

Computer Based Testing Framework Agreement

Schedule 15

Part A: Call-Off Terms

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CALL-OFF TERMS

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract the definitions set out in **Schedule 1** (Definitions) shall apply.
- 1.2 In this Contract, 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 Contract shall be dealt with in accordance with **clause 49** (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.
- 1.3 The headings in this Contract are for ease of reference only and shall not affect its interpretation.
- 1.4 References to clauses and Schedules are, unless otherwise provided, references to the clauses of and Schedules to this Contract.
- 1.5 Without prejudice to **clauses 9.4** and **13.2**, if there is any conflict between the clauses and the Schedules and/or any annexes to the Schedules and/or any conflict between the Schedules and/or between annexes to the Schedules and/or any other documents referred to in this Contract, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.5.1 the Framework Agreement;
 - 1.5.2 the Call-Off Form (except for the Contractor Solution);
 - 1.5.3 the clauses and **Schedule 1** (Definitions);
 - 1.5.4 the Services Description and **Schedule 2.2** (Service Levels);
 - 1.5.5 any other Schedules and their annexes;
 - 1.5.6 the Contractor Solution; and

- 1.5.7 any other document referred to in this Contract and any other document attached to this Contract.
- 1.6 Subject to the provisions of **clauses 5 to 8** (inclusive), neither party to this Contract shall be liable for any Default of its obligations under this Contract to the extent that such Default is caused by a failure or delay by the other party in performing its obligations under this Contract, 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.
- 1.7 Any obligation within this Contract to perform an action within a number of Working Days shall be construed as an obligation to perform that action by 17:00 hours United Kingdom time on the final Working Day of the relevant period.
- 1.8 Prompt and expedited performance of this Contract is important to the Customer Authority. In all cases therefore where the Contractor is obliged to take action, provide notice or complete a task under this Contract then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in this Contract. However, unless stated otherwise, time is not of the essence in this Contract.
- 1.9 In accordance with **clauses 46.7 and 46.8**, the Contractor acknowledges that certain obligations in the Framework Agreement are intended to benefit and may be enforced by the Customer Authority (including those clauses listed in clause 1.4 of the Framework Agreement). Accordingly, the Contractor agrees to comply and shall ensure and procure that its Sub-contractors comply with the requirements of such obligations in the context of this Contract.
- 1.10 Except where otherwise stated, any reference to "Direct Customers" in any clause, paragraph number, schedule, appendix or other document in this Contract shall be interpreted to mean any and all Customers.

2. DUE DILIGENCE

- 2.1 The Contractor acknowledges that it:
- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any Disclosed Data supplied to it by or on behalf of the Customer Authority;
- 2.1.2 has raised all relevant due diligence questions with the Customer Authority (or as part of the procurement of the Framework Agreement) before the Effective Date; and

- 2.1.3 has entered into this Contract in reliance on its own due diligence alone.
- 2.2 Unless agreed otherwise in writing with the Customer Authority, the Contractor shall not be relieved of its obligations and shall not be entitled to recover any additional costs or charges from the Customer Authority relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the Customer Authority Premises. The onus shall be on the Contractor to prove to the Customer Authority that any work to the Customer Authority Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Contractor shall not incur such additional costs or charges without obtaining the Customer Authority's prior written approval.
- 2.3 The Customer Authority do not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data. Neither the Customer Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 2.3.1 any inaccuracy, omission, unfitness for purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- 2.3.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.
- 2.4 The Contractor shall not be entitled to any additional payment nor to any increase in the Charges or be excused from any obligation or liability under this Contract by virtue of any matter referred to in **clauses 2.3.1** or **2.3.2**.
- 2.5 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure.

SECTION B – SERVICE IMPLEMENTATION

3. IMPLEMENTATION PLAN

- 3.1 The Contractor shall provide the Services and otherwise perform its obligations under this Contract in accordance with the Implementation Plan.
- 3.2 Where required by the Customer Authority, the Contractor shall develop a draft Detailed Implementation Plan based on the Outline Implementation Plan and deliver it to the Customer Authority within 3 (three) months of the Effective Date (or such other period as is agreed between the parties in the Call-Off Form) in accordance with paragraph 4 of Schedule 6.1 (Implementation Plan). The

Detailed Implementation Plan should be sufficiently detailed as is necessary to manage the implementation projects effectively. Once agreed with the Customer Authority (agreement not to be unreasonably delayed or withheld), the Contractor shall:

- 3.2.1 monitor its performance against the Implementation Plan;
- 3.2.2 report to the Customer Authority on such performance; and
- 3.2.3 keep the Detailed Implementation Plan under review as set out in paragraph 4.8 of Schedule 6.1 (Implementation).

3.3 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure. The Detailed Implementation Plan shall only be varied in accordance with the process set out in paragraph 4.8 of Schedule 6.1 (Implementation Plan).

3.4 Where implementation is taking place in a number of phases, the Customer Authority may request that the process of agreeing Detailed Implementation Plans under this **clause 3** takes place in phases and the Contractor shall comply with such request.

4. **TESTING**

4.1 When the Contractor has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing and the parties shall follow the applicable provisions of the Testing Procedures.

4.2 Each party shall bear its own costs in respect of the Testing Procedures. However, if a Milestone and/or Test does not Achieve the Test Success Criteria the Customer Authority shall be entitled to recover from the Contractor any reasonable additional costs it may incur as a direct result of further review or re-Testing to Achieve the Test Success Criteria. In such circumstances and without prejudice to **clause 5.7**, the Contractor shall bear all costs related to amending the Deliverables, re-performing the Services and re-submitting them for Testing.

4.3 If the Contractor successfully Achieves the requisite Tests, the Customer Authority shall issue a Milestone Achievement Certificate as soon as reasonably practical following such Achievement. Notwithstanding the issuing of any Milestone Achievement Certificate or Test Certificate, the Contractor shall remain solely responsible for ensuring that:

- 4.3.1 the Contractor Solution as designed and developed is and will continue to be suitable for the delivery of the Services;
- 4.3.2 the Software meets the requirements set out in **clause 47.2.5**;

- 4.3.3 the Services are implemented in accordance with this Contract; and
- 4.3.4 the Service Levels are achieved during the Operational Phase.
- 4.4 No rights of estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate or Test Certificate (or conditional Milestone Achievement Certificate pursuant to **clause 6.2.1** (Delays Due to Contractor Default)).
- 4.5 If the Contractor does not successfully Achieve any Test, the provisions of **clauses 5** (Implementation Delays - General Provisions), **6** (Delays Due to Contractor Default), **7** (Delays to Milestones due to Customer Authority Cause) and **8** (Delays Not Due to One Party) shall apply as appropriate.
- 5. **IMPLEMENTATION DELAYS - GENERAL PROVISIONS**
 - 5.1 If, at any time, for any reason and regardless of whose fault the Contractor considers the Delay to be, the Contractor becomes aware that it will not (or is unlikely to) Achieve any Milestone and/or Test by the Milestone Date it shall:
 - 5.1.1 immediately notify the Customer Authority in writing of the fact and likely length of the Delay (or likely Delay) and summarise the reasons for it;
 - 5.1.2 immediately take all remedial action that is reasonable to avoid or reduce so far as possible such Delay (or likely Delay) and the effects of such Delay (or likely Delay) on Achieving other Milestones and/or Tests;
 - 5.1.3 mitigate the impact on the Customer Authority of the Delay.
 - 5.2 Except in cases of emergency, before taking any remedial action the Contractor shall notify the Customer Authority in writing of its intended action and have regard to any comments the Customer Authority may make in respect of such intended action. Having regard to the Customer Authority's comments, or not doing so, shall not relieve the Contractor of any responsibility in respect of remedying any Delay.
 - 5.3 The Contractor shall, as soon as reasonably practicable and in any event not later than three (3) Working Days after the initial notification under **clause 5.1**, give the Customer Authority full details in writing of:
 - 5.3.1 the reasons and likely length of (if such length is different to that given under **clause 5.1.1**) for the Delay;
 - 5.3.2 the consequences of the Delay; and

- 5.3.3 if the Contractor claims that the Delay is due to an Customer Authority Cause, the reason for making that claim.
- 5.4 Whether the Delay is due to an Customer Authority Cause or not, the Contractor shall nevertheless comply with **clauses 5.1 to 5.3**.
- 5.5 Where the Contractor considers that a Delay is being caused or contributed to by an Customer Authority Cause the Customer Authority shall not be liable to compensate the Contractor for Delays to which **clauses 7 or 8** apply unless the Contractor has fulfilled its obligations set out in, and in accordance with, **clauses 5.1, 5.3 and 5.4**.
- 5.6 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

- 5.7 The Contractor shall submit a draft Correction Plan to the Customer Authority where:
- 5.7.1 it becomes aware that it will not Achieve a Milestone by the Milestone Date; or
- 5.7.2 it has failed to Achieve a Milestone by its Milestone Date, whether that failure arises because of:
- 5.7.2.1 a failure to submit any or all Deliverables in respect of that Milestone;
- 5.7.2.2 the failure of the Milestone successfully to complete or Achieve any Test; or
- 5.7.2.3 where there are no Tests in respect of the relevant Milestone, any non-conformance in respect of that Milestone.
- 5.8 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 Contract.
- 5.9 The draft Correction Plan shall be submitted to the Customer Authority for their approval as soon as possible and in any event not later than five (5) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) after the initial notification under **clause 5.1** or the issue of a Non-conformance Report.

- 5.10 The Customer Authority shall not withhold their approval of a draft Correction Plan unreasonably. If the Customer Authority do not approve the draft Correction Plan they shall inform the Contractor in writing of their reasons promptly following their 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 Customer Authority within two (2) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) of the rejection of the first draft.
- 5.11 The Contractor shall comply with its Correction Plan following its approval by the Customer Authority.
- 5.12 Approval and implementation of any Correction Plan shall not relieve the Contractor of any responsibility to Achieve Milestones and/or Tests by their agreed Milestone Date, or remedy any failure to do so, and no estoppel or waiver shall arise from any such Approval and/or implementation.

6. **DELAYS DUE TO CONTRACTOR DEFAULT**

- 6.1 If a Deliverable does not satisfy the Test Success Criteria and/or a Milestone is not Achieved due to the Contractor's Default, the Customer Authority shall issue a Non-conformance Report to the Contractor categorising the Test Issues as described in the 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 Customer Authority will then, without prejudice to any other right or remedy they may have, have the options set out in **clause 6.2**.
- 6.2 The Customer Authority may at its discretion (without waiving any rights in relation to the other options) choose to:
- 6.2.1 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
 - 6.2.2 if the Test Issue is a Material Test Issue, refuse to issue a conditional Milestone Achievement Certificate as specified in **clause 6.2.1** and escalate the matter in accordance with the Dispute Resolution Procedure and, if the matter is not resolved in accordance with the Dispute Resolution Procedure, exercise any right it may have under **clause 57.1** (Termination for Cause by the Customer Authority); and/or

- 6.2.3 require the payment of Delay Payments, which shall be payable by the Contractor on demand, where the Call-Off Form identifies that Delay Payments are payable in respect of the relevant Milestone. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is Achieved in accordance with the Correction Plan.
- 6.3 Where the Call-Off Form does not identify the payment of Delay Payments in respect of a Milestone the Customer Authority reserves its rights and remedies at law and under this Contract. Otherwise Delay Payments shall be the Customer Authority's exclusive financial remedy in respect of failure to Achieve the relevant Milestone Date except where:
- 6.3.1 the Customer Authority is otherwise entitled to or does terminate this Contract for the Contractor's Default or for a Force Majeure Event; or
- 6.3.2 the failure to Achieve the Milestone exceeds the shorter of:
- 6.3.2.1 the period commencing on the relevant Milestone Date and ending on the Fail Date associated with that Milestone as set out in the Implementation Plan; and
- 6.3.2.2 the period of three (3) months after the relevant Milestone Date.
- 6.4 Where an event which has caused a Delay has also given rise to other cause(s) of action for the Customer Authority or to other rights under this Contract **clause 6.3** does not affect the Customer Authority's rights in respect of such cause of action.
- 6.5 Where the Customer Authority issues a conditional Milestone Achievement Certificate as specified in **clause 6.2.1**, it can choose to (but are not obliged to) revise the failed Milestone Date and any subsequent Milestone Date.
- 6.6 Any Correction Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Customer Authority is willing to agree otherwise. In the latter case the Contractor shall submit a Correction Plan for approval by the Customer Authority within 5 (five) Working Days (or such other period as the Customer Authority may permit and notify to the Contractor in writing) of receipt of the Non-conformance Report.
7. **DELAYS TO MILESTONES DUE TO CUSTOMER AUTHORITY CAUSE**
- 7.1 Without prejudice to **clause 5.4** and subject to **clause 5.5**, if the Contractor would have been able to Achieve the Milestone by its Milestone Date but has

failed to do so as a result of an Customer Authority Cause the Contractor will have the rights and relief set out in this **clause 7**.

7.2 The Contractor shall:

- 7.2.1 subject to **clause 7.3**, be allowed a reasonable extension of time to deal with the Delay caused by that Customer Authority Cause;
- 7.2.2 not be in breach of this Contract as a result of the failure to Achieve the relevant Milestone by its Milestone Date;
- 7.2.3 have no liability for Delay Payments in respect of the relevant Milestone to the extent that the Delay results directly from the Customer Authority Cause; and
- 7.2.4 be entitled to compensation as set out in **clause 7.4**.

7.3 The Customer Authority Representative, acting reasonably, shall:

- 7.3.1 consider the duration of the Delay, the nature of the Customer Authority Cause and the effect of the Delay and the Customer Authority Cause on the Contractor's ability to comply with the Implementation Plan;
- 7.3.2 consult with the Contractor Representative in determining the effect of the Delay;
- 7.3.3 fix a Revised Milestone Date; and
- 7.3.4 if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan.

7.4 If the Contractor has incurred any direct loss and/or expense as a result of a Delay due to an Customer 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 **clause 7.5**. The Contractor shall provide the Customer Authority with any information the Customer Authority may require in order to assess the validity of the Contractor's claim to compensation.

7.5 If the Contractor is entitled to compensation in accordance with **clause 7.4** then such compensation shall consist of staged payments to cover any direct loss and/or expense incurred by the Contractor as a result of a Delay due to a Customer Authority Cause provided that this compensation is intended to cover wasted costs only and shall not operate so as to put the Contractor in a better position than it would have been but for the occurrence of the Customer Authority Cause. To the extent that:

7.5.1 any contributory or related breach of this Contract (or any other agreement between the Customer Authority and the Contractor) by the Contractor caused or resulted in the Customer Authority Cause; and/or

7.5.2 the Customer Authority gives any advance notification that the Customer Authority Cause is or is likely to occur and the Contractor fails to comply with **clause 7.8**,

then the compensation amount payable pursuant to this **clause 7.5** shall be reduced by a fair and equitable amount.

