

# Agreement

between

**Secretary of State for Work and Pensions**  
as the AUTHORITY

and

**Atos Origin IT Services UK Limited**  
as the CONTRACTOR

relating to

the provision of managed services and hosting for the  
Government Gateway

| <b>Contract Change Note</b> | <b>Date Signed</b> | <b>Title</b>  |
|-----------------------------|--------------------|---|
| CCN013                      | 01/05/2008         | <b>Redacted Pursuant to Section 43(2) under Fol Act</b> |
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**THIS AGREEMENT** is dated September 2006 and made

**BETWEEN:**

- (1) **Secretary of State for Work and Pensions**, (the "**AUTHORITY**"), represented by the E-Delivery Team, of 301 Bridgewater Place, Birchwood Park, Warrington, WA3 6XF; and
- (2) **ATOS ORIGIN IT SERVICES UK LIMITED**, (the "**CONTRACTOR**"), registered in England and Wales as company number 1245534 and having its registered office at 4 Triton Square Regents Place, London NW1 3HG.

**Background:**

- (A) Following a notice dated 12 October 2005, placed by the AUTHORITY in the Official Journal of the European Union, seeking expressions of interest, the AUTHORITY invited potential service providers, including the CONTRACTOR, to tender for the provision of managed services in respect of the Gateway.
- (B) On 3 August 2006, the CONTRACTOR submitted its Best and Final Offer to provide the Services.
- (C) In response to the CONTRACTOR's Best and Final Offer, the AUTHORITY has selected the CONTRACTOR to provide the Services and the Parties now wish to enter into this Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. **Interpretations**

1.1 As used in this Agreement:

- (A) The terms and expressions set out in Schedule 1 shall have the meanings ascribed therein;
- (B) The masculine includes the feminine and the neuter; and
- (C) The singular includes the plural and vice versa.

1.2 **Construction of Certain References**

In this Agreement where the context admits:

- (A) words and phrases the definitions of which are contained or referred to in Part XXVI Companies Act 1985 shall be construed as having the meanings thereby attributed to them;
- (B) any reference to a "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same shall include a reference to the others;
- (C) without prejudice to clause 56.10 (Legislative Change) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and

shall include references to any provisions of which they are re-enactments (whether with or without modification);

- (D) references to "this Agreement" or to any other agreement or document referred to in this Agreement mean this agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time, and include the Schedules;
- (E) unless otherwise stated, reference to clauses and Schedules are references to clauses and Schedules of and to this Agreement and references to paragraphs are references to paragraphs of the Schedules to this Agreement;
- (F) references to the AUTHORITY include any person who at any time is entitled, by assignment, novation, merger, division, reconstruction, reorganisation or otherwise, to the AUTHORITY's rights under this Agreement or any interest in those rights, or who is entitled to exercise those rights (and, in the case of a novation or similar event, references herein to the AUTHORITY's rights shall include the novated rights to which another person is entitled as a result of that event);
- (G) references to any document being in agreed form are to that document in the form signed, or initialled, by, or on behalf of, the Parties for identification; and
- (H) any reference to writing shall include typewriting, printing, lithography, photography and other modes of representing or reproducing words in a legible form.

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

1.4 In the event of any conflict or inconsistency between any term of a Contract Change Note and any provision of the clauses and Schedules of the Agreement, the terms of the Contract Change Note shall prevail, but only in relation to the Services performed under the relevant Contract Change Note in which such term is contained.

1.5 Terms or expressions which are capitalised but which do not have an interpretation as set out in this clause 1 or Schedule 1 of the Agreement shall be given their normal meanings or industry meanings as appropriate.

## 1.6 **Headings**

The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Agreement.

## 1.7 **Schedules**

Each of the Schedules shall have effect as if set out herein.

## 2. **Term**

2.1 This Agreement shall take effect on the Commencement Date and shall, unless otherwise terminated in accordance with the provisions of this Agreement or extended pursuant to this clause 2, continue in force until 31 March 2011 (the "Initial Term").

2.2 The AUTHORITY shall have the right to extend the term of this Agreement beyond the Initial Term or any extended term for further periods of one year up to a maximum of three

years from the expiry of the Initial Term, such right being exercisable in writing by the AUTHORITY on giving six (6) months prior notice to the CONTRACTOR.

### 3. **The Services**

3.1 The CONTRACTOR shall supply the Services to the AUTHORITY on and from the Commencement Date in accordance with:

- (A) Schedule 2;
- (B) the Service Levels;
- (C) Best Practice; and
- (D) all reasonable instructions issued by the AUTHORITY.

3.2 In the event that there is any dispute or confusion as to the scope or nature of the Services to be provided, the AUTHORITY and the CONTRACTOR shall (in the order of precedence stated below) have regard to the following documents, to inform their understanding of the scope of the relevant Services:

- (A) the CONTRACTOR's response to the SOR;
- (B) the SOR; and
- (C) correspondence, subsequent to the Commencement Date, between the Parties and agreed minutes of meetings.

3.3 In the event that the Parties cannot agree the scope of the Services following the implementation of the process set out in clause 3.2 either Party may invoke the Dispute Resolution Procedure set out in clause 54.

### 4. **Acceptance**

4.1 The Parties shall perform their respective obligations in relation to the conduct of the Acceptance Procedures as set out in Schedule 10.

### 5. **Transition**

5.1 The CONTRACTOR shall perform all of its obligations relating to Transition in accordance with the requirements set out in Schedule 3.

5.2 In the event that the CONTRACTOR fails to fulfil any of its obligations by the date specified in Schedule 3 for such fulfilment, the CONTRACTOR shall, at the request of the AUTHORITY, arrange all such additional resources as are necessary to fulfil the said obligation, as early as practicable thereafter at no additional charge to the AUTHORITY. In the event that the CONTRACTOR's failure to fulfil any of its obligations by the date specified in Schedule 3 for such fulfilment is caused by a material failure of the AUTHORITY to perform the AUTHORITY Responsibilities the CONTRACTOR shall immediately notify the AUTHORITY in writing detailing the material failure and shall nevertheless arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter. The cost of such additional resources shall be borne by the AUTHORITY where the need for deployment of additional resources results from the AUTHORITY's material failure to perform the AUTHORITY Responsibilities. In all other cases the costs shall be borne by the CONTRACTOR.



6. **Liquidated Damages**

- 6.1 Without limiting any of the AUTHORITY's other rights and remedies available under this Agreement or at law, if the CONTRACTOR fails to provide any deliverable in accordance with the Agreement by the applicable milestone date, the CONTRACTOR shall pay to the AUTHORITY, as Liquidated Damages, amounts specified below in relation to that event for any delay in meeting the milestone date.
- 6.2 The amount of the Liquidated Damages payable pursuant to clause 6.1 shall be at the rates set out in Schedule 15, in all events limited to the maximum aggregate amount as set out in Schedule 15 ("LD Cap"). For the avoidance of doubt, in the event the LD Cap is achieved, the AUTHORITY may exercise any of its rights and remedies available under this Agreement or at law, including termination of this Agreement for the Material Default of the CONTRACTOR.
- 6.3 The amount of any Liquidated Damages will be recovered by the AUTHORITY in the manner set out in Schedule 15 as a debt due by the CONTRACTOR.
- 6.4 No payment or concession to the CONTRACTOR by the AUTHORITY or other act or omission of the AUTHORITY shall in any way affect the rights of the AUTHORITY to recover Liquidated Damages from the CONTRACTOR or be deemed to be a waiver of the right of the AUTHORITY to recover any such damages unless such waiver has been expressly made in writing by the AUTHORITY.
- 6.5 The parties agree and acknowledge that Clause 6 (Liquidated Damages) of the Agreement shall not apply to the TUO Services

7. **Obligations of the AUTHORITY**

- 7.1 The AUTHORITY shall comply with its obligations as set out in Schedule 19 and elsewhere in this Agreement.

8. **CONTRACTOR's End to End Responsibility**

- 8.1 If at any time after the Transfer of Responsibility Date any of the CONTRACTOR's obligations under this Agreement are not met, notwithstanding any other provision in this Agreement, the CONTRACTOR shall, at the written request of the AUTHORITY, arrange all such additional resources and take all such remedial action as is necessary to remedy such failure as soon as practicable thereafter (and, in any event, within any reasonable timescale agreed with the AUTHORITY) and at no additional charge to the AUTHORITY. In the event that the CONTRACTOR's failure to meet any of its obligations is directly caused by a failure of the AUTHORITY to perform the AUTHORITY Responsibilities the CONTRACTOR shall nevertheless, and following consultation with an appropriate representative of the AUTHORITY, arrange all such additional resources and take all such remedial action as is necessary to remedy such failure as soon as practicable thereafter (and, in any event, within any reasonable timescale agreed with the AUTHORITY), the cost of such resources in such event being borne by the AUTHORITY.
- 8.2 If at any time after the Transfer of Responsibility Date any of the CONTRACTOR's obligations are not met as a result of the acts or omissions of any Subcontractor or person with whom the CONTRACTOR has entered into any contract, supply arrangement, subcontract, licence or otherwise, the CONTRACTOR shall arrange all such additional resources and take all such remedial action as is necessary to remedy such failure as soon as practicable thereafter and at no additional charge to the AUTHORITY.

8.3 Neither Party shall be liable for any breach of its obligations under this Agreement to the extent that such breach is caused by a failure or delay by the other Party in performing its obligations under this Agreement provided and to the extent that, the affected Party notifies the other Party of such failure or delay within fifteen (15) days of its occurrence. Notwithstanding any such failure or delay by the AUTHORITY, the CONTRACTOR shall nevertheless, and following consultation with an appropriate representative of the AUTHORITY, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter. The cost of such additional resources shall be borne by the AUTHORITY where the need for deployment of additional resources results from the AUTHORITY's failure or delay in performing the AUTHORITY Responsibilities.

9. **Service Credits**

9.1 From the Transfer of Responsibility Date, the CONTRACTOR shall provide the Services in accordance with the Service Levels.

9.2 In the event of a failure to provide the Services in accordance with the Service Levels the AUTHORITY shall be entitled to the Service Credits. Each Party shall notify the other in writing of any failure to meet the Service Levels which comes to its notice, provided that such notification shall not be a condition precedent to the AUTHORITY's entitlement to Service Credits. Service Credits shall be an exclusive remedy for failure to meet the Service Levels up to the agreed performance thresholds set out in Annex A of Schedule 4, after which the AUTHORITY shall be entitled to exercise all of its rights and remedies available under this Agreement or otherwise at law, including the right to claim its actual and provable losses in relation to any relevant Default by the CONTRACTOR. The AUTHORITY and the CONTRACTOR both acknowledge and confirm that the Service Credits are not onerous or a penalty but shall be regarded as an abatement of Charges reflecting the actual value of services rendered by the CONTRACTOR, having regard to the Service Levels.

9.3 The CONTRACTOR shall credit the AUTHORITY with the Service Credits on a credit note for the month following the date upon which the breach of the Service Levels occurred. The CONTRACTOR shall specify in a credit note rendered by it to the AUTHORITY in accordance with Schedule 16, the amount deducted from the Charges by way of Service Credits, identifying in each case the failure(s) giving rise to such Service Credits. The AUTHORITY shall notify the CONTRACTOR within twenty (20) calendar days of receipt of each such credit note if it disagrees with the CONTRACTOR's calculation of Service Credits. Any disagreement in relation to the calculation of Service Credits shall be resolved in accordance with the Dispute Resolution Procedure.

9.4 In the event that :

- (A) a failure to meet the Service Levels is remedied but is not remedied within any time limit agreed with the AUTHORITY; or
- (B) the CONTRACTOR fails to meet a Service Level in respect of which no Service Credits have been agreed,

then the AUTHORITY shall be entitled to exercise such remedies as may be available to it either under this Agreement or otherwise at law and equity. Such remedies include, but are not limited to;

- (C) the recovery from the CONTRACTOR of any additional costs or expenses reasonably and properly incurred by the AUTHORITY as a result of such failure;

- (D) withholding from payment to the CONTRACTOR or recovering as a sum of money due from the CONTRACTOR a reasonable and appropriate amount of the Charges or any portion thereof that are attributable to the Services in respect of which there has been a Service Level failure;
- (E) the removal of the element of the Services in respect of which the Service Level failure has occurred from the Services to be provided by the CONTRACTOR hereunder, or (in the AUTHORITY's sole discretion); and/or
- (F) the termination of this Agreement in accordance with clause 29,

provided that the AUTHORITY shall only be permitted to exercise the right specified in clause 9.4(E) if the AUTHORITY serves notice in writing specifying the failure to meet the Service Levels caused by the Default of the CONTRACTOR and giving the CONTRACTOR not less than thirty (30) Calendar Days to remedy such failure. Upon the expiry of such period of notice and provided that such failure has not been remedied the AUTHORITY shall be entitled to exercise any of its rights under clause 9.4(E) forthwith by further notice in writing.

