Dated: 2023

REFERENCE NUMBER XXXXXXXX

**AGREEMENT  
for [insert]**

**between**

**(1)  
GREATER MANCHESTER COMBINED AUTHORITY**

**- and -**

**(2)**

**TRANSPORT FOR GREATER MANCHESTER**

**- and -**

**(3)  
[*SUPPLIER*]**

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**THIS AGREEMENT** is dated the of 2023

**PARTIES**

1. **Greater Manchester Combined Authority** of Tootal Buildings, 56 Oxford Street, Manchester M1 6EU (**GMCA**);
2. **Transport for Greater Manchester**, the passenger transport executive for the combined authority area of Greater Manchester, established pursuant to the Transport Act 1968 and the South East Lancashire and North East Cheshire Passenger Transport Area (Designation) Order 1969, of 2 Piccadilly Place, Manchester M1 3BG (**Authority**); and
3. [***SUPPLIER***], incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (**Supplier**).

**BACKGROUND**

1. The GMCA has, through a competitive process, selected the Supplier to provide the required services to the Authority for the benefit of Users for the purpose of the Scheme.
2. As the transport delivery body for the GMCA and an officer of the GMCA for the purposes of the Local Government Act 1972 (arrangements for the discharge of functions), the GMCA has agreed that certain activities in relation to the delivery of Franchised Services shall be undertaken on its behalf (and at the GMCA's request) by the Authority, including operating the Scheme on behalf of the GMCA and the day-to-day management, operation and monitoring of the Franchised Services. Such role of the Authority includes the engagement of the Supplier under this agreement.
3. The Supplier is willing and able to provide the required services in accordance with the terms and conditions of this agreement.
4. The GMCA is entering into this agreement solely for the purposes of:
   1. Clause 40 (GMCA Termination Approval) which provides that any termination of this agreement (in whole or in part) by the Authority shall only be effective if the notice of termination contains a written confirmation on behalf of the GMCA that it consents to such termination; and
   2. Clause 32 (Data Processing).

AGREED TERMS

# DEFINITIONS AND INTERPRETATION

## The following definitions and rules of interpretation in this Clause 1 apply in this agreement (unless the context otherwise requires):

**Achieve:** with respect to a Milestone to successfully satisfy the Achievement Criteria applicable to that Milestone including where applicable the Test Success Criteria, and any reference to **Achievement** or **Achieved** shall be construed accordingly;

**Achievement Criteria:** shall have the meaning set out in Schedule 2 (Implementation Plan);

**Affected Party:** shall have the meaning set out in Clause 41.1;

**Agreement Liability Cap:** the greater of:

### £2,000,000 (two million pounds sterling); and

### 100% of the Charges Paid and Payable;

**Annual Summary:** shall have the meaning set out in Appendix 4 of Schedule 5 (Service Levels);

**Anti-slavery Policy:** the Authority's anti-slavery policy, as amended by notification to the Supplier from time to time;

**Applicable Laws:** for the purposes of Clause 32shall have the meaning set out in Clause 32.1;

**Asset Register:** the register of Hardware to be maintained by the Supplier in accordance with the provisions set out in Clause 10;

**Associated Company:** any member of the Supplier Group other than the Supplier;

**Audit:** shall have the meaning set out in Clause 34.1;

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 9 (Contract Management (Governance));

**Authority Background IPR:** Intellectual Property Rights owned by the Authority prior to the Commencement Date;

**Authority Cause:** any failure by the Authority to satisfy any of the Authority Responsibilities, except to the extent that such failure is:

### the result of any act or omission by the Authority to which the Supplier has given its prior consent; or

### caused or contributed to by the Supplier, any Sub-Contractor or any Supplier Personnel;

**Authority Data:** all data, information, text, drawings and other materials which are embodied in any medium, including the financial data and Personal Data of any and all customers of the Authority (including Users) and the Personal Data of any Users, and which are supplied to the Supplier (or a Sub-Contractor) by or on behalf of the Authority or which the Supplier (or a Sub-Contractor) generates, collects, processes, stores or transmits in performing its obligations under this agreement;

**Authority Materials:** (a) any information, data, documents, text, drawings, diagrams, images, sound or other materials in any media that are supplied to or made available to the Supplier by or on behalf of the Authority in relation to the provision of the Services including any interface specifications; (b) any software or other materials owned by the Authority or licensed to the Authority by a third party which is supplied to or made available to the Supplier under this agreement in relation to the provision of the Services; or (c) any equipment supplied or made available to the Supplier by the Authority under this agreement for the purpose of providing the Services;

**Authority Premises:** those sites owned, controlled or occupied by the Authority, the applicable Franchise Operator or a User (including any relevant premises leased by the Authority including depots) which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them) on the terms set out in this agreement or any separate agreement or licence;

**Authority Representative:** the representative of the Authority, as notified to the Supplier by the Authority from time to time, who will be engaged in Testing;

**Authority Responsibilities:** the responsibilities of the Authority specified in Clause 3.6 and Part 3 of Schedule 1 (Specification and Solution);

## **Authority Service Line**: the Authority’s information technology team from time to time at the email address provided by the Authority from time to time;

**Authority Specific Change in Standards:** a change in any of the Authority Specific Standards where the change is specific to the Authority, would not affect a Comparable Supply and does not reflect developments within the wider public sector or transport sector;

**Authority Specific Standard:** those Standards that are authored by or unique to the Authority and used by the Authority;

## **Automated Monitoring System**: shall have the meaning set out in Schedule 5 (Service Levels);

**Availability Service Levels**: shall have the meaning set out in Appendix 1 of Schedule 5 (Service Levels);

**Available**: shall have the applicable meaning set out in Appendix 1 of Schedule 5 (Service Levels) and reference to **Availability** and **Unavailable** shall be construed accordingly;

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Expected Service Levels, the Term, the pricing structure and any other relevant factors;

**Breaches of Security:** an actual, suspected or threatened event that affects the confidentiality, integrity, availability and/or resilience of the Authority Data and/or Personal Data in connection with the Services, the systems on which it is processed, and/or the services through which it is accessed, including (without limitation) a Personal Data Breach, and **Breach of Security** shall be construed accordingly;

**Bribery Act:** the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Business Continuity Plan:** a plan (being a component of the Business Continuity Plan and Disaster Recovery Plan) which sets out the procedures to be adopted by the Supplier in the event of a Supplier Business Continuity Event (including the procedures to be taken by the Supplier in planning and providing for any such event), the Business Continuity Plan at the date of this agreement being set out in Schedule 7 (Business Continuity and Disaster Recovery);

**Business Continuity Plan and** **Disaster Recovery Plan:** the combination of the Business Continuity Plan and Disaster Recovery Plan;

**Catastrophic Failure:** a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster where such failure has more than a negligible impact on the Services, operations of the Authority or User and/or either party's ability to perform its obligations under this agreement;

**Change Communication:** any Change Request, Impact Assessment, Change Control Note or other communication sent or required to be sent pursuant to Schedule 10 (Change Control);

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure;

**Change Control Procedure:** the procedure for changing this agreement, as set out in Schedule 10 (Change Control);

**Change Manager:** the person nominated to that role by each party from time to time and communicated to other party in writing;

**Change Request:** shall have the meaning set out in Schedule 10 (Change Control);

**Change(s):** any change to this agreement including to any of the Services that is not an Operational Change;

**Charges Paid and Payable:** means the Charges that:

### have been paid under this agreement;

### are due to be paid under this agreement; and

### which would have become due for payment by the Authority were the Supplier to have performed the Services in accordance with this agreement up until the then intended expiry date of this agreement;

**Charges:** the charges which shall become due and Payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 8 (Charges and Payment);

**Commencement Date:** the date of this agreement;

**Commercially Sensitive Information:** the information listed in Schedule 13 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

**Commissioning:** all works which the Supplier is required to carry out to install and commission the Hardware on-board the relevant Franchised Bus in accordance with this agreement and any reference to **Commission** or **Commissioned** shall be construed accordingly;

**Comparable Supply:** the supply of services that are the same as or similar to the applicable Services;

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

### any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;

### any information developed by the parties in the course of carrying out this agreement;

### Personal Data; and

### any Commercially Sensitive Information;

**Contract Year:** a period of twelve (12) months, commencing on the Commencement Date (or each anniversary of the Commencement Date, as appropriate);

**Costed Option Implementation Plan:** any implementation plan agreed in respect of the implementation and Commissioning of Costed Options;

**Costed Option:** the services and/or equipment described as such in Schedule 1 (Specification and Solution) which shall be provided by the Supplier if required by the Authority in accordance with Clause 27 and Schedule 2 (Implementation Plan);

**Current Resources:** at the relevant time those Supplier Personnel actually deployed in providing the Services;

**Cyber Essentials:** means the Cyber Essentials certificate issued under the cyber essentials scheme which is operated by the National Cyber Security Centre or any replacement or successor body carrying out the same function;

## **Data / Metrics:** reporting of data and other metrics from the DSM to the DSM Back Office System, including as more particularly described in Schedule 1 (Specification and Solution);

**Data Controller:** shall have the same meaning as set out in the Data Protection Legislation;

**Data Processor:** shall have the same meaning as set out in the Data Protection Legislation;

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

**Data Subject Rights:** the rights granted to a Data Subject in line with their Personal Data pursuant to the Data Protection Legislation;

**Data Subject:** shall have the same meaning as set out in the Data Protection Legislation;

**Decommissioning:** all works which the Supplier is required to carry out to decommission and removed the Hardware on-board the relevant Franchised Bus in accordance with this agreement and any reference to **Decommission** or **Decommissioned** shall be construed accordingly;

**Default SMP:** shall have the meaning set out in Appendix 3 of Schedule 5 (Service Levels);

**Default:** any breach of the obligations of the relevant party under this agreement or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub-Contractors in connection with or in relation to the subject-matter of this agreement and in respect of which such party is liable to any other party;

**Defect:** any failure of any aspect of the Supplied System (including any Deliverable) to meet the Achievement Criteria or otherwise comply with the requirements of this agreement;

**Defective Hardware:** shall have the meaning set out in Clause 15.7;

**Delay:** the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed or is anticipated to be delayed (as the context requires);

**Deliverable Equitable Adjustment:** an equitable adjustment to reflect the value (if any) of any Deliverables provided by or on behalf of the Supplier to the Authority and which the Authority elects in writing to continue to use after the date of termination pursuant to the relevant provision of this agreement such value to be determined having regard amongst other things to the extent of re-use of such Deliverables in the provision of any Replacement Services;

**Deliverable Requirements:** shall have the meaning set out in Schedule 3 (Testing Procedures);

**Deliverable(s):** an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Supplier at or prior to a Milestone Date or at any other stage during the performance of this agreement, including the Hardware;

**Disaster**: the occurrence of one or more events which, either separately or cumulatively cause material disruption to the Services or, mean that the Services, or a material part of them will be unavailable or which is reasonably anticipated will mean that the Services or a material part will be unavailable;

**Disaster Recovery Plan:** a plan (being a component of the Business Continuity Plan and Disaster Recovery Plan) which sets out the procedures to be adopted by the Supplier in the event of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), the Disaster Recovery Plan at the date of this agreement being set out in Schedule 7 (Business Continuity and Disaster Recovery);

**Disaster Recovery Services:** the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to Schedule 7 (Business Continuity and Disaster Recovery) in order to meet the requirements for such services as set out in the Specification;

**Disaster Recovery System:** the system identified by the Supplier in the Supplied System and/or the Disaster Recovery Plan which shall be used for the purpose of delivering the Disaster Recovery Services;

**Dispute Notice:** shall have the meaning set out in Clause 25.1(a);

**Dispute Resolution Procedure:** the procedure set out in Clause 25;

**Dispute:** shall have the meaning set out in Clause 25.1;

**DSM Back Office System:** central back-office information and communications technology system and infrastructure used by the Supplier in performing the Services as described in the Supplier Solution;

**DSM Project Board:** shall have the meaning set out in Schedule 9 (Contract Management (Governance));

**DSM:** the on-board hardware facilitating the monitoring of driver standards against the Five Core Service Components, as more particularly described in Schedule 1 (Specification and Solution) and any reference to **DSMs** shall be construed accordingly;

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**Emergency Exit:**

(a) a termination in whole or in part of this agreement except where the period of notice to terminate is greater than or equal to 12 months; or

(b) a wrongful termination or repudiation of this agreement by either party;

**Escalated Issue:** an Escalation Issue that has been escalated to the Escalation Representatives for resolution;

**Escalation Issue:** shall have the meaning set out in Schedule 5 (Service Levels);

**Escalation Representatives:** shall have the meaning set out Schedule 5 (Service Levels);

**Exit Management Plan:** the plan produced and updated by the Supplier during the Term in accordance with Schedule 11 (Exit Management Plan);

**Exit Management:** the obligations and rights of the respective parties pertaining to a smooth transition from the provision of the Services by the Supplier to the provision of Replacement Services by the Authority or any Replacement Supplier, including those referred to in Schedule 11 (Exit Management Plan);

**Exit Manager:** the Representative nominated by a party to (i) manage that party's compliance and/or observance with the Exit Management Plan, and (ii) conduct such other activities as are expressly specified in the Exit Management Plan;