7.6 Any Change that is required to the Implementation Plan pursuant to **clause 7.3** or the Charges pursuant to **clause 7.4** shall be implemented in accordance with the Change Control Procedure. If the Contractor's analysis of the effect of the Delay in accordance with **clause 5.3** permits a number of options, then the Customer Authority shall have the right to select which option shall apply.

7.7 The Customer Authority shall not delay unreasonably when considering and determining the effect of a Delay under this **clause 7** or in agreeing a resulting Change pursuant to the Change Control Procedure.

7.8 The Contractor shall and shall procure that each Sub-contractor shall take and continue to take all reasonable steps to eliminate or mitigate the effects of a Customer Authority Cause, including any losses and/or expenses that it incurs as a result of an Customer Authority Cause.

8. **DELAYS NOT DUE TO ONE PARTY**

Without prejudice to **clause 5.4** and subject to **clause 5.5**, where a Delay is attributable in part to the Contractor's Default and in part to an Customer Authority Cause the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. The parties agree that Delay Payments and compensation payable pursuant to **clause 7.4** (Delays to Milestones Due to Customer Authority Cause) shall be recoverable subject to reductions to reflect the extent to which the Customer Authority or the Contractor respectively have contributed to the Delay. If necessary, the parties may escalate the matter in accordance with the Dispute Resolution Procedure.

SECTION C – SERVICE SUPPLY

9. **SERVICES**

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

9.1.1 comply in all respects with the Services Description; and

- 9.1.2 are supplied in accordance with the Contractor Solution and the terms of this Contract.
- 9.2 Without prejudice to **clause 9.1**, the Contractor shall supply the Operational Services:
 - 9.2.1 from receipt of a Milestone Achievement Certificate in respect of Authority to Proceed; and
 - 9.2.2 in accordance with **clause 10**.
- 9.3 The Contractor shall perform its obligations under this Contract including those in relation to the Services in accordance with:
 - 9.3.1 Good Industry Practice;
 - 9.3.2 the Contractor's own established procedures and practices;
 - 9.3.3 the Security Policy;
 - 9.3.4 the Quality Plans; and
 - 9.3.5 the Government's ICT strategyand so as to co-ordinate with and facilitate the operations of the Customer Authority.
- 9.4 The Contractor shall draw any conflict between any of the requirements of **clause 9.1** and the requirements of **clause 9.3** to the attention of the Customer Authority and shall comply with the Customer Authority's decision on the resolution of that conflict.
- 9.5 The Contractor shall ensure, subject to any constraints identified in the Contractor Solution, that the Services and the Contractor System integrate with the Customer Authority System as required in order for the Customer Authority to receive the Services in accordance with this Contract.
- 9.6 Without prejudice to any other provision of this Contract, and any right or remedy that the Customer Authority may have, if the Contractor becomes aware of any Default in its performance of the Services or of another obligation under this Contract it shall, where such Default is capable of remedy, at its own expense remedy the same as soon as is reasonably practicable.
- 9.7 In the event of the Contractor's failure to provide the Services or to comply with its obligations in accordance with this Contract, the Customer Authority may, without prejudice to its other rights, require the Contractor to re-perform the Services or to comply with its obligations or otherwise to remedy such

non-compliance to the Customer Authority's reasonable satisfaction. If the failure is due to:

- 9.7.1 the Contractor's Default, the Contractor will comply with this clause at its own cost;
- 9.7.2 an Customer Authority Cause, **clause 7** (Delays Due to Customer Authority Cause) or **clause 12** (Effect of Customer Authority Cause in the Operational Phase) will apply (as appropriate);
- 9.7.3 a cause not due to one party, **clause 8** (Delays Not Due to One Party) will apply; or
- 9.7.4 a Force Majeure Event, the Contractor will comply with its obligations under **clause 52** (Force Majeure).

9.8 The Contractor shall not act in a manner which is detrimental to the Customer Authority's interests or reputation.

Additional Services

9.9 The Customer Authority may require the Contractor to provide any or all of the Additional Services by giving notice in writing. The Contractor acknowledges that the Customer Authority are not obliged to take any Additional Services from the Contractor and that nothing prevents the Customer Authority from receiving services that are the same as or similar to the Additional Services from any third party.

9.10 If there has been an agreed Change to the Contractor Solution prior to the Customer Authority's request for the Additional Services, then the Contractor shall notify the Customer Authority within 10 Working Days of the request (or such other period as the parties may agree) of the impact that the agreed Change will have on the relevant Additional Services.

9.11 If, following receipt of the Contractor's impact analyses pursuant to **clause 9.10**, the Customer Authority confirm in writing that it wishes to proceed with its requirement for the Additional Services the Contractor shall:

- 9.11.1 implement the relevant Additional Services in accordance with the Additional Services Implementation Plan; and
- 9.11.2 subject the relevant Additional Services to Testing.

9.12 Following the successful implementation of the Additional Services:

- 9.12.1 any additional charges for the Additional Services shall be incorporated in the Charges as specified in the Call-Off Form;

- 9.12.2 any services levels in respect of the Additional Services shall be incorporated into the Call-Off Form; and
- 9.12.3 the relevant Additional Services implemented in accordance with these **clauses 9.9** and **9.12** (inclusive) shall become part of the Services for the purpose of all other sections, clauses, obligations and rights contained within this Contract.
- 9.13 The parties shall implement any Additional Services requested by the Customer Authority in accordance with the Change Control Procedure modified to reflect the fact that the terms on which the Additional Services will be supplied have already been agreed.
10. **SERVICE LEVELS**
- 10.1 The Contractor shall provide the Operational Services to meet or exceed the Service Levels from the first ATP Milestone Date. The remaining provisions of this **clause 10** are subject to the provisions of **clause 12** (Effect of Customer Authority Cause in the Operational Phase).
- 10.2 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, the Contractor shall notify the Customer Authority of the Service Failure or likely Service Failure in accordance with Schedule 2.2 (Service Levels).
- 10.3 If there is a Service Failure or if there are reasonable grounds for the Contractor to believe that there will be a Service Failure, which takes the Service Levels below the Service Notification Threshold the Contractor shall:
- 10.3.1 immediately notify the Customer Authority in writing;
- 10.3.2 immediately take all remedial action that is reasonable to mitigate the impact on the Customer Authority of the Service Failure and to rectify or to prevent the Service Failure from taking place or recurring;
- 10.3.3 if action taken under **clause 10.3.1** or **10.3.2** has not already remedied the Service Failure, provide the Customer Authority with a Correction Plan setting out the action that it will take to:
- 10.3.3.1 rectify or prevent the Service Failure; and
- 10.3.3.2 prevent the Service Failure from recurring,
- within four (4) Working Days (or such other period as the parties agree in writing) from the day the Contractor notifies the Customer Authority under **clause 10.3.1** and then obtain the Customer Authority's written approval of such Correction Plan; and

- 10.3.4 carry out the Correction Plan approved under **clause 10.3.3** in accordance with its terms.
- 10.4 Approval and implementation of any Correction Plan shall not relieve the Contractor of any responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppel or waiver shall arise from any such approval and/or implementation.
- 10.5 If there is a Service Failure then, subject to the annual Service Credit limit in **clause 54.2.5**, where applicable the Contractor shall automatically credit the Customer Authority with Service Credits in accordance with Schedule 7.1 (Invoicing). Service Credits shall be shown as a deduction from the amount due from the Customer Authority to the Contractor in the next invoice then due to be issued under this Contract. 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 (ten) Working Days of issue.
- 10.6 Where Service Credits are provided as a remedy for Service Failure in respect of the relevant Services it shall be the Customer Authority's exclusive financial remedy in respect of such Service Failure except where:
- 10.6.1 the aggregate number of Service Points (whether the Service Points relate to the same or to different parts of the Services) exceeds 100 (one hundred) over a period of 6 (six) consecutive Service Periods (or such alternative triggers in this respect as may be set out in the Call-Off Form);
 - 10.6.2 any Service Failure that reaches, or rises above, the Service Threshold;
 - 10.6.3 the failure in the performance of the Services has arisen due to theft, gross negligence, fraud, or wilful default;
 - 10.6.4 the Service Failure results in:
 - 10.6.4.1 corruption or loss of data;
 - 10.6.4.2 a data transfer failure resulting in an inability to retrieve test results;
 - 10.6.4.3 the invocation of the BCDR Plan; or
 - 10.6.4.4 the Customer Authority being obliged to make a compensation payment to a third party; or

- 10.6.5 the Customer Authority is otherwise entitled to or does terminate this Contract for the Contractor's Default pursuant to **clauses 57.1 and 57.5**.
- 10.7 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Customer Authority, then the Customer Authority may, on written notice to the Contractor, withhold a reasonable and proportionate amount of the Charges for those Services until such time as the relevant Service Failure is remedied and the Services are restored. Provided that the relevant Service Failure is remedied and the Services are restored, the Customer Authority shall resume payment of the relevant part of the Charges, including payment of the amount retained.
- 10.8 The Customer Authority and the Contractor shall, at the Customer Authority's request, 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 Customer Authority's requirements.
- 10.9 Not more than every 6 (six) months during the Term the Customer Authority may, on at least three months written notice, change the Service Credits applicable to one or more Service Levels provided that:
- 10.9.1 the principal purpose of this change is to reflect changes in the Customer Authority's business requirements and priorities, or to reflect changing industry standards;
- 10.9.2 the change is not specifically intended to penalise the Contractor for poor performance in relation to any particular Service Levels; and
- 10.9.3 there is no increase in the total value of Service Credits potentially payable.
- 10.10 If the Contractor reasonably believes that any proposed change, which is requested by the Customer Authority under **clause 10.8**, would materially and adversely increase Costs, the Contractor shall be entitled to submit a reasonable price variation request (supported by appropriate evidence) within ten Working Days of the date of receiving the Customer Authority's written notice.
- 10.11 The Customer Authority shall then review the Contractor's price variation request submitted under **clause 10.9** and, within 15 (fifteen) Working Days shall respond to the Contractor and do one of the following:
- 10.11.1 accept the Contractor's price variation request and make any required changes to the Charges in accordance with the Change Control Procedure; or

10.11.2 where the Customer Authority consider the Contractor's price variation to be unreasonable, the Customer Authority may reject the Contractor's charges variation request and proceed to implement its proposed change to the Service Credits in accordance with the provisions of **clause 10.9**; or

10.11.3 decide not to proceed with the change.

11. **EARLY WARNING**

11.1 The Contractor shall give an early warning by notifying the Customer Authority in writing as soon as possible after it becomes aware of any matter which could:

11.1.1 increase or reduce the Charges;

11.1.2 adversely affect the performance of the Services;

11.1.3 impair the Customer Authority's ability to use the ICT Environment or otherwise adversely affect the Customer Authority's operations; or

11.1.4 lead to a Service Failure or likely Service Failure.

11.2 If the Customer Authority consider that a matter notified is sufficiently important to require an early warning meeting, an early warning meeting shall be convened and attended by the Contractor Representative, the Customer Authority Representative and such other people as the parties agree.

11.3 At an early warning meeting those who attend will co operate in:

11.3.1 making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced;

11.3.2 seeking solutions that will bring advantage to all those who will be affected; and

11.3.3 deciding upon actions which they will take and who, in accordance with this Contract, will take them.

11.4 The Contractor Representative will record the proposals considered and decisions taken at an early warning meeting and will give a copy of his record to the Customer Authority's Representative.

11.5 The Contractor shall copy any notice provided under **clause 11.1** to the Framework Authority within four (4) Working Days.

12. **EFFECT OF CUSTOMER 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 Contract but has failed to do so as a result of an Customer Authority Cause the Contractor will, subject to **clause 12.2**, have the rights and relief set out in **clause 12.3**.
- 12.2 If the Contractor claims that **clause 12.1** applies, and in order to claim the rights and relief in **clause 12.3**, it shall:
- 12.2.1 notify the Customer Authority as soon as possible of the occurrence of an Customer Authority Cause (and in any event within ten days of the date upon which it became aware or ought reasonably to have been aware of the occurrence of such Customer Authority Cause);
 - 12.2.2 give details of the Customer Authority Cause, which Services have been affected, together with a reasonable estimate of the period during which the Customer Authority Cause will continue to affect the Contractor's ability to provide the Services or the Software;
 - 12.2.3 carry out its duties to the best level reasonably achievable in the circumstances of the Customer Authority Cause; and
 - 12.2.4 take all reasonable steps to overcome and mitigate the effects of the Customer Authority Cause as soon as reasonably practicable.
- 12.3 The Contractor shall:
- 12.3.1 (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 Customer Authority Cause; and
 - 12.3.2 not be treated as being in breach of this Contract to the extent that non performance or breach is due to any Customer Authority Cause; and
 - 12.3.3 be entitled to the Charges for the relevant Services affected by the Customer Authority Cause as if it had not occurred.
- 12.4 Any Disputes about or arising out of whether an Customer Authority Cause applies to the Contractor's failure to provide the Services in accordance with the Service Levels and/or this Contract 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 Contract.

13.2 In accordance with the Framework Agreement, the Contractor shall discuss with the Framework Authority any conflict that the Contractor reasonably believes that there is or will be between any of the Standards:

13.2.1 set out in schedule 11 (Standards) of the Framework Agreement; and/or

13.2.2 any of the Standards set out in schedule 11 (Standards) of the Framework Agreement and any other obligation under this Contract,

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

14. **QUALITY ASSURANCE AND PERFORMANCE MONITORING**

Quality Plans

14.1 The Contractor shall develop, within 3 months of the Effective Date, Quality Plans, based on the draft attached to the Call-Off Form, that:

14.1.1 ensure that all aspects of the Services are the subject of quality management systems that accord with Good Industry Practice; and

14.1.2 are consistent with ISO 9001:2000 or any equivalent standard which is generally recognised as having replaced it; and

14.1.3 are consistent with the Standards or any equivalent Standards which are generally recognised as having replaced the Standards.

14.2 The Contractor shall obtain the Customer Authority Representative'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 Customer 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 Contract.

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.

- 14.5 The Contractor shall keep an up to date copy of the Quality Plans and shall make it available for inspection by the Customer Authority and its representatives (including the Customer Authority's Representative) on request.

Quality Monitoring

- 14.6 The Customer Authority and its representatives (which shall include any third party representatives) 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 6 (six) months, but the Customer Authority's Representative 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 Customer Authority's Representative, including by providing the Customer Authority's Representative 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 14.6** at no additional charge to the Customer Authority.

Performance Monitoring

- 14.7 The Customer Authority may monitor the performance of the Services by the Contractor.
- 14.8 The Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Customer Authority in carrying out the monitoring referred to in **clause 14.7** at no additional charge to the Customer Authority.
- 14.9 If the Contractor believes that the Customer Authority's monitoring of the Services is unreasonable the Contractor may escalate the issue with the Customer Authority using the Escalation Process.