- 9.5 The AUTHORITY shall have the option (in its sole discretion) to agree to accept an extension to any part of the Services in lieu of payment by the CONTRACTOR of any Service Credits arising hereunder. Any such agreement shall be in writing and made in accordance with the Change Control Procedure.

## 10. **Charges**

- 10.1 In consideration of and subject to the performance of the CONTRACTOR'S obligations under this Agreement by the CONTRACTOR in accordance with this Agreement the AUTHORITY shall pay the CONTRACTOR the Charges in accordance with the provisions of Schedules 15 and 16.
- 10.2 In complying with its obligations under this Agreement, the CONTRACTOR shall comply with the principles of Open Book.
- 10.3 The Charges are exclusive of Value Added Tax.
- 10.4 The Charges represent remuneration for all the obligations to be performed by the CONTRACTOR hereunder and (in so far as they may not fall within the definition of Services) the costs of maintenance, replacement and repair of premises, vehicles and equipment used by the CONTRACTOR in connection with the Services, and of insurance and all other outgoings in relation thereto.
- 10.5 In the event that the CONTRACTOR, in accordance with the terms of this Agreement, enters into a Subcontract, the CONTRACTOR shall ensure that a term is included in the Subcontract which requires the CONTRACTOR to pay all sums due thereunder to the Subcontractor within a specified period, not to exceed thirty (30) calendar days, from the date of receipt of a valid invoice as defined by the terms of the Subcontract.

## 11. **Recovery of Sums Due**

- 11.1 If any sum of money shall be due from the CONTRACTOR, the same may be deducted from any sum then due or which at any time thereafter may become due to the CONTRACTOR under this Agreement.

12. **Other Contractors**

12.1 The CONTRACTOR acknowledges that the Services include assisting other contractors that are providing services to the Government. The CONTRACTOR will provide reasonable assistance and co-operation as specified in Schedule 2 or as otherwise agreed with the AUTHORITY in relation to other contractors in order to ensure that the Gateway and the Services are fully maintained and supported.

13. **Intellectual Property Rights**

13.1 The Parties hereby agree that the CONTRACTOR owns, and in the case of the Third Party Software and Third Party Documentation the licensor owns and, save as provided for herein, the AUTHORITY shall not acquire title to:

- (A) the CONTRACTOR Software and the CONTRACTOR Documentation (and all Intellectual Property Rights therein);
- (B) the Third Party Software and Third Party Documentation provide by the CONTRACTOR (and all Intellectual Property Rights therein);
- (C) all reproductions, enhancements and/or modifications to the CONTRACTOR Software, Third Party Software, Third Party Documentation or the CONTRACTOR Documentation made by or on behalf of the CONTRACTOR during the term hereof (and all Intellectual Property Rights therein), other than reproductions, enhancements and/or modifications specifically generated by the CONTRACTOR for the purpose of the provision of the Services;
- (D) all other software proprietary to the CONTRACTOR (and all Intellectual Property Rights therein) and all other Intellectual Property Rights proprietary to the CONTRACTOR which are used by the CONTRACTOR during the term hereof in the provision of the Services; or
- (E) all other Intellectual Property Rights produced or acquired by the CONTRACTOR during the term hereof which are used in the provision of the Services, other than Intellectual Property Rights specifically generated by the Contractor for the purpose of the provision of the Services.

13.2 The Parties hereby agree that the AUTHORITY owns, and in the case of Third Party Software the licensor owns, and save as provided for herein the CONTRACTOR shall not acquire title to:

- (A) the Documentation (other than CONTRACTOR Documentation), the AUTHORITY Software, AUTHORITY Documentation and Government Furnished Equipment (and all Intellectual Property Rights therein);
- (B) any AUTHORITY Third Party Software (and all Intellectual Property Rights therein);
- (C) all reproductions, enhancements and/or modifications to the Documentation, the AUTHORITY Software and AUTHORITY Documentation made by or on behalf of the AUTHORITY during the term hereof (and all Intellectual Property Rights therein); or
- (D) all other software proprietary to the AUTHORITY (and all Intellectual Property Rights therein) and all other Intellectual Property Rights proprietary to the

AUTHORITY which are used by the CONTRACTOR during the term hereof in the provision of the Services.

13.3 In consideration of the payment of the relevant Charges the CONTRACTOR hereby grants to the AUTHORITY, or shall procure the grant to the AUTHORITY of:

(A) a perpetual, royalty-free, irrevocable, non-exclusive licence to Use (including, without limitation, to sub-licence) in connection with the receipt of the Services or services substantially similar to the Services the CONTRACTOR Software, CONTRACTOR Documentation and all Intellectual Property Rights referred to in clauses 13.1(A), 13.1(D) and 13.1 (E) which are necessary for the AUTHORITY to use in connection with its receipt of the Services;

(B) a royalty-free, world-wide, non-exclusive licence to Use in connection with the receipt of the Services or services substantially similar to the Services:

(1) such parts of the Third Party Software referred to in clause 13.1(B);

(2) such parts of the CONTRACTOR Documentation referred to in clause 13.1(C) as are proprietary to a third party; and

(3) such reproductions, enhancements and/or modifications to the Third Party Software referred to in clause 13.1(C),

as the CONTRACTOR has free right to sub-licence at no additional cost to the AUTHORITY at the time of such sub-licence.

(C) the CONTRACTOR shall use best endeavours to procure that such licence referred to in clause 13.3(B):

(1) is perpetual and irrevocable;

(2) extends to use of such Third Party Software or CONTRACTOR Documentation as may be proprietary to a third party for the receipt of services which are substantially similar to the Services; and

(3) permits (in the event of expiry or termination of this Agreement) the assignment or novation of such licence in favour of the AUTHORITY, or a third party engaged by the AUTHORITY to support the Services;

failing which, the CONTRACTOR shall notify the AUTHORITY to this effect and the Parties shall discuss any alternative arrangements which may be appropriate;

(D) the licence referred to in clause 13.3(A) and the sub-licence referred to in clause 13.3(B) shall include the right for the AUTHORITY to grant to any third party a permission or sub-licence to Use such software, CONTRACTOR Documentation and/or Intellectual Property Rights whether on equipment belonging to a third party, the AUTHORITY or otherwise in connection with the provision of the Services or services substantially similar to the Services to the AUTHORITY, on terms which are no less onerous than the terms on which the licence and sub-licence have been granted to the AUTHORITY under this Agreement.

13.4 The AUTHORITY hereby grants to the CONTRACTOR, or shall procure the grant to the CONTRACTOR of, a world-wide, royalty-free, non-exclusive licence to use, modify, enhance and adapt the software and Intellectual Property Rights referred to in clauses

13.2(A), 13.2(C) and 13.2(D), for the provision of the Services. In relation to the Intellectual Property Rights referred to in 13.2(B), the AUTHORITY shall procure the grant to the CONTRACTOR of a licence necessary to use the software for the provision of the Services. In relation to the software and Intellectual Property Rights referred to in clauses 13.2(A), 13.2(B), 13.2(C) and 13.2(D), such licence shall include (to the extent necessary for the provision of the Services) the right for the CONTRACTOR to grant to any third party a permission or sub-licence (on reasonable terms to be agreed by the AUTHORITY) to use such software and/or Intellectual Property Rights whether on equipment belonging to a third party, the CONTRACTOR or otherwise.

- 13.5 With respect to all Third Party Software (whether existing at the date hereof or licensed by the CONTRACTOR during the Term in connection with the provision of the Services) other than Third Party Software sub-licensed by the CONTRACTOR pursuant to clause 13.3(B), the CONTRACTOR shall, at no additional charge, procure the grant to the AUTHORITY from the owner of all such Third Party Software of a irrevocable, non-exclusive licence or sub-licence to Use the Third Party Software, such licence to Use becoming effective immediately and automatically upon the termination (for whatever reason) or expiry of this Agreement.
- 13.6 If requested by the AUTHORITY, such licence(s) and/or sub-licences referred to in clause 13.5 shall afford the AUTHORITY the right to sub-license the Use of the Third Party Software and/or Intellectual Property Rights:
- (A) for the purposes of taking Emergency Action in accordance with clause 24; and
  - (B) to any Replacement Contractor during the term of this Agreement.
- 13.7 With respect to all Third Party Software proposed to be licensed by the CONTRACTOR during the term hereof in connection with the provision of the Services, the CONTRACTOR shall, prior to using the Third Party Software, consult with the AUTHORITY and obtain the AUTHORITY's consent with respect to the terms of such licence(s) and the suitability of such Third Party Software for the provision of the Services.
- 13.8 In the event that the CONTRACTOR fails to obtain a licence from the third party owner in accordance with clauses 13.5 and 13.7, the CONTRACTOR shall notify the AUTHORITY without delay and the AUTHORITY shall have the option (at its sole discretion) to either:
- (A) require the CONTRACTOR to proceed on the terms and conditions available and the AUTHORITY shall waive the requirements of the provisions in clauses 13.5 and 13.7; or
  - (B) require the CONTRACTOR not to proceed on the terms and conditions available but where this necessitates a change to the Charges or Service Levels, this shall be treated as a Change and the Change Control Procedure will apply.
- 13.9 Except to the extent required to provide and/or receive the Services, or as may otherwise be expressly permitted by law of this Agreement, in respect of the Intellectual Property Rights of each Party, the other Party may not copy, publish, redistribute, modify, transmit, display, sell, or create derivative works, or in any way exploit the content or any portion thereof without the express permission of the Party in which such Intellectual Property Rights vest, which will not be unreasonably withheld or delayed, or the relevant licensor of such Intellectual Property. Any Intellectual Property Rights so used must not be taken out of context or presented in a misleading or discriminatory manner.

- 13.10 Without prejudice to the operational security requirements which form part of the Services, the CONTRACTOR shall place the current Source Code of such of CONTRACTOR Software as the AUTHORITY and the CONTRACTOR shall agree, in escrow in accordance with the provisions of clause 39.
- 13.11 The CONTRACTOR hereby agrees to assign to the AUTHORITY all present and future Intellectual Property Rights (including, without limitation thereto, future copyright as defined by section 91 of the Copyright, Designs and Patents Act 1988) in the Specially Written Software and Documentation.
- 13.12 In the case of the CONTRACTOR Personnel the CONTRACTOR shall (unless otherwise agreed) ensure that, at all times and from time to time, such CONTRACTOR Personnel assign all Intellectual Property Rights specifically developed by them in the course of provision of the Services which is specifically applicable to the AUTHORITY's business either:
- (A) direct to the AUTHORITY; or
  - (B) to the CONTRACTOR to enable the CONTRACTOR to comply with its obligations under Clause 13.11.
- 13.13 The CONTRACTOR hereby:
- (A) warrants that the Specially Written Software and the Documentation are original works and that it has all rights, power and entitlements to assign the Intellectual Property Rights subsisting in the Specially Written Software and the Documentation in accordance with clause 13.11;
  - (B) agrees to execute all such documents and do all such further acts as may be necessary to perfect the AUTHORITY's title to the Intellectual Property Rights assigned to the AUTHORITY at no charge (so far as it relates to execution and acts within the European Union) to the AUTHORITY; and
  - (C) warrants that the authors of the Specially Written Software and the Documentation unconditionally and irrevocably waive all moral rights subsisting in the Specially Written Software and the Documentation and that this waiver shall extend to the AUTHORITY's permitted licensees under this clause 13.

#### 14. **Intellectual Property Rights Indemnity**

- 14.1 The CONTRACTOR shall fully indemnify the AUTHORITY against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property Right in connection with the Services, the Deliverables or the use thereof by the AUTHORITY.
- 14.2 The CONTRACTOR shall forthwith notify the AUTHORITY if any claim or demand is made or action brought against the CONTRACTOR for infringement or alleged infringement of any Intellectual Property Right which may affect the Services, the Deliverables and/or the use thereof by the AUTHORITY.
- 14.3 The AUTHORITY shall forthwith notify the CONTRACTOR if any claim or demand is made or action brought against the AUTHORITY for infringement or alleged infringement of any Intellectual Property Right in connection with the Services, the Deliverables and/or the use

thereof by the AUTHORITY. The CONTRACTOR shall, at its own expense, conduct any litigation arising therefrom and all negotiations for settlement of the same and the AUTHORITY hereby agrees to grant the CONTRACTOR exclusive control of any such litigation or the negotiations for the settlement of the same.