**Expected Service Levels:** the performance level to which the Operational Services must be provided identified as the Expected Service Level in Appendix 1 of Schedule 5 (Service Levels);

**Extension Period:** any period of extension of this agreement effected pursuant to the provisions of Clause 2.2;

**Fast-track Change:** a Change or proposed Change (as the context shall require) in respect of which the provisions of paragraph 7 of Schedule 10 (Change Control) shall apply;

**Final Notice:** shall have the meaning set out in Clause 39.2;

## **Five Core Service Components**: the ability to monitor driver standards relating to:

### acceleration;

## braking;

## speeding;

## cornering (G-force); and

## idling time;

**Fix:** to implement a measure (or a series of measures) such that no subsequent steps are required to permanently resolve the Incident and the root cause of the Incident;

**FOIA:** the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**Force Majeure Event:** any of the following circumstances which are beyond a party's reasonable control:

### flood, drought, earthquake or other natural disaster (but excluding any epidemic or pandemic);

### terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

### nuclear, chemical or biological contamination or sonic boom;

### any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

### collapse of buildings, fire, explosion or accident; and

### any labour or trade dispute, strikes, industrial action or lockouts, excluding any labour or trade dispute, strike, industrial action or lockout of the Supplier's workforce or the workforce of any Sub-Contractor of the Supplier;

**Franchise Agreement:** a franchise agreement entered into between (1) the GMCA, (2) the Authority and (3) a Franchise Operator;

**Franchise Operator:** a bus operator that is selected by the Authority to operate Franchised Services;

**Franchised Bus:** a bus that will be or is (as the context requires) operated by a Franchise Operator in accordance with a Franchise Agreement (and **Franchised Buses** shall be construed accordingly);

**Franchised Services:** bus services provided by a Franchise Operator by operating Franchised Buses pursuant to a Franchise Agreement;

**General Change in Standards:** a change in any of the Standards, but excluding any Authority Specific Change in Standards;

**General Standards:** any Standards that are not Authority Specific Standards;

**Generic Achievement Criteria:** the Achievement Criteria that must be satisfied in respect of each and every Milestone as identified in Schedule 2 (Implementation Plan);

**Go-Live Instruction to Proceed:** in respect of each Tranche, the authorisation to proceed to the provision of the Operational Services provided by the Authority to the Supplier and which specifies the date on which said Operational Services must commence;

**Go-Live Milestone Date:** in respect of each Tranche means the date identified as such and set out against the Go-Live Milestone being the date by which the Operational Services in respect must be capable of being provided by the Supplier in accordance with this agreement;

**Go-Live Milestone:** in respect of each Tranche, the Milestone in respect of Go-Live;

**Go-Live:** in respect of each Tranche, the date on which the Supplied System enters into live operation and the Supplier commences provision of the applicable Operational Services in accordance with a Go-Live Instruction to Proceed;

**Guarantee:** shall have the meaning set out in Clause 23.3;

**Guarantor:** the entity (if any) who has entered (or will enter) into a Guarantee in relation to this agreement;

**Hardware:** all and any DSMs and ancillary equipment and supplies including cabling, fitments and similar fixtures (and any related physical manuals, media and documentation) to be supplied by the Supplier as set out in Schedule 1 (Specification and Solution);

**Hardware Warranty** shall have the meaning set out in Clause 15.1(c);

**Health and Safety Policy:** the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

## **Help Desk**: shall have the meaning set out in Schedule 5 (Service Levels);

**HY FT Right:** shall have the meaning set out in Appendix 3 of Schedule 5 (Service Levels);

**Impact Assessment:** an assessment of a Change Request to be provided by the Supplier to the Authority substantially in the form set out at Appendix 2 to Schedule 10 (Change Control) (unless otherwise reasonably required by the Authority);

**Implementation Charges:** those charges identified as Implementation Charges in Appendix 3 of Schedule 8 (Charges and Payment);

**Implementation Escalation Representatives:** shall have the meaning set out in Schedule 2 (Implementation Plan);

**Implementation Issue:** shall have the meaning set out in Schedule 2 (Implementation Plan);

**Implementation Plan:** shall have the meaning set out in Schedule 2 (Implementation Plan);

**Implementation Services:** the services required to be delivered by the Supplier in order to comply with the Implementation Timetable and/or the Implementation Plan;

**Implementation Timetable:** in respect of each Tranche is set out or referenced in Schedule 2 (Implementation Plan);

**Implementation:** the process of implementation of the Services so as to facilitate the provision by the Supplier of the Operational Services;

**In Month FT Right:** shall have the meaning set out in Appendix 3 of Schedule 5 (Service Levels);

**Incident Details:** details of the following in relation to each Incident:

### a description of Incident;

### the date and time that:

#### in the case of a Supplier Spotted Incident, the Supplier became aware of the Supplier Spotted Incident; and

#### in the case of all other Incidents not referred to in (i) above, the Incident was submitted to the Help Desk or Automated Monitoring System;

### the assigned Priority Level;

the Incident reference number; and

the time taken for Response and Resolution (or estimated timescale for Resolution if the Incident is Unresolved);

## **Incident:** any notification to the Supplier in accordance with the incident notification process set out in Schedule 5 (Service Levels) that relates to an event (other than prior agreed Scheduled Maintenance) that affects the operation of the Supplied System or the performance of any Operational Services;

**Index:** the consumer prices index published by the UK Office for National Statistics from time to time, or where such index ceases publication, such other equivalent and comparable index as the parties may agree in writing (such agreement not to be unreasonably withheld or delayed);

**Indexation:** an increase or decrease to the applicable Charges calculated by reference to the Index in accordance with the provisions of Schedule 8 (Charges and Payment);

**Information:** shall have the meaning given under section 84 of FOIA;

**Initial Notice:** shall have the meaning set out in Clause 39.1;

**Initial Term:** the period of seven (7) years from the Commencement Date;

**Insolvency Event:** where:

### the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

### the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors, other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;

### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership);

### an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);

### the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

### a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

### a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;

### any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); and/or

### the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

**Integration Notice:** shall have the meaning set out in Clause 24.4:

**Integration Parties****:** shall have the meaning set out in Clause 24.6(b);

**Intellectual Property Rights** or **IPRs:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**ISMS:** is the Information Security Management System as defined by ISO/IEC27001;

**Joint Data Controller:** shall have the meaning set out in Article 26(1) of the UK GDPR and for the purpose of this agreement the **Data Controllers** shall mean the Authority and the GMCA;

**Joint Review:** shall have the meaning set out in Schedule 5 (Service Levels);

**Key Milestone:** a Milestone which is identified as being a key milestone in the Implementation Timetable;

**Key Personnel:** those personnel identified Schedule 9 (Contract Management (Governance)) for the roles attributed to such personnel, as modified pursuant to Clause 19;

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body apply to the provision of the Services;

**Liability Year:**

### each Contract Year; and

### after the date of expiry or termination of this agreement each successive period of 12 months, commencing on the date of expiry or termination or its anniversary;

**Licensed Rights:**

### Supplier Background IPR and any other IPRs owned by or licensed to the Supplier, any Associated Company of the Supplier or any Sub‑Contractor (or other supplier to the Supplier or any Sub‑contractor for the purposes of this agreement); and

### the Supplied System;

**Losses:** any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses including legal fees;

**Major Incident Report:** shall have the meaning set out in Schedule 5 (Service Levels);

**Malicious Software:** any software program or code intended to destroy, interfere with, corrupt, or enable unauthorised access to, or cause other undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**Material Breach Termination Event:** shall have the meaning given in Clause 36.1(a);

**Milestone Achievement Certificate:** the certificate materially in the form of the document contained in Appendix 2 to Schedule 3 (Testing Procedures) issued by the Authority when the Supplier has Achieved a Milestone (or such other form as the Authority reasonably determines in the circumstances where no Tests are applicable to the Milestone or for those aspects of a Milestone that are not subject to Testing);

**Milestone Date:** the date set against the relevant Milestone in the Implementation Timetable;

**Milestone Payment:** any payment to be made or which has been made (as the context requires) upon Achievement of a Milestone;

**Milestone:** an event or task described as a "Milestone" in the Implementation Timetable which, if applicable, must be completed by the relevant Milestone Date;

**MS Applications:** Microsoft desktop productivity applications that are designed specifically to be used for office or business use;

**MS Project:** Microsoft Office Project, also referred to as Microsoft Project, a suite of Microsoft tools designed for project and portfolio management;

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;

**Next SMP:** shall have the meaning set out in Appendix 3 of Schedule 5 (Service Levels);

**Non**-**Hardware Implementation Charges:** the element of the Implementation Charges that does not relate to the Charges for Hardware;

**Operational Changes:** any change, deletion or addition made to the procedures, and/or processes used by the Supplier in delivering the Services which would (if implemented) have no impact on:

(a) the scope of the Services;

(b) the timing for the Supplier's delivery of the Services;

(c) the Charges;

(d) the Supplier's costs in delivering the Services;

(e) the provisions of this agreement;

(f) the Authority's or any User's ability to use or receive the Services;

(g) the Supplier's ability to deliver the Services in accordance with the provisions of this agreement using currently deployed resources; or

(h) the output of the Services or the risks in delivering or receiving the Services;

**Operational Charges:** those charges identified as Operational Charges in Part 1 of Appendix 3 of Schedule 8 (Charges and Payments);

**Operational Service Impact:** any adverse impact upon the operation of the Services and/or the Supplied System;

**Operational Services:** those services:

### identified and/or described as such in the Specification; or

### which are otherwise provided or to be provided (as the context requires) by the Supplier in satisfaction of the Authority's requirements in respect of operational services as identified in the Specification or which are required to ensure that the infrastructure and environments set out in the Specification remain fully operational,

### and the parties acknowledge that any reference to "*Operational Services*" in this agreement may be a reference to the services in respect of a given Tranche, multiple Tranches or all Tranches (as the context requires).

**Ordinary Exit:**

(a) any termination of this agreement where the period of notice given by the party serving the Termination Notice is greater than or equal to 12 months; or

(b) as a result of the expiry of the Term;

**Outline Specific Achievement Criteria:** shall have the meaning set out in Schedule 2 (Implementation Plan);

**Partial Termination:** shall mean the partial termination of the terms of this agreement to the extent that it relates to the provision of any part of the Services;

**Personal Data Breach:** shall have the same meaning as set out in the Data Protection Legislation;

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation;

**Plan Approval Process:** the process for approving a Plan as set out in Clause 44;

**Plan:** any plan, policy, manual or the like that this agreement requires be submitted to the Authority for approval pursuant to the Plan Approval Process;

**Policy Document Control Sheet:** the document used to identify any changes to the Standards agreed by the parties pursuant to Schedule 4 (Standards) and Schedule 10 (Change Control);

**Priority Level Classification:** the classification of Priority Levels as set out in Appendix 5 of Schedule 5 (Service Levels);

**Priority Level:** the level of priority allocated to an Incident by the Authority in accordance with the Priority Level Classifications and **Priority Level 1 (P1)**, **Priority Level 2 (P2)**, **Priority Level 3 (P3)** and **Priority Level 4 (P4)** shall be construed accordingly;

**Private Beta Testing Phase:** shall have the meaning set out in Schedule 3 (Testing Procedures);

**Problem:** the underlying root-cause of one or more Incidents that does not have a permanent Fix identified;

**Product Description:** the document that outlines the purpose, composition, format and quality criteria required for a Deliverable or a product;

**Professional Day Rates**:the rates set out in Appendix 2 of Schedule 8 (Charges and Payment) applicable to a Professional Day;

**Professional Day:** eight (8) hours performed during a Working Day (excluding lunch and other breaks);

**Prohibited Act:** where the Supplier acts in a manner that constitutes any of the following:

### to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

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

### committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or

### any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK;

**Project Plan:** shall have the meaning set out in Schedule 2 (Implementation Plan);

**Relevant Start Time**:shall have the meaning set out in Appendix 1 of Schedule 5 (Service Levels);

**Relevant Transfer:** a relevant transfer for the purposes of TUPE;

**Replacement Services:** any services which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier;

**Replacement Supplier:** any third party supplier of Replacement Services appointed by the Authority from time to time or should the context require the Authority;

**Representatives:** means, in relation to a party, its employees, officers, representatives and advisors;

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;

**Required Insurances:** shall have the meaning set out in Clause 30.1;

**Resolution Time Requirement:** with respect to an Incident means the applicable resolution time requirement identified in Appendix 1 of Schedule 5 (Service Levels) for the purposes of the Expected Service Level (having regard to the Priority Level of the Incident);

**Resolve:** in relation to an Incident, to:

(a) Fix the Incident; or

(b) if it is not reasonably possible to Fix the Incident in the Resolution Time Requirement, to provide a Work-around for the Incident or Problem that is acceptable to the Authority,

and reference to **Resolution**, **Resolved** and **Unresolved** shall be considered accordingly;

**Respond:** a call and/or an email by the Supplier to the User that submitted the Incident and the Authority Service Line, setting out:

(a) the Incident reference number;

(b) a brief fault description;

(c) the assigned Priority Level;

