabilities (including legal fees and other professional costs and expenses) incurred by, awarded against or agreed to be paid by the Authority arising from any breach of the Contractor's obligations under this clause 42 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

43 Freedom of information

- 43.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 43.2 The Contractor shall and shall procure that its Sub-contractors shall:
- 43.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 43.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - 43.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 43.3 The Authority shall be responsible for determining in its sole and absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information (including the Contractors Confidential Information) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 43.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 43.5 The Contractor acknowledges that (notwithstanding the provisions of clause 43) the Authority may, acting in accordance with the Secretary of States' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 43.5.1 in certain circumstances without consulting the Contractor; or
 - 43.5.2 following consultation with the Contractor and having taken their views into account;
- provided always that where clause 43.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 43.6 The Contractor shall ensure that all Information is retained for disclosure in accordance with schedule 8.4 (Records Provisions) and shall permit the Authority to inspect such records as requested from time to time.
- 43.7 The Contractor acknowledges that the description of information as Commercially Sensitive Information listed in schedule 4.2 (Commercially Sensitive Information) is of an indicative nature only and that the Authority may be obliged to disclose it in accordance with clause 43.5.

Transparency

- 43.8 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations, the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its sole and absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
- 43.9 Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Authority to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations redacted), including changes to the Agreement agreed from time to time, to the general public.
- 43.10 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its sole and absolute discretion.
- 43.11 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

44 Confidentiality

- 44.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 44.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 44.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 44.2 Clause 44.1 shall not apply to the extent that:
- 44.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 43 (Freedom of Information);
 - 44.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 44.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 44.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 44.2.5 it is independently developed without access to the other Party's Confidential Information.
- 44.3 The Contractor may only disclose the Authority Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know

the Confidential Information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

- 44.4 The Contractor shall not, and shall procure that the Contractor Personnel do not, use, copy or modify any of the Authority Confidential Information received otherwise than for the purposes of and in the performance and obligations under this Agreement.
- 44.5 The Contractor may only disclose the Authority Confidential Information to the Contractor Personnel and who need to know such Confidential Information, and shall ensure that such Contractor Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Agreement, the Contractor shall immediately notify the Authority of the default, act or omission and take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the Contractor shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 44.6 At the written request of the Authority, the Contractor shall procure that those members of the Contractor Personnel identified in the Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 44.7 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 44.7.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 44.7.2 to any consultant, contractor or other person engaged by the Authority or any person conducting a gateway review conducted by the Cabinet Office Efficiency Reform Group or any public body charged with conducting gateway reviews;
 - 44.7.3 for the purpose of the examination and certification of the Authority's accounts;
or
 - 44.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 44.8 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 44.7 is made aware of the Authority's obligations of confidentiality.

- 44.9 Nothing in this clause 44 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

SECTION H - CONTRACTOR AND AUTHORITY PROTECTIONS

45 General obligations of the parties

Contractor's Obligations

- 45.1 The Contractor shall:
- 45.1.1 at all times allocate sufficient resources to provide the Services in accordance with the terms of this Agreement;
 - 45.1.2 subject to clause 48 (Change in Law) obtain, and maintain throughout the duration of this Agreement, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary to enable the provision of the Services;
 - 45.1.3 enter into and remain a party to, throughout the duration of this Agreement, the Interface Agreements and such other agreements with third parties as the Contractor may require and which are necessary to enable the provision of the Services including agreements with such third parties listed in schedule 11 and such other third parties as identified by the Authority and notified to the Contractor from time to time;
 - 45.1.4 provide to the Authority information in respect of known program defects, defect corrections, restrictions and bypasses in respect of the Contractor Solution;
 - 45.1.5 provide to the Authority's other suppliers as are notified to the Contractor periodically, such reasonable co-operation, information (including any Documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Contractor; and
 - 45.1.6 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services.
- 45.2 In respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Contractor System, the Contractor shall have primary management responsibility for incident or problem resolution, including:
- 45.2.1 for ensuring that such requirement does not interfere with the provision of the Services in accordance with this Agreement; and
 - 45.2.2 for taking all necessary steps within its power to ensure that the interface is successfully achieved,

provided that if it is subsequently agreed by the Parties, or determined in accordance with the Dispute Resolution Procedure, that the third party supplier should have been responsible, or partly responsible, for resolving the relevant incident, the Contractor may recover its

reasonable additional expenses for resolving the issue to the extent that the third party contractor is agreed or is determined to have been responsible and to the extent that the Authority is able to recover an equivalent amount from the relevant third party contractor.

- 45.3 The Contractor shall ensure that the release of any new Software or upgrade to Software complies with the interface requirements in the Services Description, shall notify the Authority three months before the release of any new Software or upgrade to Software, and will co-ordinate its activity with the Authority to ensure it minimises any disruption to the Services, the ICT Environment or the Authority's operations.
- 45.4 Any change in the way in which the Contractor provides the Services which would materially increase the Authority's risk or reduce the effect of the governance provisions of the Agreement shall be agreed in accordance with the Change Control Procedure.

Authority's Responsibilities

- 45.5 The Authority shall comply with the Authority's Responsibilities set out in schedule 3 (Authority Responsibilities).

Contractor and Authority Responsibilities

- 45.6 The Contractor and the Authority agree to comply with their respective obligations and may exercise their respective rights pursuant to schedule 7.4 (Financial Distress).

46 Warranties

- 46.1 Each Party warrants, represents and undertakes that:
- 46.1.1 it has full power, capacity and authority to enter into and to perform this Agreement;
 - 46.1.2 this Agreement is executed by a duly authorised representative of that Party;
 - 46.1.3 there are no claims, actions, litigations, arbitration, suits or proceedings or regulatory investigations in progress, pending or, to that Party's knowledge, threatened against or affecting that Party or its assets before any court or administrative body or arbitration tribunal or otherwise that might affect the ability of that Party to meet and carry out its obligations under this Agreement; and
 - 46.1.4 neither the Contractor nor its assets are subject to any contractual obligation, Law, regulation, judgement, order or decree of any court of competent jurisdiction or Government agency compliance with which might affect the ability of that Party to meet and carry out its obligations under this Agreement;
 - 46.1.5 neither an Insolvency Event has occurred nor proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) in relation to an Insolvency Event which might affect the Contractor's assets or revenue or its ability to meet and carry out its obligations under this Agreement;
 - 46.1.6 once duly executed this Agreement will constitute its legal, valid and binding obligations and
 - 46.1.7 in entering into this Agreement it has not committed a Prohibited Act.