- 14.4 The AUTHORITY shall, at the request of the CONTRACTOR, afford to the CONTRACTOR all reasonable assistance for the purpose of contesting any such claim or demand made or action brought against the AUTHORITY or the CONTRACTOR for infringement or alleged infringement of any Intellectual Property Right in connection with the Services, the Deliverables and/or the use thereof by the AUTHORITY and shall be repaid all reasonable costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 14.5 The AUTHORITY shall not make any admissions regarding or attempt to settle any claims, demands or actions referred to in clause 14.1 without the CONTRACTOR's consent.
- 14.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in respect of the Services and/or the Deliverables or in the reasonable opinion of the CONTRACTOR is likely to be made, the CONTRACTOR may, without prejudice to the AUTHORITY'S rights under clause 14.1, at its own expense either:
- (A) modify or replace the Services and/or the Deliverables, without reducing the performance and functionality of the same, so as to avoid the infringement or alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Services and/or the Deliverables; or
  - (B) procure a licence to use and provide the Services and/or the Deliverables on terms which are acceptable to the AUTHORITY (such acceptance not to be unreasonably withheld or delayed).
- 14.7 The foregoing provisions of this clause 14 and clause 15.1(M) shall not apply insofar as any such infringement, claim, demand or action is in respect of:
- (A) any use by or on behalf of the AUTHORITY of anything supplied by the CONTRACTOR under this Agreement in combination with any item not so supplied where such use of the item not so supplied directly gives rise to the claim, demand or action;
  - (B) any adaptation, enhancement or modification carried out by or on behalf of the AUTHORITY to any item supplied by the CONTRACTOR under this Agreement if such adaptation, enhancement or modification is not authorised by the CONTRACTOR or is otherwise contemplated by this Agreement;
  - (C) any use by the AUTHORITY of the Services in a manner not contemplated by this Agreement; or
  - (D) claims and demands arising due to the AUTHORITY being in breach of the warranties in clause 15.2.

## 15. **Warranties and Representations**

- 15.1 The CONTRACTOR hereby warrants and represents to the AUTHORITY that:



- (A) The CONTRACTOR has full capacity and authority and all necessary licences and consents to enter into and perform this Agreement and there are no circumstances which exist which could lead to any of such licences or consents being revoked or not being renewed in whole or in part;
- (B) the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (C) the CONTRACTOR shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Best Practice and in accordance with its own established internal Procedures, and shall at all times act accordingly or as may otherwise be authorised in accordance with the Change Control Procedures;
- (D) in the event of the provision of the Exit Services, the AUTHORITY or the Replacement Contractor (as applicable) shall acquire title to any Assets sold to the AUTHORITY or the Replacement Contractor (as applicable) free from all encumbrances, and the AUTHORITY or the Replacement Contractor (as applicable) shall have the right to quiet possession of such Assets and such Assets shall, at the point of transfer, be in good working order (fair wear and tear excepted) and in a condition sufficient to support the performance of services the same as or substantially similar to the Services to at least the level required of the Services before termination or expiry;
- (E) its obligations under this Agreement shall be performed in compliance with all applicable Laws, enactments, orders, regulations, and other similar instruments;
- (F) the Services shall be provided in accordance with the Service Levels;
- (G) all components and equipment supplied and/or used in the course of the provision of the Services shall be used and maintained in accordance with their manufacturers' technical specifications;
- (H) all software developments, amendments, modifications or enhancements carried out by or on behalf of the CONTRACTOR as part of the Services shall comply with the specifications therefor agreed by the AUTHORITY and the CONTRACTOR;
- (I) the provision of the Services shall not cause electrical interference to Government sites or to those premises operated by the AUTHORITY's staff beyond the limits laid down in the relevant standard specified in Schedule 11, provided that for the purpose of this clause 15.1(I), the Services shall be deemed to include the operation of any testing and monitoring instruments used in connection with the provision of the Services;

the CONTRACTOR will ensure that all Subcontracts, equipment rental or lease agreements, licences of Intellectual Property Rights (other than licences for **Redacted Pursuant to Section 43 (1) under Fol Act.**

- (J) and all other (non-employment) contracts which are necessary to the performance of the Services, are, for the duration of the Term, assignable to the AUTHORITY (without any transfer charge) upon the exercise of any termination rights prior to the expiry of the Agreement and the CONTRACTOR will confirm this in writing to the AUTHORITY within one (1) month of the Actual Transfer of Responsibility Date or within one (1) month of entering into of any such agreement (whichever is the later);

- (K) the CONTRACTOR will use its best endeavours to ensure that all Subcontracts, equipment rental or lease agreements, licences of Intellectual Property Rights (other than licences for USD and Opsware software tools) and all other (non-employment) contracts which are necessary to the performance of the Services, are assignable to the AUTHORITY (without any transfer charge) upon the expiry of the Agreement and the CONTRACTOR will confirm this in writing to the AUTHORITY within one (1) month of the Transfer of Responsibility Date or within one (1) month of entering into of any such agreement (whichever is the later);
- (L) all statements and representations in the CONTRACTOR's Response to the SOR are, to the best of its knowledge, information and belief, true and accurate and it will advise the AUTHORITY of any fact, matter or circumstance which would render any such statement or representation to be false or misleading;
- (M) subject to clause 14.7 the provision of the Services and the Deliverables, and the AUTHORITY's Use thereof, shall not infringe any Intellectual Property Rights of any third party;
- (N) the CONTRACTOR shall not encumber in any way any Assets, where "encumber" shall for the purposes of this clause 15.1(N) exclude entering into any leasing agreement, but include the creation of any interest or equity in favour of any person (including without limitation any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, title retention or any other security agreement or arrangement; and
- (O) any and all information supplied by or on behalf of the CONTRACTOR to the AUTHORITY or to any of its advisors, including but not limited to the contents of the Technical Definitions Documents, was, at the time it was provided, true and accurate.

15.2 The AUTHORITY warrants that:

- (A) it has all necessary rights in the AUTHORITY Third Party Software and AUTHORITY Software or any other item necessary for the provision of the Services to grant to the CONTRACTOR (and its Subcontractors) a right to use such AUTHORITY Third Party Software and Government Furnished Software for the performance of the CONTRACTOR's obligations under this Agreement; and
- (B) so far as the AUTHORITY is aware, the use by the CONTRACTOR of the AUTHORITY Third Party Software and AUTHORITY Software in the delivery of the Services will not infringe any Intellectual Property Right of any third party.

16. **Limitation of Liability**

16.1 Nothing in this clause 16 shall limit the liability of either Party for death or personal injury caused by its acts or omissions, or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

16.2 Nothing in this clause 16 shall limit the liability of the CONTRACTOR under or in respect of:

- (A) clause 14 (Intellectual Property Rights Indemnity);
- (B) a breach of clause 44 (Corrupt Gifts and Payments of Commission); or

(C) a breach of clause 45 (Non-discrimination).

**Remainder of Schedule 16 Redacted as Commercially Sensitive  
Pursuant to Section 43 (1) under Fol Act.**

17. **Third Party Actions**

17.1 For the avoidance of doubt any defect in the Services that arises as a result of:

(A) an error or defect of software forming a part of the Services developed by CONTRACTOR Personnel or any other third party contractor of the CONTRACTOR; or

(B) the acts or omissions of any CONTRACTOR Personnel,

will, subject to clause 17.2, be treated, for the purposes of this Agreement, as if it were an error or defect in the software developed by the CONTRACTOR, or an act or omission of the CONTRACTOR.

17.2 The CONTRACTOR's liability in relation to any warranties in respect of errors or defects in software forming a part of the Services which has been developed under any of the Third Party Contracts referred to in clause 37 shall be limited to any warranty contained in such Third Party Contracts.

18. **Insurance**

18.1 The CONTRACTOR shall, during the Term, insure or make provision for self-insurance against losses and damages:

(A) which may result from damage to, or the loss or destruction of, the Services; and/or

(B) which are the result of its wilful act or omission or negligence in performing its obligations hereunder.

Any insurances taken out must be effective in each case not later than the date on which the relevant risk commences.

18.2 The terms of any insurance or the amount of cover shall not relieve the CONTRACTOR of any liabilities under this Agreement.

18.3 The CONTRACTOR will, if requested in writing by the AUTHORITY, produce to the AUTHORITY a letter from its brokers confirming the coverage currently in force or provide the AUTHORITY with the certificates or, in the case of self-insurance, such other evidence of the coverage of the CONTRACTOR's insurance as the AUTHORITY may reasonably require.

19. **Confidentiality**

19.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information the CONTRACTOR acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents by the CONTRACTOR in the course of tendering for or the performance of this Agreement (or by

any person employed or engaged by the CONTRACTOR in connection with this Agreement in the course of such employment or engagement) is the property of the Crown.

19.2 The CONTRACTOR shall ensure that:

- (A) the CONTRACTOR (and any person employed or engaged by the CONTRACTOR in connection with this Agreement in the course of such employment or engagement) only uses Confidential Information for the purposes of this Agreement;
- (B) the CONTRACTOR (and any person employed or engaged by the CONTRACTOR in connection with this Agreement in the course of such employment or engagement) does not disclose any Confidential Information to any third party without the prior written consent of the AUTHORITY;
- (C) the CONTRACTOR takes all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purpose of this Agreement by the CONTRACTOR's employees, servants, agents or Subcontractors; and
- (D) without prejudice to the generality of the foregoing, neither the CONTRACTOR nor any person engaged by him whether as a servant or a consultant or otherwise uses the Confidential Information for the solicitation of business from the AUTHORITY or another part of the Crown by the CONTRACTOR or by such servant or consultant or by any third party.

19.3 The AUTHORITY shall:

- (A) treat as confidential all Confidential Information, obtained from the CONTRACTOR or any Subcontractors, including but not limited to any Source Code; and
- (B) not disclose to any third party without the express permission of the CONTRACTOR (which shall not be unreasonably withheld or delayed) any Confidential Information obtained from the CONTRACTOR or any of its contractors and providing always that such third party has entered into a confidentiality agreement on substantially the same terms and conditions as those set out in Schedule 25,
- (C) shall only use Confidential Information for the purposes of this Agreement.

19.4 The provisions of clauses 19.1, 19.2 and 19.3 shall not apply to any information which:

- (A) is or becomes public knowledge other than by breach of this clause 19;
- (B) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
- (C) can be shown by documentary evidence to have been created by a Party independently from the work under this Agreement;
- (D) is received from a third party who was free to divulge it; or
- (E) is required to be disclosed as a matter of law or pursuant to the rules of the London Stock Exchange or other stock exchange, bourse or listing authority.

- 19.5 Nothing in this clause shall be deemed or construed to prevent the AUTHORITY from disclosing any Confidential Information provided by the CONTRACTOR:
- (A) which it is required to disclose or in respect of which there is a reasonable need to disclose to any other department, office or agency of Government, or Parliament or any Parliamentary committee, provided that the AUTHORITY shall take all reasonable steps to ensure that such Confidential Information is treated as confidential by such departments, offices and agencies, and their servants or agents, including (where appropriate) either requiring servants or agents to enter into a confidentiality undertaking or ensuring that such servants or agents are already bound by an obligation of confidentiality; and
  - (B) to any consultant, contractor or other person engaged by the AUTHORITY in connection with the Services, provided that the AUTHORITY shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in the Confidentiality Agreement set out at Schedule 25 hereto.
- 19.6 Nothing in this Agreement shall prevent the CONTRACTOR or the AUTHORITY from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the AUTHORITY or the CONTRACTOR of any Intellectual Property Right.
- 19.7 Except as otherwise permitted in accordance with clause 19 each Party undertakes not to disclose or communicate to any person whatsoever (unless ordered by a court of competent jurisdiction) the terms of this Agreement.
- 19.8 The CONTRACTOR acknowledges that the AUTHORITY is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the AUTHORITY to enable the AUTHORITY to comply with its Information disclosure obligations.
- 19.9 The CONTRACTOR shall and shall procure that its Subcontractors shall:
- (A) transfer to the AUTHORITY all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - (B) provide the AUTHORITY with a copy of all Information in its possession, or power in the form that the AUTHORITY requires within five (5) Working Days (or such other period as the AUTHORITY may specify) of the AUTHORITY's request; and
  - (C) provide all necessary assistance as reasonably requested by the AUTHORITY to enable the AUTHORITY to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.10 The AUTHORITY shall be responsible for determining in its absolute discretion 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, but shall (subject to clause 19.12) use all reasonable endeavours to advise the CONTRACTOR of such Request for Information as soon as reasonably possible and take any representations the CONTRACTOR may make into account when determining whether the Commercially Sensitive Information should be disclosed.

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

19.12 The CONTRACTOR acknowledges that the AUTHORITY may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information, including the Commercially Sensitive Information, in accordance with clause 19.10, and without consulting or obtaining consent from the CONTRACTOR, or despite having taken the CONTRACTOR's views into account.