(d) the Resolution Time Requirement; and

(e) a confirmation that the Incident has been assigned to the relevant resolver group for action,

and reference to **Response** and **Responded** shall be construed accordingly;

**Response Time Requirement:** with respect to an Incident means the applicable response time requirement identified in Appendix 1 of Schedule 5 (Service Levels) for the purposes of the Expected Service Level (having regard to the Priority Level of the Incident);

**Retention Release Point:** the points at which the applicable part of the Retention is payable to the Supplier in accordance with Schedule 8 (Charges and Payment);

**Retention:** the sum identified in out in Schedule 8 (Charges and Payment) that is to be withheld from the Implementation Charges payable upon the Achievement of the applicable Milestone and which shall not be invoiced by the Supplier prior to the Retention Release Point;

**Review Report:** shall have the meaning set out in Schedule 7 (Business Continuity and Disaster Recovery);

**Revised Milestone Date:** any revised date which is set for the Achievement of a Milestone;

**Scheduled Maintenance:** any pre-agreed periods or any scheduled maintenance periods in accordance with the processes and procedures in Appendix 1 of Schedule 5 (Service Levels) during which all or part of the DSMs or DSM Back Office System are Unavailable, including any time required to deploy hardware updates, hardware upgrades, software updates, software upgrades or patches into the live environment;

**Scheme:** the scheme overseen by the GMCA (and managed by the Authority on behalf of the GMCA) in respect of the availability and roll-out of Franchised Buses in the metropolitan area of Greater Manchester;

**Security Management Plan:** the Supplier's security management plan prepared pursuant to Schedule 6 (Security Management Plan);

**Security Requirements:** the requirements in relation to security which the Supplier is required to adhere to in the performance of the Services which are set out in Schedule 4 (Standards) or which are otherwise notified to the Supplier by the Authority from time to time;

**Security Tests:** shall have the meaning set out in Schedule 6 (Security Management Plan), and **Security Test** shall be construed accordingly;

**Service Deduction Cap:** with respect to the applicable Service Measurement Period, the maximum amount of Service Deductions for which the Supplier can be liable as identified in Appendix 2 of Schedule 5 (Service Levels) in respect of that Service Measurement Period;

**Service Deductions:** the deductions that the Authority is entitled to make or which are made by the Authority pursuant to any such entitlement (as the context shall require) from the Charges for failure by the Supplier to achieve an Expected Service Level;

**Service Failure:** a failure by the Supplier to provide the Services (or any part thereof) in accordance with this agreement including any failure to achieve any of the Expected Service Levels;

**Service Hours**: 07:00 to 18:00 (GMT) Monday to Friday on each Working Day (excluding bank holidays);

**Service Level Failure**: a failure by the Supplier to meet or exceed an applicable Expected Service Level;

**Service Level Report Details**: means:

### details of the Supplier’s actual performance of the applicable Operational Services as against each applicable Expected Service Level;

highlight any Service Level Failures;

a root cause analysis of each Service Level Failure highlighted (at a level of detail that is appropriate having regard to the nature and severity of the failure); and

identify the Service Points and Service Deductions (if any) that have accrued in respect of the relevant Service Measurement Period,

and any other information required by Schedule 5 (Service Levels) to be contained in such Service Level Report.  For the avoidance of doubt, if the required information to provide a root cause analysis of a Service Level Failure as set out above is not available to the Supplier at the point that the applicable Service Level Report must be submitted by the Supplier, the Supplier shall provide such root cause analysis as soon as reasonably practicable thereafter;

**Service Level Report Non-Compliance**:has the meaning given in Schedule 5 (Service Levels);

**Service Level Report:** the report which summarises the performance by the Supplier against each of the Service Levels, which report shall be prepared by the Supplier and submitted to the Authority pursuant to Schedule 5 (Service Levels);

**Service Levels:** the service levels for the Operational Services set out in Appendix 1 of Schedule 5 (Service Levels);

## **Service Manager:** the Supplier's manager with overall accountability for the Services, ensuring the Services meet the business needs of the Authority and are delivered in accordance with agreed business requirements;

**Service Measurement Period** or **SMP:** a calendar month;

**Service Points:** the points identified in Appendix 2 of Schedule 5 (Service Levels) that accrue in respect of a Service Level Failure;

**Service Review Meeting:** a meeting convened to review the Supplier's provision of the Services, as contemplated by Schedule 9 (Contract Management (Governance));

**Services Effective Date:** in respect of each Tranche, the date on which the provision by the Supplier of the applicable Operational Services must commence, such date being identified in the Go-Live Instruction to Proceed;

**Services:** any and all of the services to be provided by the Supplier under this agreement (including the Implementation Services, the Operational Services, Commissioning, Decommissioning and the Termination Services);

**Site:** any premises (including the Authority Premises, the Supplier's Premises or other third party premises);

**Specific Achievement Criteria:** the Achievement Criteria that in addition to the Generic Achievement Criteria must be satisfied in respect of a particular Milestone;

**Specification:** the output based requirements document of the Authority in respect of the required Services, as set out in Part 1 of Schedule 1 (Specification and Solution);

**Standards:** the standards, policies and procedures referred to in Schedule 4 (Standards), and the standard operating procedures of the Authority from time to time;

**Sub-Contract:** any contract or agreement or proposed contract or agreement (as the context requires) between the Supplier (or any agent, servant or sub-contractor of the Supplier) and any third party whereby that third party agrees to provide to the Supplier (or the relevant agent, servant or sub-contractor of the Supplier) the Services (or any part thereof) or facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services (or any part thereof), but excluding contracts or agreements between the Supplier and any third party which relate to the provision of facilities or services for the Supplier's internal benefit and which do not directly relate to this agreement;

**Sub-Contractor:** any person that enters into a Sub-Contract with the Supplier;

**Supplied System:** the system, software and/or environments used by the Supplier to provide the Services and/or accessible to, and to be utilised by, the Authority and Users resulting from the provision of the Services by the Supplier (including the DSM Back Office System and Hardware on-board the Franchised Buses);

**Supplier Background IPR:** Intellectual Property Rights owned by the Supplier, any Associated Company of the Supplier or any Sub‑Contractor of the Supplier or any Associated Company of the Supplier, in each case prior to the Commencement Date;

**Supplier Business Continuity Event:** shall have the meaning given to in Schedule 7 (Business Continuity and Disaster Recovery);

**Supplier Group:** the Supplier, its ultimate holding company and all subsidiaries of its ultimate holding company, the definitions of "holding company" and "subsidiary" being those set out in section 1159 of the Companies Act 2006 but for the purposes of section 1159(1) a company shall be treated as a member of another company even if its shares in that other company are registered in the name of (i) a person by way of security where that company has provided the security; or (ii) a person as nominee for that company;

**Supplier Materials:** any know-how, tools, methodologies, information, data, documents, text, drawings, diagrams, logos, images, sound, software or other materials or equipment, used by the Supplier in the provision of the Services or made available or supplied to the Authority under this agreement (excluding the Authority Materials and Hardware);

**Supplier Premises:** any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services or where the DSM Back Office System is situated;

**Supplier Solution:** the Supplier's solution for the provision of the Services as set out in Part 2 of Schedule 1 (Specification and Solution);

**Supplier Spotted Incident Details**: means:

### a brief description of Incident;

the assigned Priority Level or Priority Level to be assigned by the Supplier; and

the date and time that the Supplier became aware of the Supplier Spotted Incident;

**Supplier Spotted Incident**:shall have the meaning set out in Schedule 5 (Service Levels);

**Supplier's Tender:** the tender submitted by the Supplier and other associated documentation set out and/or referenced in Part 2 of Schedule 1 (Specification and Solution);

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time;

**Support and Maintenance Services:** in respect of Hardware, those services:

### identified and/or described as such in the Specification; or

### which are otherwise provided or to be provided (as the context requires) by the Supplier in satisfaction of the Authority's requirements in respect of Hardware support and maintenance services as identified in the Specification,

### and the parties acknowledge that any reference to "*Support and Maintenance Services*" in this agreement may be a reference to the services in respect of a given Tranche, multiple Tranches or all Tranches (as the context requires);

**Supporting Documentation:** shall have the meaning set out in Schedule 8 (Charges and Payment);

**Term:** the period commencing on the Commencement Date and ending on the expiry of the Initial Term or if later, the Extension Period (if any) or on earlier termination of this agreement;

**Termination Assistance Notice:** the notice issued by the Authority pursuant to Schedule 11 (Exit Management Plan), requiring the provision by the Supplier of the Termination Services;

**Termination Assistance Period:** the period specified in the Termination Assistance Notice during which the Supplier shall provide the applicable Termination Services as such period may be extended pursuant to Schedule 11 (Exit Management Plan);

**Termination Date:** the date of expiry or termination of this agreement;

**Termination Level:** the termination level set out in Appendix 3 of Schedule 5 (Service Levels);

**Termination Notice:** a notice to terminate this agreement or part of the Service either immediately or at a date specified in the notice;

**Termination Services:** the services and activities to be performed by the Supplier pursuant to the Exit Management Plan and any other services required pursuant to the Termination Assistance Notice;

**Test Approach:** an approach to Testing comprising, as a minimum, the elements referred to in paragraph 5.3 of Schedule 3 (Testing Procedures);

**Test Case:** a set of test inputs, execution conditions, and expected results developed for a particular objective, such as to exercise a particular user need or requirement;

**Test Certificates:** the certificate(s) more particularly described in Appendix 2 of Schedule 3 (Testing Procedures), issued by the Authority when a Deliverable and/or the applicable Services satisfies the Test Success Criteria for the Test(s) related to that Deliverable and/or Service;

**Test Issue Management Logs:** shall mean the log of Test Issues and their current status maintained by the Supplier;

**Test Issue:** any variance or non‑conformity of a Deliverable and/or the applicable Services from its requirements as set out in the relevant Test Success Criteria and/or as agreed in writing between the parties;

**Test Management Tools:** the Supplier's preferred tool for test management as agreed with the Authority from time to time;

**Test Plan:** the plan for carrying out test activities in relation to the Deliverables or otherwise in respect of the Implementation Services developed by the Supplier and approved by the Authority in accordance with Schedule 3 (Testing Procedures);

**Test Report:** shall mean the report delivered by the Supplier upon completion of any Test containing the following details;

(a) an overview of the Test conducted and relevant Test subject;

(b) identification of those parts of the Achievement Criteria that have been achieved;

(c) identification of those parts of the Achievement Criteria that have not been achieved together with the Supplier's explanation of why those requirements have not been achieved;

(d) details of any issues identified by the Tests and the severity levels attached to those issues;

(e) the dates on which the Tests were undertaken and the location at which such Tests were conducted;

(f) the identities of those present at Tests; and

(g) such other information as the Authority shall reasonably require;

**Test Strategy:** a document that outlines a strategy for the conduct of Testing which includes desired goals and objectives for the Testing, and which complies with the outline strategy more particularly described in Appendix 1 of Schedule 3 (Testing Procedures) (unless such compliance is otherwise waived by the Authority);

**Test Success Criteria:** the test success criteria in respect of a particular Test agreed by the parties pursuant to Schedule 3 (Testing Procedures) (including any applicable user stories);

**Test Witness:** shall mean the individual(s) required by the Authority in its sole discretion to attend at any Test in accordance with paragraph 10 of Schedule 3 (Testing Procedures);

**Testing Procedures:** the applicable testing procedures and Test Success Criteria set out in Schedule 3 (Testing Procedures);

**Testing:** the process of performing tests in accordance with this agreement and any reference to a **Test**, **Tests** or **Tested** shall be construed accordingly;

**Tranche 1:** the initial tranche of the Scheme;

**Tranche 2:** the second tranche of the Scheme;

**Tranche 3:** the third tranche of the Scheme;

**Tranche:** a tranche of the overall roll-out of the Scheme, to occur within specified geographical areas and any reference to **Tranches** shall be a reference to Tranche 1, Tranche 2 and Tranche 3, details of the Tranches are set out in Schedule 2 (Implementation Plan);

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

**UK GDPR:** Regulation ((EU) 2016/679) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as incorporated into domestic United Kingdom law by the European Union (Withdrawal Agreement) Act 2020 and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020;

**Use:** the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission and display);

**User:** a designated legal entity or individual that has been approved by the Authority to be granted controlled access to the Supplied System and/or use the Services and which therefore will be third party beneficiaries of the Services;

**Wider Private Beta Testing Phase:** shall have the meaning set out in Schedule 3 (Testing Procedures);

**Work-around:** an interim measure for a finite period that is acceptable to the Authority, which does not Fix the Incident, but which avoids the Incident meaning that a User is not reliant on a particular aspect of the service, system or component that is known to have an Incident and that the corresponding process operation or task can still be effected with minimal inconvenience;

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales;

**Working Hours:** the period from 7.00am to 8.00pm on any Working Day, and the period from 8.00am to 6.00pm on any Saturday, Sunday or Bank Holiday; and

**24x7 Basis:** twenty-four (24) hours per day, seven (7) days per week.

## Other than as provided for in Clause 32, references to **party** means the Authority or the Supplier and references to **parties** shall be construed accordingly.

## Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

## A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

## A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

## A reference to writing or written includes e-mail.

## Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

## References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

## Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

### the clauses of this agreement;

### Part 1 of Schedule 1 (Specification and Solution) to this agreement; and

### the remaining schedules to this agreement.

## The GMCA has entered into this agreement solely for the purposes of Clauses 32 (Data Processing) and 40 (GMCA Termination Approval) and the GMCA shall have no liability to the Supplier under or in connection with this agreement other than in respect of a breach of Clause 32. Without prejudice to the GMCA's rights under Clauses 32 (including the indemnity at Clause 32.7), the GMCA shall not be entitled to exercise any of the rights or remedies expressed for the benefit of the Authority against the Supplier.

## The GMCA shall have no liability to the Supplier in respect of any Default of the Authority.

## The Authority shall have no liability to the Supplier in respect of any Default of the GMCA.

## The Supplier acknowledges that:

### it is not, and shall not be, the exclusive supplier of services of the same or a similar nature to the Services (or any of them) and the Authority may at any time obtain from any other person or perform itself services of the same or a similar nature as the Services (or any of them); and

### it has been given no commitment by the Authority as to the volume of Services required by the Authority pursuant to this agreement or through the operation of the Scheme.

COMMENCEMENT AND DURATION

# TERM

## This agreement shall take effect on the Commencement Date and shall continue for the Term.

## At the end of the Initial Term, the Authority shall be entitled, at its sole option, to extend this agreement beyond the Initial Term for a further period of three (3) years (with such an extension being the **Extension Period**). If the Authority wishes to extend this agreement, it shall give the Supplier at least six (6) months' written notice of such intention before the expiry of the Initial Term.

## If the Authority does not wish to extend this agreement beyond the Initial Term, this agreement shall expire on the expiry of the Initial Term and the provisions of Clause 43 shall apply.

# DUE DILIGENCE, SUPPLIER WARRANTIES AND THE AUTHORITY'S RESPONSIBILITIES

## The Supplier acknowledges and confirms that:

### save for any continuing requirement on the Authority to provide information and/or documentation pursuant to any express provision of this agreement, the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;

### it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority;

### it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement; and

### it has entered into this agreement in reliance on its own due diligence.

## Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## The Supplier:

### warrants and represents that:

#### all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of this agreement;

#### its responses to the Authority's slavery and human trafficking due diligence questionnaire are complete and accurate; and

#### neither the Supplier nor any of its officers, employees or other persons associated with it:

##### has been convicted of any offence involving slavery and human trafficking; and

##### has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

### shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Expected Service Levels.

## The Supplier shall implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

## The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with Clause 3.3(b).

## The Authority shall:

### use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;

### provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this agreement as defined in the Implementation Plan;

### use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and

### procure for the Supplier such agreed reasonable access and use of the Authority Premises (as a licensee only) and associated facilities to the extent that this is reasonably required for the Supplier to comply with its obligations under this agreement, such access to be agreed in advance with the Authority (including as to access periods, including the date and time of access).

## Nothing in this Clause 3 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

THE HARDWARE AND SERVICES

# IMPLEMENTATION

## The Supplier shall comply with the Implementation Plan (including the achievement of each Milestone by the Milestone Date applicable to that Milestone), together with the test and assurance activities set out in the Testing Procedures.

## Without prejudice to any other rights or remedies of the Authority, where the Authority terminates this agreement in accordance with Clause 36.1(h) or 36.1(i), the Supplier shall repay to the Authority, on demand, all Charges previously paid to the Supplier subject to the Deliverable Equitable Adjustment (if any).

# MILESTONE ACHIEVEMENT

## When the Supplier has completed the Implementation Services in respect of a Milestone, it shall notify the Authority and shall submit any and all Deliverables and/or Services relating to that Milestone for Testing, and the parties shall follow the applicable provisions of the Testing Procedures insofar as the Testing Procedures are applicable to that Milestone.

## Each party shall bear its own costs in respect of the Testing Procedures. However, if a Milestone does not Achieve the Achievement Criteria the Authority shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or further Testing of a Milestone, except where a failure to Achieve the Achievement Criteria is attributable in whole or in a material part to the Authority in which case each party shall bear its own costs.

## If the Authority (in its absolute discretion) considers that the Testing Procedures in respect of a Milestone have been successful, and that all applicable Test Success Criteria have been met in relation to such Milestone, the Authority shall notify the Supplier in writing.

* + - * 1. If the Supplier has met all relevant Achievement Criteria in accordance with the Implementation Plan (including where applicable by Achieving the Test Success Criteria applicable in respect of any and all Deliverables relating to that Milestone) the Authority shall issue a Milestone Achievement Certificate. The Authority shall not unreasonably refuse to issue or unreasonably delay issuing a Milestone Achievement Certificate. Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that:

### the Services meet the Specification;

### the Supplier Solution is suitable for the provision of the Services and satisfies the Specification;

### the Services are implemented in accordance with this agreement; and

### that the Expected Service Levels are achieved.

* + - * 1. No rights of estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate.
        2. Unless and until a Milestone Achievement Certificate has been issued in respect of any Milestone then:

### unless otherwise expressly provided for hereunder the Authority shall be under no obligation to pay any Milestone Payment or any other Charges that are conditional upon Achievement of that Milestone; and

### the Supplier shall have no authority to proceed in the performance of any Services that relate to any subsequent Milestone unless otherwise provided for in the Implementation Plan or otherwise agreed in writing with the Authority.

* + - * 1. If the Supplier does not successfully Achieve any Milestone by the applicable Milestone Date, the provisions of Clause 6 shall apply as appropriate.

# DELAYS

## The provisions of this Clause 6 are without prejudice to any right of termination set out in Clause 36.1(h) or 36.1(i) and shall not operate to prevent or restrict the exercise by the Authority of any such right of termination.

## If, at any time (and for any reason), the Supplier becomes aware that it will not (or is unlikely to) Achieve any Milestone by the applicable Milestone Date it shall as soon as reasonably practicable notify the Authority of the fact of the Delay and summarise the reasons for such Delay in accordance with the notification requirements set out in Schedule 2 (Implementation Plan).

## Whether any Delay is due to an Authority Cause or not, the Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences of the Delay and where the Delay is due to an Authority Cause, the Authority shall also use all reasonable endeavours to eliminate or mitigate the consequences of the Delay.

## Any Disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, the Delay and unless otherwise required by the Authority the Supplier shall continue to provide the Services that are the subject of the Delay in accordance with this agreement. Furthermore, the Authority will continue to pay the Supplier's Operational Charges in respect those applicable Operational Services that continue to be provided in accordance with this agreement during such Delays, the Authority will continue to hold the right to repayment of these fees in accordance with clause 24.9(b).

## Subject to compliance by the Supplier with its obligations pursuant to clause 6.1 and without prejudice to Clause 6.3, to the extent that the Supplier would have been able to Achieve the Milestone by its Milestone Date but has failed to do so as a direct result of an Authority Cause, the Supplier will have the rights and relief set out in Clause 6.6 below. The provisions of Clause 6.6 below are the Supplier's exclusive remedy for an Authority Cause.

## The Supplier shall:

### subject to Clause 6.7, be allowed an extension of time equal to that part of the Delay which was caused by the Authority Cause but there shall be no extension to the Initial Term or Term; and

### not be in breach of this agreement to the extent that the failure to Achieve the relevant Milestone by its Milestone Date results directly from the Authority Cause.

## The Authority Representative, acting reasonably, shall:

### consider the duration of the Delay, the nature of the Authority Cause and the effect of the Delay and the Authority Cause on the Supplier's ability to comply with the Implementation Plan;

### consult with the Supplier's Representative in determining the effect of the Delay;

### fix a Revised Milestone Date; and

### if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan.

## Any Change that is required to the Implementation Plan pursuant to Clause 6.7 shall be implemented in accordance with the Change Control Procedure. If the Supplier's analysis of the effect of the Delay in accordance with Clause 6.7 permits a number of options, then the Authority shall have the right to select which option shall apply.

## The Authority shall not delay unreasonably when considering and determining the effect of a Delay under Clause 6.7 or in agreeing a resulting Change pursuant to the Change Control Procedure.

## The Supplier shall and shall procure that each Sub-Contractor shall take and continue to take all reasonable steps to eliminate or mitigate (should elimination not be possible by the taking of such reasonable steps) losses and expenses that it incurs or but for such reasonable steps the Supplier would have incurred as a result of an Authority Cause.

## If a Deliverable does not satisfy the Test Success Criteria and/or a Milestone is not Achieved due to the Supplier's Default the Authority may at its discretion (without waiving any rights in relation to the other options available to it and without prejudice to any other rights and remedies available to it):

### issue a Milestone Achievement Certificate without condition;

### issue a Milestone Achievement Certificate conditional upon remediation of the Test Issues and/or the non-conformities of the Deliverables or Defects in the Implementation Services (as applicable) in accordance with an agreed correction plan; or

### refuse to issue a Milestone Achievement Certificate, but extend the period relating to the provision of the applicable Implementation Services for a period or periods, specified by the agreed correction plan, during which time the Supplier shall correct the Test Issues, non-conformities of the Deliverables and/or Defects in the Implementation Services which caused the Milestone not to have been Achieved in accordance with an agreed correction plan.

## If a Milestone Achievement Certificate has been issued pursuant to Clause 6.11 and the Supplier does not: (i) put forward an acceptable correction plan; (ii) remedy all Test Issues, all non-conformities of the Deliverables and all Defects in the Implementation Services within the timescales and/or manner specified in the agreed correction plan, or if the period relating to the provision of the applicable Implementation Services has been extended pursuant to Clause 6.11(c) and if the Deliverable does not satisfy the Test Success Criteria and/or a Milestone is not Achieved at the end of such period, then, in any such case, and without prejudice to any other rights and remedies available to the Authority, the Authority may choose to:

### exercise any of the remedies available under Clause 6.11; or

### (if the relevant Milestone is a Key Milestone) terminate this agreement whole or in part by notice in writing in accordance with Clause 36.1.

## For the avoidance of doubt, where the Supplier has failed to Achieve a Milestone by the Milestone Date, the Supplier agrees that it shall not issue an invoice for that Milestone until the correction plan has been carried out and the Milestone has been Achieved.

## Where the Authority issues a conditional Milestone Achievement Certificate as specified in Clause 6.11(b), it can choose to (but does not have to) revise the failed Milestone Date and any subsequent Milestone Date.

## Any correction plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority otherwise agrees in writing.

## Without prejudice to Clause 6.3, where a Delay is attributable in part to the Supplier's Default and in part to an Authority Cause the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. Any extension of time agreed in respect of a Delay which is attributable in part to both parties shall not exceed that part of the Delay which was caused by an Authority Cause and there shall be no extension to the Initial Term or Term. Any Change that is required to the Implementation Plan pursuant to this Clause 6.16 shall be implemented in accordance with the Change Control Procedure.

# SERVICES

## Subject to earlier termination as hereinafter provided and subject to all other rights and remedies of the Authority hereunder, the Supplier shall provide:

### the Implementation Services in accordance with the Implementation Timetable and/or the Implementation Plan;

### the Operational Services as from the applicable Services Effective Date; and

### any and all associated services and activities which would reasonably be considered to be related to the Implementation Services or the Operational Services that are not specifically referred to in the Specification, but which are required for the proper and efficient provision of the services required by the Specification.

## The Supplier shall perform its obligations under this agreement including those in relation to the Services, in accordance with:

### Best Industry Practice;

### all applicable Laws;

### all applicable national, international and industry standards;

### the Standards;

### the Expected Service Levels;

### the Security Management Plan;

### the Health and Safety Policy; and

### all other obligations of the Supplier under this agreement,

## and using sufficient and competent experienced and qualified personnel suitably trained to undertake the work and the services assigned to them.

## Subject to Clause 1.15, if the Supplier believes there is a conflict between any of the obligations contained within the requirements of one of the limbs referred to in Clause 7.2 with which it must comply:

### the Supplier shall promptly serve notice upon the Authority Representative to that effect (providing all relevant details);

### the Authority Representative shall (acting reasonably) confirm in writing which obligation is to take precedence; and

### the Supplier shall comply with the confirmation(s) provided by the Authority Representative in accordance with Clause 7.3(b).

## The Supplier shall ensure that the Services comply in all respects with the Specification and are supplied in accordance with the Supplier Solution.

# EFFECT OF AUTHORITY CAUSE ON THE OPERATIONAL SERVICES

## If the Supplier would have provided the Operational Services in accordance with the Expected Service Levels and this agreement, but has failed to do so as a result of an Authority Cause, the Supplier will have the rights and relief set out in Clause 8.2.

## The Supplier shall:

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

### not be treated as being in breach of this agreement to the extent that non-performance or breach is due to an Authority Cause.

## The Supplier shall and shall procure that each Sub-Contractor shall take and continue to take all reasonable steps to eliminate or mitigate (should elimination not be possible by the taking of such reasonable steps) losses and expenses that it incurs or but for such reasonable steps the Supplier would have incurred as a result of an Authority Cause.