- 46.2 The Contractor warrants, represents and undertakes for the duration of the Term that:
- 46.2.1 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards;
 - 46.2.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Agreement and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Agreement;
 - 46.2.3 it has and will continue to have all necessary licences and rights in and to the Contractor Software or the Third Party Software and/or the Contractor's Background IPRs, or any other IPR and materials made available by the Contractor and/or the Sub-contractors to the Authority necessary for the Contractor to perform the Contractor's obligations under this Agreement and for the Authority to receive and use the Services including the Contractor Solution;
 - 46.2.4 in performing its obligations under this Agreement, all Software used by or on behalf of the Contractor will:
 - (i) be currently supported versions of that Software; and
 - (ii) perform in all material respects in accordance with its specification;
 - (iii) to the extent and in the manner stated in schedule 4.1 (Contractor Solution) be capable of supporting the functions described in the Schedule 2.1 (Services Description);
 - (iv) be of satisfactory quality and free from programming errors and defects in design, manufacture or materials.
 - 46.2.5 it has taken and shall continue to take all steps, in accordance with Good Industry Practice to prevent the:
 - (i) introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware including Malicious Software; and
 - (ii) unauthorised use of or modification or access,

to (or into) the Authority Software, Authority Data, Authority Materials, Authority System Authority Assets, Confidential Information, Contractor Solution, any other Software or Contractor System used by the Authority for the purposes of this Agreement;
 - 46.2.6 it shall take all measures to avoid any data loss and data corruption during the provision of the Services under this Agreement and all measures to avoid the failure or reduced performance (in whole or in part) of the Services;
 - 46.2.7 as at the Effective Date all information, statements and representations in the PQQ Response and Tender Response including any attachments thereto and any other document which resulted in the award of this Agreement to the Contractor are to the best of its knowledge, information and belief, true and accurate and not

misleading and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false inaccurate or misleading and all warranties and representations contained in the PQQ Response and Tender and any documents attached thereto and any other document which resulted in the award of this Agreement to the Contractor shall be deemed to be repeated in this Agreement with reference to the circumstances existing at the time that they are deemed to be repeated;

- 46.2.8 the Documentation will contain all necessary information and explanation required for the purpose of executing the Exit Plan and for suitably qualified employees of the Authority or of the Replacement Contractor to be able to use the Software and receive the Services and to perform the Replacement Services on termination or expiry; and
- 46.2.9 the Contractor System and assets used in the performance of the Services:
 - (i) will be free of all encumbrances;
 - (ii) will be Date Compliant; and
 - (iii) will be Euro Compliant.
- 46.2.10 all staff assigned to the performance of the Service shall possess and exercise the skill and experience, qualifications, training and expertise necessary for the proper performance of the Services and such staff will be deployed in adequate numbers to deliver and/or perform the Services in accordance with this Agreement.
- 46.2.11 it shall at all times comply with Law and all applicable Standards in carrying out its obligations under this Agreement.
- 46.2.12 it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
- 46.2.13 in the three (3) Years prior to the Effective Date:
 - (i) it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.
- 46.3 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.

46.4 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 the Authority may have in respect of breach of that provision by the Contractor.

46.5 The Contractor acknowledges and agrees that:

46.5.1 the warranties, representations and undertakings contained in this Agreement are material and are designed to induce the Authority into entering into this Agreement; and

46.5.2 the Authority has been induced into entering into this Agreement and in doing so has relied upon the warranties, representations and undertakings contained herein.

47 Not used

48 Change in law

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

48.1.1 a General Change in Law; or

48.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Effective Date in particular a change to the Private Security Industry Act 2001 shall not constitute or be construed as a Specific Change in Law where the implementation of such change has been set out in the Schedule 2.1 (Services Description) or the remaining provisions of this Agreement;

48.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 48.1.2), the Contractor shall notify the Authority of the likely effects of that change, including:

48.2.1 whether any Change is required to the Services, the Charges or this Agreement; and

48.2.2 whether any relief from compliance with the Contractor's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Levels at any time.

48.3 As soon as practicable after any notification in accordance with clause 48.1, the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

48.3.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

48.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

48.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

- 48.3.4 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 15 (Services Improvement), has been taken into account in amending the Charges.
- 48.4 Any increase in the Charges or relief from the Contractor's obligations agreed by the Parties pursuant to clause 48.3 shall be implemented in accordance with the Change Control Procedure.

SECTION I - RISK PROTECTION

49 Security requirements

- 49.1 The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy, the Security Policy Framework and the Security Management Plan and the Contractor shall ensure that the Security Management Plan produced by the Contractor fully complies with the Security Policy.
- 49.2 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 49.3 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Change Control Procedure.
- 49.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to clause 49.3 the Contractor shall continue to perform the Services in accordance with its existing obligations.
- 49.5 The Contractor shall ensure that the Contractor System shall be located in the United Kingdom and no person located outside of the United Kingdom shall have access to the Contractor System without the prior written consent of the Authority.

Malicious Software

- 49.6 The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the Parties).
- 49.7 Notwithstanding clause 49.6, 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.
- 49.8 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 49.6 shall be borne by the Parties as follows:
- 49.8.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor (except where the Authority has waived the obligation set out in clause 49.6) or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not

quarantined or otherwise identified by the Authority when such Authority Data was provided to the Contractor; and

- 49.8.2 by the Authority if the Malicious Software originates from the Authority Software (in respect of which the Authority has waived its obligation set out in clause 49.6) or the Authority Data (whilst the Authority Data was under the control of the Authority) unless the Authority can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Contractor when such Authority Data was returned to the Authority.

50 Business continuity and disaster recovery

- 50.1 The Parties shall comply with the provisions of the BCDR Plan and the provisions of schedule 8.6 (Business Continuity and Disaster Recovery Plan).
- 50.2 The Contractor shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.
- 50.3 The Contractor shall undertake regular risk assessments in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Authority promptly in writing following each review in accordance with schedule 8.6 ((Business Continuity and Disaster Recovery Plan).
- 50.4 The Contractor shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

51 Force majeure

- 51.1 Subject to the remaining provisions of this clause 51, either Party to this Agreement may claim relief from liability for non-performance or delay in performance of its obligations under this Agreement to the extent this is due to a Force Majeure Event. In particular, the Contractor shall be relieved from its Delay Payment obligation to the extent that the Achievement of any Milestone is affected by the Force Majeure Event, its Service Credits obligation to the extent that the Services are affected by the Force Majeure Event and the Charges shall be reduced to the extent that the Authority does not receive the Services as a result of the Force Majeure Event.
- 51.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 51.3 The Contractor cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the BCDR Plan but has failed to do so (unless this failure is also due to a Force Majeure Event affecting the operation of the BCDR Plan) and/or it is a matter that was within the scope or contemplation of the disaster recovery and/or business continuity plans of the Affected Party or an Affected Party's third party provider of relevant disaster recovery or business continuity services and/or it is a matter against which a prudent organisation could reasonably be expected to take preparatory measures or put in place contingency arrangements.
- 51.4 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations

as a result of a Force Majeure Event) and no substitute person, agent, supplier, Sub-contractor or other third party is reasonably available.

- 51.5 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 51.6 As soon as practicable following after the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 51.7 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. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 51.8 Subject to clause 51.9, if a Force Majeure Event affects the Services, the Authority may direct the Contractor to procure those Services from a third party service provider in which case the Contractor will be liable for payment for the provision of those Services for as long as the failure or delay in performance continues.
- 51.9 If the Authority directs the Contractor to use a replacement supplier pursuant to clause 51.8, then the Authority will pay the Contractor (a) the Charges; and (b) the difference between the Charges and the replacement supplier's costs if, in respect of the Services that are subject to Force Majeure Event, the replacement service provider's costs are greater than the Charges.
- 51.10 If a Force Majeure Event prevents either Party from performing its obligations under this Agreement for a period of 120 days, either Party may terminate this Agreement by serving notice in writing to the other Party in accordance with clause 57.6.