## 20. **Protection of User Data and Confidentiality**

20.1 The CONTRACTOR acknowledges that certain of the Data processed in connection with or by the Services will be of a sensitive, confidential or secure nature. The CONTRACTOR shall ensure that any Subcontractors who have or are likely to have access to any Data processed in connection with or by the Services shall enter, on the AUTHORITY's request, into a Confidentiality Agreement.

20.2 The CONTRACTOR's attention is hereby drawn to the Data Protection Act 1998. The CONTRACTOR undertakes to abide by and procure that its employees, representatives and agents abide by the provisions of the Data Protection Act 1998.

20.3 Where the CONTRACTOR or any of its Subcontractors, as part of the Services, processes personal data as a data processor on behalf of the AUTHORITY, the CONTRACTOR shall, and shall procure that its Subcontractors shall:

(A) process personal data only in accordance with instructions from the AUTHORITY as data controller; and

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

(C) at all times take all appropriate technical or organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

20.4 The AUTHORITY may from time to time serve on the CONTRACTOR data subject access requests and/or information and notice requests from the Information Commissioner in accordance with the Data Protection Act 1998 requiring the CONTRACTOR, within such time and in such form as is specified in the data subject access request and/or information and notice requests from the Information Commissioner, to furnish to the AUTHORITY such information as the AUTHORITY may reasonably require relating to compliance by the CONTRACTOR or by its Subcontractors with the CONTRACTOR's obligations to the AUTHORITY under this Agreement in connection with the processing of personal data.

20.5 The CONTRACTOR acknowledges that the AUTHORITY's Data, and all Databases administered by the AUTHORITY, will be and remain the sole property of the AUTHORITY or the Crown, and is the Confidential Information of the AUTHORITY. The AUTHORITY reserves all Intellectual Property Rights which may subsist in the AUTHORITY's Data and its Databases. The CONTRACTOR shall not delete or remove any copyright or Database right notices contained within or relating to the AUTHORITY Data.

20.6 The CONTRACTOR shall include in any and all Databases used to provide the Services, a notice stating that the Crown is the maker and owner of the Database.

- 20.7 The CONTRACTOR shall not store, copy, disclose or use the AUTHORITY Data except as necessary for the performance by the CONTRACTOR of its obligations under this Agreement or as otherwise expressly authorised by the AUTHORITY.
- 20.8 If, at any time and from time to time, through the provision of the Services, the CONTRACTOR is deemed by virtue of the Copyright and Rights in Databases Regulations 1997, to be the first owner of the Database right in any AUTHORITY's Data, the CONTRACTOR shall forthwith assign all Intellectual Property Rights in that AUTHORITY Data to the AUTHORITY.
- 20.9 In this clause 20 the terms "process", "personal data", "data processor", "data subject" and "data controller" shall have the meaning given to these terms in the Data Protection Act 1998.
21. **Loss of Data and General Indemnity for Third Party Actions**
- 21A **Redacted as Commercial in Confidence (Subcontractor Arrangements) Pursuant to Section 43 (1) under Fol Act.**
- 21.1 **Redacted – Third Party Arrangements Pursuant to Section 43 (1) under Fol Act.**
- 21.2 The AUTHORITY shall promptly notify the CONTRACTOR if any claim or demand is made or action brought against the AUTHORITY to which clause 0 may apply. The AUTHORITY shall allow the CONTRACTOR to conduct and settle all negotiations and proceedings and give the CONTRACTOR all reasonable assistance if requested in relation to any claim, demand or action to which clause 0 may apply. The AUTHORITY shall not make any admission nor attempt to settle or compromise any claim, demand or action.
- 21.3 In the event that the AUTHORITY Data is corrupted or lost as a result of any Default by the CONTRACTOR, the AUTHORITY shall have the option to elect either of the following remedies:
- (A) the AUTHORITY may require the CONTRACTOR at its own expense to restore or procure the restoration of the AUTHORITY Data; and/or
  - (B) where the CONTRACTOR fails in accordance with clause 21.3(A) to restore the AUTHORITY Data within a reasonable time, the AUTHORITY may itself restore or procure restoration of the AUTHORITY Data and shall be repaid by the CONTRACTOR any reasonable expenses incurred in doing so.
- 21.4 The indemnity set out above in clause 0 shall be limited (to the maximum extent reasonably possible) to direct losses, damages, reasonable costs and expenses incurred by the AUTHORITY to the extent that they are directly and solely attributable to any act, error or omission of the CONTRACTOR, or by any of its Subcontractors or agents and shall not apply to any actions, claims or demands made by any User for losses, damages or costs which consist of loss of revenue, business, contracts anticipated savings or profits, or for any indirect or consequential loss whatsoever.

- 21.5 The CONTRACTOR shall not be responsible or be obliged to indemnify the AUTHORITY under clause 0 if the action, claim or demand arises as a:
- (A) direct result of any inaccuracy in any information made available or provided to the CONTRACTOR by the AUTHORITY;
  - (B) direct result of the CONTRACTOR acting on the specific instruction of the AUTHORITY;
  - (C) direct result of the negligence or wilful misconduct of the AUTHORITY, its employees, agents or contractors;
  - (D) direct result of any defect in the software, hardware or processors from any Subcontractor or any other application of the CONTRACTOR's use of which has been mandated by the AUTHORITY;
  - (E) direct result of the negligence or wilful misconduct of the User;
  - (F) direct result of a failure of a third party holding a contract with the AUTHORITY to carry out its obligations to the AUTHORITY in connection with the Gateway providing always that the CONTRACTOR has satisfactorily carried out all material obligations to the AUTHORITY under this Agreement;
  - (G) result of a Force Majeure; or
  - (H) result of the AUTHORITY failing to comply with its obligations under this Agreement.

22. **Security**

- 22.1 The CONTRACTOR shall implement security measures in accordance with Schedule 11 and such other security measures as the AUTHORITY deems necessary to comply with the provisions of Schedule 11, provided that if such other security measures increase the CONTRACTOR's costs or otherwise affect its ability to perform its obligations, compliance with such other security measures shall be subject to agreement in accordance with the Change Control Procedure.

23. **Official Secrets Act and Disclosure of Information**

- 23.1 The CONTRACTOR's attention is drawn to the provisions of the Official Secrets Act 1911 to 1989. The CONTRACTOR shall take all reasonable steps (including, without limitation by the display of notices or by other appropriate means) to ensure that all persons engaged on any work in connection with this Agreement have notice that these statutory provisions apply to them and will continue so to apply after the expiry or termination of this Agreement.
- 23.2 The CONTRACTOR shall regularly (and in any event not less than once every six (6) months) remind its employees, agents, Subcontractors and representatives in writing of the obligations upon such persons set out in Schedule 11. The CONTRACTOR shall monitor the compliance by such persons with such obligations.
- 23.3 The CONTRACTOR shall forthwith report to the AUTHORITY in writing:



- (A) all breaches of the obligations set out herein, whether by the CONTRACTOR or any of its employees, agents, Subcontractors, representatives or by any third party; and
- (B) all disciplinary actions taken by the CONTRACTOR in respect of such breaches by the employees of the CONTRACTOR and all other actions taken in respect of such breaches by agents, Subcontractors or representatives.

24. **Critical National Infrastructure**

24.1 The CONTRACTOR acknowledges that the Services form a part of the Critical National Infrastructure. If at any time during the Term the AUTHORITY reasonably believes that it needs to take Emergency Action in respect of the Services or any part thereof, due to:

- (A) a Default caused by the CONTRACTOR or any CONTRACTOR Personnel that is materially preventing or materially delaying the performance of the Services or any part of the Services;
- (B) a serious risk existing to the health or safety of persons or property or to the environment;
- (C) the need to discharge a statutory duty; and/or
- (D) the AUTHORITY deeming that there is a danger to the Critical National Infrastructure or to the national interest,

then the AUTHORITY shall be entitled to take Emergency Action in accordance with clauses 24.2 to 24.3 below.

24.2 Where the AUTHORITY wishes to exercise its entitlement under clause 24.1 to take Emergency Action, it shall notify the CONTRACTOR in writing of the following:

- (A) the action that it intends to take;
- (B) the reason for taking such action;
- (C) the date from which such action shall commence;
- (D) the time period that it believes to be necessary for such action; and
- (E) to the extent practicable, the effect on the CONTRACTOR and its obligation to provide the Services during the period such action is being taken.

24.3 Following service of such notice, the AUTHORITY shall take such action as is notified under clause 24.2 above and any consequential additional action as it reasonably believes is necessary (together, the "Emergency Action") and the CONTRACTOR shall give all reasonable assistance to the AUTHORITY while it is taking such Emergency Action.

24.4 If the Emergency Action is taken other than as a result of the Default of the CONTRACTOR or any CONTRACTOR Personnel, then for so long as and to the extent that the Emergency Action is taken, and this prevents the CONTRACTOR from providing any part of the Services:

- (A) the CONTRACTOR shall be relieved from its obligations to provide such part of the Services; and

- (B) in respect of the period in which the AUTHORITY is taking the Emergency Action, the Charges due from the AUTHORITY to the CONTRACTOR shall equal the amount the CONTRACTOR would receive if it were satisfying all its obligations.
- 24.5 If the Emergency Action is taken as a result of a Default of the CONTRACTOR under this Agreement, then the CONTRACTOR shall pay to the AUTHORITY all the AUTHORITY's direct costs of operation in taking the Emergency Action, and the AUTHORITY shall be entitled to deduct such costs from the Charges or any other sum then due or which at any time thereafter may become due to the CONTRACTOR under this Agreement, in accordance with clause 11.
- 24.6 If the AUTHORITY decides, in its sole and absolute discretion, to cease to exercise its rights to take any Emergency Action, the AUTHORITY may by written notice to the CONTRACTOR ("Step Out Notice") specify:
- (A) the Emergency Action the AUTHORITY has actually taken; and
  - (B) the date on which the AUTHORITY plans to end the Emergency Action ("Step Out Date"), subject to the AUTHORITY being satisfied with the CONTRACTOR's ability to resume the provision of the Services and approval of the CONTRACTOR's plan developed in accordance with clause 24.7.
- 24.7 The CONTRACTOR shall, following receipt of a Step Out Notice and not less than 20 days prior to the Step Out Date, develop for the AUTHORITY's approval a draft plan ("Step Out Plan") relating to the resumption by the CONTRACTOR of the Services, including any action the CONTRACTOR proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 24.8 If the AUTHORITY does not approve the draft Step Out Plan, the AUTHORITY shall inform the CONTRACTOR of its reasons and the CONTRACTOR shall promptly revise the draft Step Out Plan, taking such reasons into account and shall re-submit the Step Out Plan for the AUTHORITY's approval. The AUTHORITY's approval of the Step Out Plan shall be at its sole and absolute discretion.
- 24.9 Nothing in this clause 24 shall affect any of the AUTHORITY's other rights under this Agreement.

25. **Guarantee**

The CONTRACTOR shall procure the agreement of the Parent Company to provide a guarantee to the AUTHORITY in the terms set out in Schedule 14.

26. **Financial Capability**

26.1 If:

- (A) the CONTRACTOR becomes aware of or its Parent Company announces publicly any event giving rise to an actual or potential financial loss either to itself or to a person who in relation to the CONTRACTOR is a Connected Person which is material to the CONTRACTOR or its Parent Company ("Relevant Entity");
- (B) the Relevant Entity's long-term bond rating published by Standard and Poor's falls below "BBB-" or "investment grade"; or

- (C) in respect of the Guarantor, a detrimental financial event occurs which the Guarantor would be required to notify under the rules of any stock exchange or similar body where its stock is quoted or under the rules of any body responsible for the regulation of such stock exchange,

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

26.2 If:

- (A) the CONTRACTOR becomes aware of any such event as it is under an obligation to notify to the AUTHORITY in accordance with clause 26.1 but fails to do so in the manner or at the time prescribed in clause 26.1;
- (B) the CONTRACTOR has notified the AUTHORITY and the AUTHORITY has requested a meeting with the CONTRACTOR with a view to reaching an outcome in accordance with clause 26.1 but the CONTRACTOR either fails to agree to such a meeting or does not act in good faith and use all reasonable endeavours to agree an outcome; or
- (C) the CONTRACTOR and the AUTHORITY have reached an agreement in accordance with clause 26.1 and the CONTRACTOR fails fully and promptly to implement such agreement (other than through the fault of a third party or due to a Force Majeure Event),

then any such event shall be deemed to be a Material Default of its obligations.

26.3 For the purposes of clause 26.1, where the relevant event relates to a Connected Person, the Parties shall be deemed to have agreed an outcome in accordance with that clause where the CONTRACTOR identifies an alternative source of supply of the products or services provided by that Connected Person and includes an undertaking by the CONTRACTOR to use that alternative source of supply (which, if an alternative subcontractor, shall be subject to approval by the AUTHORITY under clause 57).