## If the Supplier claims that Clause 8.1 applies, in order to claim the rights and reliefs in Clause 8.2, it shall provide the Authority with details of the Authority Cause as soon as practicable after the occurrence of the relevant alleged Authority Cause and in any event within ten (10) Working Days.

## Any Disputes about or arising out of whether an Authority Cause applies to the Supplier's failure to provide the Operational Services in accordance with the Expected Service Levels and/or this agreement shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to use all reasonable endeavours to resolve the causes of and mitigate the effects of such failure.

# STANDARDS AND POLICIES

## When performing the Services and its obligations under this agreement the Supplier shall (unless otherwise notified in writing by the Authority) comply with the Standards.

## The Standards may be amended (and the Authority shall be entitled to amend Schedule 4 (Standards) so as to introduce new standards, policies or procedures or to remove existing Standards) by the Authority upon not less than ten (10) Working Days' written notice to the Supplier (save that the Supplier shall be obliged to comply with any new Standards within a shorter time period, if such is required by Law).

## Should an Authority Specific Standard be amended (as stated in Clause 9.2) then the Supplier shall notify the Authority if such amendment will increase its costs of Service provision and have an impact on the Charges. Such notice shall include details of the increased costs (broken down by cost line item) and associated impact on the Charges and shall also include suggestions as to how the cost impact can be mitigated (where this is reasonably possible). Any increase in the Charges shall be agreed in accordance with the Change Control Procedure. The Supplier shall not be entitled to an increase in the Charges as a result of a General Change in Standards.

# ASSET REGISTER

## The Supplier shall compile and maintain a complete and up to date Asset Register which shall list all Hardware used in the provision of the Services including their serial numbers (or other unique identification mark) and details of the vehicles on which each unit is installed on. The Authority will use such information to update its asset management system.

## The Supplier shall provide the Authority's Authorised Representative with an updated copy of the Asset Register promptly upon the request of the Authority's Authorised Representative.

# SERVICE LEVELS

## The Supplier shall provide the Operational Services to meet or exceed the Expected Service Levels.

## Without prejudice to any other rights or remedies of the Authority should a Service Failure occur, or the Supplier believes that a Service Failure is likely to occur, then without prejudice to its other obligations under this agreement, the Supplier shall:

### notify the Authority immediately of the Service Failure or likely Service Failure;

### investigate the underlying causes of the Service Failure and, at the request of the Authority, provide for the Authority's approval (within such timeframe as the Authority shall reasonably require) a correction plan of the action that it will take to rectify the Service Failure or to prevent the Service Failure from taking place or recurring and/or mitigate the adverse impact of any Service Failure that has occurred or is likely to occur;

### take all remedial action that is necessary to:

#### rectify the Service Failure (where the Service Failure is capable of rectification) or, where the Service Failure has not yet taken place, prevent the Service Failure from taking place (to the extent that remedial action can prevent the Service Failure from taking place);

#### prevent the Service Failure from reoccurring; and

#### mitigate the adverse impact of the Service Failure,

## such action to take place in accordance with the agreed correction plan to the extent that one is agreed pursuant to 11.2(b); and

### subject to the Service Deduction Cap, credit or pay Service Deductions to the Authority in accordance with the provisions of Schedule 5 (Service Levels).

## The parties agree that the application of Service Deductions is an adjustment of the Charges and is not an estimate of the loss or damage that may be suffered by the Authority as a result of a Service Level Failure and that the crediting and/or payment of Service Deductions is without prejudice to any other rights or remedies of the Authority arising from the Service Level Failure.

## Where Service Deductions are provided as a remedy for Service Level Failure in respect of the applicable Services they shall be the Authority's exclusive financial remedy except where:

### the Authority has the right to terminate this agreement (or has in fact terminated this agreement pursuant to any such right) for cause pursuant to Clause 36;

### the Authority has the right to partially terminate the agreement (or has in fact partially terminated the agreement pursuant to any such right) for cause pursuant to clause 38;

### the failure to perform the Services in accordance with the Expected Service Level has arisen due to fraud or fraudulent misrepresentation, wilful Default, or gross negligence on the part of the Supplier, any Sub-Contractor or any Supplier Personnel; or

### the Service Deduction Cap has been reached.

## The Authority may, at any time during the agreement (but no more frequently than once in any twelve (12) month period) notify the Supplier that it requires a Change to the Service Levels and/or the Service Deductions applicable to any failure to meet any Expected Service Level provided that:

### the principal purpose of this change is to reflect changes in the Authority's business requirements and priorities, or to reflect changing industry standards or to ensure appropriate management in performance of the Services; and

### there is no increase in the total value of Service Deductions potentially payable.

## Any change required by the Authority pursuant to Clause 11.5 shall be agreed by the parties pursuant to the Change Control Procedure.

# COMPLIANCE

## The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining, or complying with the same.

## The Supplier acknowledges that it has been supplied with a copy of the Health and Safety Policy. The Supplier agrees to comply with the Health and Safety Policy and any additional rules and policies made known to the Supplier from time to time by the Authority including those pertaining to the Authority's Premises, together with all applicable statutory rules and regulations regarding these matters.

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

# COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

## In performing its obligations under this agreement, the Supplier shall:

### comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;

### have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance;

### not engage in any activity, practice or conduct that would constitute an offence under Part 1 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

### require that each of its Sub-Contractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015.

## The Supplier represents, warrants, and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery Policy.

# SECURITY REQUIREMENTS

## **Security**

### The Supplier shall not undertake any act or omission which has or could reasonably be expected to have an adverse impact upon the security of any of the Services or any systems or services of the Authority.

### The Supplier shall ensure that the Security Management Plan produced by or on behalf of the Supplier fully complies with the Security Requirements.

### The Supplier shall comply, and shall procure the compliance of the Supplier Personnel, with the Security Requirements and the Security Management Plan.

### The Authority shall notify the Supplier of any changes or proposed changes to the Security Requirements in accordance with the provisions of Clause 9.

## **Malicious Software**

### The Supplier shall, as an enduring obligation throughout the Term, deploy latest versions of anti-virus software (including the latest versions of available anti-virus definitions from an industry accepted anti-virus software vendor) to check for, contain the spread and minimise the impact of, and delete Malicious Software to prevent Malicious Software from adversely impacting provision of the Services or operation of the Supplied System (except to the extent otherwise agreed by the parties).

### Notwithstanding Clause 14.2(a), if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes adverse impact on the operational efficiency of the Services or the Authority's business or loss or corruption of Authority Data within the control of the Supplier or any Sub‑contractor, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency (and where the Authority Data affected by the Malicious Software is not within the control of the Supplier or any Sub‑contractor then the Supplier shall provide reasonable cooperation to the Authority wherever reasonably practicable).

### Any cost arising out of the actions taken in compliance with the provisions of Clause 14.2(b) shall be borne by the Supplier, unless the Supplier can demonstrate to the reasonable satisfaction of the Authority that the Malicious Software could not have been deleted from or protected against penetration into the Supplied System through compliance with its obligations pursuant to Clause 14.2(a) in which case each party shall bear its own costs.

# HARDWARE

## The Hardware shall be supplied by the Supplier in accordance with the following provisions:

### the relevant Hardware and their prices (including installation and commissioning costs) shall be as set out in Schedule 8 (Charges and Payment);

### the Supplier shall supply and, where required under this agreement, install and Commission the Hardware in accordance with this agreement and the relevant specification;

### the Supplier shall ensure that the Hardware complies with its applicable specification and remains free from material defects in design, materials and workmanship for twelve (12) months after its Commissioning and being placed into live operation (**Hardware Warranty**). Any Hardware that does not comply with the Hardware Warranty shall be replaced by the Supplier (and the new Hardware shall be Commissioned) at the Supplier’s own cost in accordance with the Specification and as applicable Decommissioning and Commissioning process set out in Schedule 2 (Implementation Plan);

### the Supplier shall be solely responsible for the cost of carriage of the Hardware to the Sites and vehicles as required, including its off-loading, removal of all packaging and other associated costs;

### where the Hardware is to be supplied pursuant to a Milestone in respect of a Tranche the Hardware shall be supplied in accordance with the requirements applicable to that Milestone (including any requirements as to timing for installation and Commissioning);

### where the Hardware is to be supplied pursuant to a Costed Option the Hardware shall be supplied in accordance with the Authority's requirements as specified in accordance with Schedule 2 (Implementation Plan), including any applicable Costed Option Implementation Plan; and

### the Supplier shall ensure that the Hardware is manufactured in accordance with the specifications as set out in the Specification.

## Without prejudice to any other rights or remedies of the Authority, if following inspection or testing the Authority considers that the Hardware does not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

## Without prejudice to any other rights or remedies of the Authority, risk and title in the Hardware shall pass to the Authority at the time of the second payment instalment referred to in paragraph 4.4.3.2 of Schedule 8 (Charges and Payment) or its equivalent provision in respect of Tranche 2 and Tranche 3.

## The Supplier shall provide the Support and Maintenance Services in respect of the Hardware.

## In the event of a product recall (other than due to the wrongful act or omission or negligence of the Authority), initiated by any person including without limitation the Supplier, the Supplier shall without delay and at its own cost and expense Decommission the affected Hardware in accordance with the decommissioning process set out in Schedule 2 (Implementation Plan) or as otherwise reasonably required by the Authority and credit the Authority for the affected Hardware (including, used Hardware) and associated installation/Commissioning costs.

## The Supplier shall immediately notify the Authority in writing together with all relevant details if the Supplier has any reason to suspect or believe that there is:

### any defect in any Hardware (or its installation/Commissioning) previously delivered to the Authority at any time; or

### any error or omission in the instructions for the use, installation/Commissioning and/or assembly of the Hardware which exposes or may expose any Users or any individual (including on bus personnel (including drivers) and consumers) to any risk of death, injury, or damage to property.

## In the event of the circumstances of Clause 15.6 occurring, the Supplier shall recall and/or withdraw any and all Hardware that does not function to the specified standards (**Defective Hardware**)immediately and replace the recalled and/or withdrawn Defective Hardware as soon as reasonably practicable and in any event within one (1) day, all such action being taken at the Supplier's sole cost and expense and where applicable, in accordance with the Decommissioning and Commissioning process set out in Schedule 2 (Implementation Plan).

## The Authority may at its discretion and at the Supplier's sole cost and expense issue any written or other notification to its Users about the manner of, or operation of, any Hardware already issued by the Authority to its Users on the basis of the identification whether by the Authority, its Users or any third party of any defect in the relevant Hardware or any error or omission in the instructions for the use, installation and/or assembly of the relevant Hardware which the Authority reasonably concludes affects or is likely to affect any of the Hardware supplied or exposes or may expose any of its Users to any risk of death, injury or damage to property.

## The Supplier agrees to indemnify the Authority for all costs reasonably incurred by the Authority in administering any product recall campaign relating to the Hardware.

# BUSINESS CONTINUITY AND DISASTER RECOVERY

## The Supplier shall comply at all times with the relevant provisions of the Business Continuity Plan and Disaster Recovery Plan.

## Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:

### implement the Business Continuity Plan and Disaster Recovery Plan;

### continue to provide the affected Services to the Authority in accordance with the Business Continuity Plan and Disaster Recovery Plan; and

### restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

## To the extent that the Supplier complies fully with the provisions of this Clause 16 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Supplier), the Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Clause 11 but shall be the Service Levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

# PAYMENT

## In consideration of the provision of the Services by the Supplier in accordance with this agreement, the Authority shall pay the Charges to the Supplier in accordance with Schedule 8 (Charges and Payment).

## Unless otherwise stated in Schedule 8 (Charges and Payment), the Charges:

### shall remain fixed throughout this agreement; and

### is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier's Personnel.

## The Supplier shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 8 (Charges and Payment). All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Supplier from time to time. Any such invoices shall take into account any Service Deductions which have been accrued in the previous Service Measurement Period.

## Subject to the further provisions of this Clause 17, the Authority shall pay the Charges that have become payable in accordance with this agreement within thirty (30) days of receipt of an undisputed invoice from the Supplier.

## If the Authority receives an invoice that it reasonably believes includes a sum that is not valid and properly due:

### the Authority shall notify the Supplier in writing as soon as reasonably practicable;

### the Authority's failure to pay the disputed Charges shall not be deemed to be a breach of this agreement; and

### the Supplier shall as soon as is practicable: (i) cancel the disputed invoice and issue a credit note to the Authority for its full amount; and (ii) raise a replacement invoice in relation to the sums not in dispute; and

## if the applicable parties are unable to resolve the dispute within thirty (30) days of a notice given in accordance with Clause 17.5(a), any such party may escalate the matter for resolution in accordance with the Dispute Resolution Procedure. Upon resolution of any dispute referred to in Clause 17.5 the Supplier shall be entitled to raise an invoice under this agreement for any sum which the Authority agrees to pay (whether such agreed sum is in the amount originally invoiced, or a reduced amount).

## Provided that the sum has been disputed in good faith, interest due on any sums in dispute in accordance with Clause 17.5, shall not accrue until thirty (30) days after resolution of the dispute between the parties.

## Subject to Clause 17.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with Clause 18. The Supplier shall not suspend the supply of the Services if any payment is overdue.