Warning Notices and Increased Monitoring

- 14.10 Without prejudice to the other rights or remedies of the Customer Authority, if at any time the Contractor has:
- 14.10.1 committed any material breach of its obligations under this Contract;
or
 - 14.10.2 in respect of its performance of the Services, rising to, or above, a Service Threshold;
 - 14.10.3 accrued 30 (thirty) or more Service Points in any three (3) Service Periods;

14.10.4 failed to achieve any Milestone or Test by its associated Milestone Date,

then the Customer Authority may, but are 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.

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

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

14.11.2 if the Contractor (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Customer Authority in writing within two (2) Working Days of the receipt of the notice referred to in **clause 14.11.1** 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 Contract);

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

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

15. **NOT USED**

16. **SITES AND EQUIPMENT**

- 16.1 The Contractor shall not share the Sites (nor any part of them) with, nor use the Sites (nor any part of them) for the benefit of, any Undesirable Person.
- 16.2 The Contractor shall be solely responsible for the cost of carriage of Contractor Equipment to the Sites and to the Customer Authority's 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 Customer Authority's Premises, including the cost of packing, carriage and making good the Customer Authority's 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.
- 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 or the loss or unavailability of any of the Sites (in whole or in part) for any reason 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 in accordance with this Contract, including the provision of the Services under this Contract, the Customer Authority shall pay the Charges to the Contractor in accordance with the payment profile and the invoicing procedure specified in the Call-Off Form and Schedule 7.1 (Invoicing). The Customer Authority acknowledges that the Contractor may pass on all or part of the Framework Authority Costs to Customers and accordingly the Call-Off Form sets out the portion and amount (if any) of the Framework Authority Costs relating to this Contract that will be passed on to the Customer Authority.
- 17.2 The Contractor shall ensure that a term is included in any Sub-contract permitted under this Contract 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. The Contractor shall comply with such terms.
- 17.3 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Contract under **clause 57.8** for failure to

pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

- 17.4 Except as otherwise provided in this Contract, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Contract, including **clauses 4.2** (Testing), **14** (Quality Assurance and Performance Monitoring), **43** (Protection of Personal Data) and **44** (Freedom of Information).

Management Information

- 17.5 Without prejudice to the monitoring rights which the Customer Authority has under this Contract, the Contractor shall submit Management Information to the Customer Authority throughout the Term on the last day of every month. The Customer Authority may audit the Management Information in accordance with **clause 46.7.2**.
- 17.6 The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver Management Information to the Customer Authority in accordance with this Contract.
- 17.7 The Contractor permits:
- 17.7.1 the Customer Authority; and
 - 17.7.2 any such third parties with whom the Management Information is shared in accordance with **clause 17.8**,
- to use the Management Information in connection with their normal operational activities.
- 17.8 The Contractor permits the Customer Authority to share the Management Information with the Framework Authority, any Customer and/or any other Crown Body. In addition, the Contractor agrees that the Customer Authority may provide any other information relating to the Services and any payments made under this Contract to the Framework Authority.
- 17.9 In the event that the Customer Authority shares the Management Information, any Crown Body or Customer receiving such Management Information shall be informed of the sensitive nature (such Management Information may include Commercially Sensitive Information) thereof and shall be required not to disclose it to any third party who is not a Crown Body or Customer (unless required to do so by Law).

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 Customer Authority following delivery of a valid VAT invoice.

18.2 The Contractor shall indemnify and keep indemnified the Customer Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this **clause 18.2** shall be paid in cleared funds by the Contractor to the Customer Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Customer Authority.

19. **RECOVERY OF SUMS DUE**

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

20. **NOT USED**

21. **NOT USED**

SECTION E – CONTRACT GOVERNANCE

22. **REPRESENTATIVES**

22.1 Each party appoints the persons named as such in the Call-Off Form as the Customer Authority Representative and the Contractor Representative respectively.

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

22.3 The respective Representatives 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 Contract.

22.4 The Customer Authority may require the Contractor to replace the Contractor Representative in accordance with **clause 29.10** (Key Personnel).

22.5 The Customer Authority Representative may delegate any of his actions and may cancel his delegation and will notify the Contractor in writing of such delegation or cancellation.

22.6 The Contractor will not act on instructions given by an employee or officer of the Customer Authority (including any instructions to implement a change to the Services) unless the employee or officer is an Customer Authority Representative or has been notified to the Contractor pursuant to **clause 22.5** above.

23. **GOVERNANCE**

The parties agree to manage this Contract through the governance structure detailed in Schedule 8.1 (Governance).

24. **NOT USED**

25. **NOT USED**

26. **RECORDS AND REPORTS**

The parties shall comply with the provisions of Schedule 8.4 (Records Provisions) in relation to the keeping of records and the making of reports.

27. **CHANGE CONTROL**

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 Contract in accordance with the Dispute Resolution Procedure.

28.2 The Contractor shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

28.3 The Framework Authority may intervene in any Disputes to support their resolution but, subject to **clause 28.4**, the resolution of such Disputes shall continue to be in accordance with the Dispute Resolution Procedure.

28.4 Where the Framework Authority has intervened in a Dispute which the Framework Authority determines is a Multi-Party Dispute, the parties acknowledge that the Framework Authority may manage such Multi-Party Dispute to ensure that a satisfactory resolution is achieved by the parties to the Multi-Party Dispute. In such instance, the dispute resolution procedure set out in clauses 41.1 to 41.5 (inclusive) of the Framework Agreement shall apply. The Contractor and the Customer Authority shall provide such assistance,

information and documentation to the Framework Authority as it may require to support the resolution of such Disputes.

SECTION F – PERSONNEL

29. CONTRACTOR PERSONNEL

- 29.1 The Customer Authority may refuse admission to the Customer Authority's Premises and/or direct the Contractor to end the involvement in the provision of the Services of any of the Contractor Personnel whom the Customer Authority believes represent a security risk or does not have the required levels of training and expertise or where the Customer Authority has other grounds for doing so. The decision of the Customer 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 and Key Personnel engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 29.3 The Contractor shall provide to the Customer Authority a list of names of all Contractor Personnel and prospective Contractor Personnel it intends to engage in the provision of the Services or performance of the Contractor's obligations under this Contract, and shall promptly update the list as necessary.

Relevant Convictions

- 29.4 The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor or the Customer Authority to have any Relevant Convictions (whether through the Criminal Records Bureau, Access NI or Disclosure Scotland procedures, or otherwise), is employed or engaged in the provision of any part of the Services without the Customer Authority's prior and express written consent.
- 29.5 For each of the Contractor Personnel who, in providing the Services, has, will have or is likely to have access to persons under 18, vulnerable persons or other members of the public to whom the Customer Authority owes a special duty of care the Contractor shall (and shall procure that the relevant Sub-contractor shall):
- 29.5.1 conduct thorough questioning regarding any Relevant Convictions; and
 - 29.5.2 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau, Access NI or Disclosure Scotland (as applicable),

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

Key Personnel

- 29.6 The parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Contractor shall and shall procure that any Sub-contractor shall obtain the prior written consent of the Customer 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 (3) months written notice must be provided by the Contractor of its intention to replace any member of Key Personnel from their corresponding role.
- 29.7 The Customer 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 Customer Authority may interview the candidates for Key Personnel roles before such candidate is appointed to such role.
- 29.8 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer Authority. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than 10 (ten) Working Days and may appoint a temporary replacement until such time as a permanent replacement is found, whilst using reasonable endeavours to find such permanent replacement. The Contractor shall ensure that any replacement (whether temporary or permanent) 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.
- 29.9 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 Customer 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.
- 29.10 The Customer 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 Customer Authority may also require the Contractor to remove any member of the Key Personnel that the Customer Authority considers in any respect unsatisfactory.

- 29.11 The Customer Authority shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Contractor shall indemnify and keep indemnified the Customer Authority against all Employee Liabilities that may arise in this respect.

Staffing Security

- 29.12 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Personnel employed or engaged in the provision of the Services. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 29.13 The Contractor shall provide training on a continuing basis for all Contractor Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- 29.14 Where the procedures set out in **clauses 29.4, 29.5 and 29.12** cannot be applied to Contractor Personnel engaged overseas, the Contractor shall apply the nearest equivalent processes operated in that jurisdiction in accordance with Good Industry Practice.

30. EMPLOYMENT INDEMNITY

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

31. STAFF TRANSFER

The parties acknowledge that the commencement, expiry and/or termination of this Contract may constitute a Relevant Transfer and that the provisions of Schedule 9.1 (Staff Transfer) will apply.

32. HEALTH AND SAFETY

- 32.1 The Contractor agrees to comply with all applicable statutory rules and regulations regarding health and safety, including the Health and Safety Regime and, where required by the Customer Authority, Customer Authority's rules regarding health and safety. The Customer Authority shall be responsible for procuring that its employees and agents also comply with these rules and regulations.
- 32.2 Any party shall notify the other parties as soon as practicable of any health and safety hazards at the Customer Authority's 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**

The Contractor shall, and shall procure that the Contractor Personnel, comply with any applicable anti-discrimination legislation.

34. **NON-SOLICITATION**

Except in respect of any Staff Transfer, the Customer 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 of this Contract 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 Customer Authority) in the receipt and/or administration of the Services. For the purposes of this **clause 34**, "solicit or entice away" means to approach an individual (whether directly or through a third party) with a view to employing, engaging, or procuring the employment or engagement of that individual as an employee, director, officer, independent contractor or consultant other than by way of bona fide general advertising.

SECTION G – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

35. **INTELLECTUAL PROPERTY RIGHTS**

35.1 Except as expressly set out in this Contract:

35.1.1 neither the Customer Authority nor any Indirect Customers shall acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, including:

35.1.1.1 the Contractor Software;

35.1.1.2 the Third Party Software;

35.1.1.3 the Specially Written Software; or

35.1.1.4 the Contractor's Background IPRs; and

35.1.2 neither the Contractor nor any Sub-contractors shall acquire any right, title or interest in or to the Intellectual Property Rights of the Customer Authority, any Indirect Customers or their licensors, including:

35.1.2.1 the Customer Authority Software;

- 35.1.2.2 the Customer Authority Data;
- 35.1.2.3 the Database;
- 35.1.2.4 the Project Specific IPRs;
- 35.1.2.5 the Customer Authority's and/or any Indirect Customer's documentation, processes and procedures; and
- 35.1.2.6 the Customer Authority's and/or any Indirect Customer's Know-How.

35.2 Where either party (or any Indirect Customers or Sub-contractors as applicable) 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 (or procure the assignment of) in writing such Intellectual Property Rights to the party entitled in accordance with **clause 35.1** to such assignment on the request of the entitled party (whenever made).

36. **LICENCES GRANTED BY THE CONTRACTOR**

36.1 The Contractor hereby grants, or shall procure the direct grant, to the Customer Authority and all Indirect Customers of a licence of the Specially Written Software (including 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) on the Enhanced Licence Terms.

36.2 The Contractor hereby grants to the Customer Authority and all Indirect Customers a licence of the Contractor Software and the Contractor's Background IPRs on the Standard Licence Terms.

36.4 The Third Party Software shall be licensed to the Customer Authority and all Indirect Customers on Standard Licence Terms. If the Contractor cannot obtain a licence materially in accordance with the Standard Licence Terms the Contractor will consult with the Customer Authority on whether the rights that can be obtained are nevertheless acceptable to the Customer Authority or whether the Contractor should seek to use an alternative provider of software.

36.5 The Contractor shall, if requested by the Customer 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.

36.6 The Contractor hereby grants to the Customer Authority and all Indirect Customers a non-exclusive licence to copy the Documentation for any purpose

connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Customer Authority under this Contract.

37. LICENCES GRANTED BY THE CUSTOMER AUTHORITY

37.1 The Customer Authority (to the extent within its ownership or control) hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use:

37.1.1 the Customer Authority Software;

37.1.2 the Database from the date the relevant rights are transferred to the Customer Authority in accordance with **clause 39.2** ;

37.1.3 the Customer Authority's documentation, processes and procedures; and

37.1.4 the Customer Authority's Know-How;

37.1.5 the Project Specific IPRs from the date the relevant rights are transferred to the Customer Authority in accordance with **clause 39.2**;

37.1.6 the Customer Authority Data; and

37.1.7 any other materials made available to the Contractor by the Customer Authority pursuant to this Contract.

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 45** (Confidentiality);

37.2.2 except in respect of the Project Specific IPRs and the Database to the extent set out in **clause 39.5**, is granted solely to the extent necessary for performing the Services in accordance with this Contract. 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 Customer Authority; and

37.2.3 is subject to the Contractor acknowledging the source of the IPRs in any use of the same.

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

- 37.4 In the event of the termination or expiry of this Contract, 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 Customer Authority all material licensed to the Contractor pursuant to **clause 37.1** or **clause 37.3** in the Contractor's possession or control.
38. **NOT USED**
39. **PROJECT SPECIFIC IPR AND DATABASE**
- 39.1 The Contractor hereby assigns to the Customer Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Database or shall procure that the first owner of the Project Specific IPRs or the Database assigns them to the Customer 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 or Database, as appropriate.
- 39.3 The Contractor shall waive or procure a waiver of any moral rights in any copyright works or the Database assigned to the Customer Authority under this Contract.
- 39.4 If requested to do so by the Customer Authority, the Contractor shall without charge to the Customer Authority execute all documents and do all such further acts as the Customer Authority may require to perfect the assignment under **clause 39.1** or shall procure that the owner of the Project Specific IPRs or Database does so on the same basis.
- 39.5 The licence granted under **clause 37.1** in respect of the Project Specific IPRs and Database shall also extend to the creation of works for other customers that are adapted or derived from the Project Specific IPRs or the Database, subject to the agreement between the parties of commercial exploitation arrangements satisfactory to the Customer Authority.
- 39.6 To the extent that it is necessary for the Customer Authority to obtain the full benefits of ownership of the Project Specific IPRs or the Database, the Contractor hereby grants to the Customer Authority and shall procure that any relevant third party licensor shall grant to the Customer Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-licence 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 Project Specific IPRs or the Database.

40. **NOT USED**

41. **OPEN SOURCE SOFTWARE**

- 41.1 The Software, excluding the OSS, is to be provided aggregated with the OSS. The Software does not contain any Open Source Software other than the OSS. The Software (excluding the OSS) remains separable from or merely links or binds by name to the interfaces of the OSS.
- 41.2 The Contractor shall not at any time during the Term, without the Customer Authority's express written consent, include in or aggregate with the Software any Open Source Software other than the OSS, or make any changes to the Software which require it to be aggregated with or operated in conjunction with any open source software other than the OSS.
- 41.3 Any OSS used must be able to support systems to Government standards and represent best value for money over the total lifecycle of a system.
- 41.4 The Contractor warrants that the OSS is licensed upon terms which permit the use of such Open Source Software by the Contractor, the Customer Authority, all Indirect Customers and the Customer Authority's end users for all purposes contemplated by this Contract.