## 27. **Publicity**

27.1 Except with the written consent of the AUTHORITY, the CONTRACTOR shall not make any press announcement or publicise this Agreement in any way save that either Party may make announcements required by Parliament or any Parliamentary committee or for the purposes of compliance with the rules of the London Stock Exchange, other stock exchange, bourse or listing authority, or any legal or accounting requirements applicable to that Party provided that the Party first obtains the prior written approval of the other Party (such approval not to be unreasonably withheld or delayed).

27.2 The CONTRACTOR shall ensure that all its CONTRACTOR Personnel comply with clause 27.1. The AUTHORITY shall ensure that all its personnel comply with clause 27.1.

28. **Contract Action Notices**

28.1 Without prejudice to any other rights or remedies set out in this Agreement, where the AUTHORITY (acting reasonably) considers that the CONTRACTOR is in Default, the AUTHORITY may issue a contract action notice ("Contract Action Notice" or "CAN") which shall set out details of the alleged Default and the action which the AUTHORITY requires the CONTRACTOR to take so as to remedy the circumstances giving rise to the service of the relevant CAN.

28.2 At the meeting of the next appropriate governance body following the service of a Contract Action Notice (or earlier if the AUTHORITY so requires in the relevant Contract Action Notice), the AUTHORITY and the CONTRACTOR shall agree a Contract Action Plan which shall set out the corrective action (if any) which is to be taken by the CONTRACTOR so as to remedy the circumstances giving rise to the service of the relevant CAN. To the extent that the CONTRACTOR and the AUTHORITY (each acting reasonably) are unable to agree on such Contract Action Plan, the matter shall be handled by the Parties in accordance with the Dispute Resolution Procedure.

28.3 Without prejudice to any rights or remedies which either Party may have under this Agreement, the Parties each agree to undertake any action which they are required to take as part of any Contract Action Plan which is agreed or determined pursuant to clause 28.2.

29. **Termination**

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

(A) there is a change of control, as defined by section 416 of the Income and Corporation Taxes Act 1988, of the CONTRACTOR or its Parent Company; or

(B) there is an Insolvency Event.

29.2 The AUTHORITY may at any time by Notice in writing terminate this Agreement forthwith, if the CONTRACTOR:

(A) commits a Material Default that is capable of remedy and fails to remedy the Material Default within fourteen (14) days (or such other period as the Parties may agree in writing) of written notice to the CONTRACTOR specifying the Material Default and requiring its remedy; or

(B) commits a Material Default which is not capable of remedy.

**Remainder of section 29 Redacted as Commercially Sensitive Pursuant to Section 43 (1) under Fol Act.**

30. **Effects of Termination and Expiry**

30.1 In the event of termination of this Agreement, the AUTHORITY shall pay the sums detailed in the applicable provisions of paragraph 13 of Schedule 15.

- 30.2 In the event of termination or expiry of this Agreement the AUTHORITY shall have the following rights which it may choose, in its sole and absolute discretion to exercise and the CONTRACTOR shall, where the AUTHORITY exercises such rights, comply therewith and/or shall, where appropriate, procure that any Subcontractors comply therewith:
- (A) to purchase from the CONTRACTOR at the agreed pre-estimated value any Assets owned by the CONTRACTOR and used exclusively in connection with the provision of the Services. For the purposes of this clause 29.2(A), the agreed pre-estimated value of each Asset shall mean the greater of: (i) value of the Asset as set out in the financial records of the CONTRACTOR, less any depreciation applicable to that Asset as evidenced by such financial records; or (ii) the unrecovered portion of the purchase price of that Asset;
  - (B) to purchase from the CONTRACTOR at a price agreed between the Parties any other equipment used in the provision of the Services which is owned by the CONTRACTOR and which the parties agree should be sold by the CONTRACTOR to the AUTHORITY at a price equal to the greater of: (i) the value of the equipment as set out in the financial records of the CONTRACTOR less any depreciation applicable to that equipment as evidenced by such financial records; or (ii) the unrecovered portion of the purchase price of that Asset;
  - (C) (subject to the terms of any such third party agreement) to require the CONTRACTOR at no charge (save for the payment by the AUTHORITY of third party charges with respect to such assignments) to assign to the AUTHORITY any equipment leases between the CONTRACTOR and third parties which relate to equipment used exclusively in connection with the provision of the Services; and
  - (D) to comply with its obligations set out in Schedule 12.
- 30.3 In the event of termination or expiry and subject always to clause 13, the CONTRACTOR shall, at no cost to the AUTHORITY, forthwith release to the AUTHORITY a current back-up (stored by the CONTRACTOR in accordance with Schedule 2) of all the CONTRACTOR Software and all Third Party Software (subject to the consent of and any terms and conditions imposed by the owner or licensor of such Third Party Software) and all other software, Data, tools, utilities, Documentation and (excluding the Assets and the licences for USD and Opsware software tools) any other item necessary to provide the Services.
- 30.4 Termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 30.5 The CONTRACTOR agrees upon termination or expiry of this Agreement (for whatever reason) to render to the AUTHORITY or any third party nominated by the AUTHORITY, all such assistance as the AUTHORITY may reasonably require to provide for the provision of facilities and/or services equivalent to the Services by the AUTHORITY itself or by a Replacement Contractor. The CONTRACTOR shall be entitled to make a reasonable fair market charge for the provision of assistance under this clause 30.5.
- 30.6 The provision of clauses 1 (Interpretations); 13 (Intellectual Property Rights); 14 (Intellectual Property Rights Indemnity); 16 (Limitation of Liability); 19 (Confidentiality); 23 (Official Secrets Act and Disclosure of Information); 27 (Publicity); 30 (Effect of Termination and Expiry); 32 (Audit Access); 35 (Government Furnished Equipment); 44 (Corrupt Gifts and Payment of Commission); 48 (Non Solicitation); 55 (Force Majeure); 56.2 (Entire Agreement); 56.4 (Further Assurance); 58 (Law and Jurisdiction), and the

provisions of Schedules 1, 5, 11, 12, 14, 15 and 20 shall survive the termination or expiry of this Agreement.

31. **Assistance by the CONTRACTOR for Re-procurement**

31.1 The CONTRACTOR shall comply with the obligations set out in Schedule 12.

32. **Audit Access**

32.1 The CONTRACTOR (and any person acting on the CONTRACTOR's behalf) shall keep, or cause to be kept, full and accurate financial and other performance records of all products used and services exclusively performed in connection with this Agreement (all such information herein referred to as the "Records"). The CONTRACTOR shall ensure that Subcontractors during the term hereof in connection with the performance of the Services shall also keep or cause to be kept full and accurate Records and shall grant and allow the same rights of access and accept the same obligations to provide information as are granted, allowed and/or accepted by the CONTRACTOR under this clause 32.

32.2 Except where specifically provided in this clause 32, neither the CONTRACTOR nor its CONTRACTOR Personnel or other representatives shall be entitled to reimbursement by the AUTHORITY for any costs or expenses incurred as a result of compliance with their respective obligations hereunder.

32.3 The CONTRACTOR shall, and shall procure that its Subcontractors shall, grant to the AUTHORITY or its authorised agents or any other Government body (subject, in the case of authorised agents or other Government body (except for such bodies referred to in clause 32.5) to execution of a confidentiality undertaking in favour of the CONTRACTOR on the terms set out in Schedule 25) the right of access at all reasonable times to inspect and take copies from the Records and/or any sites and/or premises and/or personnel connected with the provision of the Services and shall provide all reasonable assistance at all times during the Term (and for eighteen (18) months after the date of termination or expiry, for whatever reason, of this Agreement) for the purposes of allowing the AUTHORITY to obtain such information as is necessary to:

- (A) fulfil the AUTHORITY's obligations to supply information for parliamentary, judicial or other administrative purposes; and/or
- (B) audit the CONTRACTOR's compliance with its obligations under the Agreement;
- (C) carry out physical audits of the Assets involved in the delivery of the Services, whether or not they are listed on the Asset Register; and/or
- (D) audit all activities, security and integrity in connection with the provision of the Services.

32.4 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity, other impropriety or Default by the CONTRACTOR, or any CONTRACTOR Personnel, in connection with this Agreement or the performance of the Services, the AUTHORITY shall have for itself and its authorised representatives and agents the right to obtain immediate access to the Records and/or any sites and/or any premises and/or any personnel described in clauses 32.1, 32.2 and 32.3 above and the CONTRACTOR agrees to render all necessary assistance, and shall ensure that its CONTRACTOR Personnel render all necessary assistance, to the conduct of such investigation at all times during the Term or at any time thereafter. For the avoidance of doubt, the CONTRACTOR shall be repaid its reasonable expenses incurred in giving

assistance pursuant to this Clause 32.4 in the event that the result of such investigation reveals no fraudulent activity or other impropriety or Default by the CONTRACTOR or any CONTRACTOR Personnel.

32.5 For the purposes of:

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

the Comptroller and Auditor General and/or his representatives (the "C & AG") shall have the right to examine the Records and all such documents and other information owned, maintained or held by, or otherwise in the control of, the CONTRACTOR (including computerised records or Data) as the C & AG may reasonably require or consider necessary. The CONTRACTOR shall provide access (and shall procure that any person acting on the CONTRACTOR's behalf who has such documents and/or other information shall also provide access) to such documents and/or other information for the C & AG for such purposes. Further, the CONTRACTOR shall furnish to the C & AG such oral or written explanations as he requires for such purposes. The C & AG shall bear the costs incurred by himself of such examination and clarification.

32.6 For the avoidance of doubt, it is hereby declared that clause 32.5 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the contract by the C & AG under section 6(3)(d) of the National Audit Act 1983.

### 33. Asset Register

33.1 The CONTRACTOR shall prepare and maintain during the full term of the Agreement a register of all of the Assets (which, for the purposes only of this clause 33, includes any Government Furnished Equipment, Government Furnished Software, or other material referred to in clause 33.2) and their configuration status ("Asset Register"). Such Asset Register shall contain, without limitation, the following information:

- (A) a description of each listed Asset (sufficient to enable the identification of each individual Asset) including, where relevant, the identity of the third party that has supplied the Asset;
- (B) the identity and location of each listed Asset;
- (C) the date on which each of the listed Assets was originally procured and/or installed and its original purchase price;
- (D) all Assets and all equipment provided or used in providing the Services, identifying the precise Services for which the Assets or equipment is being used, location by building and room, brand and model, state or condition, age, equipment identification number and maintenance log identification number;
- (E) all equipment leases, maintenance agreements, support agreements and all other Subcontracts and agreements entered into by the CONTRACTOR in relation to the performance of the CONTRACTOR's obligations under this Agreement;

- (F) all software in use in connection with the Services, identifying its version and installed patches, whether it is Deposited Software, and if so what version has most recently been placed in escrow and when;
  - (G) all Intellectual Property Rights (including those owned by the CONTRACTOR or by any of the Connected Persons or licensed to the CONTRACTOR by a third party) comprised or used in the Service or required to be used in order to enable the Services to perform as required; and
  - (H) details of who has title to the Assets (and where such Assets are rented or leased by the CONTRACTOR, the identities of the parties to any relevant rental agreements or leases).
- 33.2 The Asset Register (together with any draft or preparatory versions of the same), shall be deemed to fall within the definition of Records.
- 33.3 The CONTRACTOR shall deliver to the AUTHORITY (without additional charge) an up to date printed copy of the Asset Register so far as it relates to a Service:
- (A) within five (5) Working Days of any request to do so by the AUTHORITY;
  - (B) within thirty (30) Calendar Days of the expiry or termination of this Agreement.
- 33.4 The CONTRACTOR shall ensure that all Assets are clearly marked with:
- (A) a unique identification mark;
  - (B) a functional title or code so that it can be readily identified in the relevant Documentation; and
  - (C) a security mark, such as a bar code or other scannable format.
- 33.5 The CONTRACTOR shall log appropriate details of each Asset, its unique identification mark, its functional title or code and its security mark in the appropriate register no later than three (3) Working Days after installation of such Asset.
- 33.6 Any failure by the CONTRACTOR to deliver or make available the Asset Register in accordance with this clause 33 shall constitute a Material Default.
34. **Documentation**
- 34.1 The CONTRACTOR shall supply to the AUTHORITY and update the Documentation in accordance with the operational procedures and requirements set out in Schedule 2. For the purposes of this clause 34.1 and Schedule 2 the Documentation shall not be deemed to have been delivered until it has been Accepted or otherwise approved by the AUTHORITY.
- 34.2 The CONTRACTOR warrants that the Documentation (other than Documentation in respect of licences for **Redacted Pursuant to Section 43(1) under Fol Act**) comprises a complete set of operating manuals and technical handbooks, documents, diagrams, information and other materials (which for the avoidance of doubt shall not include hardware or fixtures) necessary for use of the Services by the AUTHORITY's personnel provided they have the appropriate qualifications and expertise for the role they are performing.