SECTION J - INDEMNITIES, LIABILITY AND INSURANCE

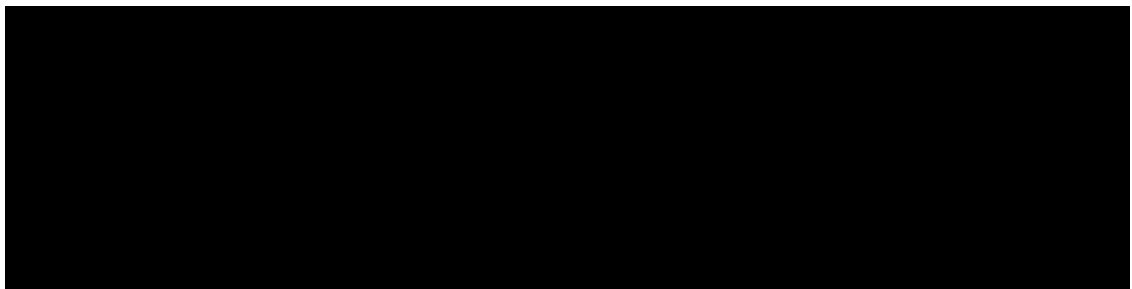
52 IPR indemnity

- 52.1 The Contractor shall at all times, during and after the Term, fully indemnify the Authority and keep the Authority indemnified from and against all claims, proceedings, actions, losses, damages, costs or expenses and other liabilities (including legal fees and other professional costs and expenses) incurred by, awarded against or agreed to be paid by the Authority arising from an IPR Claim.
- 52.2 The Authority agrees that:
- 52.2.1 it will notify the Contractor in writing of any IPR Claim;
 - 52.2.2 it will allow the Contractor to conduct all negotiations and proceedings and will provide the Contractor with such reasonable assistance required by the Contractor, each at the Contractor's cost, regarding the IPR Claim; and
 - 52.2.3 it will not, without first consulting with the Contractor, make an admission relating to the IPR Claim.

- 52.3 The Contractor shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute.
- 52.4 The Contractor shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 52.5 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor may, at its own expense and sole option, either:
- 52.5.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - 52.5.2 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 ICT Environment;
 - (iii) there is no additional cost to the Authority; and
 - (iv) the terms of the Agreement shall apply to the replaced or modified Services.
- 52.6 If the Contractor elects to modify or replace an item pursuant to clause 52.5.2 or to procure a licence in accordance with clause 52.5.1, but this has not avoided or resolved the IPR Claim, then the Authority may terminate this Agreement by written notice with immediate effect and, without prejudice to the indemnity set out in clause 52.1, the Contractor 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;
- 52.7 The provisions of clauses 52.1 to 52.6 (inclusive) shall not apply in respect of any IPR Claim caused by:
- 52.7.1 any use by or on behalf of the Authority of the Software, or the use of the Authority Software by or on behalf of the Contractor, in either case in combination with any item not supplied pursuant to this Agreement; or
 - 52.7.2 the use by the Authority of the Software, or the use of the Authority Software by the Contractor, in either case in a manner not reasonably to be inferred from the Services Description or the provisions of this Agreement.