42. **CUSTOMER AUTHORITY DATA**

- 42.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Authority Data and shall at all times use government approved protective markings on all Customer Authority Data.
- 42.2 The Contractor shall not store, copy, disclose, or use the Customer Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer Authority.
- 42.3 To the extent that the Customer Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Customer Authority Data to the Customer Authority as requested by the Customer Authority in the format specified by the Customer Authority from time to time.
- 42.4 The Contractor shall take responsibility for preserving the integrity of the Customer Authority Data and preventing the corruption or loss of the Customer Authority Data (including any copy of such Customer Authority Data).
- 42.5 The Contractor shall perform secure back-ups of all of the Customer 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 and in a pre-agreed

format. The Contractor shall deliver such back-ups to the Customer Authority upon request.

42.6 The Contractor shall ensure that any system on which the Contractor holds any Customer Authority Data, including back-up data, is a secure system that complies with the Security Policy.

42.7 If the Customer Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer Authority may:

42.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Customer 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 within 2 (two) Working Days; and/or

42.7.2 itself restore or procure the restoration of the Customer Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (Business Continuity and Disaster Recovery Plan).

42.8 If at any time the Contractor suspects or has reason to believe that the Customer Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Customer Authority immediately and inform the Customer Authority of the remedial action the Contractor proposes to take.

43. **PROTECTION OF PERSONAL DATA**

43.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the Customer Authority is a Data Controller and that the Contractor is the Data Processor.

43.2 The Contractor shall:

43.2.1 process the Personal Data only in accordance with instructions from the Customer Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer Authority to the Contractor during the Term);

- 43.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 43.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 43.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 43.2.5 obtain prior written consent from the Customer Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates, which, if consent is obtained, shall be used solely for the provision of the Services;
- 43.2.6 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this **clause 43**;
- 43.2.7 ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer Authority;
- 43.2.8 notify the Customer Authority as soon as reasonably practicable and in any event within 2 (two) Working Days) if it receives:
 - 43.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 43.2.8.2 a complaint or request relating to the Customer Authority's obligations under the Data Protection Legislation;
- 43.2.9 provide the Customer Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - 43.2.9.1 providing the Customer Authority with full details of the complaint or request;
 - 43.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer Authority's instructions;

- 43.2.9.3 providing the Customer Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer Authority); and
- 43.2.9.4 providing the Customer Authority with any information requested by the Customer Authority;
- 43.2.10 permit the Customer Authority or the Customer Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Customer Authority to enable the Customer Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- 43.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Customer Authority); and
- 43.2.12 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:
 - 43.2.12.1 the Contractor shall submit a Change Request to the Customer Authority which shall be dealt with in accordance with the Change Control Procedure and **clauses 43.2.12.2 to 43.2.12.4** below;
 - 43.2.12.2 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 Customer 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;

43.2.12.3 in providing and evaluating the Change Request and Impact Assessment, the parties shall ensure that they have regard to and comply with then-current Customer 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

43.2.12.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the Customer 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 Contract 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 Customer Authority on such terms as may be required by the Customer 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).

43.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer Authority to breach any of its applicable obligations under the Data Protection Legislation.

44. **FREEDOM OF INFORMATION**

- 44.1 The Contractor acknowledges that the Customer Authority are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer Authority to enable the Customer Authority to comply with their Information disclosure obligations.
- 44.2 The Contractor shall and shall procure that its Sub-contractors shall:
- 44.2.1 transfer to the Customer Authority all Requests for Information that it receives as soon as practicable and in any event within 2 (two) Working Days of receiving a Request for Information;
 - 44.2.2 provide the Customer Authority with a copy of all Information in its possession, or power in the form that the Customer Authority require within 5 (five) Working Days (or such other period as the Customer Authority may specify) of the Customer Authority's request; and
 - 44.2.3 provide all necessary assistance as reasonably requested by the Customer Authority to enable the Customer Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 44.3 The Customer Authority shall be responsible for determining in their absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations. Where any Commercially Sensitive Information includes Management Information, the Customer Authority may disclose such Management Information in accordance with **clause 17.8**.
- 44.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Customer Authority.
- 44.5 The Contractor acknowledges that (notwithstanding the provisions of **clause 43**) the Customer Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Customer Authority under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 44.5.1 in certain circumstances without consulting the Contractor; or
 - 44.5.2 following consultation with the Contractor and having taken their views into account,

provided always that where **clause 44.5.1** applies the Customer 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.

- 44.6 The Contractor shall ensure that all Information is retained for disclosure in accordance with Schedule 8.4 (Records Provisions) and shall permit the Customer Authority to inspect such records as requested from time to time.
- 44.7 The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer Authority may be obliged to disclose it in accordance with **clause 44.5**.
- 44.8 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the contract, to the general public.
- 44.9 The Customer Authority may consult with the Contractor to inform its decision under **clause 44.8** regarding any exemptions but the Customer Authority shall have the final decision in its absolute discretion. The Contractor shall assist and cooperate with the Customer Authority to enable the Customer Authority to publish this Contract.

45. **CONFIDENTIALITY AND PUBLICITY**

- 45.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract:

- 45.1.1 the Contractor shall:

- 45.1.1.1 treat the Customer Authority's Confidential Information as confidential and safeguard it accordingly; and

- 45.1.1.2 not disclose the Customer Authority's Confidential Information to any other person without the Customer Authority's prior written consent; and

- 45.1.2 the Customer Authority shall:

- 45.1.2.1 treat the Contractor's Confidential Information as confidential and safeguard it accordingly; and
- 45.1.2.2 not disclose the Contractor's Confidential Information to any other person without the Contractor's prior written consent

45.2 **Clause 45.1** shall not apply to the extent that:

- 45.2.1 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 44** (Freedom of Information);
 - 45.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 45.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 45.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 45.2.5 it is independently developed without access to the (in the case of the Contractor) the Customer Authority's Confidential Information and (in the case of the Customer Authority) the Contractor's Confidential Information.
- 45.3 The Contractor shall at all times use government approved protective markings on all Confidential Information.
- 45.4 The Contractor may only disclose the Customer Authority's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 45.5 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Customer Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 45.6 The Contractor may only disclose the Customer Authority's Confidential Information to the Contractor Personnel and who need to know the information, and shall ensure that such Contractor Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality.

- 45.7 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 Contract, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the Contractor shall provide such evidence to the Customer Authority as the Customer Authority may reasonably require (though not so as to risk compromising or prejudicing 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.
- 45.8 At the written request of the Customer Authority, the Contractor shall procure that those members of the Contractor Personnel identified in the Customer Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 45.9 Nothing in this Contract shall prevent the Customer Authority from disclosing the Contractor's Confidential Information:
- 45.9.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Customer Authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Customer Authority 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;
 - 45.9.2 as permitted under the Framework Agreement;
 - 45.9.3 to any consultant, contractor or other person engaged by the Customer Authority or any person conducting a government gateway review;
 - 45.9.4 for the purpose of the examination and certification of the Customer Authority's accounts or those of the Framework Authority or any Indirect Customer; or
 - 45.9.5 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer Authority has used its resources.
- 45.10 The Customer 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 45.9** is made aware of the Customer Authority's obligations of confidentiality.

- 45.11 Nothing in this **clause 45** shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract 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.
- 45.12 The Contractor shall comply with, and shall ensure that the Contractor Personnel comply with:
 - 45.12.1 the Official Secrets Act 1911 to 1989; and
 - 45.12.2 Section 182 of the Finance Act 1989.
- 45.13 The Contractor shall not and shall procure that its Sub-contractors and the Contractor Personnel shall not:
 - 45.13.1 do anything which may damage the reputation of the Customer Authority (or any Indirect Customer) or bring the Customer Authority (or any Indirect Customer) into disrepute; or
 - 45.13.2 make any press announcements or publicise this Contract in any way without the Customer Authority's prior written approval. Where the Contractor or its holding company is required to make a public announcement by the applicable rules of any regulated securities exchange, it may do so, but shall notify the Customer Authority in writing and in advance of the announcement it intends to release and shall make any reasonable changes requested by the Customer Authority.
- 45.14 The Customer Authority may publicise this Contract in accordance with any legal obligation upon the Customer Authority (or any Indirect Customer), including any examination of this Contract by an auditor or otherwise.
- 45.15 The Contractor acknowledges to the Customer Authority that nothing in this Contract either expressly or by implication constitutes an endorsement of any goods and/or services of the Contractor (including the Services) and the Contractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION H – CONTRACTOR AND AUTHORITY PROTECTIONS

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

Contractor's Obligations

46.1 The Contractor shall:

- 46.1.1 at all times allocate sufficient resources to provide the Services in accordance with the terms of this Contract;
- 46.1.2 subject to **clause 49** (Change in Law) obtain, and maintain throughout the duration of this Contract, 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;
- 46.1.3 provide to the Customer 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 and the services supplied by such persons to enable such persons to create and maintain technical or organisational interfaces with the Services and, on the ending of this Contract for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Contractor; and
- 46.1.4 provide the Customer Authority with such assistance as the Customer Authority may reasonably require during the Term in respect of the supply of the Services.

46.2 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:

- 46.2.1 for ensuring that such requirement does not interfere with the provision of the Services in accordance with this Contract; and
- 46.2.2 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 Customer

Authority are able to recover an equivalent amount from the relevant third party contractor.

- 46.3 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 Customer Authority three months before the release of any new Software (or upgrade to such Software) that will have an impact on the end-user interface, and will co-ordinate its activity with the Customer Authority to ensure it minimises any disruption to the Services, the ICT Environment or the Customer Authority's operations. The Customer Authority may refuse any new Software (or upgrade to such Software) that will have an impact on the end-user interface at its sole discretion and shall not incur any liability to the Contractor by reason of such refusal.
- 46.4 Any change in the way in which the Contractor provides the Services which would materially increase the Customer Authority's risk or reduce the effect of the governance provisions of the Contract shall require the Customer Authority's prior written approval and must be agreed in accordance with the Change Control Procedure.

Customer Authority's Responsibilities

- 46.5 The Customer Authority shall comply with the Customer Authority's Responsibilities.
- 46.6 The Contractor acknowledges and agrees that it shall have no claim against the Customer Authority and that the Customer Authority shall be deemed not to be in Default to the extent that the Default of the Customer Authority is a failure to comply with the Customer Authority's Responsibilities and such failure is caused or contributed to by the Contractor, any Affiliate of the Contractor or any Contractor Party under this Contract or any other contract with the Customer Authority or otherwise.

Rights and obligations under the Framework Agreement

- 46.7 The following Customer Authority rights and Contractor obligations shall be exercised and enforced by the Framework Authority under internal agreements between the Customer Authority and the Framework Authority:
- 46.7.1 service improvement obligations in accordance with clauses 5.11 and 5.13 (Scope of Framework Agreement) of the Framework Agreement;
 - 46.7.2 clause 18 (Records and Audit Access) of the Framework Agreement;
 - 46.7.3 clause 25 (Step-in Rights and Suspension of Contractor's Appointment) of the Framework Agreement;

- 46.7.4 supply chain rights in accordance with clause 31 (Transfer and Sub-Contracting) of the Framework Agreement. Accordingly, the Contractor shall not sub-contract any of its obligations under this Contract without the Framework Authority's prior written consent (as set out in the Framework Agreement);
 - 46.7.5 schedule 5 (Benchmarking) of the Framework Agreement;
 - 46.7.6 schedule 11 (Standards) of the Framework Agreement;
 - 46.7.7 schedule 12 (Financial Distress) of the Framework Agreement;
 - 46.7.8 schedule 14 (Insurance Requirements) of the Framework Agreement;
 - 46.7.9 schedule 16 (Security Requirements and Plan) of the Framework Agreement; and
 - 46.7.10 any other rights and obligations set out in the clauses referred to in **clause 1.9**.
- 46.8 These rights and obligations are set out in more detail in the Framework Agreement. Notwithstanding this, the Contractor agrees to comply, and shall ensure and procure that its Sub-contractors comply, with such obligations in accordance with this Contract and where the Contractor and/or its Sub-contractors breach any obligation under the Framework Agreement which is intended to confer a benefit on the Customer Authority (either itself or for a number of Customers including the Customer Authority) **clause 54** (Limitations on Liability) shall apply when calculating the extent of the Contractor's liability to the Customer Authority under this Contract.

47. **WARRANTIES**

- 47.1 Each party warrants, represents and undertakes that:
- 47.1.1 it has full capacity and authority to enter into and to perform this Contract;
 - 47.1.2 this Contract is executed by a duly authorised representative of that party;
 - 47.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Contract; and

- 47.1.4 once duly executed this Contract will constitute its legal, valid and binding obligations.
- 47.2 The Contractor warrants, represents and undertakes for the duration of the Term that:
 - 47.2.1 the Software will be provided and the Services will be performed by appropriately qualified and trained personnel, with due skill, care and diligence, in accordance with Good Industry Practice;
 - 47.2.2 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Staff Vetting Procedure, the Security Policy and the Standards;
 - 47.2.3 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 Contract;
 - 47.2.4 it has and will continue to have all necessary rights in and to the Contractor Software or the Third Party Software and/or the Contractor's Background IPRs, or any other materials made available by the Contractor and/or the Sub-contractors to the Customer Authority necessary to perform the Contractor's obligations under this Contract;
 - 47.2.5 in performing its obligations under this Contract, all Software will:
 - 47.2.5.1 be currently supported versions of that Software;
 - 47.2.5.2 perform in all material respects in accordance with its specification and in all respects in accordance with the applicable Service Levels; and
 - 47.2.5.3 provide the functionality set out in the Services Description and the Contractor Solution;
 - 47.2.6 all Contractor Personnel are appropriately qualified, trained, and experienced to provide the Services in accordance with this Contract;
 - 47.2.7 as at the Effective Date all statements and representations in the Contractor's Tender as defined in the Framework Agreement are to the best of its knowledge, information and belief, true and accurate and that it will advise the Customer Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;

- 47.2.8 the Documentation which will be provided by the Contractor to the Customer Authority in accordance with Schedule 8.5 (Exit Management) will contain all necessary information and explanation required for the purpose of executing the Exit Plan and for suitably qualified employees of the Customer Authority or of the Replacement Contractor to be able to use the Software and receive the Services and to perform the Replacement Services on termination or expiry;
- 47.2.9 the Contractor System and Assets used in the performance of the Services:
- 47.2.9.1 will be free of all encumbrances;
 - 47.2.9.2 will be Date Compliant;
 - 47.2.9.3 will be Euro Compliant; and
 - 47.2.9.4 will comply with the Restriction of Use of Certain Hazardous Substances in the Electrical and Electronic Equipment Regulations 2008 in respect of all Assets made available to the Customer Authority by the Contractor; and
- 47.2.10 it shall at all times comply with Law in carrying out its obligations under this Contract.
- 47.3 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 47.4 For the avoidance of doubt the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer Authority may have in respect of breach of that provision by the Contractor.
48. **NOT USED**
49. **CHANGE IN LAW**
- 49.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the Charges as the result of:
- 49.1.1 a General Change in Law; or
 - 49.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Effective Date. The effect of a

Specific Change in Law shall be "known" where the Contractor was aware or should reasonably have been aware of it as at the Effective Date.