35. **Government Furnished Equipment**

- 35.1 Government Furnished Equipment shall remain the property of the AUTHORITY and shall be used in the performance of this Agreement and for no other purposes without the prior written approval of the AUTHORITY.
- 35.2 All Government Furnished Equipment shall be deemed to be in good condition when received by or on behalf of the CONTRACTOR unless the CONTRACTOR notifies the AUTHORITY to the contrary within five (5) Working Days of receipt.
- 35.3 The CONTRACTOR undertakes the safe custody of and due return of all Government Furnished Equipment and acknowledges that it is subject to the duties of a bailee under common law in respect of all Government Furnished Equipment and the CONTRACTOR shall be responsible for all loss of or damage (including any deterioration in the state and condition other than fair wear and tear resulting from normal and proper use in the performance of this Agreement which is not contributed to by lack of due maintenance and repair) (where such maintenance and repair is the CONTRACTOR's responsibility) to Government Furnished Equipment whilst in its possession unless such loss and damage is due to the negligence of the AUTHORITY, its staff or employees or a contractor engaged by the Authority.
- 35.4 Neither the CONTRACTOR, nor any CONTRACTOR Personnel, nor any other person, shall have a lien on any Government Furnished Equipment for any sum due to the CONTRACTOR, CONTRACTOR Personnel or other person and the CONTRACTOR shall take all steps necessary to ensure that the title of the AUTHORITY is brought to the notice of all Subcontractors and third parties.
- 35.5 The AUTHORITY warrants that it has all necessary rights in the Government Furnished Equipment to allow the CONTRACTOR (and its Subcontractors) a right to use the Government Furnished Equipment.
- 35.6 On or immediately prior to the Commencement Date (or such other date as may be agreed between the Parties), the AUTHORITY shall make available to the CONTRACTOR the Government Furnished Equipment that the CONTRACTOR has notified and agreed with the AUTHORITY is necessary to be provided by the AUTHORITY for the CONTRACTOR to perform the Services.

36. **Authority Software**

- 36.1 If the CONTRACTOR uses any AUTHORITY Software, the CONTRACTOR shall satisfy itself that such software meets the specification agreed for such software. The CONTRACTOR shall notify the AUTHORITY of any AUTHORITY Software which does not meet its agreed specification.
- 36.2 The CONTRACTOR undertakes the safe custody of and the due return of all AUTHORITY Software and shall be responsible for any loss of or damage to such AUTHORITY Software (other than as a result of the negligence, wilful act or omission of the AUTHORITY or a third party for whom the CONTRACTOR is not responsible) and shall indemnify the AUTHORITY against any such loss or damage.
- 36.3 Neither the CONTRACTOR, any Subcontractor nor any other person shall have a lien on any AUTHORITY Software for any sum due to the CONTRACTOR, Subcontractor or other person and the CONTRACTOR shall take all reasonable steps to ensure that the title, Intellectual Property Rights and/or licence to use of the AUTHORITY, and the exclusion of

any such lien, are brought to the notice of all Subcontractors and other persons dealing with any AUTHORITY Software.

36.4 Except as expressly stated in this clause 36 and clause 15.2, all warranties with respect to the AUTHORITY Software, whether express or implied by statute, common law or otherwise (including, but not limited to, fitness for purpose) are hereby excluded to the extent permitted by law.

36.5 Where AUTHORITY Software is licensed from a third party, the AUTHORITY will:

- (A) arrange licences and support arrangements appropriate to allow the CONTRACTOR to discharge its duties under this Agreement;
- (B) disclose to the CONTRACTOR the full terms of any such licences; and
- (C) remain liable for all payments due pursuant to such licences.

The costs of such licences and support arrangements will be borne by the AUTHORITY save that where additional charges or costs are incurred as a result of abnormal or unauthorised usage of such software, those costs will be borne by the CONTRACTOR.

### 37. **Third Party Contracts**

37.1 On or before the Transfer of Responsibility Date, the AUTHORITY shall use reasonable endeavours to procure, at its own expense, the transfer, novation or assignment of the Third Party Contracts in favour of the CONTRACTOR upon the same terms as apply to the AUTHORITY at the Commencement Date.

37.2 In respect of Third Party Contracts which have not been transferred, novated or assigned to the CONTRACTOR:

- (A) the CONTRACTOR shall act as agent for the AUTHORITY and the AUTHORITY shall hold those Third Party Contracts in trust for the benefit of the CONTRACTOR. In such circumstances the Parties shall, as between themselves, in all respects act and behave as if the Third Party Contracts had been transferred to the Contractor;
- (B) the AUTHORITY shall give all reasonable assistance to the CONTRACTOR to enable the CONTRACTOR to enforce for the CONTRACTOR's benefit the AUTHORITY's rights under those Third Party Contracts; and
- (C) upon termination of such contract, which continues to be necessary for the provision of the Services, the CONTRACTOR shall use its best endeavours to negotiate an equivalent contract in its name or if this is not possible using its best endeavours, the CONTRACTOR shall use its best endeavours to procure suitable alternative rights or services to enable it to perform the Services under this Agreement.

37.3 The AUTHORITY shall indemnify the CONTRACTOR from and against any and all losses, costs, liabilities, outgoings and expenses arising out of or in connection with the Third Party Contract prior to the novation or arising as a result of the AUTHORITY's breach of any Third Party Contracts.

**38. Title And Risk**

- 38.1 Except as otherwise provided in this Agreement, title to and risk in all software and equipment used by the CONTRACTOR in the performance of the Services shall not pass to the AUTHORITY.
- 38.2 For the avoidance of doubt, this shall not affect the AUTHORITY's liability for loss or damage to such software or equipment due to the wilful or negligent act or omission of the AUTHORITY, its staff or employees or third party contractors engaged by the AUTHORITY. Any software or equipment controlled by the AUTHORITY and on the premises of the Authority or a third party will be at the AUTHORITY's risk.

**39. Escrow**

- 39.1 The CONTRACTOR shall keep master copies of all Source Code held by or reasonably available to the CONTRACTOR and operational versions of all Third Party Software in a secure place.
- 39.2 Without prejudice to the operation security requirements which form part of the Services the CONTRACTOR shall, and shall procure that its Subcontractors and licensors shall, place the Source Code of the Deposited Software in escrow with NCC Escrow International on the basis of the appropriate standard agreement or on such other terms as the AUTHORITY, the Subcontractor and NCC Escrow International shall agree. Such escrow agreement shall be entered into within reasonable timescales to be agreed between the AUTHORITY and the CONTRACTOR.
- 39.3 The AUTHORITY shall pay, and the CONTRACTOR shall pay (and shall procure that its Subcontractors pay), their respective fees as set out in any escrow agreement entered into pursuant to clause 39.2.
- 39.4 The CONTRACTOR grants, and shall procure that its Subcontractors grant, to the AUTHORITY a non-transferable, irrevocable and non-exclusive licence to Use, reproduce, modify, adapt and enhance (and to authorise any third party to Use, reproduce, modify, adapt and enhance) the Source Code version of the Deposited Software. However, the foregoing licence shall only become effective if the AUTHORITY becomes entitled to obtain access to the Source Code version of the Deposited Software pursuant to the source code escrow agreement referred to in clause 39.1 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Deposited Software provided that such restrictions shall not detract from the rights granted hereunder.

**40. Access to CONTRACTOR Sites**

- 40.1 The CONTRACTOR hereby grants to the AUTHORITY, its employees, officers, agents representatives and other contractors, and any of its other contractor's employees, officers, agents and representatives, an irrevocable right of access to any site used by the CONTRACTOR in the provision of the Services (upon reasonable notice) for the purposes of confirming the CONTRACTOR's compliance with the Agreement.
- 40.2 The AUTHORITY shall ensure that its employees, officers, agents, representatives and other contractors comply at all times with all reasonable directions of the CONTRACTOR and all security and other regulations of the CONTRACTOR whilst present on any such site referred to in clause 40.1.

40.3 The AUTHORITY shall not, for the purposes of clause 40.1, utilise an agent, representative or other contractor that is a competitor of the CONTRACTOR or a competitor of an affiliate of the CONTRACTOR. For the avoidance of doubt, nothing in this clause 40.3 shall serve to limit the AUTHORITY's rights as set out in clause 24.

41. **Licence to Use AUTHORITY Premises**

41.1 Any AUTHORITY Premises (including temporary buildings) made available to the CONTRACTOR and the CONTRACTOR Personnel by the AUTHORITY in connection with this Agreement shall be made available to the CONTRACTOR and the CONTRACTOR Personnel free of charge and shall, unless otherwise agreed in writing by the AUTHORITY, be used by the CONTRACTOR and the CONTRACTOR Personnel solely for the purpose of performing its or their obligations under this Agreement.

41.2 The CONTRACTOR and the CONTRACTOR Personnel shall have the use of such AUTHORITY Premises as licensees and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the AUTHORITY may determine.

42. **Health and Safety Hazards**

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

42.2 The Authority shall notify the CONTRACTOR of any health and safety hazards which may exist at the AUTHORITY Premises (which the AUTHORITY is aware) and may affect the CONTRACTOR and/or any persons entering or otherwise present at the AUTHORITY Premises. The CONTRACTOR shall inform all persons entering or otherwise present at the AUTHORITY Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

43. **Management and Reporting**

43.1 The Parties will perform the activities and responsibilities set out in Schedule 13.

43.2 The CONTRACTOR shall deliver to the AUTHORITY, in the manner and at the times specified in Schedule 13 the reports required by that Schedule.

43.3 The Parties shall ensure that their respective representatives attend the meetings and perform the functions specified in Schedule 13.

43.4 The CONTRACTOR shall notify the AUTHORITY, as soon as reasonably practicable after they come to the CONTRACTOR's attention, of any events or circumstances that may adversely affect the performance of the Services and the CONTRACTOR's obligations under this Agreement, in whole or in part, that are reasonably likely to result in any material delay in the provision of the Services, including any relevant:

- (A) change in the role or status of any Key Personnel;
- (B) delay or failure of performance under, or termination of, any Subcontract;
- (C) threat of or planned industrial action, including any strikes or lock-outs;
- (D) interruption or unavailability of power supplies or telecommunication networks;
- (E) failure of any system or equipment; or

(F) loss or corruption of any Data.

43.5 Where a progress report, or other information pertaining to the progress or performance of either Party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such report, or other information, shall not prejudice the rights of either Party under this Agreement.

44. **Corrupt Gifts and Payment of Commission**

44.1 The CONTRACTOR shall neither:

(A) offer to give or agree to give any person on Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with Government or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor

(B) enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person on Her Majesty's Service by the CONTRACTOR or on the CONTRACTOR's behalf or to the CONTRACTOR's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the AUTHORITY.

44.2 In the event of any breach of this clause 44 by the CONTRACTOR or by anyone employed by the CONTRACTOR or acting on the CONTRACTOR's behalf (whether with or without the knowledge of the CONTRACTOR) or the commission of any offence by the CONTRACTOR or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889 to 1916 in relation to this Agreement or any other contract for Her Majesty's Service, the AUTHORITY may terminate this Agreement forthwith by Notice in writing to the CONTRACTOR. Any such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the AUTHORITY. The AUTHORITY may recover from the CONTRACTOR the amount of value of any such gift, consideration or commission.

44.3 The decision of the AUTHORITY shall be final and conclusive in any dispute, difference or question arising in respect of:

(A) the interpretation of this clause 44 (except so far as the same may relate to the amount recoverable from the CONTRACTOR under clause 44.2 in respect of any loss resulting from such termination of this Agreement); or

(B) the right of the AUTHORITY under this clause 44 to terminate this Agreement; or

(C) the amount or value of any such gift, consideration or commission.

45. **Non-Discrimination**

45.1 The CONTRACTOR shall not unlawfully discriminate within the meaning of the scope of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986 and any other applicable anti-discrimination statutes or any statutory modification or re-enactment thereof relating to discrimination in employment.

45.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of clause 45.1 by all CONTRACTOR Personnel.

46. **CONTRACTOR's Personnel**

46.1 The AUTHORITY reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Government and/or AUTHORITY Premises any person employed or engaged by the CONTRACTOR, or by a Subcontractor, whose admission would be, in the opinion of the AUTHORITY, undesirable.

46.2 If and when directed by the AUTHORITY, the CONTRACTOR shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of this Agreement, to any premises occupied by or on behalf of the Government, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the AUTHORITY may require.

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

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

46.5 If the CONTRACTOR fails to comply with clause 46.2 and if the AUTHORITY (whose decision shall be final and conclusive) decides that such failure is prejudicial to the interests of the Government and if the CONTRACTOR does not comply with the provisions of clause 46.2 within a reasonable time of written notice so to do then the AUTHORITY may treat such failure as a Material Default of this Agreement

46.6 The decision of the AUTHORITY as to whether any person is to be refused admission to any AUTHORITY Premises and as to whether the CONTRACTOR has failed to comply with clause 46.2 shall be final and conclusive.