53 Indemnities

53.1

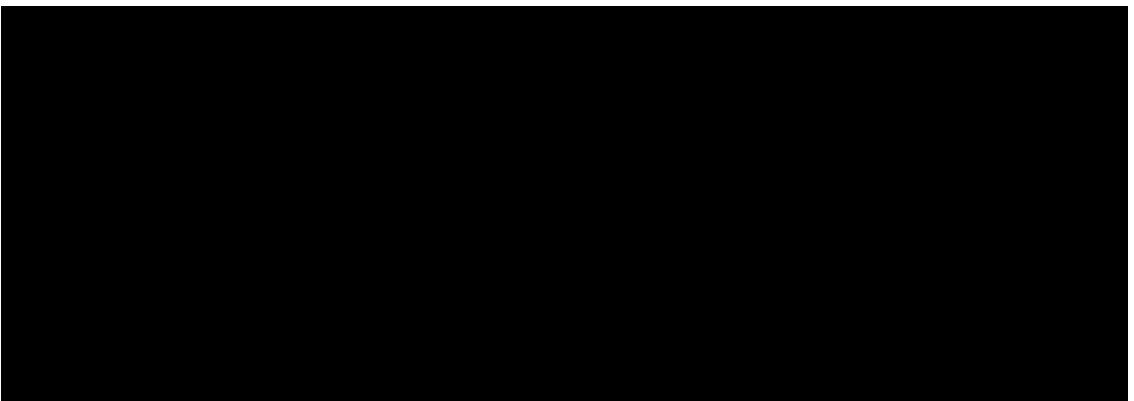


53.2



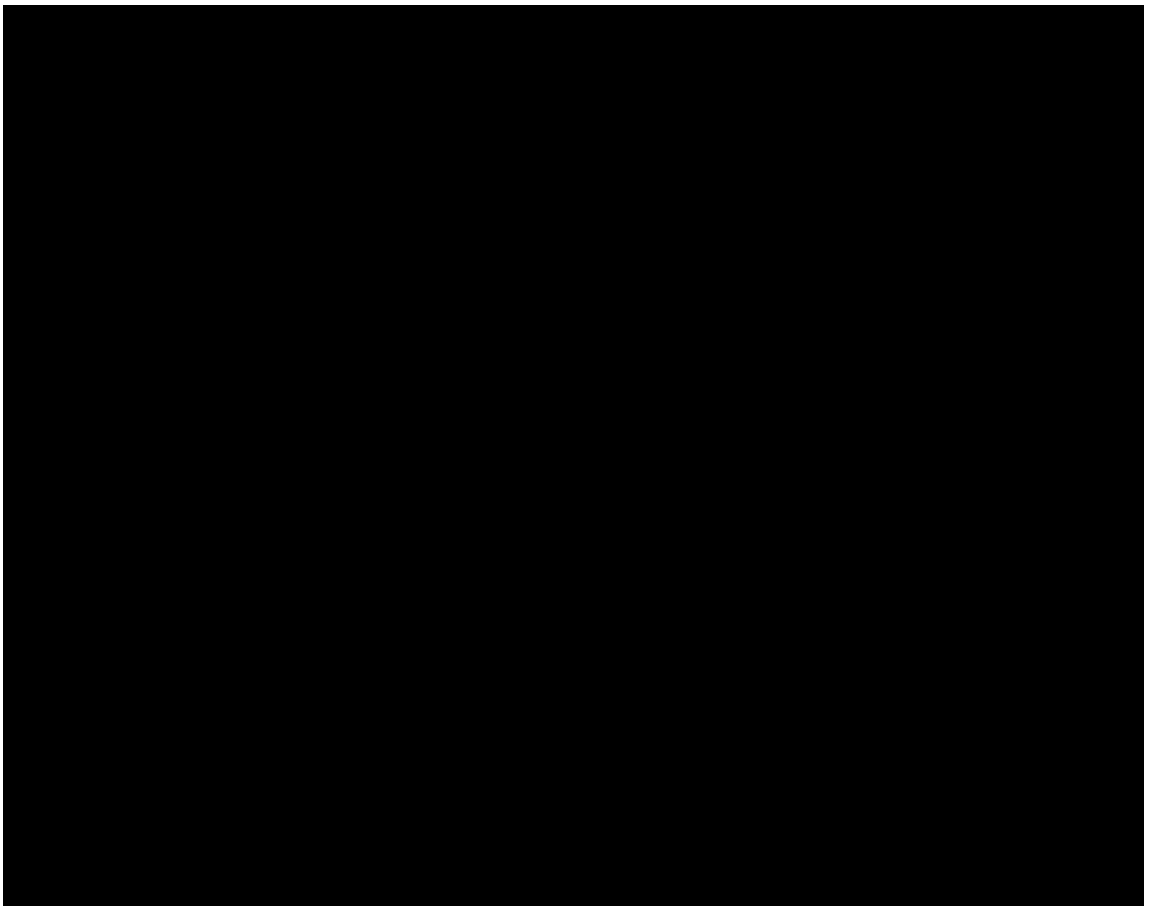
54 Limitations on liability

54.1



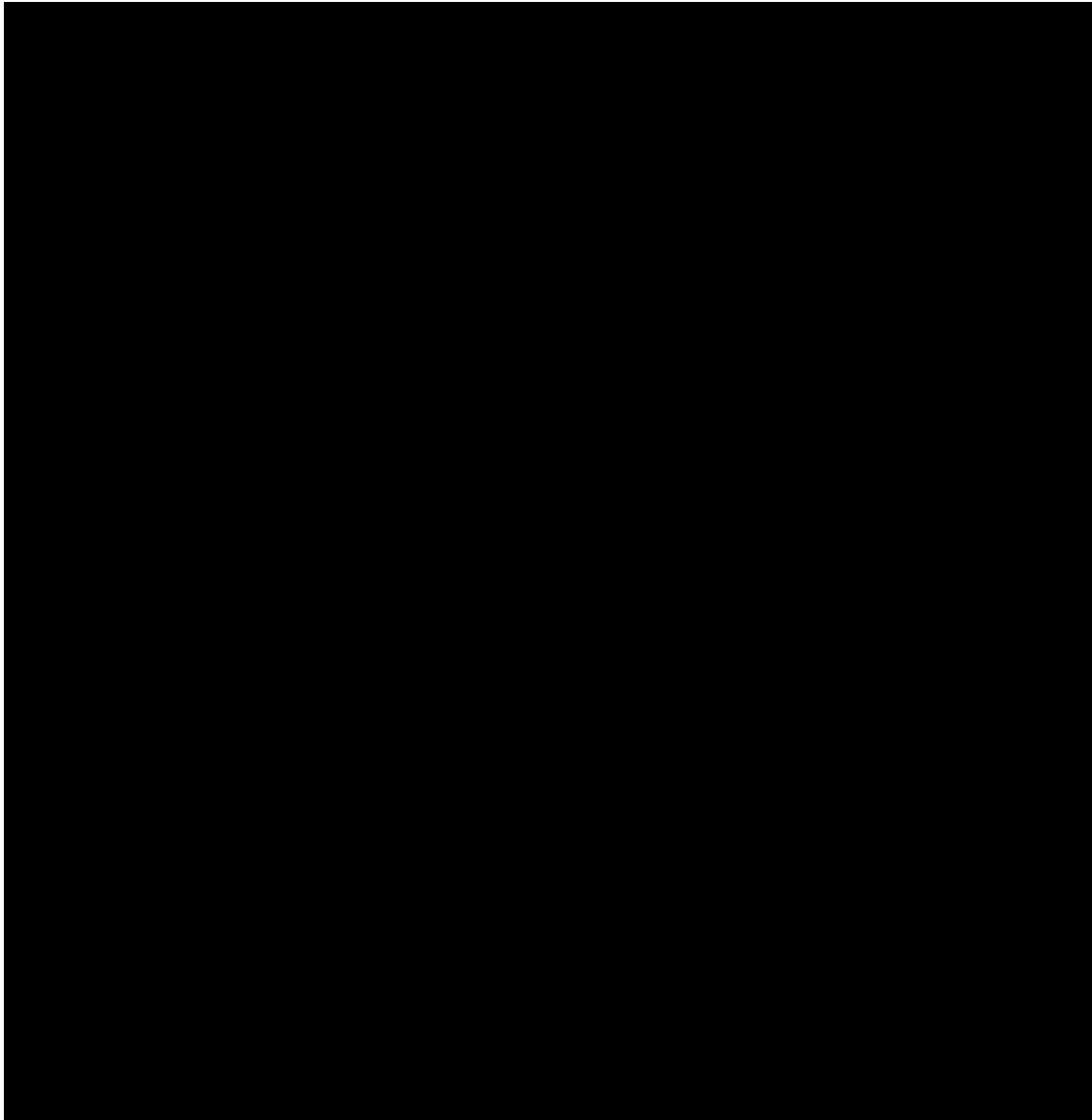
Financial Limits

54.2





54.3



54.4

54.5

54.6

54.7

55 Insurance

- 55.1 The Contractor shall take out and maintain or procure the maintenance of the Insurances to provide a level of cover for each and every risk of the Contractor under this Agreement in accordance with the provisions of schedule 2.6 (Insurance Requirements).
- 55.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement. It shall be the responsibility of the Contractor to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in clause 54 of this Agreement.

SECTION K - TERM, TERMINATION AND EXIT MANAGEMENT

56 Term

- 56.1 This Agreement will begin on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with this Agreement, will terminate at:
- 56.1.1 the end of the Initial Term; or
- 56.1.2 if the Authority elects to extend the Initial Term, at the end of the Extension Period.
- 56.2 The Authority may extend the Initial Term as follows:
- 56.2.1 by service on the Contractor of not less than twelve (12) months' written notice to expire on or before the last day of the Initial Term; and
- 56.2.2 the Extension Period shall not exceed a period which, when added to the Initial Term, would cause this Agreement to expire on a date later than the tenth anniversary of the Effective Date.
- 56.3 For avoidance of doubt, the terms of this Agreement shall not be varied due to or as a result of the Authority exercising its rights under clause 56.2, except as agreed between the parties in accordance with the Change Control Procedure.

57 Termination rights

- 57.1 Termination for Cause by the Authority
- 57.1.1 The Authority may terminate this Agreement by serving a Termination Notice on the Contractor, such termination taking effect immediately or on such date as

specified in the Termination Notice, if one or more of the circumstances set out in clause 57.1.4 exist.