## The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded, or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

## The Supplier shall maintain complete and accurate records of, and Supporting Documentation for, all amounts which may be chargeable or have been charged to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for six (6) years from the end of the Contract Year to which the records relate.

## The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.

## If the Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to Clause 17.11, it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

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

# INTEREST

## Each party shall pay interest on any sum due under this agreement, calculated as follows:

### rate: 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%; and

### period: from when the overdue sum became due, until it is paid.

STAFF

# KEY PERSONNEL

## The Supplier shall appoint the persons named as such in Schedule 9 (Contract Management (Governance)) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by the Supplier as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of the Supplier on the matters for which they are expressed to be responsible.

## The Supplier shall not remove or replace any of the Key Personnel unless:

### requested to do so by the Authority;

### the person dies, is on long-term sick leave, is on maternity/paternity or adoption leave;

### the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;

### the person resigns from their employment with the Supplier or is promoted to a new role within the Supplier and it is not reasonably practicable for that person to continue to perform the role specified for that individual; or

### the Supplier obtains the prior written consent of the Authority.

## The Supplier shall inform the Authority of the identity of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified and supply such other information about the individual as reasonably requested by the Authority.

## The Supplier shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than fourteen (14) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect by the Supplier following the role becoming vacant.

## The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

## If the Supplier replaces the Key Personnel as a consequence of this clause 19, the cost of effecting such replacement shall be borne by the Supplier.

# OTHER PERSONNEL USED TO PROVIDE THE SERVICES

## At all times, the Supplier shall ensure that:

### each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

### there is an adequate number of Supplier's Personnel to provide the Services properly;

### only those people who are authorised by the Supplier are involved in providing the Services; and

### all of the Supplier's Personnel comply with all of the Authority's policies as set out in Schedule 4 (Standards) to the extent they are applicable (including those that apply to persons who are allowed access to the applicable Authority's premises).

## The Authority may refuse to grant access to, and require the removal from the performance of the Services, of any of the Supplier's Personnel including any Sub-Contractor who in the reasonable opinion of the Authority:

### do not comply with the policies referred to in Clause 20.1(d);

### presents a security threat;

### is not a fit and proper person to be on the Authority Premises or engaged in the provision of the Services; or

### is not performing properly or efficiently their role in the provision of Services.

## Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

## The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

## The Supplier shall implement a system of training for its employees, suppliers, and Sub-Contractors to ensure compliance with the Anti-slavery Policy.

## The Supplier shall keep a record of all training offered and completed by its employees, suppliers and Sub-Contractors to ensure compliance with the Anti-slavery Policy and shall make a copy of the record available to the Authority on request.

## The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

# TUPE

## The parties agree that the provisions of Schedule 12 (TUPE) shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

# REPORTING AND MEETINGS

## The parties shall comply with their respective obligations as set out in Schedule 9 (Contract Management (Governance)).

# PERFORMANCE MONITORING AND GUARANTEE

## The Supplier shall monitor and report its performance of the Services in accordance with the provisions of Schedule 5 (Service Levels). Notwithstanding the aforesaid, the Authority reserves the right to itself monitor the performance of the Services by the Supplier.

## The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in the Authority carrying out any monitoring referred to in Clause 23.1 at no additional charge to the Authority.

## Where required by the Authority, the Supplier shall, on or before the Commencement Date, deliver to the Authority on the behalf of the Authority and the GMCA a parent company guarantee in the form set out in Schedule 15 (Parent Company Guarantee), executed as a deed for and on behalf of the Guarantor by duly authorised representatives of the Guarantor (the **Guarantee**). In the event of breach of this Clause 23.3, the Authority shall be entitled, at its sole discretion, to terminate this agreement in accordance with Clause 36.1.

## If the Guarantee ceases to be valid or enforceable for any reason, the Supplier shall procure that a replacement guarantee in a form and from a guarantor which is acceptable to the Authority is provided within fifteen (15) days (or such other longer period as the Authority may, at its discretion, agree in writing), failing which the Authority shall be entitled to terminate this agreement in accordance with Clause 36.1. The Authority may, in its discretion, agree to waive compliance with this Clause 23.4 by giving the Supplier notice in writing.

# CHANGE CONTROL, CONTINUOUS IMPROVEMENT AND INTEGRATION

## Change Control

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

## Continuous Improvement

## The Supplier shall have an ongoing obligation throughout this agreement to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six (6) months for the remainder of this agreement on:

### the emergence of new and evolving relevant technologies which could improve the Services;

### new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;

### new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

### changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.

## Any potential Changes highlighted as a result of the Supplier's reporting in accordance with Clause 24.2 shall be addressed by the parties using the Change Control Procedure.

Integration

## The Authority may at any time request the Supplier to apply a further or revised system which integrates the Supplied System with other background IT infrastructure of the Authority. The Authority may in its absolute discretion initiate any integration request by notifying the Supplier in writing of the requirement (**Integration Notice**).

## An Integration Notice shall contain such details as the Authority considers reasonably appropriate to enable the Supplier to commence the tasks set out in Clause 24.6, and to develop a suitable implementation timetable, including milestones around the implementation of the proposed integration solution.

## Following the issue of an Integration Notice:

### the Authority and the Supplier shall discuss the process and scope of integration in order to determine in advance potential timescales for implementation, general scope of costs and inputs required from the Authority and other relevant third parties. Such discussions, and any discussions following the issue of an Integration Notice, shall take place at meetings of the DSM Project Board pursuant to Schedule 9 (Contract Management (Governance));

### where it is appropriate to do so, the Authority shall establish confidentiality arrangements covering the Supplier and all other relevant service providers engaged and concerned in the integration of the Supplied System (the **Integration Parties**) to enable the sharing of knowledge and otherwise to facilitate such integration requirements; and

### the Supplier agrees to liaise with the Integration Parties to devise an update to the existing Supplied System that would meet the integration requirements outlined by the Authority. The Supplier will use its reasonable endeavours to complete this exercise within three (3) months following the issue of the Integration Notice. The Supplier shall keep the Authority informed of progress on the integration discussions and it shall notify the Authority of the details of the proposed solution when the Supplier and the Integration Parties are satisfied that the proposed integration solution may progress to implementation.

## The Supplier shall provide:

### its draft implementation timetable, including milestones and test strategy, reflecting the requirements of the Integration Notice; and

### its itemised pricing for the implementation of the proposed integration solution,

## within four (4) months following receipt of the Integration Notice for the Authority's approval. The provisions of Clauses 4 and 5 of this agreement, and paragraphs 1, 3, 4 and 5 of Schedule 2 (Implementation Plan) shall apply mutatis mutandis to this Implementation Timetable in respect of the proposed integration solution, subject to Clause 24.8 below.

## The parties acknowledge that the development and approval of any integration implementation timetable and associated pricing will be an iterative process. Each party shall respond promptly (and in any event within ten (10) Working Days) and as fully as possible to any requests or comments of the other party in the process of developing the integration implementation timetable and in agreeing the associated pricing. As a result of following the process set out in this Clause 24.8, the Supplier shall provide a proposed final draft implementation timetable, for the Authority's final approval, within six (6) months of issue of an Integration Notice. The Authority shall be entitled to make changes to such proposed final draft implementation timetable (at all times acting reasonably and in good faith). If the Authority makes such changes, the Supplier shall issue a version of the implementation timetable that reflects those changes, within 10 Working Days. Upon such implementation timetable being approved by the Authority, the Supplier shall be bound to comply with it.

## The Supplier shall comply with the requirements of the integration implementation timetable promptly following:

### the Authority's approval:

#### of the implementation timetable in accordance with Clause 24.8; and

#### of all associated pricing. The pricing shall:

##### comply with the requirements set out in Schedule 8 (Charges and Payment) to the extent relevant and set out or referred to therein; and

##### in respect of third party costs to be comprised in the pricing not captured in Clause 24.9(a)(ii)(A) above, be supported by a reasonable procurement strategy (having regard to the amount of the costs in question, with the expectation that a multiple quote strategy will be used unless there is a substantive commercial reason to depart from this), and on a basis that is transparent and open book (including as to the third party costs) to the Authority; and

### the parties' approval to a reduction in the level of the Operational Charges in the event that the integration implementation timetable leads to a reduction in the scope of the activities thereafter to be undertaken by the Supplier in the performance of the Services (the parties agreeing that the Operational Charges shall be reduced by an amount which is proportionate to the reduction in the scope of such activities, and the parties shall act in good faith in determining the same).

# DISPUTE RESOLUTION

## If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this Clause:

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

### if the Authorised Representatives are for any reason unable to resolve the Dispute within sixty (60) days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Chief Executive Officer (or his/her deputy) and the Supplier's Chief Executive Officer, who shall attempt in good faith to resolve it; and

### if the Authority's Chief Executive Officer (or his/her deputy) and the Supplier's Chief Executive Officer are for any reason unable to resolve the Dispute within sixty (60) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. The mediation process will start not later than ten (10) days after the date of the ADR notice.

## The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 55, of which Clause shall apply at all times.

## The Supplier shall continue to provide the Services in accordance with the terms of this agreement notwithstanding a Dispute having arisen.

# SUB-CONTRACTING AND ASSIGNMENT

## Subject to Clause 26.4, neither party shall assign, novate, sub-contract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority. For the avoidance of doubt, the restriction on sub-contracting shall not apply to individuals engaged by the Supplier on a personal independent contractor basis.

## In making a request for the Authority's consent pursuant to Clause 26.1 the Supplier shall provide the Authority with the following information about the proposed Sub-Contractor:

### its name, registered office and company registration number;

### a copy of the proposed Sub-Contract (provision shall be subject to applicable confidentiality obligations in place between the Supplier and its proposed Sub-Contractor, provided that the Supplier shall use all reasonable endeavours to obtain the proposed Sub-Contractor's consent to disclose the terms of the proposed Sub-Contract to the Authority);

### the purposes for which the proposed Sub-Contractor will be engaged, including the nature and scope of any services to be provided by the proposed Sub-Contractor; and

### any further information reasonably requested by the Authority,

in each case in sufficient time, having regard to the nature and value of the services to be provided by the proposed Sub-Contractor, to enable the Authority to undertake an assessment of the proposed Sub-Contractor prior to the appointment of the proposed Sub-Contractor and the Authority shall notify the Supplier of its consent or rejection of the proposed Sub-Contract within ten (10) Working Days of receipt of all of the information set out in this Clause.

## In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall remain responsible to the Authority for the performance of its obligations under this agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions and negligence of its Sub-Contractors.

## The Authority shall be entitled to assign, novate or otherwise dispose of any of all of its rights and/or obligations under this agreement to:

### the GMCA; or

### any other body which substantially performs any of the functions that previously had been performed by the Authority.

## Provided that the Authority has given its prior written consent, the Supplier shall be entitled to novate this agreement where:

### the specific change in supplier was provided for in the procurement process for the award of this agreement; and

### there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

# COSTED OPTIONS

## The Authority may require the Supplier to provide any or all of the Costed Options at any time by giving written notice to the Supplier, following which the process relating to Costed Options in Schedule 2 (Implementation Plan) shall apply. The Supplier acknowledges that the Authority is not obliged to take any Costed Options from the Supplier.

LIABILITY

# INDEMNITIES

## Without prejudice to the other indemnities provided by the Supplier under this agreement, the Supplier shall indemnify and keep indemnified the Authority from and against all Losses incurred by the Authority arising out of or in connection with:

### any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;

### any and all Losses incurred by, or awarded against, the Authority as a result of:

#### loss and/or damage to Authority or third party physical or tangible property or equipment caused by the Supplier's (or its Sub-Contractor's) acts or omissions;

#### any breach of the Anti-slavery Policy; or

#### any non-compliance of the Supplier or any Sub-Contractor with the Data Protection Legislation or any act or omission of the Supplier or any Sub-Contractor that results in non-compliance by the Authority with the Data Protection Legislation; and

### the enforcement of any and all judgments obtained by the Authority arising out of or in connection with this agreement.

# LIMITATION OF LIABILITY

## Subject to Clauses 29.2 and 29.8, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

## Notwithstanding the provisions of Clause 29.1, but subject to Clause 29.4 the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:

### sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with this agreement;

### wasted expenditure or charges rendered unnecessary and/or incurred by the Authority or User;

### additional costs of procuring, selecting, implementing and operating replacements for, or alternatives to, the Services whether internally or through or with a third party including additional charges associated with such replacements and/or alternatives (or additional costs associated with their provision if provided internally) and the costs of transition including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

### losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any sub-contractor, Supplier's Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier;

### any additional operational and/or administrative costs and expenses arising from a Supplier Default including additional wages, overtime, expenses and allocated overhead incurred by the Authority or User, including, without limitation, those costs and expenses immediately or subsequently arising from any employees and/or contractors of the Authority or User being unable to perform their normal work for the Authority or the applicable User; and

### in respect of loss of any anticipated savings.

## Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

## Subject to Clause 29.1 and Clause 29.8, the Supplier's aggregate liability:

### is unlimited in respect of:

#### the indemnity in Schedule 12 (TUPE);

#### any breach of Clause 42;

#### the Supplier's wilful Default;

#### the Supplier's abandonment of any of its obligation under this agreement;

#### the Supplier’s liability to repay Charges pursuant to Clause 4.2;

#### the indemnity in Clause 17.9;

#### the indemnity in Clause 28.1(c); and

#### the indemnity in Clause 35.6.

### in respect of the indemnity in Clause 28.1(b)(i), shall be limited to the cover level required to be maintained in respect of the Supplier's public liability insurance policy as set out in Clause 30.1(a);

### in respect of the indemnity in Clause 32.7 shall be limited in each Liability Year to £3,000,000 (three million pounds sterling) in respect of all Defaults that occur during that that Liability Year. This cap on liability shall apply as overall limit of the Supplier's liability in respect of the indemnity in Clause 32.7 to the Authority and the GMCA taken together; and

### in respect or all other Defaults, in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent) or in respect of restitution, under or in connection with this agreement shall be limited to the Agreement Liability Cap.