47. **Key Personnel**

47.1 For the information of the AUTHORITY, the CONTRACTOR shall provide the AUTHORITY with a curriculum vitae relating to each of the Key Personnel.

47.2 The CONTRACTOR shall ensure that each of the Key Personnel devotes all necessary time and effort to the performance of the Services and the CONTRACTOR's other obligations under this Agreement as is required by their role. For so long as any Key Personnel remain engaged to provide their services to the CONTRACTOR or to a person who in relation to the CONTRACTOR is a Connected Person (as the case may be), the CONTRACTOR shall not, subject to the remainder of this clause 47.2, cease the involvement of any of those Key Personnel in the provision of the Services under this Agreement without the prior written consent of the AUTHORITY (such consent not to be unreasonably withheld or delayed) provided always that the written consent of the AUTHORITY shall not be required in relation to Key Personnel ceasing to be involved in the provision of the Services in the following circumstances:

(A) dismissal of Key Personnel by the CONTRACTOR for gross misconduct;

- (B) resignation of the Key Personnel from the employment of the CONTRACTOR;
- (C) absence due to the sickness or ill health of Key Personnel;
- (D) holiday entitlement taken by Key Personnel; or
- (E) maternity or paternity leave taken by Key Personnel,

save that where the Key Personnel ceases to be involved in the provision of Services in accordance with clauses 47.2(C), 47.2(D) or 47.2(E), the CONTRACTOR shall employ or engage a replacement who, in the reasonable opinion of the AUTHORITY, is of suitable and appropriate calibre. The CONTRACTOR shall give prior Notice to the AUTHORITY of any extended cessation of involvement of Key Personnel due to clauses 47.2(D) or 47.2(E).

47.3 If the CONTRACTOR replaces the Key Personnel the cost of effecting such replacement shall be borne by the CONTRACTOR. The CONTRACTOR shall ensure that all arrangements for changes in the CONTRACTOR's Personnel that impact the performance of the CONTRACTOR's obligations under this Agreement:

- (A) provide adequate periods during which incoming and outgoing personnel work together to transfer appropriate knowledge and responsibilities; and
- (B) comply with any relevant requirements of this Agreement.

47.4 Before assigning replacement Key Personnel, the CONTRACTOR will:

- (A) provide the AUTHORITY with a curriculum vitae and any other information about the individual as reasonably requested by the AUTHORITY; and
- (B) introduce the individual to the AUTHORITY and provide the AUTHORITY with an opportunity to interview the individual. The AUTHORITY will notify the CONTRACTOR within three (3) Working Days after being introduced to that individual if it reasonably objects to the appointment of that individual as a member of the Key Personnel, together with its reasons for such objection.

47.5 Save as provided for in clause 47.2, the CONTRACTOR will not remove nor terminate contracts of Key Personnel without the AUTHORITY's prior written approval (such approval not to be unreasonably withheld or delayed).

47.6 The AUTHORITY may require the CONTRACTOR to remove any Key Personnel that the AUTHORITY reasonably considers in any respect unsatisfactory. For the avoidance of doubt, nothing in this clause 47.6 shall relieve the CONTRACTOR of meeting any of its obligations under this Agreement.

47.7 Absence or illness of any of the CONTRACTOR's Personnel shall not limit or diminish any of the CONTRACTOR's liabilities or obligations under this Agreement or constitute a Force Majeure event.

47.8 The CONTRACTOR shall ensure that the Key Personnel comply with all such procedural requirements in relation to the performance of the Services as the AUTHORITY may reasonably require.

48. **Non-Solicitation**

- 48.1 For the duration of this Agreement and for the period of six (6) months thereafter, neither Party shall, without the prior written consent of the other Party, actively solicit or entice away (or seek or attempt to solicit or entice away) from the employment of the other Party (or of any person who, in respect of that Party, is a Connected Person) any person employed in the provision or the receipt or administration of the Services provided by the CONTRACTOR (or any person who has been so employed in the preceding six (6) months).
- 48.2 Clause 48.1 shall not apply to restrict either Party from employing (or offering to employ) any employee of the other Party who has responded (without solicitation by the first Party) to general recruitment advertising issued by or on behalf of the first Party.

49. **Transfer Obligations**

**At the Commencement Date**

- 49.1 The Parties agree that the Transfer Regulations may apply at the Commencement Date.
- 49.2 The CONTRACTOR agrees to comply with its obligations to inform and/or consult with any Transferring Employees in accordance with the Transfer Regulations.
- 49.3 The CONTRACTOR shall indemnify the AUTHORITY against any losses, liabilities, damages, costs, expenses (including but not limited to taxes, management time and reasonable legal costs and disbursements) and charges arising out of any claim or demand which arises or is alleged to arise or is made against the AUTHORITY:
- (A) by virtue of any actual or alleged act, omission, obligation or liability of the CONTRACTOR or any other employer (other than the AUTHORITY or any Replacement Contractor) in relation to a Transferring Employee on or after the Commencement Date;
  - (B) as a result of the CONTRACTOR'S failure or alleged failure to comply with its obligations under the Transfer Regulations;
  - (C) by virtue of any changes made or proposed by the CONTRACTOR or any other employer (other than the AUTHORITY) in the working conditions or terms of employment of all or any of the Transferring Employees that taken individually or collectively are to the detriment of all or any of the Transferring Employees;
  - (D) by virtue of a change or proposed change in the identity of the employer of all or any of the Transferring Employees where that change is a significant change and to the detriment of all or any of the Transferring Employees; or
  - (E) by virtue of any rights, obligations or entitlements arising from the Transfer Regulations.
- 49.4 The AUTHORITY agrees to comply with its obligations to inform and / or consult with any Transferring Employees in accordance with the Transfer Regulations.
- 49.5 The AUTHORITY shall indemnify the Contractor against any losses, liabilities, damages, costs, expenses (including but not limited to taxes, management time and reasonable legal costs and disbursements) and charges arising out of any claim or demand which arises or is alleged to arise or is made against the Contractor:



- (A) by virtue of any actual or alleged act, omissions, obligation or liability of the AUTHORITY in relation to a Transferring Employee before the Commencement Date.
- (B) as a result of the Authority's failure or alleged failure to comply with its obligations under the TUPE Regulations.

49.6 In the event that there are any Transferring Employees, the AUTHORITY hereby agrees that the CONTRACTOR shall be entitled to raise a Change Control Request to address any additional costs (including salary / and redundancy costs) that may be incurred by reason of any such Transferring Employees becoming employees of the CONTRACTOR.

### **Expiry/Termination**

49.7 The CONTRACTOR agrees to satisfy and will procure that any Subcontractor will satisfy all of its obligations up to Expiry/Termination with respect to all outgoings and accrued liabilities in respect of the Employees involved in performing the CONTRACTOR's obligations under this Agreement.

49.8 The Parties agree that the Transfer Regulations may apply at Expiry/Termination.

49.9 The CONTRACTOR shall comply with its obligations, if any, to inform and/or consult in relation to the Employees in connection with Expiry/Termination and shall indemnify the AUTHORITY and any Replacement Contractor against any losses, liabilities, damages, costs, expenses (including but not limited to taxes, management time and reasonable legal costs and disbursements) and charges incurred by either the AUTHORITY or the Replacement Contractor as a result of the CONTRACTOR'S failure to do so.

49.10 The CONTRACTOR shall (subject to any applicable Laws including those relating to data protection) no later than 6 weeks before Expiry/Termination provide to the AUTHORITY the following relevant information in respect of the Employees:

- (A) their full name and date of birth;
- (B) their general terms and conditions of employment including (but not limited to) date of commencement of employment/engagement, remuneration details, holiday entitlement, hours of work, pension entitlement and all other benefits;
- (C) taxation details including PAYE, national insurance contributions and other social security contributions;
- (D) the date continuous employment began;
- (E) details of any collective agreements;
- (F) any outstanding claims arising from their employment;
- (G) any other information, which pursuant to the Transfer Regulations, the CONTRACTOR is required to provide in respect of the Employees;

to enable it to comply with its obligations in respect of the Employees under the Transfer Regulations.

49.11 The CONTRACTOR shall:

- (A) co-operate in the orderly management of issues relating to the Employees in connection with Expiry/Termination;
- (B) enable and assist the AUTHORITY and/or any Replacement Contractor (as appropriate), if requested, to inform and consult or communicate with and meet any Employees or their trade union or other representatives;
- (C) promptly comply with all reasonable instructions from the AUTHORITY with regard to arrangements connected with Expiry/Termination.

49.12 The CONTRACTOR shall (except as provided in clause 49.13) indemnify the AUTHORITY and any Replacement Contractor against all losses, liabilities, damages, costs, expenses (including but not limited to taxes, management time and reasonable legal costs and disbursements) and charges arising out of any claim or demand which arises or is alleged to arise against the AUTHORITY or Replacement Contractor by virtue of the operation of the Transfer Regulations or otherwise in connection with the performance of the Services and/or Expiry/Termination including but not limited to any claim or demand that is made by:

- (A) any current Employee or former Employee relating to facts or events occurring at any time, in connection with such person's employment or engagement or the termination of such employment or engagement (including any dismissal or alleged dismissal of such person by the CONTRACTOR, any Subcontractor, the AUTHORITY or otherwise; or
- (B) a trade union and/or other appropriate representatives in connection with any current Employee or former Employee relating to facts or events occurring at any time (including such claims arising as a result of a failure to comply with obligations to inform and consult under the Transfer Regulations or otherwise). Notwithstanding the above, the indemnity referred to in clause 49.9 shall not apply to the extent that any liability is attributable to the AUTHORITY's or any Replacement Contractor's failure to provide the information it is obliged to provide to the CONTRACTOR in connection with the transfer or partial transfer of the Services away from the CONTRACTOR pursuant to the Transfer Regulations prior to the Transfer Date.

49.13 The AUTHORITY shall indemnify the CONTRACTOR against all claims, demands, actions, liabilities, costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages incurred by the CONTRACTOR or any Sub-Contractor arising under or in connection with claims or demands which are made against the CONTRACTOR or any Sub-Contractor by any of the Employees who transfer or claim to have transferred to the AUTHORITY or any Replacement Contractor by virtue of the operation of the Transfer Regulations in connection with the transfer or partial transfer of the Services away from the CONTRACTOR and which are as a result of any act or omission by the AUTHORITY and/or any Replacement Contractor or which are attributable to the AUTHORITY or any Replacement Contractor's failure to provide the information it is required to provide to the CONTRACTOR in connection with the transfer or partial transfer of the Services away from the CONTRACTOR pursuant to the Transfer Regulations provided always that the AUTHORITY shall not be liable for any such costs, expenses (including but not limited to reasonable legal costs and disbursement) liabilities, losses and damages which are due to any unreasonable act or omission of the CONTRACTOR including a failure by the CONTRACTOR to comply with its information and consultation obligations pursuant to the Transfer Regulations.

- 49.14 In the event that any of the Employees or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the Services, makes a claim against the AUTHORITY or the CONTRACTOR arising out of or in connection with the provision of the Services, the AUTHORITY and the CONTRACTOR shall at their own respective expense give to the other as soon as practicable after any request therefor all co-operation, assistance and information which may be reasonably required by the other in relation to the claim. Where any such claim made against the AUTHORITY is one in respect of which the CONTRACTOR has agreed to indemnify the AUTHORITY under the terms of this Agreement the CONTRACTOR shall if the AUTHORITY so requires have conduct of the claim and the CONTRACTOR shall give such assistance as the AUTHORITY reasonably requires. Where any such claim made against the CONTRACTOR is one in respect of which the AUTHORITY has agreed to indemnify the CONTRACTOR under the terms of this Agreement the AUTHORITY shall if the CONTRACTOR so requires have conduct of the claim and the AUTHORITY shall give such assistance as the CONTRACTOR reasonably requires.
- 49.15 Notwithstanding any other provision of this Agreement, for the purposes of this clause 49 and in accordance with the Contracts (Rights of Third Parties) Act 1999, any Replacement Contractor or any Sub-Contractor shall be entitled to enforce the benefits conferred on it by clause 49. The consent of a Replacement Contractor or Sub-Contractor shall not be required for the variation of clause 49, even if that variation affects the benefits conferred on any Replacement Contractor.