- 57.1.2 Subject to clause 57.1.3, where a Default is capable of remedy the Parties shall follow the Remedial Plan Process provided that if the Remedial Plan Process fails then termination shall occur on the last day of the period specified by the Authority in its Termination Notice served in accordance with the Remedial Plan Process.
- 57.1.3 The Parties shall not follow the Remedial Plan Process where the Contractor has already failed to resolve the relevant Default in accordance with a Correction Plan pursuant to clause 6 (Implementation Delays - General Provisions) or 11 (Service Levels).
- 57.1.4 The circumstances giving rise to the Authority's right to terminate are:
- (i) the Contractor is in Default which it has failed to remedy in accordance with the Remedial Plan Process; or
 - (ii) the Contractor commits a Material Default of this Agreement which is irremediable;
 - (iii) the Contractor's failure to:
 - (A) meet any conditions required under clause 2.1 by the relevant date in accordance with clause 2.2 and:
 - 1) the Contractor does not submit or resubmit a Correction Plan for approval within the timescales required or at all; or
 - 2) the Authority acting reasonably does not approve the proposed Correction Plan on the second occasion of seeking approval; or
 - (B) Achieve a Milestone by its associated Milestone Date and comply with a Correction Plan for a failure to Achieve a Milestone because;
 - 1) the Contractor does not submit or resubmit a Correction Plan for approval within the timescales required or at all; or
 - 2) the Authority acting reasonably does not approve the proposed Correction Plan on the second occasion of seeking approval; or
 - (C) comply with a Correction Plan relating to a Critical Service Failure because:
 - 1) the Contractor does not submit or resubmit a Correction Plan for approval within the timescales required or at all; or

- 2) the Authority acting reasonably does not approve the proposed Correction Plan on the second occasion of seeking approval; or
- (D) achieve ATP by the relevant date set out in clause 5.5; or
- (E) achieve CPP by the relevant date set out in clause 5.6.
- (iv) pursuant to:
 - (A) clause 52.6 (where a modification or replacement of an item pursuant to clause 52.5.2 or where procuring a licence in accordance with clause 52.5.1 has not avoided or resolved an IPR Claim); or
 - (B) clause 66.1 (Prevention of Corruption);
- (v) the Contractor is in Material Default of:
 - (A) clause 42 (Protection of Personal Data);
 - (B) clause 43 (Freedom of Information);
 - (C) clause 44 (Confidentiality); or
 - (D) the security requirements set out in schedule 2.1 (Services Description) or the Security Policy;
- (vi) the Contractor's level of performance constitutes a Critical Service Failure as defined by Schedule 2.2;
- (vii) an Insolvency Event affecting the Contractor occurs;
- (viii) in respect of a Financial Distress Event in accordance with the provisions of paragraph 3.1 of schedule 7.4 (Financial Distress);
- (ix) as a result of the Contractor's Default the Authority suffers damages that exceed the aggregate value of liability caps as set out in clause 53 (Limitations on Liability);
- (x) not used
- (xi) the occurrence of:
 - (A) any breach; or
 - (B) any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would constitute an event of breach,

which is continuing, unremedied and unwaived, under or in connection with any document or arrangement relating to any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) of the Contractor in respect of money that has been borrowed

exclusively for the purposes of financing the provision of the Services by the Contractor;

- (xii) the Contractor committing a Default (other than as a consequence of a Default by the Authority) which results in the criminal investigation, prosecution and conviction of the Contractor or any Sub-contractor under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this clause 57.1.4(xii) the Authority shall:
 - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (B) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (xiii) there has been a disaster and the Contractor has not acted in accordance with its obligations under the BCDR Plan and such failure to act is in itself a Material Default or the result of such failure to act has a material adverse impact on the Authority; or
- (xiv) the Contractor makes any public announcement or a director of the board of directors of the Contractor advises an officer of the Authority that the Contractor is no longer going to continue to develop or to offer the provision of services similar to the Services.

57.2 Termination for Convenience by the Authority

- 57.2.1 The Authority may terminate this Agreement for convenience at any time on serving a Termination Notice on the Contractor such termination taking effect immediately or on such date as specified in the notice. The amount of notice given affects the payments that the Authority is obliged to make as a consequence of termination and this is dealt with in clause 60 (Payments Made on Termination).

57.3 Termination for Change of Control

- 57.3.1 The Authority may terminate this Agreement by serving a Termination Notice on the Contractor, such termination taking effect immediately or on such date as specified in the notice, without penalty if there is a Change of Control except where the Authority:
 - (i) has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) has not served its notice within six 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.
- 57.3.2 The Contractor shall notify the Authority in writing within one month of any Change of Control taking place.

57.4 Partial Termination

- 57.4.1 Subject to the provisions of clauses 57.4.3 and 57.4.4 the Authority may, by serving a Termination Notice on the Contractor, such termination taking effect immediately or on such date as specified in the Termination Notice, require the Partial Termination of any part of the Services on the occurrence, in relation to that part, of a Material Default by the Contractor, where the Material Default is not capable of remedy or, if the Material Default is capable of remedy, the Material Default has not been remedied in accordance with the Remedial Plan Process.
- 57.4.2 The Contractor shall return to the Authority on demand if, and to the extent it so requires, the aggregate sum of all Reclaimable Milestone Payments which relate to any part of the Services partially terminated pursuant to clause 57.4.1 (Partial Termination) prior to the Contract Performance Point.
- 57.4.3 On receipt of the Authority's notice of Partial Termination, the Contractor may respond to the Authority in writing within the notice period provided for in clause 57.4.1 as follows:
- (i) accept the Partial Termination of this Agreement; or
 - (ii) reject the Partial Termination of this Agreement.
- 57.4.4 If the Contractor rejects the Partial Termination the Authority may, in its sole and absolute discretion and within one month of receiving the Contractor's election under clause 57.4.3(ii), terminate the whole Agreement.
- 57.4.5 The Parties shall agree the effect of any Change made necessary to the Agreement by the Partial Termination, including the effect the Partial Termination may have on any other Services and the Charges, in accordance with the Change Control Procedure, provided that:
- (i) the Contractor shall not be entitled to an increase in the charges if the Partial Termination arises pursuant to clause 57.4.1; and
 - (ii) any increase to the Charges (if any) shall not be unreasonable and in any event shall be calculated in accordance with the Contractor's financial model in schedule 7.5 (Financial Model); and
 - (iii) the Contractor shall not be entitled to reject the Change.

57.5 Termination by the Contractor

- 57.5.1 The Contractor may terminate this Agreement only if the Authority is in Material Default of its obligation to pay undisputed Charges by giving the Authority 90 days written notice specifying the Material Default and requiring its remedy. The Contractor's right of termination under this clause 57.5 shall not apply to non-payment of the Charges by the Authority where such non-payment is due to the Authority exercising its rights under clause 19 (Recovery of Sums Due).
- 57.5.2 The Contractor shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

57.6 Termination for Continuing Force Majeure Event

57.6.1 Either Party may, by serving a Termination Notice on the other Party, require the Partial Termination of any part of the Services on the occurrence in relation to that part, or terminate this Agreement if:

- (i) a Force Majeure Event occurs which affects all or a substantial part of the Services for a continuous period of more than 90 days; or
- (ii) a Force Majeure Event endures for a continuous period of more than 120 days.

such termination taking effect immediately or on such date as specified in the Termination Notice.

58 Remedial plan process

58.1 Subject to clause 57.1.3 or 57.4.1, if the Contractor commits a Material Default and the Material Default is capable of remedy, the Authority may not terminate this Agreement in whole or in part without first operating the Remedial Plan Process.

58.2 The Remedial Plan Process is as follows:

58.2.1 The Authority notifies the Contractor that it considers that the Contractor is in Material Default and that it requires a Remedial Plan. The notice may specify the matters complained of in outline but must contain sufficient detail so that it is reasonably clear what the Contractor has to remedy.

58.2.2 The Contractor shall serve a draft Remedial Plan within 10 Working Days (or any other period agreed by the Parties) even if the Contractor disputes that it is responsible for the matters complained of.