- 49.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in **clause 49.1.2**), the Contractor shall notify the Customer Authority of the likely effects of that change, including:
- 49.2.1 whether any Change is required to the Services, the Charges or this Contract; and
 - 49.2.2 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.
- 49.3 As soon as practicable after any notification in accordance with **clause 49.1**, 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:
- 49.3.1 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;
 - 49.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - 49.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 49.3.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
- 49.4 Any change to the Charges or relief from the Contractor's obligations agreed by the parties pursuant to **clause 49.3** shall be implemented in accordance with the Change Control Procedure.

SECTION I – RISK PROTECTION

50. SECURITY REQUIREMENTS

- 50.1 The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with schedule 16 (Security Requirements and Plan) of the Framework Agreement, any specific security requirements set out or referenced in the Call-Off Form, the Security Policy (where relevant) and the Security Plan. Furthermore the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy (provided always that where

there is a conflict between the Security Policy and the Security Plan, the Security Plan shall prevail but only to the extent of such conflict. Where there is such a conflict, the Contractor shall promptly inform the Framework Authority and the Framework Authority shall advise the Contractor how it must proceed) and any specific security requirements set out or referenced in the Call-Off Form.

- 50.2 Where relevant, the Customer Authority shall notify the Contractor in writing of any changes or proposed changes to the Security Policy and, subject to **clauses 50.3** and **50.4**, the Contractor shall comply with any such changes (provided always that where there is a conflict between the Security Policy and the Security Plan, the Security Plan shall prevail but only to the extent of such conflict. Where there is such a conflict, the Contractor shall promptly inform the Framework Authority and the Framework Authority shall advise the Contractor how it must proceed).
- 50.3 If the Contractor believes that a change or proposed change to the Security Policy (where relevant) will alter the way it provides the Services it may submit a Change Request and, where such Change will have a material and unavoidable cost implication to the Services it may request a Change to the Charges in such Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any Change to the Services and/or the Charges shall then be agreed in accordance with the Change Control Procedure.
- 50.4 Until and/or unless a change to the Charges is agreed by the Customer Authority pursuant to **clause 50.3** the Contractor shall continue to perform the Services in accordance with its existing obligations.
- 50.5 As and when the Contractor amends the Security Plan in accordance with schedule 16 (Security Requirements and Plan) of the Framework Agreement, the Contractor shall provide a written copy of the Security Plan, as updated, to the Customer Authority.

Malicious Software

- 50.6 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).
- 50.7 Notwithstanding **clause 50.6**, 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 the Customer Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

50.8 Any cost arising out of the actions of the parties taken in compliance with the provisions of **clause 50.7** shall be borne by the parties as follows:

50.8.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor (except where the Customer Authority has waived the obligation set out in **clause 50.6**) or the Customer Authority Data (whilst the Customer 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 Customer Authority when provided to the Contractor; and

50.8.2 by the Customer Authority if the Malicious Software originates from the Customer Authority Software (in respect of which the Customer Authority have waived the obligation set out in **clause 50.6**) or the Customer Authority Data (whilst the Customer Authority Data was under the control of the Customer Authority).

51. **BUSINESS CONTINUITY AND DISASTER RECOVERY**

51.1 Subject to the provisions in respect of disasters set out in clause 5.16 of the Framework Agreement, the parties shall comply with the provisions of the BCDR Plan and the provisions of Schedule 8.6 (Business Continuity and Disaster Recovery Plan).

51.2 The Contractor shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.

51.3 The Contractor shall test the BCDR Plan on a regular basis in accordance with the requirements of Schedule 8.6 (Business Continuity and Disaster Recovery Plan).

51.4 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 Authorities promptly in writing following each review.

51.5 The Contractor shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

52. **FORCE MAJEURE**

- 52.1 Subject to the Affected Party complying with the remaining provisions of this **clause 52**, any party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event. In particular, the Contractor shall be relieved from its Delay 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 Customer Authority do not receive the Services as a result of the Force Majeure Event.
- 52.2 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.
- 52.3 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.
- 52.4 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).
- 52.5 The Affected Party shall (as soon as reasonably practicable upon becoming aware of the Force Majeure Event) give the other parties 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.
- 52.6 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 Contract. 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.
- 52.7 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 Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

SECTION J – INDEMNITIES, LIABILITY AND INSURANCE

53. IPR INDEMNITY

- 53.1 The Contractor shall at all times, during and after the Term, on written demand indemnify the Customer Authority and keep the Customer Authority indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer Authority arising from an IPR Claim.
- 53.2 The Customer Authority agrees that it:
- 53.2.1 will promptly notify the Contractor in writing of any IPR Claim;
 - 53.2.2 will (subject to **clause 53.3**) 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
 - 53.2.3 will not, without first consulting with the Contractor, make an admission relating to the IPR Claim.
- 53.3 The Contractor shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Customer Authority, or its reputation, into disrepute.
- 53.4 The Contractor shall not settle or compromise any IPR Claim without the Customer Authority's prior written consent (not to be unreasonably withheld or delayed).
- 53.5 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor shall promptly, at its own expense and sole option, either:
- 53.5.1 procure for the Customer Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - 53.5.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - 53.5.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - 53.5.2.2 the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
 - 53.5.2.3 there is no additional cost to the Customer Authority; and

53.5.2.4 the terms of the Contract shall apply to any replaced or modified items.

53.6 If:

53.6.1 the Contractor elects to modify or replace an item pursuant to **clause 53.5.2** or to procure a licence in accordance with **clause 53.5.1**, but this has not avoided or resolved the IPR Claim; or

53.6.2 the Customer Authority and/or any of its Indirect Customers become subject to a binding court order arising in connection with the IPR Claim to cease using all or any part of the Services and/or ICT Environment and the Contractor does not obtain the discharge of such order within ten (10) Working Days (or such other period as the Customer Authority is prepared to agree to in writing),

then the Customer Authority may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity set out in **clause 53.1**, 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 and/or services.

53.7 The provisions of **clauses 53.1** to **53.6** (inclusive) shall not apply in respect of any IPR Claim caused by the use by the Customer Authority of the Software in a manner not reasonably to be inferred from the Services Description, the Contractor Solution or the provisions of this Contract.

54. **LIMITATIONS ON LIABILITY**

54.1 No party limits its liability for:

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

54.1.2 fraud or fraudulent misrepresentation by it or its employees; or

54.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

Financial Limits

54.2 Subject to **clause 54.1**, the Contractor's total aggregate liability:

54.2.1 in respect of:

- 54.2.1.1 the indemnities in **clauses 18.2** (Tax), **30** (Employment Indemnity), **53** (IPR Indemnity) and Schedule 9.1 (Staff Transfer);
- 54.2.1.2 all losses, damages, costs, expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer Authority arising from the Contractor's breach of its obligations in **clauses 43** (Protection of Personal Data) and/or **45** (Confidentiality); and
- 54.2.1.3 all loss, destruction, corruption, degradation, inaccuracy or damage to the Customer Authority Data caused by the Contractor's Default,

shall be unlimited;

- 54.2.2 for all loss of or damage to the Customer Authority's Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer Authority Data or any other data) of the Customer Authority caused by the Contractor's Default shall in no event exceed one million pounds sterling (£1,000,000) (or such other amount as is specified in respect thereof in the Call-Off Form) (subject to indexation);
- 54.2.3 in respect of Services Credits shall be limited in each Contract Year to thirty five percent (35%) (or such other percentage as is specified in respect thereof in the Call-Off Form) of the aggregate annual Charges paid, due or which would have been payable under this Contract in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months as set out in the Call-Off Form) and prior to the calculation of any reduction to those Charges pursuant to this Contract;
- 54.2.4 in respect of Delay Payments shall be limited to forty percent (40%) (or such other percentage as is specified in respect thereof in the Call-Off Form) of the aggregate annual Charges paid, due or which would have been payable under this Contract in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months as set out in the Call-Off Form) and prior to the calculation of any reduction to those Charges pursuant to this Contract;

- 54.2.5 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract shall be limited in each Contract Year to one hundred and twenty-five percent (125%) (or such other percentage as is specified in respect thereof in the Call-Off Form) of the aggregate Charges paid, due or payable under this Contract in the Contract Year in question prior to the calculation of any reduction to those Charges pursuant to this Contract.
- 54.3 Subject to **clause 54.1**, the Customer Authority's total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment:
- 54.3.1 for all Defaults by the Customer Authority resulting in loss of or damage to the property or assets (including technical infrastructure, assets or equipment) of the Contractor shall in no event exceed seven hundred and fifty thousand pounds sterling (£750,000) (or such other amount as is specified in respect thereof in the Call-Off Form) (subject to indexation);
- 54.3.2 for the Termination Payment shall not exceed the sum set out in the Call-Off Form and for the Compensation Payment shall not exceed thirty five percent (35%) (or such other percentage as is specified in respect thereof in the Call-Off Form) of the aggregate annual Charges paid, due or which would have been payable under this Contract in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months as set out in the Call-Off Form) and prior to the calculation of any reduction to those Charges pursuant to this Contract; and
- 54.3.3 in respect of all other Defaults by the Customer Authority shall in no event exceed an amount equivalent to one hundred percent (100%) (or such other percentage as is specified in respect thereof in the Call-Off Form) of the aggregate annual Charges paid, due or which would have been payable under this Contract in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months as set out in the Call-Off Form) and prior to the calculation of any reduction to those Charges pursuant to this Contract.
- 54.4 Subject to **clauses 54.1** and **54.5**, no party will be liable to any other party for:
- 54.4.1 any indirect, special or consequential loss or damage; or

- 54.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 54.5 Subject to **clause 52.2**, the Customer Authority may, amongst other things, recover as a direct loss:
- 54.5.1 any additional operational and/or administrative costs and expenses arising from the Contractor's Default;
- 54.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer Authority arising from the Contractor's Default;
- 54.5.3 the additional cost of procuring Replacement Services for the remainder of the Term; and
- 54.5.4 any anticipated savings.
- 54.6 The parties expressly agree that if any limitation or provision contained or expressly referred to in this **clause 54** is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this **clause 54**.
- 54.7 Nothing in this **clause 54** shall act to reduce or affect a party's general duty to mitigate its loss.
- 54.8 In accordance with **clause 1.9**, where certain obligations in the Framework Agreement are intended to benefit and may be enforced by the Customer Authority (including those clauses listed in clause 1.4 of the Framework Agreement), any breach of such obligations shall, as between the parties to this Contract, be subject to the terms of this Contract including this **clause 54** (Limitations on Liability).
55. **INSURANCE**
- 55.1 Without prejudice to **clause 55.2** and **55.2**, the Contractor shall ensure that throughout the Term it is an insured party in accordance with schedule 14 (Insurance Requirements) of the Framework Agreement.
- 55.2 The Contractor shall comply with any additional insurance requirements of the Customer Authority as set out in the Call-Off Form.

SECTION K – TERM, TERMINATION AND EXIT MANAGEMENT

56. TERM

This Contract will begin on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with **clause 57**, will terminate at:

- 56.1 the end of the Initial Term; or
- 56.2 if the Customer Authority elect to extend the Initial Term (or any subsequent Extension Period), at the end of the Extension Period.

57. TERMINATION RIGHTS

57.1 Termination for Cause by the Customer Authority

- 57.1.1 The Customer Authority may terminate this Contract by giving written notice of termination to the Contractor if one or more of the circumstances set out in **clause 57.1.4** exist.
- 57.1.2 Where the Customer Authority are terminating this Contract for a material Default of this Contract or one of the specific provisions in **clause 57.1.4.5** it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.
- 57.1.3 Circumstances where a Default shall be deemed not capable of remedy include where the Contractor has already failed to resolve the relevant Default in accordance with a Correction Plan pursuant to **clause 5** (Implementation Delays – General Provisions) or **10** (Service Levels).
- 57.1.4 The circumstances giving rise to the Customer Authority's right to terminate are:
 - 57.1.4.1 the Contractor is in material Default which it has failed to remedy within twenty (20) Working Days of written notice to do so;
 - 57.1.4.2 the Contractor commits a material Default of this Contract which is irremediable;
 - 57.1.4.3 the Contractor's failure to:
 - (a) achieve a Milestone by its associated Milestone Date; and
 - (b) comply with a Correction Plan for either a Milestone or material Service Failure because:

- (i) the Contractor does not submit or resubmit a Correction Plan for approval within the timescales required or at all; or
- (ii) the Customer Authority acting reasonably do not approve the proposed Correction Plan on the second occasion of seeking approval; or

57.1.4.4 pursuant to:

- (a) **clause 53.6** (where a modification or replacement of an item pursuant to **clause 53.5.2** or where procuring a licence in accordance with **clause 53.5.1** has not avoided or resolved an IPR Claim); or
- (b) **clause 66** (Prevention of Bribery);

57.1.4.5 the Contractor is in material Default of:

- (a) **clause 42** (Customer Authority Data)
- (b) **clause 43** (Protection of Personal Data);
- (c) **clause 44** (Freedom of Information);
- (d) **clause 45** (Confidentiality); or
- (e) **clause 50** (Security Requirements);

57.1.4.6 the Contractor's level of performance constitutes a Critical Service Failure as defined by Schedule 2.2 (Service Levels);

57.1.4.7 an Insolvency Event affecting the Contractor occurs; or

57.1.4.8 as a result of the Contractor's Default the Customer Authority suffer damages that exceed 80% of the aggregate value of liability caps as set out in **clause 54** (Limitations on Liability);

57.1.4.9 the Contractor committing a Default (other than as a consequence of a Default by the Customer Authority) which results in the criminal investigation, prosecution and conviction of the Contractor or any Sub-contractor under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this **clause 57.1.4.9** the Customer 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 Contract;
 - 57.1.4.10 the Contractor makes any public announcement or a director of the board of directors of the Contractor advises an officer of the Customer Authority that the Contractor is no longer going to (or is unsure whether it is going to) continue to develop or to offer the provision of services similar to the Services and there is evidence that such announcement will materially adversely impact the ability of the Contractor to provide the Services;
 - 57.1.4.11 the Contractor is in breach of any aspect of the law that would, in the opinion of the Customer Authority, bring the Customer Authority into disrepute, including but not limited to, relevant aspects shown in Regulation 23 of Public Contract Regulations 2006 (as amended) relating to rejection criteria; or
 - 57.1.4.12 the Framework Authority Suspends the Framework Agreement (or any part thereof).
- 57.2 The rights of the Customer Authority (to terminate or otherwise) under this **clause 57** are in addition (and without prejudice) to any other right or remedy which the Customer Authority or any Contracting Authority may have to claim the amount of loss or damage suffered by the Customer Authority or the Contracting Authority on account of the acts or omissions of the Contractor (or to take any action other than termination of this Contract).
- 57.3 Any termination by the Customer Authority under **clause 57.1** shall be deemed to be termination for breach of condition, and the Customer Authority shall, subject to **clause 54** (Limitations on Liability), be entitled to claim for the loss and damage that has been suffered as flowing from such breach of condition.
- 57.4 The Customer Authority may exercise any right of termination under **clause 57.1** without first instigating the Dispute Resolution Procedure or without awaiting its final outcome. Where the Customer Authority does not do so, the parties' obligations under **clause 28** (Disputes) shall continue to apply. The foregoing does not preclude the Contractor from disputing that the Customer Authority is entitled to terminate this Contract.