## Subject to Clauses 29.1, 29.6 and 29.8, the Authority's aggregate liability to the Supplier in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent) or in respect of restitution, under or in connection with this agreement shall be limited to the Agreement Liability Cap. This liability cap shall not apply in respect of the Authority's failure to pay any of the Charges that are properly due and payable in respect of Services provided by the Supplier in accordance with this Agreement and for which the Authority shall remain fully liable.

## The maximum aggregate liability of the Authority and the GMCA (taken together as an aggregate cap and not as separate caps applying to each of the Authority and the GMCA individually) to the Supplier in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent) or in respect of restitution, for breaches of Clause 32 shall be limited in each Liability Year to £3,000,000 (three million pounds sterling) in respect of all breaches that occur during that that Liability Year.

## For the avoidance of doubt the liability caps referred to in Clauses 29.4(b), 29.4(c), 29.4(d), 29.5 and 29.6 operate as separate and independent liability caps.

## Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence (or the negligence of its personnel, agents or Sub-Contractors);

### breach of any obligation as to title implied by statute; or

### any other liability for which may not be limited under any applicable law.

## When assessing whether the liability caps set out in this Clause 29 have been met or exceeded Service Deductions applied in respect of the applicable period shall not be taken into account.

# INSURANCE

## The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

### public liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds sterling) in relation to any one (1) claim or series of claims;

### employer's liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds sterling) in relation to any one (1) claim or series of claims; and

### professional indemnity insurance with a limit of indemnity of not less than £1,000,000 (one million pounds sterling) in relation to any one (1) claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover; and

### cyber liability insurance with a limit of indemnity of not less than £1,000,000 (one million pounds sterling) in relation to any one claim or series of claims,

### (**Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of this agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

## The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

## The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this agreement.

## The Supplier shall hold and maintain the professional indemnity insurance for a minimum of six (6) years following the expiration or earlier termination of this agreement.

INFORMATION

# FREEDOM OF INFORMATION

## The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

### provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

### transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

### provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

### not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

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

## Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

## The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

# DATA PROCESSING

## Each party will comply with all applicable requirements of the Data Protection Legislation. This Clause 32 is in addition to, and does not relieve, remove, or replace, a party's obligations under the Data Protection Legislation. In this Clause 32, Applicable Laws means (to the extent that (i) they apply to the Supplier, and (ii) they are connected to the treatment, storage and processing of Personal Data) the law of the European Union, the law of any member state of the European Union, the Data Protection Legislation and any other law that applies under the laws of England and Wales.

## The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority and the GMCA are the Joint Data Controller, and the Supplier is the Data Processor. Schedule 14 (Data Processing) sets out the scope, nature, and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

## Without prejudice to the generality of Clause 32.1, the Joint Data Controllers will each ensure that it has all necessary appropriate lawful basis and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

## Without prejudice to the generality of Clause 32.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

### process that Personal Data only on the written instructions of the Joint Data Controllers (as set out in Schedule 14 (Data Processing)), unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is so required, it shall promptly notify the Joint Data Controllers before processing the Personal Data, unless prohibited by the Applicable Laws;

### ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Joint Data Controllers, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

### not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Joint Data Controllers has been obtained and the following conditions are fulfilled:

#### the Supplier has provided appropriate safeguards in relation to the transfer;

#### the Data Subject has enforceable rights and effective remedies;

#### the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

#### the Supplier complies with the reasonable instructions notified to it in advance by the Joint Data Controllers with respect to the processing of the Personal Data.

### notify the Joint Data Controllers immediately if it receives:

#### a request from a Data Subject to have access to that person's Personal Data;

#### a request to rectify, block or erase any Personal Data; and

#### receives any other request, complaint or communication relating to any party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner).

### assist the Joint Data Controllers in responding to any request from a Data Subject and in ensuring compliance with the Joint Data Controllers' obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

### notify the Joint Data Controllers immediately and in any event within twenty-four (24) hours on becoming aware of a Personal Data Breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

### at the written direction of the Joint Data Controllers, delete or return Personal Data and copies thereof to the Joint Data Controllers on termination or expiry of this agreement unless required by the Applicable Laws to store the Personal Data; and

### maintain complete and accurate records and information to demonstrate its compliance with this Clause 32 and allow for audits by the Joint Data Controllers or the Joint Data Controllers' designated auditor pursuant to Clause 34.

## A notification made in accordance with Clause 32.4(f) shall include details of:

### the nature of the Personal Data Breach, including the categories and approximate number of (i) Data Subjects and Personal Data records concerned; and (ii) total Data Subjects and Personal Data records concerned;

### the contact at the Supplier who will liaise with the Data Subject concerning the Personal Data Breach;

### the likely consequences of the Personal Data Breach; and

### the remediation measures being taken or proposed to be taken to address the Personal Data Breach, to mitigate the adverse effects of the Personal Data Breach and to prevent it recurring.

## The Supplier's obligation to notify under Clause 32.4(f), and its obligation to provide details under Clause 32.5 shall, where the Supplier is not able to provide all the information required, include an obligation to provide further information to the Authority in phases, as details become available and without undue delay.

## The Supplier shall indemnify the Joint Data Controllers against any Losses incurred by the Joint Data Controllers arising from, or in connection with, any breach of the Supplier's obligations under this Clause 32.

## Where the Supplier intends to engage a Sub-Contractor pursuant to Clause 26 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

### notify the Joint Data Controllers in writing of the intended processing by the Sub-Contractor;

### obtain prior written consent to the processing; and

### ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this Clause 32.

## A party may, at any time on not less than thirty (30) Working Days' written notice to the other parties, revise this Clause 32 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

## In this Clause 32 reference to a **party** includes the Supplier, the Authority and the GMCA and reference to **parties** shall be construed accordingly.

## The provisions of this Clause shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

# CONFIDENTIALITY

## Subject to Clause 33.2, each party shall keep the other party's Confidential Information confidential and shall not:

### use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or

### disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 33.

## The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

### which the other party confirms in writing is not required to be treated as Confidential Information;

### which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

### which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;

### which is in or enters the public domain other than through any disclosure prohibited by this agreement;

### which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or

### which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

## A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

### it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

### it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this Clause as if they were a party to this agreement,

### and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Clause 33.3.

## The provisions of this Clause 33 shall survive for a period of five (5) years from the Termination Date.

# AUDIT

## Throughout this agreement and for a period of six (6) years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:

### to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

### to review and verify compliance by the Supplier with its obligations under this agreement;

### to review the integrity, confidentiality and security of any data relating to the Authority or any Users;

### to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with Clause 32 (Data Processing) and Clause 31 (Freedom of Information) and any other legislation applicable to the Services;

### to review any records created during the provision of the Services;

### to review any books of account kept by the Supplier in connection with the provision of the Services;

### to carry out the audit and certification of the Authority's accounts;

### to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and

### to verify the accuracy and completeness of any reports delivered or required by this agreement,

### (each an **Audit**).

## Except where an Audit is imposed on the Authority by a regulatory body (in which case audits shall not be limited to once in any calendar year), the Authority may not conduct an audit under this Clause 34 more than once in any calendar year.

## The Authority shall use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

## Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each Audit, including:

### all information requested by the above persons within the permitted scope of the Audit;

### reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) by it or any Sub-contractor in the performance of the Services; and

### reasonable access to the Supplier's Personnel.

## The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an Audit (and it is acknowledged by the Supplier that in the case of an Audit required, or carried out, by a regulatory body, shorter or no notice may be provided by the Authority of such Audit).

## The parties agree that they shall bear their own respective costs and expenses (and the Sub-Contractors shall bear their own costs and expenses) incurred in respect of compliance with their obligations under this Clause, unless the Audit identifies:

### fraud;

### a miscalculation by the Supplier of any sums due to or from the Supplier under this agreement (other than a miscalculation of an immaterial nature); or

### a material failure by the Supplier to perform its obligations under this agreement,

### in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred by the Authority (including those of any third party engaged by the Authority) in relation to the Audit.

## If an Audit identifies that:

### the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

### the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within twenty (20) days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

### the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Supplier in relation to invoicing within twenty (20) days.

# INTELLECTUAL PROPERTY

## **Background Intellectual Property**

### Notwithstanding anything to the contrary in this agreement, all Authority Background IPR shall remain vested in and remain the property of the Authority or its licensor (which for these purposes excludes the Supplier and its Associated Companies and any Sub‑Contractor of the Supplier or any Associated Company of the Supplier), and all Supplier Background IPR shall remain vested in and remain the property of the Supplier (or its Associated Company or sub-contractor or the Supplier or its Associated Company, as the case may be).

### The parties acknowledge that all Intellectual Property Rights in the Supplier Materials shall vest in and constitute the property of the Supplier (or its Associated Company or any of their licensors, as the case may be), and nothing in this agreement will assign to the Authority any such Intellectual Property Rights.

## **Authority Supplied Materials**

As between the Authority and the Supplier, the Authority or its relevant third party licensor (which for these purposes excludes the Supplier and its Associated Companies and Sub‑Contractors of the Supplier or any of its Associated Company) retains ownership of all their IPRs in the Authority Materials and nothing in this agreement will assign to the Supplier any such IPRs. Any IPRs in the Authority Materials that are created after the Commencement Date shall vest in the Authority upon their creation.

## **Authority Data**

As between the Authority and the Supplier all IPRs in and to the Authority Data shall vest in the Authority unconditionally and automatically upon creation. The Supplier irrevocably assigns to the Authority (including by way of a present assignment of future Intellectual Property Rights) and, where relevant, shall procure the irrevocable assignment to the Authority of, all IPRs in and to the Authority Data, with full title guarantee, free from encumbrances, including the right to take action for any past, present and future infringement and to retain all damages and other sums awarded in respect thereof and with the benefit of all other remedies in respect of any such infringement. The Supplier shall at the request of the Authority execute all documents and instruments reasonably requested by the Authority so as to confirm the title of the Authority to all IPRs in and to the Authority Data.

## **Licences from the Supplier to the Authority**

### The Supplier hereby grants to the Authority and each User (each with a right to sub-license) a non-exclusive, irrevocable, transferable (in accordance with the provisions of Clause 35.5) and free (except in relation to the Charges) licence during the Term (and after the Term to the extent such licences are required for successful Exit Management and/or the receipt of the Termination Services) to Use the Licensed Rights within the United Kingdom to enable the Authority and each User:

#### to receive the Services, and operate and receive the benefit of the Supplied System;

#### to perform obligations and/or exercise rights under this agreement; and

#### for the purposes of Exit Management and/or the receipt of the Termination Services.

### In relation to the licence in Clause 35.4(a), the Supplier or its licensor (as the case may be) retains any ownership it currently has of the Licensed Rights.

### For the avoidance of doubt, the Supplier shall provide, or will procure the provision of, all licences, permits, consents and approvals required to enable the Authority and each User to make use of and received the benefit of the Supplied System and Services as intended under this agreement.

## **Transfer of licences by the Authority**

### The licences granted pursuant to Clause 35.4(a) shall be transferable by the Authority pursuant to any assignment, novation or disposal of this agreement or any or all of the Authority's rights and obligations under this agreement pursuant to Clause 26.5.

## **Infringement of IPRs owned by third parties**

## The Supplier shall at all times, during and after the Term, indemnify the Authority against all Losses arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right arising out of the Supplier's (and/or any of its Sub-Contractor's) the provision of the Services and/or Deliverables and the Authority's and each Users receipt, use and/or receipt of the Services, Supplied System, and/or any Deliverables, except to the extent that such Losses have been caused by or contributed to by any Default of the Authority.

## **Hardware Confirmation**

## For the avoidance of doubt, nothing in this Clause 35 shall prevent or restrict in any way the Authority's ownership of the Hardware, which ownership shall remain at all times with the Authority once title has passed to the Authority under (and in accordance with) this agreement.