58.2.3 If the Authority considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Escalation Process.

58.2.4 If despite the measures taken under clause 58.2.3 a Remedial Plan cannot be agreed within 10 Working Days of the date of submission of the draft remedial plan then the Authority may elect to end the Remedial Plan Process at the end of the escalation period set out in the Dispute Resolution Procedure and/or terminate this Agreement by serve a Termination Notice which will take effect on such date as specified in the Termination Notice, unless the Contractor remedies the Material Default within a period specified in the Termination Notice which shall not be less than 20 Working Days from the date on which the Termination Notice is sent to the Contractor.

58.2.5 If a Remedial Plan is agreed between the Parties but the Contractor fails to implement the Remedial Plan the Authority may either give the Contractor a further opportunity to resume full implementation of the Remedial Plan or escalate any issues arising out of the failure to implement the Remedial Plan using the Escalation Process or exercise its rights of step-in under clause 62 (Step-In Rights).

58.2.6 If the reasons for the Contractor's failure to implement the Remedial Plan have not been resolved despite the use of the Escalation Process in accordance with

clauses 58.2.3 or 58.2.5, and the Contractor has not otherwise remedied the Material Default, then the Authority may serve a Termination Notice and the Agreement shall terminate on the last day of the period specified by the Authority in its notice, which shall not be less than 20 Working Days from the date on which the Termination Notice is sent to the Contractor.

- 58.2.7 The Authority shall not be obliged to follow the Remedial Plan Process if a Remedial Plan has been implemented but the Contractor has failed to remedy the Material Default by those means or if there is a repetition of substantially the same Material Default within a period of three months following the conclusion of the Remedial Plan. In either case the Authority may serve a Termination Notice and the Agreement shall terminate on the last day of the period specified by the Authority in its notice, which shall not be less than 20 Working Days from the date on which the Termination Notice is sent to the Contractor, unless the Contractor remedies the Material Default within that period.

59 Consequences of expiry or termination

- 59.1 Subject to any obligation to provide the Services in accordance with the Exit Plan following the service of a Termination Notice for any reason the Contractor shall continue to be under an obligation to provide the Services to the required Service Levels and to ensure that there is no degradation in the standards of the Services until the date of the termination specified in the Termination Notice.
- 59.2 The rights of termination in this Agreement are in addition to any other rights of the Authority under this Agreement to any claim, right of action or remedy of either Party which has accrued or which subsequently accrues and its exercise shall be without prejudice to any claim, remedy or right of action that the Authority may have in relation to this Agreement and any other right or remedy which the Authority may have to claim the amount of loss or damage suffered by the Authority on account of the acts or omissions of the Contractor (or to take any action other than termination of this Agreement).
- 59.3 Unless otherwise stipulated by the Authority in its Termination Notice, any Services that have not commenced at the date of the Authority's Termination Notice shall be cancelled automatically and irrevocably.
- 59.4 In the event of termination or expiry, the Contractor shall:
- 59.4.1 repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination;
 - 59.4.2 comply with its obligations contained in the Exit Plan; and
 - 59.4.3 subject to the content of the Exit Plan, cease to use the Authority Data and, at the direction of the Authority provide the Authority and/or the Replacement Contractor with a complete and uncorrupted version of the Authority Data in electronic form in the formats and on media agreed with the Authority and/or the Replacement Contractor or as specified in the Information Assets Register; and
 - 59.4.4 on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Authority Data, excepting a copy of any such Authority Data which is also a record as set out in schedule 8.4 (Records Provisions) and promptly provide written confirmation to the Authority that the Authority Data has been destroyed; and

59.4.5 provide access during normal working hours to the Authority and/or the Replacement Contractor for up to 12 months after expiry or termination to:

- (i) such information relating to the Services as remains in the possession or control of the Contractor; and
- (ii) such members of the Contractor Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Contractor, provided that the Authority and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually incurred in responding to requests for access under this clause 59.4.5.

59.5 The provisions of clauses 25 (Audits), 34 (Non-Solicitation), 35 (Intellectual Property Rights), 36 (Licences Granted by the Contractor), 42 (Protection of Personal Data), 43 (Freedom of Information), 44 (Confidentiality), 52 (IPR Indemnity), 53 (Indemnities) 54 (Limitations on Liability), 59 (Consequences of Termination), 60 (Payments made on Termination), 68 (Severance), 70 (Entire Agreement), 71 (Third Party Rights) and 73 (Governing Law and Jurisdiction), and the provisions of schedules 1 (Definitions), 7.1 (Charges), 9.1 (Staff Transfer) and 8.5 (Exit Management) shall survive the termination or expiry of this Agreement.

60 Payments made on termination

60.1 Save for any payments in respect of any assets made in accordance with schedule 8.5 (Exit Management), the Authority shall not make a payment to the Contractor:

- 60.1.1 on the expiry of the Term;
- 60.1.2 for Termination for Cause by the Authority in accordance with clause 57.1 or for Partial Termination in accordance with clause 57.4.1; or
- 60.1.3 for termination for Change of Control in accordance with clause 57.3.1 ; or
- 60.1.4 for termination for continuing Force Majeure Event in accordance with clause 57.6;

60.2 The Authority shall pay the Contractor the Termination Payment if this Agreement is terminated by the Authority pursuant to clause 57.2 (Termination for Convenience by Authority) or by the Contractor pursuant to clause 57.5 (Termination by the Contractor).

60.3 If:

- 60.3.1 the notice given by the Authority pursuant to clause 57.3 (Termination for Convenience by Authority) is less than 6 months; or
- 60.3.2 the period between the date of the Material Default by the Authority referred to in clause 57.5 (Termination by the Contractor) and the date on which termination pursuant to clause 57.5 (Termination by the Contractor) takes effect is less than 12 months,

the Authority shall also make the Compensation Payment calculated in accordance with schedule 7.2 (Payments on Termination).

- 60.4 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement pursuant to clause 57.6 (Termination for Continuing Force Majeure Event).
- 60.5 The Compensation Payment and/or the Termination Payment shall be the Contractor's sole remedy for the Authority's termination of this Agreement in accordance with clause 57.2 (Termination for Convenience by the Authority) or the Contractor's termination of this Agreement in accordance with clause 57.5 (Termination by the Contractor).

Payments made by the Contractor

- 60.6 The Contractor shall return to the Authority on demand (if, and to the extent the Authority requires) the aggregate sum of all Reclaimable Milestone Payments in the event this Agreement is terminated by the Authority pursuant to clause 57.1 (Termination for Cause by the Authority), clause 57.4 (Partial Termination) or clause 57.3 (Termination for Change of Control) prior to the Contract Performance Point.