57.5 Termination for Convenience by the Customer Authority

- 57.5.1 The Customer Authority may terminate this Contract for convenience at any time on giving written notice to the Contractor. The amount of notice given affects the payments that the Customer Authority are obliged to make as a consequence of termination and this is dealt with in **clause 60** (Payments made on Termination).
- 57.5.2 Subject to any obligation to provide the Services in accordance with the Exit Plan, the Contractor's obligation to provide the Services shall end on the date set out in the Customer Authority's notice.
- 57.5.3 Without prejudice to **clause 57.5.2** and unless otherwise stipulated by the Customer Authority in their notice of termination, any Services that have not commenced at the date of the Customer Authority's notice shall be cancelled automatically.
- 57.5.4 This right of termination is in addition to any other rights of the Customer Authority under this Contract and its exercise shall be without prejudice to any claim, remedy or right of action that any party may have in relation to this Contract.

57.6 Termination for Change of Control

- 57.6.1 The Customer Authority may terminate this Contract by written notice without penalty if there is an Ultimate Holding Company Change to which the Customer Authority objects on one of the grounds set out in **clause 57.6.2**, except where the Customer Authority:
 - 57.6.1.1 have given their prior written consent to the particular Ultimate Holding Company Change, which subsequently takes place as proposed; or
 - 57.6.1.2 subject to the Contractor's compliance with **clause 57.6.3**, has not served its notice within 6 (six) months of the later of the date the Ultimate Holding Company Change took place or the date on which the Customer Authority was given notice of the Ultimate Holding Company Change.
- 57.6.2 The grounds upon which the Customer Authority may object to an Ultimate Holding Company Change are where the Customer Authority considers (at its sole discretion) that such Ultimate Holding Company Change:

57.6.2.1 would mean that the Customer Authority contracts with an entity which:

- (a) it would not have contracted with at the Effective Date; and/or
- (b) has not provided reasonable services to the Customer Authority such that such services have been subject to dispute or escalation on the grounds of poor service; and/or
- (c) takes a stance on matters relating to corporate social responsibility (including environmental sustainability) which is inconsistent with the policies of the UK government; and/or

57.6.2.2 might or would adversely affect or prejudice:

- (a) national security or the level of threat of criminal activity; and/or
- (b) the operations, reputation or good standing of the Customer Authority; and/or
- (c) the compliance of the Services with any of the Standards; and/or
- (d) the continued provision of the Services under this Contract or may be contrary to the interests of the Customer Authority.

In addition the Customer Authority may object to an Ultimate Holding Company Change where the Framework Authority has withheld its approval for an Ultimate Holding Company Change in accordance with the Framework Agreement.

57.6.3 The Contractor shall notify the Customer Authority in writing within one month of any Change of Control taking place.

57.7 **Partial Termination of the Services**

57.7.1 Subject to the provisions of **clauses 57.7.2 57.7.3, and 57.7.3**, the Customer Authority may, by one month's prior written 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 Default is not capable of remedy or, if the Default is capable of

remedy, the Default has not been remedied within twenty (20) Working Days of written notice to do so.

57.7.2 The parties shall agree the effect of any Change made necessary to the Contract 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:

57.7.2.1 the Contractor shall not be entitled to an increase in the Charges if the Partial Termination arises pursuant to **clause 57.7.1**; and

57.7.2.2 any increase to the Charges (if any) shall not be unreasonable and in any event shall be calculated in accordance with schedule 4 (Charges) of the Framework Agreement; and

57.7.2.3 the Contractor shall not be entitled to reject the Change.

57.7.3 Termination in accordance with this **clause 57.7** shall be without prejudice to any right of action or remedy of any party which has accrued or which subsequently accrues.

57.8 Termination by the Contractor

57.8.1 The Contractor may terminate this Contract only if the Customer Authority are in material breach of their obligation to pay undisputed Charges by giving the Customer Authority (and the Customer Authority Representative) 90 (ninety) days written notice specifying the breach and requiring its remedy. The Contractor's right of termination under this clause shall only arise if the Customer Authority have failed to remedy the breach specified in the written notice within the 90 (ninety) days notice period. The Contractor's right of termination under this **clause 57.8** shall not apply to non-payment of the Charges by the Customer Authority where such non-payment is due to the Customer Authority exercising their rights under **clause 19** (Recovery of Sums Due).

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

57.9 Termination for Continuing Force Majeure Event

Any party may, by written notice to the other, terminate this Contract, or require the Partial Termination of any part of the Services on the occurrence in relation to that part, if:

57.9.1 a Force Majeure Event occurs which affects all or a substantial part of the Services, or part of the Services critical to their provision, for a continuous period of more than 30 days; or

57.9.2 a Force Majeure Event occurs which affects a part, but not a substantial or critical part, of the Services for a continuous period of more than 90 days.

58. NOT USED

59. CONSEQUENCES OF EXPIRY OR TERMINATION

59.1 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.

59.2 In the event of termination or expiry, the Contractor shall:

59.2.1 repay to the Customer Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination;

59.2.2 comply with its obligations contained in the Exit Plan; and

59.2.3 subject to the content of the Exit Plan, cease to use the Customer Authority Data and, at the direction of the Customer Authority provide the Customer Authority and/or the Replacement Contractor with a complete and uncorrupted version of the Customer Authority Data in electronic form in the formats and on media agreed with the Customer Authority and/or the Replacement Contractor; and

59.2.4 on the earlier of the receipt of the Customer Authority's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Authority Data, excepting a copy of any such Customer Authority Data which is also a record as set out in Schedule 8.4 (Records Provisions) and promptly provide written confirmation to the Customer Authority that the data has been destroyed; and

- 59.2.5 provide access during normal working hours to the Customer Authority and/or the Replacement Contractor for up to 12 months after expiry or termination to:
- 59.2.5.1 such information relating to the Services as remains in the possession or control of the Contractor; and
 - 59.2.5.2 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 Customer 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 59.2.5**.
- 59.3 The provisions of **clauses 34** (Non-Solicitation), **35** (Intellectual Property Rights), **36** (Licences Granted by the Contractor), **43** (Protection of Personal Data), **44** (Freedom of Information), **45** (Confidentiality), **53** (Indemnities), **54** (Limitations on Liability), **59** (Consequences of Termination), **60** (Payments made on Termination), **68** (Severance), **70** (Entire Contract), **71** (Third Party Rights) and **73** (Governing Law and Jurisdiction), and the provisions of **Schedules 1** (Definitions), 9.1 (Staff Transfer) and 8.5 (Exit Management) and any other relevant clauses and Schedules which expressly or by implication are stated to survive termination or expiry of this Contract.
60. **PAYMENTS MADE ON TERMINATION**
- 60.1 The Customer 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 Customer Authority in accordance with **clause 57.1**, or for Partial Termination in accordance with **clause 57.7.1**; or
 - 60.1.3 for termination for Change of Control in accordance with **clause 57.6.1**.
- 60.2 The Customer Authority shall pay the Contractor the Termination Payment if this Contract is terminated by the Customer Authority pursuant to **clause 57.2** (Termination for Convenience by Customer Authority) or by the Contractor pursuant to **clause 57.8** (Termination by the Contractor).
- 60.3 If:

60.3.1 the notice given by the Customer Authority pursuant to **clause 57.2** (Termination for Convenience by Customer Authority) is less than 12 months; or

60.3.2 the period between the date of the material breach by the Customer Authority referred to in **clause 57.8** (Termination by the Contractor) and the date on which termination pursuant to **clause 57.8** (Termination by the Contractor) takes effect is less than 12 months,

the Customer 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 any party terminates or partially terminates this Contract pursuant to **clause 57.9** (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 Customer Authority's termination of this Contract in accordance with **clause 57.2** (Termination for Convenience by the Customer Authority) or the Contractor's termination of this Contract in accordance with **clause 57.8** (Termination by the Contractor).

60.6 In the event of termination (however arising) or expiry, the Contractor shall repay to the Customer Authority all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of such expiry or termination (save to the extent that such Services are provided after such date pursuant to Schedule 8.5 (Exit Management)).

61. **EXIT MANAGEMENT**

61.1 The Customer Authority and the Contractor shall comply with the Exit Management requirements set out in Schedule 8.5 (Exit Management) and any current Exit Plan.

61.2 Unless the Customer Authority otherwise require, during the time between service of a notice of termination of this Contract, or for Partial Termination in accordance with **clause 57.7**, and such termination or exercise taking effect, the Contractor shall take all steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Contractor may incur as a result of the termination, including to:

61.2.1 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;

- 61.2.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Customer Authority whether such contracts are required to be transferred to the Customer Authority or Replacement Contractor instead;
 - 61.2.3 reduce labour costs by the redeployment or release of Contractor Personnel other than Key Personnel to the extent possible in the circumstances; and
 - 61.2.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in **clauses 61.2.1 to 61.2.3** (inclusive).
- 61.3 If the Contractor does not fulfil its obligations in accordance with **clause 61.2**, the Customer Authority shall not pay any sums in excess of those which the Customer Authority would have paid had such action been taken.

62. **NOT USED**

SECTION L – MISCELLANEOUS AND GOVERNING LAW

63. **ASSIGNMENT AND NOVATION**

- 63.1 The Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Contract without the prior written consent of the Customer Authority.
- 63.2 The Customer Authority may:
- 63.2.1 assign, novate or otherwise dispose of any or all of their rights and obligations under this Contract and any associated third party licences to any other Contracting Authority; or
 - 63.2.2 novate this Contract and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Customer Authority. If this transfer increases the burden of the Contractor's obligations under this Contract 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.
- 63.3 A change in the legal status of the Customer Authority shall not (subject to **clause 63.4**) affect the validity of this Contract and this Contract shall be binding on any successor body to the Customer Authority.

63.4 If this Contract is novated to a body which is not a Contracting Authority, or a body which is not a Contracting Authority succeeds the Customer Authority, (both "**transferee**" in the rest of this clause):

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

63.4.1.1 the transferee suffers an Insolvency Event; or

63.4.1.2 the transferee commits:

(a) a material Default which Default is not remedied within 30 (thirty) days after notice of Default from the Contractor to the transferee requiring its remedy; or

(b) a material Default which is irremediable;

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

63.4.3 the following clauses shall be varied from the date of the novation or the date of the Customer Authority's change of status (as appropriate) as if this Contract had been amended by the parties in accordance with the Change Control Procedure:

63.4.3.1 in **clauses 17.8** (Charging and Invoicing) and **19** (Recovery of Sums Due) the words "or any other Crown Body" shall be deleted;

63.4.3.2 in **clause 17.9** (Charging and Invoicing) the words "Crown Body or" shall be deleted; and

63.4.3.3 the definition of "Crown Body" in **Schedule 1** shall be deleted and **clause 45.9.1** (Confidentiality) shall be deleted.

64. **WAIVER AND CUMULATIVE REMEDIES**

64.1 The rights and remedies provided by this Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

64.2 Unless a right or remedy of the Customer Authority is expressed to be an exclusive right or remedy, the exercise of it by the Customer Authority is without prejudice to the Customer Authority's other rights and remedies. Any failure to

exercise or any delay in exercising a right or remedy by any party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

- 64.3 The rights and remedies provided by this Contract are cumulative and, unless otherwise provided in this Contract, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Contract.

65. RELATIONSHIP OF THE PARTIES

- 65.1 Nothing in this Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon the Customer Authority for the act or failure to act of the Contractor, or to authorise the Contractor to act as agent for the Customer Authority. The Contractor shall have no authority to make representations, act in the name of, or on behalf of, or to otherwise bind the Customer Authority.
- 65.2 Nothing in this Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon the Contractor for the act or failure to act of the Customer Authority, or to authorise the Customer Authority to act as agent for the Contractor. The Customer Authority shall have no authority to make representations, act in the name of, or on behalf of, or to otherwise bind the Contractor.
- 65.3 The Customer Authority may appoint any third party or third parties to act on its behalf in carrying out its obligations and exercising its rights under this Contract. The Customer Authority shall give the Contractor written notice of such appointment(s), and relevant contact details, and the Contractor shall cooperate in good faith with each such third party.
- 65.4 Where indicated on the Call-Off Form or subsequently agreed through the Change Control Procedure, the Contractor shall provide the Services for the benefit of both the Customer Authority and/or the other third parties who are designated as Indirect Customers.
- 65.5 Where indicated in the Call-Off Form or following written notice from the Customer Authority, an Indirect Customer may, under the Contracts (Rights of Third Parties) Act 1999, enforce the benefit of this Contract to the extent that the Services are being provided to that Indirect Customer. However, this right shall be limited to a right to recover financial losses through a claim for damages and shall not include the right to terminate this Contract. Subject to **clause 65.3**, only the Customer Authority may exercise rights of termination or other non-financial remedies under this Contract. In any event, any Delay Payments or Service Credits shall be paid only to the Customer Authority.
- 65.6 No Indirect Customer or other third party may authorise any Changes.

- 65.7 Save where an Indirect Customer has the rights set out in **clause 65.5**, the Contractor shall be liable only to the Customer Authority and shall deal only with the Customer Authority. If any breach arises out of any act or omission of an Indirect Customer, any claim by the Contractor shall be brought only against the Customer Authority and not against any Indirect Customer.
- 65.8 The Customer Authority may recover all Losses suffered by any Indirect Customer as though it had suffered such loss itself, provided that in no event may the Customer Authority or any Indirect Customer recover twice in respect of the same loss (so that loss recovered by an Indirect Customer may not be recovered by the Customer Authority and vice versa).
- 65.9 The Indirect Customers' rights under **clause 65.5** and the Customer Authority's rights under **clause 65.8** shall not increase the limitations on liability in **clause 54.2**.
- 65.10 The Customer Authority shall procure that all Indirect Customers shall comply with the terms of this Contract to the extent that those obligations are relevant to that Indirect Customer.

66. **PREVENTION OF BRIBERY**

66.1 The Contractor:

- 66.1.1 shall not, and shall procure that any Contractor Party and all Contractor Personnel shall not, in connection with this Contract 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 Customer Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer Authority before execution of this Contract.