TERMINATION

# TERMINATION FOR BREACH

## The Authority may terminate this agreement with immediate effect (or with effect from the date specified in the Authority's notice provided that such date shall not take effect prior to any cure period applicable in respect of the specific termination right) by the service of written notice on the Supplier in the following circumstances:

### if the Supplier commits a material breach of this agreement (being a single event or a series of events which together amount to a material breach) provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this Clause 36.1 if the Supplier has failed to remedy such breach within twenty-eight (28) days of receipt of notice from the Authority to do so (**Material Breach Termination Event**);

### if the Supplier commits a breach of the Anti-slavery Policy;

### if the Supplier's performance reaches the Termination Level;

### if a Catastrophic Failure has occurred;

### if there is an Insolvency Event;

### if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;

### the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply;

### if the Supplier fails to Achieve a Key Milestone by its associated Milestone Date;

### if the Supplier fails to Achieve the Go-Live Milestone in respect of a Tranche by its associated Go-Live Milestone Date or the Authority acting reasonably determines that as a result of Delay the Supplier will not reasonably be able to achieve a Go-Live Milestone by its associated Go-Live Milestone Date;

### if the Supplier (or any Supplier Personnel) commits fraud in relation to the Services, or deliberately submits false information in relation to its entitlement to the Charges under this agreement; or

### the Supplier fails to comply with Clause 23.3 or Clause 23.4.

## The termination rights set out in Clause 36.1 are without prejudice to any other right for the Authority to terminate this agreement set out elsewhere in this agreement.

## Should the performance of the Services, (whether arising as a result of a single event or a series of events and including where performance fails to meet the requirements of this agreement over a continuing period or on a number of occasions throughout a period), constitute a Material Breach Termination Event the Authority's right of termination under Clause 36.1(a) shall apply regardless of whether a right to terminate has also arisen under Clause 36.1(c).

## If this agreement is terminated by the Authority pursuant to this Clause 36, such termination shall be at no loss or cost to the Authority.

# TERMINATION FOR CONVENIENCE

## Without affecting any other right or remedy available to it, the Authority may at no cost terminate this agreement in whole or in part by giving at least twelve (12) months' written notice to the Supplier to take effect no earlier than the second anniversary of this agreement. Any termination pursuant to this Clause 37 shall take effect on the last day of the period specified by the Authority in its Termination Notice (which for the avoidance of doubt shall not be earlier than the expiry of the twelve (12) month notice period aforesaid).

## The right of termination under this Clause 37 is in addition to any other rights of the Authority under this agreement and its exercise shall be without prejudice to any claim, remedy or right of action that either party may have in relation to this agreement.

# PARTIAL TERMINATION

## In any of the circumstances set out in Clause 36 or 37 or set out elsewhere in this agreement in which the Authority may terminate this agreement the Authority may instead terminate any element or part of the Services or the provision of any element or part of the Services to any particular User.

## In the event of a Partial Termination pursuant to this clause:

### the remaining Services shall continue to be performed for the remainder of this agreement;

### the Supplier shall implement a fair and equitable reduction in the Charges applying the relevant charging principles set out in Schedule 8 (Charges and Payment) and the parties shall record such reduction in a Change Control Note;

### the Supplier shall provide the Termination Services in relation to those Services that have been terminated; and

### the parties shall comply with their respective obligations set out in Schedule 12 (TUPE) with respect to those Services that have been or are to be terminated.

## Termination in accordance with this Clause 38 shall be without prejudice to any right of action or remedy of either party which has accrued, or which subsequently accrues.

# TERMINATION BY THE SUPPLIER

## The Supplier shall have the right to serve on the Authority a written notice (**Initial Notice**) referring to this Clause 39.1 in the event that the Authority has failed to pay undisputed invoiced amounts which in aggregate exceed [£\*\*\*] *[****Note to bidders:*** *to be populated once charges are confirmed]* and which have been due and payable for a period in excess of thirty (30) days prior to the date of service by the Supplier of the Initial Notice. The Initial Notice shall itemise the undisputed invoiced amounts to which it relates.

## In the event that the sums referred to in the Initial Notice remain unpaid for a period in excess of thirty (30) days following the receipt by the Authority of the Initial Notice then the Supplier may serve a further notice, stating the Supplier's intention to terminate this agreement attaching the Initial Notice and specifically referring to this Clause 39.2 (**Final Notice**). In the event that the Authority fails to pay these undisputed invoiced amounts within thirty (30) days of receipt of the Final Notice the Supplier may, unless and until the Authority pays such undisputed invoiced amounts detailed in the Initial Notice, serve notice on the Authority to terminate this agreement with immediate effect. The Supplier's right under this Clause 39.2 shall lapse immediately on payment by the Authority (or a person acting on its behalf) of the sums referred to in the Initial Notice.

## The Supplier's rights under Clauses 39.2 and 41.6 shall constitute the Supplier's sole rights to terminate this agreement (whether under contract, at common law or otherwise including any right or purported right to terminate for repudiatory breach or renunciation of the agreement by the Authority). For the avoidance of doubt the Supplier's obligation to provide the Termination Services shall remain unaffected by such termination.

# GMCA TERMINATION APPROVAL

A termination of this agreement by the Authority (in whole or in part) shall only be effective if the notice of termination contains a written confirmation on behalf of the GMCA that it consents to such termination.

# FORCE MAJEURE

## Provided it has complied with the remaining provisions of this Clause 41, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations to the extent that such failure or delay is due to a Force Majeure Event.

## If the Supplier is the Affected Party, the Authority may suspend payment normally due to the Supplier for those parts of the Services that are not performed by the Supplier until such time as the Supplier has resumed its performance of the Services in accordance with this agreement and the Authority has received notification from the Supplier in accordance with Clause 41.5.

## The Affected Party shall:

### as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this agreement; and

### use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

## An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. Without prejudice to the foregoing, the Supplier cannot claim relief from liability for any delay in performing or failure to perform its obligations under this agreement if:

### the Force Majeure Event is one which, in accordance with Best Industry Practice, the Supplier should have foreseen and provided for the cause in question; or

### the Force Majeure Event (or the Force Majeure Event's effect upon the Supplier's ability to perform its obligations under this agreement) is attributable to, or is caused by, the Supplier's, its Sub-Contractors' or any of its Supplier Personnel's neglect or failure to take reasonable precautions against the relevant Force Majeure Event (including failure to comply with Clause 16 (unless this failure is also due to a Force Majeure Event affecting the operation of the Business Continuity Plan and/or Disaster Recovery Plan)).

## The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than six (6) weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving not less than twenty-four (24) weeks' notice to the Affected Party.

# PREVENTION OF BRIBERY

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

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

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

## The Supplier shall not throughout this agreement:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

## The Supplier shall throughout this agreement:

### establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under Clause 42.3(a) and make such records available to the Authority on request.

## The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 42.1 and/or Clause 42.2, or has reason to believe that it has or any of the Supplier's Personnel have:

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

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

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

## If the Supplier makes a notification to the Authority pursuant to Clause 42.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 34.

## If the Supplier is in Default under Clause 42.1 and/or Clause 42.2, the Authority may by notice:

### require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or

### immediately terminate this agreement.

## Any notice served by the Authority under Clause 42.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

# CONSEQUENCES OF TERMINATION OR EXPIRY

## On the expiry of the Term or if this agreement is terminated for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.

## On termination or expiry of this agreement the Supplier shall continue to be under an obligation to provide the Services to the required Expected Service Levels and to ensure that there is no degradation in the standard of Service provision until the date upon which the Supplier ceases to be obliged to provide the applicable Services pursuant to this agreement.

## On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier Authorised Representative shall certify full compliance with this Clause.

## Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including Clause 1 (Definitions and Interpretation), Clause 21 (TUPE), Clause 28 (Indemnities), Clause 29 (Limitation of Liability), Clause 30 (Insurance), Clause 31 (Freedom of Information), Clause 32 (Data Processing), Clause 33 (Confidentiality), Clause 34 (Audit), Clause 35 (Intellectual Property), Clause 36 (Termination for Breach), this Clause 43 (Consequences of Termination or Expiry), Clause 45 (Waiver), Clause 46 (Rights and Remedies), Clause 47 (Severability), Clause 49 (Third Party Rights), Clause 50 (Publicity), Clause 51 (Notices), Clause 52 (Entire Agreement), Clause 55 (Governing Law), Clause 56 (Jurisdiction), Schedule 11 (Exit Management Plan), Schedule 12 (TUPE) and Schedule 14 (Data Processing) shall remain in full force and effect.

## Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the Termination Date.

## In the event of termination or expiry (in whole or in part) of this agreement:

### the Authority shall pay all Charges valid and due in accordance with the payment terms set out in Schedule 8 (Charges and Payment);

### the Supplier shall promptly repay to the Authority all Charges it has been paid in advance in respect of Services not yet delivered or performed;

### the Supplier shall provide the Termination Services and shall comply with all of its other obligations under Schedule 11 (Exit Management Plan) and under the Exit Management Plan;

### the Supplier shall provide access to the Authority and/or any Replacement Supplier or potential Replacement Supplier (as required by the Authority) in accordance with and to the extent required pursuant to Schedule 11 (Exit Management Plan) to:

(i) such information relating to the Services as remains in the possession or control of the Supplier or any Supplier Personnel; and

(ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier or any Sub-Contractor.

### the Supplier shall vacate the Sites and any Authority Premises.

## Each party may retain Confidential Information of the other party and/or records to the extent that such retention is necessary to enable said party to comply with Law.

## Clause 33 shall continue to apply to such retained Confidential Information and records and such items may only be used for the purposes for which they have been retained.

GENERAL PROVISIONS

# PLAN APPROVAL PROCESS

## Where this agreement requires the Supplier to submit to the Authority a Plan for approval by the Authority in accordance with the Plan Approval Process then said Plan shall be submitted by the date specified in the relevant clause of this agreement or relevant paragraph of the applicable schedule to this agreement, or if no such date is specified then by the date otherwise reasonably required by the Authority. The Authority shall not unreasonably withhold or delay approval of any Plan submitted.

## Once approved by the Authority, each Plan shall be adopted immediately unless otherwise provided for in this agreement or otherwise required by the Authority.

## Should the Authority withhold approval of a draft Plan, it shall identify the changes it reasonably requires to be made to that Plan together with the reasons for such changes. The Supplier shall amend the draft Plan so as to incorporate such changes reasonably required and shall promptly re-submit the draft Plan to the Authority for approval (and in any event shall re-submit the draft Plan by the date (if any) required by any express provision of this agreement).

## If the Authority does not approve an amended draft Plan submitted in accordance with Clause 44.2 above, the Authority may at its discretion require the Supplier to repeat the process set out above until such time as the Plan is approved or either party may at its option refer the matter to the Dispute Resolution Procedure.

## In developing any draft Plan, the Supplier shall at the Authority's request liaise with third party service providers whose services are outside the scope of the Services but which connect to or interoperate with the Services in respect of those aspects of any such draft Plan which have or may have an impact on such third party services.

# WAIVER

## No failure or delay by a party to exercise, or waiver by a party of, any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise or enforceability of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# RIGHTS AND REMEDIES

## The rights and remedies provided under this agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law (including equitable remedies) or otherwise.

# SEVERABILITY

## If any provision or part-provision of this agreement is, or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect or impair the legality, validity and enforceability of the rest of this agreement.

## If any provision or part-provision of this agreement is deemed deleted under Clause 47.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

# RELATIONSHIP OF THE PARTIES

## Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the principal or agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

## Each party confirms it is acting on its own behalf and not for the benefit of any other person.

# THIRD PARTY RIGHTS

## Subject to Schedule 12 (TUPE) and as otherwise expressly set out in this agreement this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

# PUBLICITY

## The Supplier shall not:

### make any press announcements or publicise this agreement or its contents in any way; or

### use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

# NOTICES

## Any notice given to a party under or in connection with this agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address set out below:

### to the Authority at: 2 Piccadilly Place, Manchester, M1 3BG;

### to the GMCA at: Tootal Buildings, 56 Oxford Street, Manchester, M1 6EU; and

### to the Supplier at: [ADDRESS TO BE INSERTED].

## Any notice shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

## This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## A notice given under this agreement is not valid if sent by email.

# ENTIRE AGREEMENT

## This agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

## Subject to Clause 3.3(a)(i), each party agrees that it has not relied upon and subject to Clause 52.3, shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## Nothing in this agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

# VARIATION

## No amendment to this Agreement shall be effective unless agreed in accordance with the Change Control Procedure and set out in a Change Control Note.

# COUNTERPARTS

## This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

# GOVERNING LAW

## This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

# JURISDICTION

## Without prejudice to the Dispute Resolution Procedure, each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS** whereof the parties hereto have executed this agreement as a deed (but it remains undelivered until the day and year first above written)

**THE COMMON SEAL** of **GREATER** )

**MANCHESTER COMBINED AUTHORITY** was)

hereunto affixed in pursuance of an order )

of the said Authority)

**Authorised Signatory**

**THE COMMON SEAL** of **TRANSPORT** for )

**GREATER MANCHESTER** was )

hereunto affixed in the presence of: )

|  |  |
| --- | --- |
| **Authorised Signatory** | Signature |
|  |

|  |  |
| --- | --- |
| **Authorised Signatory** | Signature |
|  |

**EXECUTED AND DELIVERED AS A DEED** by ) …………………………………………

**[*SUPPLIER*]** )Director

acting by a director, )

in the presence of: )

………………………………………………

*Witness signature*

………………………………………………

*Witness name*

………………………………………………

*Witness address*

………………………………………………

*Witness occupation*