61 Exit management

- 61.1 The Authority and the Contractor shall comply with the Exit Management requirements set out in schedule 8.5 (Exit Management) and any current Exit Plan. Notwithstanding any other provision of this Agreement the Authority shall have the rights set out in clause 61.2:
- 61.1.1 if an Insolvency Event occurs, the Authority's rights under clause 61.2 shall be exercisable by the Authority at any time before the winding up of the Contractor or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;
- 61.1.2 in the event of termination of this Agreement for any reason; and/or
- 61.1.3 upon the expiry of this Agreement.
- 61.2 The Contractor shall not, without the Authority's consent, encumber any Contractor Equipment in any way which would require the consent of a third party to the exercise by the Authority of its rights under schedule 8.5 (Exit Management) or which would in some other way restrict the exercise by the Authority of its rights under that schedule. For the purposes of this clause 61.2 "encumber" shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement or which otherwise restricts the Contractor's ability to use and deal with the relevant item of Contractor Equipment.
- 61.3 Unless the Authority otherwise requires, during the time between service of a Termination Notice of this Agreement, or for Partial Termination in accordance with clause 57.4, and such termination or exercise taking effect, the Contractor shall:
- 61.3.1 cancel all capital and recurring cost commitments in connection with the Implementation Plan and/or the provision of Services on the most cost-effective terms;
- 61.3.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Authority whether such contracts are required to be transferred to the Authority or Replacement Contractor instead;

- 61.3.3 reduce labour costs by the redeployment or release of Contractor Personnel other than Key Personnel to the extent possible in the circumstances; and
 - 61.3.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in clauses 61.3.1 to 61.3.3 (inclusive).
 - 61.3.5 take all steps which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Contractor may incur as a result of the termination.
- 61.4 If the cost of any Contractor Equipment has not been fully paid for through Milestone Payments or otherwise amortised at the time of expiry or termination of this Agreement, the Authority shall pay the Contractor the Net Book Value of any Contractor Equipment that the Authority elects to have transferred to it in accordance with schedule 8.5 (Exit Management).
- 61.5 If the Contractor does not fulfil its obligations in accordance with clause 61.3, the Authority shall not pay any sums in excess of those which the Authority would have paid had such action been taken.

62 Step-in rights

- 62.1 The Authority may take action under this clause in the following circumstances:
- 62.1.1 there is a Default entitling the Authority to terminate in accordance with clause 57.1 (Termination for Cause by the Authority);
 - 62.1.2 there is a Material Default by the Contractor in performance of the Services or any part of the Services;
 - 62.1.3 there is a Delay that has or the Authority reasonably anticipates will result in the Contractor's failure to Achieve a Milestone in respect of Authority to Proceed or CPP by its respective Milestone Date;
 - 62.1.4 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
 - 62.1.5 the Contractor has accrued 15 Service Credits in any period of 6 consecutive months;
 - 62.1.6 the Contractor has accrued Delay Payments in excess of 20% of the applicable Service Charges in each Contract Year;
 - 62.1.7 where the Contractor is not in breach of its obligations under this Agreement but the Authority considers that the circumstances constitute an emergency;
 - 62.1.8 where a Regulatory Body has advised the Authority that the exercise by the Authority of its rights under this clause is necessary;
 - 62.1.9 because a serious risk exists to the health or safety of persons, property or the environment;
 - 62.1.10 to discharge a statutory duty; and/or
 - 62.1.11 on the occurrence of an Insolvency Event in respect of the Contractor.

Action To Be Taken Prior To Exercise Of The Right Of Step-in

- 62.2 Before the Authority exercises its right of step-in under this clause 62 it shall permit the Contractor the opportunity to demonstrate to the Authority's reasonable satisfaction within 20 Working Days that the Contractor is still able to provide the Services in accordance with the terms of this Agreement and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.
- 62.3 If the Authority is not satisfied with the Contractor's demonstration pursuant to clause 62.2, the Authority may:
- 62.3.1 where the Authority considers it expedient to do so, require the Contractor by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Authority's right to step-in;
 - 62.3.2 appoint any person to work with the Contractor in performing all or a part of the Services (including those provided by any Sub-contractor); or
 - 62.3.3 take the steps that the Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-contractor).
- 62.4 The Contractor shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of clause 62.3.2, and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.

Exercise of the Right of Step-in

- 62.5 If the Contractor:
- 62.5.1 fails to confirm within 10 Working Days of a notice served pursuant to clause 62.3.1 that it is willing to comply with that notice; or
 - 62.5.2 fails to work with a person appointed in accordance with clause 62.3.2; or
 - 62.5.3 fails to take the steps notified to it by the Authority pursuant to clause 62.3.3,
- then the Authority may take action under this clause either through itself or with the assistance of third party contractors, provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to clause 44 (Confidentiality).
- 62.6 If the Authority takes action pursuant to clause 62.5, the Authority shall serve notice ("Step-in Notice") on the Contractor. The Step-in Notice shall set out the following:
- 62.6.1 the action the Authority wishes to take and in particular the Services it wishes to control;
 - 62.6.2 the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Contractor's Default;
 - 62.6.3 the date it wishes to commence the action;
 - 62.6.4 the time period which it believes will be necessary for the action;
 - 62.6.5 whether the Authority will require access to the Contractor's premises and/or the Sites;

- 62.6.6 to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period the action is being taken.
- 62.7 Following service of a Step-in Notice, the Authority shall:
- 62.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "Required Action");
 - 62.7.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 62.7.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide any Services in relation to which the Authority is not assuming control; and
 - 62.7.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this clause.
- 62.8 For so long as and to the extent that the Required Action is continuing, then:
- 62.8.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 62.8.2 subject to clause 62.9, the Authority shall pay to the Contractor the Charges after the deduction of any applicable Service Credits, Delay Payments and the Authority's costs of taking the Required Action.
- 62.9 If the Required Action results in:
- 62.9.1 the degradation of any Services not subject to the Required Action; or
 - 62.9.2 the non-Achievement of a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Contractor shall be entitled to an agreed adjustment of the Charges, provided that the Contractor can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-Achievement.
- 62.10 Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Contractor ("Step-Out Notice"), specifying:
- 62.10.1 the Required Action it has actually taken; and
 - 62.10.2 the date on which the Authority plans to end the Required Action ("Step-Out Date") subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 62.11.
- 62.11 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan ("Step-Out Plan") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

- 62.12 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 62.13 The Contractor shall bear its own costs in connection with any step-in by the Authority under this clause 62, provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- 62.13.1 clauses 62.1.4 or 62.1.7; or
 - 62.13.2 clauses 62.1.8, 62.1.9 and 62.1.10 (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of a Contractor's Default).

SECTION L - MISCELLANEOUS AND GOVERNING LAW

63 Assignment and novation

- 63.1 Subject to clause 24, the Contractor shall not assign, transfer, charge, otherwise encumber, deal in any manner, novate subcontract or otherwise dispose of or create any trust in relation to this Agreement or any or all of its rights, benefits, interests and obligations under this Agreement (or any part) without the prior written consent of the Authority.
- 63.2 Notwithstanding clause 63.1, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Contractor under the Agreement. Any assignment under this clause 63.2 shall be subject to:
- 63.2.1 deduction of any sums in respect of which the Authority exercises its right of recovery under clause 18 (Recovery of Sums Due); and
 - 63.2.2 all related rights of the Authority under this Agreement in relation to the recovery of sums due but unpaid; and
 - 63.2.3 the Authority receiving notification under clauses 63.5.
- 63.3 In the event that the Contractor assigns the right to receive the Charges under clause 63.2 the Contractor or the Assignee shall:
- 63.3.1 notify the Authority in writing of the assignment and the date upon which the assignment becomes effective;
 - 63.3.2 ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- 63.4 The provisions of clause 19 (Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended.
- 63.5 The Authority may:
- 63.5.1 assign, transfer, charge, otherwise encumber, deal in any manner, novate subcontract or otherwise dispose of this Agreement or any associated third party licences or any or all of its rights, benefits, interests and obligations under this

Agreement and any associated third party licences (or any part) to any other Contracting Authority; or