66.2 The Contractor shall:

- 66.2.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including the Bribery Act ("Relevant Requirements");
- 66.2.2 promptly report to the Customer Authority any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract;

- 66.2.3 immediately notify the Customer Authority (in writing) if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract);
- 66.2.4 if requested, provide the Customer Authority with any reasonable assistance, at the Customer Authority's reasonable cost, to enable the Customer 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;
- 66.2.5 within 20 (twenty) Working Days of the Effective Date, and annually thereafter, certify to the Customer 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 Contract. The Contractor shall provide such supporting evidence of compliance as the Customer Authority may reasonably request.
- 66.3 The Contractor shall have (and shall disclose to the Customer Authority) an anti-bribery policy, including adequate procedures under the Bribery Act, to prevent any Contractor Party or Contractor Personnel from committing a Prohibited Act and to ensure compliance with the Relevant Requirements, and shall enforce it where appropriate.
- 66.4 The Contractor shall ensure that any person associated with the Contractor who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this **clause 66** ("Relevant Terms"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer Authority for any breach by such persons of any of the Relevant Terms.
- 66.5 If any breach of **clauses 66.1** to **66.4** is suspected or known, the Contractor must notify the Customer Authority immediately.
- 66.6 If the Contractor notifies the Customer Authority that it suspects or knows that there may be a breach of **clauses 66.1** to **66.4**, the Contractor must respond promptly to the Customer Authority's enquiries, co-operate with any investigation, and allow the Customer Authority to audit books, records and any other relevant documentation. This obligation shall survive the expiry or earlier termination of this Contract.

- 66.7 The Customer Authority may terminate this Contract by written notice with immediate effect if the Contractor, any Contractor Party or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches **clauses 66.1, 66.2, 66.3** and/or **66.4**. In determining whether to exercise the right of termination under this clause **66.7**, the Customer Authority shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-contractor) means and shall be construed as acting:
- 66.7.1 with the authority; or
 - 66.7.2 with the actual knowledge,
 - of any one or more of the directors of the Contractor or the Sub-contractor (as the case may be); or
 - 66.7.3 in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.
- 66.8 Any notice of termination under **clause 66.7** must specify:
- 66.8.1 the nature of the Prohibited Act;
 - 66.8.2 the identity of the party whom the Customer Authority believe has committed the Prohibited Act; and
 - 66.8.3 the date on which this Contract will terminate.
- 66.9 Any termination under **clause 66.7** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer Authority.
- 66.10 Notwithstanding **clause 28** (Disputes), any dispute relating to:
- 66.10.1 the interpretation of **clause 66**; or
 - 66.10.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Customer Authority and the decision shall be final and conclusive.
- 66.11 For the purpose of this **clause 66**, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and

any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this **clause 66** a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.

67. PUBLICITY AND BRANDING

67.1 The Contractor shall not:

67.1.1 disclose or permit disclosure of any details of this Contract to the news media or any third party other than Sub-contractor or make any press announcements or publicise this Contract or its contents in any way;

67.1.2 use the Customer Authority's names or brands in any promotion or marketing or announcement of orders; or

67.1.3 disclose that the Customer Authority are a customer or client of the Contractor

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

67.2 The Contractor acknowledges to the Customer Authority that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the Contractor (including the Services, the Contractor System and the Customer Authority System) and the Contractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

68. SEVERANCE

If any provision of this Contract 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 Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the Contractor and the Customer Authority shall immediately commence good faith negotiations to remedy that invalidity.

69. FURTHER ASSURANCES

Each party undertakes at the request of any 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 Contract.

70. **ENTIRE AGREEMENT**

- 70.1 This Contract (including the Call-Off Form), together with the documents referred to in it and attached to it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 70.2 Each of the parties acknowledges and agrees that in entering into this Contract, and the documents referred to in it and attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to any party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
- 70.3 Nothing in this **clause 70** shall operate to exclude any liability for fraud.

71. **THIRD PARTY RIGHTS**

- 71.1 Subject to **clause 45.9** (Confidentiality), **clause 65**, and paragraph 8 of Schedule 9.1 (Staff Transfer), a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 71.2 Any rights created under **clause 71.1** may be altered or extinguished by the parties without the consent of the third party beneficiaries.

72. **NOTICES**

- 72.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one party to the other shall have any validity under this Contract unless made in writing by or on behalf of the party sending the communication and shall be served by:

72.1.1 sending it by pre-paid first class post, recorded delivery or airmail; or

72.1.2 sending it by e-mail or fax, in each case with a copy sent by pre-paid first class post, recorded delivery or airmail to; or

72.1.3 delivering it to or leaving it at,

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 Any notice which is to be given by either party to the other shall be deemed to have been received:
- 72.2.1 if delivered or left at (but not, in either case, by post) the relevant address, at the time of delivery or, if delivered after 16:00 hours, on the next Working Day;
 - 72.2.2 in the case of pre-paid first class post, recorded delivery or airmail, three (3) Working Days from the date of posting (or in the case of recorded delivery, the date the notice is signed for if this is earlier); and
 - 72.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 09:00 hours on the next Working Day and provided that:
 - 72.2.3.1 at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
 - 72.2.3.2 a copy has also been sent by pre-paid first class post, recorded delivery or airmail in accordance with **clause 72.1**;
 - 72.2.4 in the case of e-mail, at the time of sending the e-mail or 09:00 hours if sent before 09:00 hours on a Working Day or 09:00 hours on the next Working Day if delivered on a non-Working Day or after 16:00 on any Working Day provided that:
 - 72.2.4.1 no automatic electronic notification is received by the sender within 24 hours after sending the e-mail informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office; and
 - 72.2.4.2 a copy has also been sent by pre-paid first class post, recorded delivery or airmail in accordance with **clause 72.1**.
- 72.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address previously notified for the receipt of notices (or as otherwise notified by that party in writing) and either delivered to or left at that address or delivered into the custody of the postal authorities as pre-paid first class post, recorded delivery or airmail, or that the notice was transmitted by fax to the fax number of the relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that party in writing), or that the e-mail was sent by e-mail to the e-mail address of the relevant party at its e-mail address previously notified for the

receipt of notices (or as otherwise notified by that party), provided in the case of e-mail and fax that a copy of the notice was also delivered into the custody of the postal authorities as pre-paid first class post, recorded delivery or airmail.

72.4 For the purposes of **clause 72.2**, the addresses of each party shall be as set out in the Call-Off Form.

72.5 Any changes to any service of notice details such as designated service address, number, or named person shall only be changed by service of a written notice setting out the changes, which must be agreed between the parties acting reasonably.

73. **GOVERNING LAW AND JURISDICTION**

This Contract 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.

74. **COUNTERPARTS/DUPLICATES**

74.1 This Contract may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.

74.2 This Contract may be executed in duplicate, each of which shall constitute an original.

SCHEDULE 1

Definitions

Unless the context otherwise requires the following expressions shall have the meanings set out below.

"Achieve"	in respect of a Test, to successfully pass a Test without any Test Issues and, in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with Schedule 6.2 (Testing Procedures), and "Achieved" and "Achievement" shall be construed accordingly;
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"Additional Services"	the services described as such in the relevant sections (as referenced in the Call-Off Form) of part A of schedule 2 (Service Requirements and Contractor Service Descriptions) of the Framework
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	Agreement which are to be provided by the Contractor if requested by the Customer Authority in accordance with clauses 9.9 to 9.13 (Additional Services);
"Additional Implementation Plan"	Services the implementation plan to effect the Additional Services agreed between the parties prior to the Effective Date and, if not agreed, to be developed by the Contractor and approved the Customer Authority;
"Affected Party"	the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Assets"	all assets and rights used by the Contractor to provide the Services in accordance with this Contract but excluding the Customer Authority Assets;
"ATP Milestone Date"	the Milestone Date on which the Contractor is granted Authority to Proceed in respect of the relevant Operational Services;
"Authority to Proceed"	the point at which the Contractor is authorised to provide the Operational Services to the Customer Authority provided in the form of a Milestone Achievement Certificate relating to the Milestone which is recorded as being linked to ATP in the Outline Implementation Plan;
"BCDR Plan"	any plan set out in or prepared pursuant to Schedule 8.6 (Business Continuity and Disaster Recovery Plan), as may be amended from time to time;
"Bribery Act"	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

"Call-Off Form"		the form, based on the proforma set out in schedule 18 (Call-Off Form) of the Framework Agreement, completed and agreed in writing by the parties which forms part of this Contract;
"Change"		any change to this Contract;
"Change Control Procedure"		the procedure for changing this Contract, as set out in Schedule 8.2 (Change Control Procedure);
"Change in Law"		any change in Law, which impacts on the performance of the Services which comes into force after the Effective Date;
"Change of Ownership"		the acquisition whether by purchase, transfer, renunciation or otherwise by a third party purchaser of any interest in shares in the capital of a Relevant Entity if, upon completion of that acquisition, the third party purchaser, together with the persons acting in concert or connected with him, would hold more than fifty percent (50%) of the voting rights attached to the issued shares in the capital of the Relevant Entity. For the purposes of this definition, the expressions "acting in concert" and "connected with" shall have those respective meanings ascribed to them as set out in the City Code on Takeovers and Mergers;
"Charges"		the charges for the provision of the Services set out in the Call-Off Form and derived in accordance with schedule 4 (Charges);
"Commencement Date"		the date on which the Services are to start, as set out in the Call-Off Form;
"Commercially Sensitive Information"	Sensitive	the information listed in the Call-Off Form comprising the information of a commercially sensitive nature relating to the Contractor, its IPR or its business or which the Contractor has indicated to the Customer Authority that, if disclosed by the Customer Authority, would cause the Contractor significant commercial disadvantage or material financial loss;
"Comparable Supply"		the supply of services to another customer of the Contractor that are the same or similar to the

	Services;
"Compensation Payment"	the payment calculated in accordance with paragraph 3 of Schedule 7.2 (Payments on Termination);
"Confidential Information"	the Customer Authority Confidential Information and/or the Contractor's Confidential Information;
"Contract"	the Call-Off Form, the clauses of these Call-Off Terms together with the schedules, appendices and annexes to it and any documents referred to in it or attached to it;
"Contract Performance Point" or "CPP"	is the date after the relevant ATP Milestone Date on which the Contractor has demonstrated that the Contractor Solution or any relevant Service is working satisfactorily in its operating environment which date is anticipated to be linked to the Milestone which is referred to as an "ATP Milestone" in the Outline Implementation Plan;
"Contract Year"	a period of 12 months (or shorter period in the period immediately prior to the end of the Term) commencing on the Effective Date or on an anniversary of the Effective Date;
"Contracting Authority"	any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Customer Authority and "Contracting Customer Authority" shall be construed accordingly;
"Contractor's IPRs"	<p>Background</p> <p>(a) IPRs owned by the Contractor before the Effective Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's Know-How or generic business methodologies; and/or</p> <p>(b) IPRs created by the Contractor independently of this Contract,</p>

but excluding IPRs owned by the Contractor subsisting in the Contractor Software;

"Contractor's Confidential Information"	any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Contractor Equipment"	the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-contractors (but not hired, leased or loaned from the Customer Authority) for the provision of the Services;
"Contractor Party"	<ul style="list-style-type: none">(a) any officer, servant, agent, sub-contractor (of any tier) or Affiliate of the Contractor and any officer, servant or agent of such a person;(b) any person on or at any of the Sites at the express or implied invitation of the Contractor (other than the Customer Authority);
"Contractor Personnel"	all employees, agents, consultants, directors, officers, and contractors of the Contractor and/or of any Sub-contractor;
"Contractor Representative"	the representative appointed by the Contractor pursuant to clause 22 (Representatives);
"Contractor Software"	software which is proprietary to the Contractor or an Affiliate of the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services including the software specified as such in the Call-Off Form, but excluding the Specially Written Software;

“Contractor Solution”	the Contractor’s solution for the Services identified set out in the relevant sections (as referenced in the Call-Off Form) of part B of schedule 2 (Services Requirements and Contractor Service Descriptions) of the Framework Agreement;
“Contractor System”	the information and communications technology system used by the Contractor in performing the Services including any software, the Contractor Equipment and related cabling (but excluding the Customer Authority System);
“Control”	that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Conviction”	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988);
“Correction Plan”	<p>the Contractor’s plan for the remediation of any:</p> <ul style="list-style-type: none"> (a) Test Issues or the resolution of any non-conformities in any Deliverable to be agreed in accordance with clause 5 (Implementation Delays – General Provisions); or (b) Service Failure in accordance with clause 10 (Service Levels);
“Crown Body”	any department, office or agency of the Crown;

"Customer"	the Framework Authority, the Secretary of State for Transport, the Department of the Environment Northern Ireland and any other contracting bodies described in the OJEU and listed in Regulation 3 of the Regulations;
"Customer Authority Assets"	the Customer Authority Materials, the specially written material, the authority infrastructure and any other data, software, assets, equipment or other property owned by the Customer Authority and which is or may be used in connection with the provision or receipt of the Services;
"Customer Authority Cause"	any breach by the Customer Authority of any of the Customer Authority Responsibilities (except to the extent that to which it was caused or contributed to by the Contractor or any Contractor Party or a Force Majeure Event or caused or contributed to by any act or omission by the Customer Authority to which the Contractor has given its prior consent);
"Customer Authority Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer Authority, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Customer Authority Data"	<p>(c) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Customer Authority; or</p> <p>(ii) which the Contractor is required to generate, process, store or</p>

transmit pursuant to this Contract; or

- (d) any Personal Data for which the Customer Authority are the Data Controller;

“Customer Authority Materials” the Customer Authority Data together with any materials, documentation, information, programs and codes supplied by the Customer Authority to the Contractor, the IPR in which:

- (a) are owned or used by or on behalf of the Customer Authority; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any specially written material, Contractor Material and Third Party Material;

“Customer Authority Premises” premises owned, controlled or occupied by the Customer Authority or their Affiliates which are made available for use by the Contractor or its Sub-contractors for provision of the Services (or any of them) on the terms set out in this Contract or any separate agreement or licence;

“Customer Authority Responsibilities” the responsibilities of the Customer Authority specified in Schedule 3 (Customer Authority Responsibilities) and the Call-Off Form;

“Customer Authority Representative” the representative appointed by the Customer Authority pursuant to clause 22 (Representatives);

“Customer Authority Software” software which is owned by or licensed to the Customer Authority, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Software;

“Customer Authority System” the Customer Authority’s computing environments (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer Authority or the Contractor in connection with this Contract which are owned by or licensed to the Customer Authority by a third party

and which interface with the Contractor System or which is necessary for the Customer Authority to receive the Services;

"Data Controller"

shall have the same meaning as set out in the Data Protection Act 1998;

"Data Processor"

shall have the same meaning as set out in the Data Protection Act 1998;

"Data Protection Legislation"

the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Data Subject"

shall have the same meaning as set out in the Data Protection Act 1998;

"Database"

the rights in or to the database developed and supplied by the Contractor to the Customer Authority in accordance with the terms of this Contract;

"Date Compliant"

that no previous or future date change has had or will have any adverse impact on the performance or functionality of the Contractor System;

"Default"

any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject-matter of this Contract and in respect of which such party is liable to the other;