## 50. **Communications**

- 50.1 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of an authorised officer of the AUTHORITY or as the case may be by or on behalf of the CONTRACTOR.
- 50.2 Any Notice or other communication whatsoever which either Party is required or authorised by this Agreement to give or make to the other shall be given or made either by post in a prepaid letter, or by facsimile or email transmission confirmed by post in a prepaid letter, addressed to the other Party in the manner referred to in clause 50.3 below and if that letter is not returned as being undelivered within seven (7) calendar days of dispatch of that letter that Notice or communication shall be deemed, for the purposes of this Agreement, to have been given or made after two (2) Working Days, for a letter, or four (4) hours, for a facsimile or email transmission provided always that if a facsimile or email is sent on a non Working Day it shall be deemed to have been received on the next following Working Day.
- 50.3 For the purposes of clause 50.2 above the address of each Party shall be:
- (A) for the AUTHORITY:
- 301 Bridgewater Place, Birchwood Park, Warrington WA3 6XF
- For the attention of the Project Manager
- Telephone: 020 7276 3285 Facsimile: 020 7276 3290
- (B) for the CONTRACTOR:
- 4 Triton Square, Regent's Place, London NW1 3HG

For the attention of: Government Gateway Account Manager

Telephone: 0207 830 4444

Facsimile: 0207 830 4445

50.4 Either Party may change its address for service by Notice as provided in this clause 50.

51. **Modernising Government**

51.1 The CONTRACTOR acknowledges that the Services are part of a wider programme of change taking place within Government, known as the modernisation programme and that other services are to be provided to the AUTHORITY by other contractors or other third parties. The CONTRACTOR shall, where reasonably requested by the AUTHORITY, liaise and co-operate with such parties providing services to the AUTHORITY as part of the modernisation programme and provide all reasonable assistance, information and co-operation to such third parties in support of the objectives of the "joined up Government". In the event that such liaison, co-operation, assistance, or information constitutes a Change the CONTRACTOR shall invoke the Change Control Procedure.

52. **Change Control**

52.1 Any requirement for a Change to the Services or for the provision of additional Services or facilities shall be subject to the Change Control Procedure.

53. **Benchmarking**

53.1 The Parties shall conduct Benchmarking of the Services in accordance with Schedule 9.

54. **Dispute Resolution**

54.1 Subject always to clause 58 in the event of any dispute arising between the Parties in connection with this Agreement the Parties shall escalate that dispute in accordance with the Escalation Procedure.

54.2 If the dispute cannot be resolved using the Escalation Procedure, senior representatives of the Parties shall, within twenty one (21) calendar days of a written request from either Party (served after the Escalation Procedure has been engaged and either of the Parties in good faith believes that such engagement of the Escalation Procedure is unlikely to resolve the dispute) to the other communicated in accordance with clause 50, meet in good faith to attempt to resolve the dispute without recourse to legal proceedings.

54.3 If the dispute is not resolved as a result of a meeting of the Parties' senior representatives pursuant to clause 54.2, either Party may (at such meeting or within twenty one (21) days of its conclusion) suggest to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ("Neutral Advisor"). If the other Party agrees to such suggestion then clauses 54.4 to 54.10 shall apply. If either Party does not wish to enter into such structured negotiations then any dispute between the parties may be referred to the courts.

54.4 If the Parties are unable to agree on a Neutral Advisor or if the Neutral Advisor agreed upon is unable or unwilling to act, either Party shall within twenty one (21) days from the date of the proposal to appoint a Neutral Advisor or within twenty one (21) days of notice to either Party that he or she is unable or willing to act, apply to any recognised dispute resolution body to appoint a Neutral Advisor.

- 54.5 The Parties shall, within fourteen (14) days of the appointment of the Neutral Advisor, meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the Parties may, at any stage, seek assistance from any recognised dispute resolution body to provide guidance on a suitable procedure.
- 54.6 The Parties shall conduct the mediation of their dispute in accordance with the procedure agreed in accordance with clause 54.5 and following the completion of the mediation procedure the Neutral Advisor shall produce recommendations on a proposed resolution of the dispute.
- 54.7 If the Parties accept the Neutral Advisor's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the Parties. The Parties shall bear their own costs in connection with this clause 54 but shall share equally the costs of the Neutral Advisor.
- 54.8 Unless concluded by the written binding agreement referred to in clause 54.6, all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 54.9 Failing agreement on the basis referred to in clause 54.7, either of the Parties may invite the Neutral Advisor to provide a non-binding opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings commenced pursuant to the terms of this Agreement without the prior written consent of both Parties.
- 54.10 If the Parties fail to reach agreement in the structured negotiations within twenty one (21) calendar days of the Neutral Advisor giving such an opinion, then any dispute between them may be referred to the courts unless within such period or a further period of seven (7) calendar days the Parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

55. **Force Majeure**

- 55.1 For the purposes of this Agreement the expression "Force Majeure" shall mean 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 (but without limiting the generality thereof) emergency governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Such cause will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the Party claiming Force Majeure or its servants, agents or employees.
- 55.2 Neither Party shall in any circumstances be liable to the other for any failure or delay in the performance of its obligations under this Agreement which is due to Force Majeure.
- 55.3 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 55.4 It is expressly agreed that any failure by the CONTRACTOR to perform or any delay by the CONTRACTOR in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company

which is the CONTRACTOR's Subcontractor, contractor or supplier, shall be regarded as a failure or delay due to Force Majeure only in the event that the Subcontractor, contractor or supplier, shall itself or themselves be prevented from or delayed in complying with its obligations under such Subcontract, contract or supply arrangement as a result of circumstances of Force Majeure.

- 55.5 It is expressly agreed that any failure by the CONTRACTOR to perform or any delay by the CONTRACTOR in performing its obligations under this Agreement which results from any failure or delay in connection with a failure or delay or other act, event, omission, happening or non-happening in services provided via the Gateway shall be regarded as a failure or delay due to Force Majeure only in the event that the failure or delay or other act, event, omission, happening or non-happening resulted from circumstances of Force Majeure impacting the provider of such services.
- 55.6 Save as expressly provided elsewhere in this Agreement and for the avoidance of doubt, it is hereby expressly declared that the only events which shall afford the CONTRACTOR relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.
- 55.7 For the avoidance of doubt, in the event that the AUTHORITY no longer requires the Services for whatever reason, the AUTHORITY shall be entitled to terminate this Agreement for convenience in accordance with clause **Error! Reference source not found.** and such circumstances shall not constitute a circumstance of Force Majeure.
- 55.8 If a Force Majeure event continues for a period of thirty (30) consecutive calendar days, the AUTHORITY may terminate the Agreement or that part of the Agreement affected by Force Majeure, without further obligation or liability to the CONTRACTOR under or in respect of the Agreement, or otherwise at law. Any consequential amendments required to the Agreement following partial termination in accordance with this clause shall be addressed by the parties through the Change Control Procedure.

## 56. **Miscellaneous**

### 56.1 **Waiver**

- (A) The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- (B) A waiver of any Default shall not constitute a waiver of any subsequent Default.
- (C) No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 50.
- (D) The rights of each Party under this Agreement may be exercised as often as necessary, are cumulative, may be exercised concurrently or separately and are not, save as expressly provided in this Agreement, exclusive of rights or remedies provided for in this Agreement or that are available at law or in equity.

### 56.2 **Entire agreement**

- (A) Subject to clause 3.2, this Agreement constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior

drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

- (B) Each Party acknowledges that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having negotiated and freely entered into this Agreement, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud. Each Party acknowledges that its legal advisers have explained to it the effect of this clause 56.2.

### **56.3 Agreement survives completion**

The covenants, conditions, provisions and warranties contained in this Agreement will not merge or terminate upon completion of the transactions contemplated in this Agreement, but to the extent that they have not been fulfilled and satisfied or are capable of having effect will remain in full force and effect.

### **56.4 Further assurance**

At any time after the date hereof each of the Parties shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of all the provisions of this Agreement.

### **56.5 Counterparts**

This Agreement may be executed in any number of counterparts, which shall together constitute one Agreement. Any Party may enter into this Agreement by signing any such counterpart.

### **56.6 Relationship of the Parties**

Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, any Party the agent of any other Party for any purpose.

### **56.7 Severability**

- (A) If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid provisions eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the AUTHORITY and the CONTRACTOR shall immediately commence good faith negotiations to remedy such invalidity.
- (B) Subject to any express provisions to the contrary in this Agreement, no Party shall have the right or authority to, and shall not, do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other Party or bind the other Party in any way.

## 56.8 Liability for acts and omissions of others

- (A) Any act or omission of any CONTRACTOR Personnel, subsidiary, employee, contractor, subcontractor, representative or agent of the CONTRACTOR involved in the performance of this Agreement shall be considered in relation to this Agreement as an act or omission of the CONTRACTOR.
- (B) Any act or omission of any employee, contractor (other than the CONTRACTOR), subcontractor, representative or agent of the AUTHORITY involved in the performance of this Agreement shall be considered in this Agreement as an act or omission of the AUTHORITY.

## 56.9 No Third Party Rights

Except as otherwise expressly provided in this Agreement, no person who is not a Party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 56.10 Legislative Change

- (A) The CONTRACTOR shall bear the cost of complying with such statutes, enactments, orders, regulations or other similar instruments as are referenced in this Agreement and the CONTRACTOR's response to the Statement of Requirements and any amendments thereto except that where any such amendment necessitates a Change to the Services, and provided that such amendment could not have reasonably been foreseen at the date hereof, the Parties shall enter into good faith negotiations to make such adjustments to the Charges and/or Services or Service Levels as may be reasonable to accommodate such amendments and implement the same via the Change Control Procedure.
- (B) The CONTRACTOR shall, at the AUTHORITY's request and subject to payment by the AUTHORITY of the Charges to be determined by agreement between the Parties, pursuant to the Change Control Procedure, upgrade the Services prior to the commencement of any transitional period prior to the implementation of the Euro by the United Kingdom Government, such that to the extent possible the Services:
  - (1) comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation number 1103/97; and
  - (2) are capable of displaying, printing and will incorporate in all relevant screen layouts, all symbols and codes adopted by the EU Commission in relation to the Euro.

## 56.11 Variation

This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by an authorised officer on behalf of the AUTHORITY and by a duly authorised representative of the CONTRACTOR.

## 57. Transfer and Subcontracting

- 57.1 This Agreement is personal to the CONTRACTOR. The CONTRACTOR shall not assign, novate, subcontract or otherwise dispose of this Agreement or any part thereof without the



prior written consent of the AUTHORITY, which consent the AUTHORITY may grant, refuse or, subject to clause 57.6 revoke in its discretion at any time.

57.2 The AUTHORITY hereby consents to the CONTRACTOR's subcontracting obligations specified in Schedule 18 to the respective Subcontractors specified in Schedule 18 or, subject to clause 57.1, such other contractors as may be notified by the CONTRACTOR to the AUTHORITY from time to time subject to the provision to the AUTHORITY of information in writing relating to the proposed subcontractor as may be requested by the AUTHORITY.

57.3 The CONTRACTOR will remain primarily liable and responsible for the acts and omissions of its subcontractors as fully as if they were the acts and omissions of the CONTRACTOR or its directors, officers, employees and agents.

57.4 The AUTHORITY shall be entitled to:

(A) assign, novate, otherwise dispose of its rights and obligations under this Agreement, or any part thereof to any contracting authority (as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993) (a "Contracting Authority") provided that any such assignment, novation or other disposal shall not increase the burden of the CONTRACTOR's obligations pursuant to this Agreement; and

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

57.5 Any change in the legal status of the AUTHORITY such that it ceases to be a Contracting Authority shall not affect the validity of this Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any such successor body to the AUTHORITY.

57.6 In the event the AUTHORITY, acting reasonably, revokes its consent to the subcontracting of any obligation in accordance with Clause 57.1, the CONTRACTOR shall replace the relevant Subcontractor as soon as practicable, and shall mitigate the effect of that replacement on the performance of the Services. The CONTRACTOR agrees that the AUTHORITY shall be deemed to be acting reasonably in revoking its consent to the subcontracting of any obligation to a Subcontractor where the AUTHORITY considers that:

(A) the appointment of the Subcontractor is or may prejudice the provision of the Services in accordance with the terms of this Agreement and/or may be contrary to the interests of the AUTHORITY, including where it may damage the reputation of the Government or any part thereof;

(B) the Subcontractor is considered to be unreliable and/or has not provided a reasonable service to the AUTHORITY or to any of its other customers; and/or

(C) the Subcontractor uses the services of unfit persons.

## 58. **Law and Jurisdiction**

58.1 This Agreement shall be considered as a contract made in England and according to English law and subject to the exclusive jurisdiction of the English courts to which both Parties hereby submit.

58.2 This Agreement is binding on the AUTHORITY and the CONTRACTOR and the CONTRACTOR's successors and permitted assignees.

**IN WITNESS** whereof this Agreement has been executed on the day and year written above.

SIGNED )  
for and on behalf of )  
the AUTHORITY )

.....  
Signature

Name

Date

SIGNED )  
for and on behalf of )  
the CONTRACTOR )

.....  
Signature

Name

Date