- 63.5.2 novate this Agreement and any associated third party licences or any or all of its rights, benefits, interests and obligations under this Agreement and any associated third party licences (or any part) to any other body or person which substantially performs any of the functions that previously had been performed by the Authority. If this transfer increases the burden of the Contractor's obligations under this Agreement the Contractor shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Change Control Procedure.
- 63.6 A change in the legal status of the Authority shall not (subject to clause 63.3) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 63.7 If this Agreement is novated to a body which is not a Contracting Authority, or a body which is not a Contracting Authority succeeds the Authority, (both "transferee" in the rest of this clause):
- 63.7.1 the Contractor shall be entitled to exercise a right of termination if:
- (i) the transferee suffers an Insolvency Event; or
 - (ii) the transferee commits:
 - (A) a Material Default which Material Default, subject to the exercise of a process equivalent to the Remedial Plan Process, is not remedied within 30 days after notice of Material Default from the Contractor to the transferee requiring its remedy; or
 - (B) a Material Default which is irremediable;
- 63.7.2 the transferee may only assign, transfer, charge, otherwise encumber, deal in any manner, novate subcontract or otherwise dispose of this Agreement or its rights, benefits, interests and obligations under this Agreement (or any part) with the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed); and
- 63.7.3 the following clauses shall be varied from the date of the novation or the date of the Authority's change of status (as appropriate) as if this Agreement had been amended by the Parties in accordance with the Change Control Procedure:
- (i) the definition of "Crown Body" in schedule 1 shall be deleted and clause 44.7.1 (Confidentiality) shall be deleted.
- 63.8 The Contract Management Board shall be notified of, but shall not be required to pass any resolution on, any assignment, transfer, charge, encumbrance, dealing, novation, subcontracting or disposal by the Contractor in accordance with this clause 63. The Contractor shall provide the Authority with all relevant information as the Authority may reasonably request.

64 Waiver and cumulative remedies

- 64.1 The terms of this Agreement and the rights and remedies provided by this Agreement may be waived only in writing by the relevant Authority Contact Manager or Contractor Contract Manager in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to and such waiver is communicated to the other Party in writing in accordance with clause 72 (Notices).
- 64.2 Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's other rights and remedies. Any failure to or delay of either Party to insist upon strict performance of any provision of this Agreement, or failure to enforce or exercise or any delay in enforcing or exercising for any period of time a right or remedy by either Party does not and shall not constitute and shall not be construed as a waiver of that right or remedy or of any other rights or remedies or affect the right to enforce or exercise it and shall not cause a diminution of the obligations established by this Agreement.
- 64.3 A waiver by either Party of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.
- 64.4 The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Agreement.

65 Relationship of the parties

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

66 Prevention of corruption

- 66.1 The Contractor:
- 66.1.1 shall not, and shall procure that all Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- 66.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.
- 66.2 The Contractor shall:
- 66.2.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
- 66.2.2 within 20 Working Days of the Effective Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the

Contractor) compliance with this clause 66 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 66.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 66.4 If any breach of clause 66.1 is suspected or known, the Contractor must notify the Authority immediately.
- 66.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clause 66.1, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for seven years following the expiry or termination of this Agreement.
- 66.6 The Authority may terminate this Agreement by serving a Termination Notice to the Contractor such termination taking effect immediately or on such date as specified in the Termination Notice if the Contractor, Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 66.1.
- 66.7 Any Termination Notice under clause 66.6 must specify:
- 66.7.1 the nature of the Prohibited Act;
 - 66.7.2 the identity of the Party whom the Authority believes has committed the Prohibited Act; and
 - 66.7.3 the date on which this Agreement will terminate.
- 66.8 Despite clause 28 (Disputes), any dispute relating to:
- 66.8.1 the interpretation of clause 66; or
 - 66.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- 66.9 Any termination under clause 66.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

67 Publicity and branding

- 67.1 The Contractor shall not:
- 67.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
 - 67.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;
- without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

- 67.2 The Authority shall be entitled to publicise the Agreement in accordance with any legal obligation upon the Authority, including any examination of the Agreement by the Auditor.
- 67.3 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Contractor 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.
- 67.4 The Contractor shall not do anything or permit to cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

68 Severance

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, illegal or unenforceable, the Contractor and the Authority shall immediately commence good faith negotiations to remedy that invalidity, illegality or unenforceability.

69 Further assurances

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

70 Entire agreement

- 70.1 This Agreement, together with the documents referred to in it and attached to it, constitutes the entire agreement and understanding between the Parties and supersedes, cancels and nullifies all prior and contemporaneous proposals, understandings, representations or any previous agreement between the Parties whether oral or written, in relation to the subject matter hereof.
- 70.2 Each of the Parties acknowledges and agrees that no representations, statements, warranties or undertakings were made prior to the entering into of this Agreement and the documents referred to in it and attached to it and that in entering into this Agreement and the documents referred to in it and attached to it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a Party to this Agreement or not) other than as expressly set out in this Agreement.
- 70.3 Nothing in this Agreement shall operate to exclude or limit any liability of either Party for fraud or fraudulent misrepresentation or any other liability that cannot be excluded or limited by law.
- 70.4 Nothing in this Agreement shall operate to exclude (but for avoidance of doubt this Agreement does limit) liability for fundamental misrepresentation including any misrepresentation as to its ability to perform its obligations under this Agreement.

71 Third party rights

- 71.1 Subject to paragraphs 15 and 37 of schedule 9.1 (Staff Transfer), a person who is not a Party to this Agreement has no right either expressly or impliedly, under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any

right or remedy of any person which exists or is available otherwise than pursuant to Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

- 71.2 No consent of any third party, including any third party with rights under paragraphs 15 and 37 of schedule 9.1 (Staff Transfer), is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Agreement or any one or more provisions of it notwithstanding any reliance on or indication of assent to any provision of this Agreement by such Party.

72 Notices

- 72.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by recorded delivery or registered post or by fax or by email (provided such email is confirmed by letter served recorded delivery or registered post) to the address and for the attention of the relevant Party notified for such purpose or to such other address as that Party may have stipulated in accordance with this clause.
- 72.2 A notice shall be deemed to have been received:
- 72.2.1 if delivered personally, at the time of delivery or, if delivered after 16.00 hours on the next Working Day;
 - 72.2.2 in the case of registered post or recorded delivery provided the relevant notice is not returned as undelivered, three Working Days from the date of posting;
 - 72.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day following the date of the transmission and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
 - 72.2.4 in the case of email, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within twenty four hours (24) of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by recorded delivery or registered post to the intended recipient.
- 72.3 For the avoidance of doubt, any notice or communication given under this Agreement shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

73 Governing law and jurisdiction

- 73.1 This Agreement and all non-contractual obligations arising out of or in connection to it shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute that arises in relation to this Agreement or arising out of or in connection with it. Each Party agrees to waive any objection to the English courts whether on the grounds of venue or on the grounds that the forum is not appropriate.

IN WITNESS of which this Agreement has been duly executed by the Parties.

SIGNED for and on behalf of Security Industry
Authority

SIGNED for and on behalf of British
Telecommunications plc

Signature.....

Name:

Position:

Date.....

Signature.....

Name:

Position.....

Date.....

**[SCHEDULES REDACTED
– FOI EXEMPT]**