"Delay"		the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;
"Delay Payments"		the amounts payable by the Contractor to the Customer Authority in respect of a Delay and specified in the Call-Off Form;
"Deliverable"		an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Contractor at a Milestone Date or at any other stage during in the performance of this Contract;
"Detailed Plan"	Implementation	the plan developed in accordance with paragraph 4 of Schedule 6.1 (Implementation Plan);
"Disclosed Data"		information relating to the Project disclosed to the Contractor and its advisers prior to the Effective Date including the information specified in the Call-Off Form;
"Dispute"		any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Procedure"	Resolution	the dispute resolution procedure set out in Schedule 8.3 (Dispute Resolution Procedure);
"Documentation"		<p>descriptions of the Services , Software and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the Contractor to the Customer Authority under this Contract;</p> <p>(b) is required by the Contractor in order to</p>

provide the Services; or

- (c) has been or shall be generated for the purpose of providing the Services;

“Effective Date”

the date of this Contract;

“Employee Liabilities”

all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;

“Enhanced Licence Terms”

the licence terms set out in Part B of Schedule 5 (Licence Terms);

“Environmental Information Regulations”

the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

“Escalation Process”

the initial stages of the process for dealing with

Disputes without the intervention of third parties as set out in paragraph 2 of Schedule 8.3 (Dispute Resolution Procedure);

“Euro Compliant”

that: (i) the introduction of the euro within any part of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer Authority’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- (a) be able to perform all such functions in any number of currencies and/or in euros;
- (b) during any transition phase applicable to the UK, be able to deal with multiple currencies and in relation to the euro and the national currency of UK dual denominations;
- (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (d) incorporate protocols for dealing with rounding and currency conversion;
- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the UK and/or the euro; and
- (f) permit the input of data in euro and

display an outcome in euro where such data, supporting the Customer Authority's normal business practices, operates in euro and/or the national currency of the UK;

"Exit Management"

the obligations and rights of the respective parties pertaining to managing a smooth transition from the provision of the Services by the Contractor to the provision of Replacement Services by the Customer Authority or any Replacement Contractor, all as set out in Schedule 8.5 (Exit Management);

"Extension Period"

the Customer Authority's option (at their absolute discretion) to extend the Initial Term by a period of one year and, at the end of that one year extension, a further period of one year;

"Fail Date"

the longstop date specified in the Implementation Plan for any Milestone, being the latest date before which a failure to Achieve the Milestone Date becomes a fundamental failure and breach;

"Force Majeure Event"

any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor, the Contractor Personnel or any other failure in the Contractor or the Sub-contractor's supply chain;

"FOIA"

the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

"Framework Agreement"

the framework agreement number RM995 entered into between the Framework Authority and the

	Contractor dated [<i>insert date</i>];
“Framework Authority”	the Minister for the Cabinet Office (“Cabinet Office”) as represented by the Government Procurement Service, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP;
“General Change in Law”	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
“Guarantor”	as defined in the Framework Agreement;
“Health and Safety Regime”	the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1998, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
“Holding Company”	a holding company as defined by sections 1159 and 1160 of the Companies Act 2006;
“ICT”	information and communications technology;
“ICT Environment”	the Customer Authority System and the Contractor System;
“Implementation Plan”	the Outline Implementation Plan or (if and when required and approved by the Customer Authority pursuant to clause 3 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with paragraph 4 of Schedule 6.1 (Implementation Plan) from time to time;

"Indirect Customers"		third parties to whom the Services are provided from time to time, as set out in the Call-Off Form;
"Information"		has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Standards"	Assurance	the HMG Information Security Standards issued by the Cabinet Office as a supplement to the Security Policy Framework;
"Information System"		a system for generating, sending, receiving, storing or otherwise processing electronic communications;
"Initial Term"		the period commencing on the Effective Date and ending 5 (five) years after the Effective Date;
"Insolvency Event"		<p>the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:</p> <ul style="list-style-type: none"> (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved; (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue; (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors; (d) the entity being unable to pay its debts or

being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (e) the entity entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

“Intellectual Property Rights” or “IPRs”

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“IPR Claim”

any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or any other materials provided by the Contractor (or to which the Contractor has provided access) to the Customer Authority in the fulfilment of its obligations;

“Key Personnel”

those members of the Contractor Personnel described in the Call-Off Form as such is modified

		by agreement by the parties;
"Know-How"		all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the Contractor's or the Customer Authority's possession before this Contract;
"Law"		any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
"Malicious Software"		any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Management Board"		the contract management board whose roles and responsibilities are outlined in Schedule 8.1 (Governance);
"Management Information"		the management information specified in Schedule 2.2 (Service Levels), Schedule 7.1 (Invoicing) and Schedule 8.1 (Governance) to be provided by the Contractor to the Customer Authority;
"Material Test Issue"		has the meaning given in Schedule 6.2 (Testing Procedure);
"Measurement Period"		has the meaning given in Schedule 2.2 (Service Levels)
"Milestone"		an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date, including a milestones in respect of Authority to Proceed and any CPP;
"Milestone Achievement"		has the meaning given in Schedule 6.2 (Testing

Certificate"	Procedure);
"Milestone Date"	the date set against the relevant Milestone in the Implementation Plan;
"month"	a calendar month and "monthly" shall be interpreted accordingly;
"Multi-Party Dispute"	a dispute which affects or is likely to affect more than one Customer that has entered into call-off contracts under the Framework Agreement;
"Non-conformance Report"	a report including detail of the reasons why any Test has failed or of any non-conformities in respect of any Milestone;
"OJEU"	the OJEU Notice issued by the Framework Authority in the Official Journal of the European Union on 27.09.2012 (reference 2012/S 186-305980) for the procurement of the Computer Based Testing Services Framework, RM995;
"Open Source Software"	any third party software code which is licensed upon terms which materially conform to either: <ul style="list-style-type: none"> (a) the Open Source Definition laid down by the body known as the Open Source Initiative at the relevant time; or (b) any generally accepted replacement for or alternative to such Open Source Definition at the relevant time;
"Operational Phase"	the phase in which the Contractor will deliver the Operational Services, identified as such in the Implementation Plan and commencing from the Operational Service Commencement Date;
"Operational Service Commencement Date"	the date on which the Operational Services commence as identified in the Implementation Plan;
"Operational Services"	the operational services described as such in the Services Description;
"Operating Environment"	the Customer Authority System and the Sites;

"OSS"	the Open Source Software listed in the Call-Off Form;
"Outline Implementation Plan"	the Plan set out in the Call-Off Form;
"Partial Termination"	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in clause 57 (Termination);
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Planned ATP Milestone Date"	the date set out in the Implementation Plan for the Achievement of the Milestone relating to Authority to Proceed;
"Pre-Operational Phase"	the phase during which the Contractor will deliver Pre-Operational Services, being the period from the Commencement Date until the date of successful achievement of the final ATP Milestone (as recorded in the appropriate Milestone Achievement Certificate);
"Pre-Operational Services"	the services provided by the Contractor for the design, build, test, implementation and roll out of the Operational Services as described in the Services Description;
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and "Processing" shall be construed accordingly;
"Prohibited Act"	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer Authority a financial or other advantage to: (b) induce that person to perform improperly a relevant function or activity; or (c) reward that person for improper

performance of a relevant function or activity;

- (d) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

committing any offence:

- (e) under the Bribery Act;
- (f) under legislation creating offences concerning fraudulent acts;
- (g) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer Authority; or
- (h) defrauding, attempting to defraud or conspiring to defraud the Customer Authority;

“Project Specific IPRs”

- (a) IPRs in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract and updates and amendments of these items; and/or
- (b) IPRs arising as a result of the performance of the Contractor’s obligations under this Contract;

but which shall not include the Contractor’s Background IPRs or the Specially Written Software;

“Quality Plans”

the Contractor’s plan that reflects the quality management systems as further described in clause 14 (Quality Assurance and Performance Monitoring);

“Regulatory Bodies”

those government departments and regulatory, statutory and other entities, committees and

bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer Authority and **"Regulatory Body"** shall be construed accordingly;

"Relevant Conviction"

a Conviction that is relevant to the nature of the Services to be provided;

"Relevant Entity"

each of the following;

(a) the Contractor;

(b) the Guarantor; and

(c) any Holding Company of the Contractor or Guarantor;

"Relevant Employees"

the employees who are the subject of a Relevant Transfer;

"Relevant Requirements"

has the meaning given to it in clause 66.2.1;

"Relevant Terms"

has the meaning given to it in clause 66.4;

"Relevant Transfer"

a 'relevant transfer' for the purposes of the Employment Regulations;

"Replacement Contractor"

any third party service provider of Replacement Services appointed by the Customer Authority from time to time;

"Replacement Services"

any services which are substantially similar to any of the Services and which the Customer Authority receive in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Customer Authority internally and/or by any third party;

"Representatives"

either or both of the Customer Authority Representative and the Contractor Representative, as the context requires;

"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Revised Milestone Date"	any revised date which is set for the Achievement of a Milestone;
"Security Plan"	the Contractor's security plan prepared pursuant to paragraph 3 of schedule 16 (Security Requirements and Plan) of the Framework Agreement an outline of which is set out in Appendix 1 of schedule 16 (Security Requirements and Plan) of the Framework Agreement;
"Security Policy"	the Customer Authority's security policy from time to time in force;
"Security Policy Framework"	the security policy framework contains the primary internal protective security policy and guidance on security and risk management for HM Government Departments and associated bodies. It is the source on which all localised security policies should be based. Whilst it is recognised that security policies will differ according to the range of business and risks faced by each organisation, the framework sets out the minimum security requirements which are mandatory for all Government Departments and Agencies. The framework also provides technical information, advice and guidance to support implementation of the policy requirements;
"Service Credits"	the sums payable in respect of the failure by the Contractor to meet one or more Service Levels as specified in schedule 4 of the Framework Agreement and the Call-Off Form;
"Service Failure"	has the meaning given to it in schedule 2.2 (Service Levels);
"Service Levels"	the levels of service required to be provided, as prescribed in Schedule 2.2 (Service Levels);
"Service Period"	shall have the following meaning:

(i) the first Service Period of this Contract shall begin on the Operational Service Commencement Date and shall expire at the end of the calendar month in which the Operational Service Commencement Date falls; and

(ii) after the first Service Period of this Contract a Service Period shall be a calendar month during this Contract save that the final Service Period of this Contract shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

"Service Points"

has the meaning given to it in schedule 2.2 (Service Levels);

"Service Threshold"

the level at which the quality of any Services becomes unacceptable to the Customer Authority as prescribed in the Appendix to Part A of Schedule 2.2 (Service Levels);

"Service Notification Threshold"

the level as prescribed in the Appendix to Part A of Schedule 2.2 (Service Levels) which triggers a notification event under **clause 10.3** of this Contract;

"Services"

any and all of the services to be provided by the Contractor under this Contract including those set out or referred to in the Call-Off Form;

"Services Description"

the description of the Services set out in the relevant sections (as referenced in the Call-Off Form) of part A of schedule 2 (Services Requirements and Contractor Service Descriptions) of the Framework Agreement;

"Services Employees"

those employees of the Contractor who shall from time to time be engaged in the performance of the Services in the relevant part of the undertaking within the Contractor and who may be transferred on the expiry or termination of this Contract under the Employment Regulations to the Customer Authority or a Replacement Contractor;

"Sites"	any premises from which the Services are provided or from which the Contractor manages, organises or otherwise directs the provision or the use of the Services or where any part of the Contractor System is situated or where any physical interface with the Customer Authority System takes place;
"Software"	Specially Written Software, Contractor Software and Third Party Software;
"Specially Written Software"	any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Customer Authority and which would not affect a Comparable Supply;
"Staff Transfer"	the transfer of staff pursuant to the Employment Regulations under this Contract;
"Staff Vetting Procedures"	the Customer Authority's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of which is subject to any relevant security measures including the provisions of the Official Secrets Act 1911 to 1984;
"Standard Licence Terms"	the licence terms set out in Part A of Schedule 5 (Licence Terms);
"Standards"	the standards, codes, practices, processes, policies and Quality Plans referred to in schedule 2 (Service Requirements and Contractor Service Descriptions) and schedule 11 (Standards) of the Framework Agreement and in the Call-Off Form, together with any other applicable British or international standards, notified Framework Authority and Customer Authority internal policies and procedures and applicable Government codes of practice (including the Information Assurance Standards) from time to time in force;
"Sub-contract"	any contract or agreement or proposed contract or agreement between the Contractor and any third

	party whereby that third party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-contractor"	the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Suspension"	a suspension, pursuant to the Framework Agreement, of the Contractor's rights and "Suspend" and "Suspended" shall be construed accordingly;
"Term"	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract;
"Termination Notice"	a notice to terminate this Contract or part of the Services either immediately or at a date specified in the notice;
"Termination Payment"	the payment calculated in accordance with the formula set out in paragraph 2 of Schedule 7.2 (Payments on Termination);
"Tests" and "Testing"	any tests required to be carried out under this Contract, as further described in Schedule 6.2 (Testing Procedure);
"Testing Procedures"	the applicable testing procedures and Test Success Criteria set out in Schedule 6.2 (Testing Procedure);
"Test Success Criteria"	the test success criteria set out in the Call-Off Form;
"Third Party Materials"	the Third Party Software together with the Documentation relating to the Third Party Software;
"Third Party Software"	software which is proprietary to any third party other than an Affiliate of the Contractor (and in which the IPRs are not owned by the Contractor) which is or will be used by the Contractor for the

	purposes of providing the Services, including the software specified as such in the Call-Off Form;
"UK"	the United Kingdom;
"Ultimate Holding Company"	in relation to any Relevant Entity, the Holding Company which is not owned by a Holding Company;
"Ultimate Holding Company Change"	<p>any transaction or series of transactions which result in:</p> <p>(a) a change in the identity of the Ultimate Holding Company;</p> <p>(b) a Change of Ownership or Control of the Ultimate Holding Company; and/or</p> <p>(c) the acquisition of Control of the Relevant Entity by a person (or connected persons or persons acting in concert) which are not themselves Controlled by the Ultimate Holding Company;</p>
"Undesirable Person"	any person engaged in, or with substantial interest in, gambling, pornography, gaming, the production or sale of products containing or derived from tobacco or alcohol, the use of child labour or abuse of vulnerable persons, the manufacture or sale of arms and weapons or any other activity that could damage the reputation of any Authority;
"Use"	<p>(a) with respect to the Standard Licence Terms, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that Software;</p> <p>(b) with respect to the Enhanced Licence Terms for Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that</p>

Software; and

- (c) with respect to the Enhanced Licence Terms for Project Specific IPR other than Software, the right to copy, adapt, publish (including on the ICT Environment), distribute or otherwise use any other Project Specific IPR;

"VAT"

value added tax as provided for in the Value Added Tax Act 1994; and

"Warning Notice"

has the meaning given in **clause 14.10**;

"Working Day"

any day other than a Saturday, Sunday or public holiday in England and Wales.