

dated 5th August 2013

Commercial in Confidence

The London Borough of Barnet

and

Capita (BDRS) Limited

Legal Terms and Conditions of DRS Partnering Contract

relating to the provision of Development and Regulatory Services

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This Agreement is made by deed

dated the **5th** day of **August 2013**

Between

- (1) **The London Borough of Barnet** of North London Business Park, Oakleigh Road South, London N11 1NP (the **Authority**); and
- (2) **Capita (BDRS) Limited** incorporated and registered in England and Wales with company number 8615172 whose registered office is at 17 Rochester Row, London, SW1P 1QT (the **Service Provider**).

Background

- (A) The Authority wishes to enter into a contractual arrangement for a range of Services (defined below).
- (B) By an advertisement dated 19 March 2011 in the Supplement to the Official Journal of the European Union, the Authority sought proposals pursuant to the / EU Consolidated Directive (2004/18/EC) and the Public Contracts Regulations 2006 (SI 2006 No 5) competitive dialogue procedure for the provision of development and regulatory services for the Authority.
- (C) Following a selection process and dialogue, the Authority has selected Capita Symonds Limited as the company that will enter into a joint venture arrangement with the Authority (through the Authority's holding company). This joint venture company (Capita (BDRS) Limited) will be the Service Provider for the purposes of this Agreement and the Service Provider has agreed to provide the Services in accordance with the terms of this Agreement.
- (D) The Authority is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure the Services are Best Value functions.

It is now agreed as follows:

Part 1: Preliminary

1 Definitions and Interpretation

- 1.1 In this Agreement words and phrases with a first capital letter (or any derivation thereof) shall have the meanings set out in Schedule 1 (Definitions).
- 1.2 In this Agreement except where the context otherwise requires:-
 - 1.2.1 the masculine includes the feminine and vice-versa;
 - 1.2.2 the singular includes the plural and vice-versa;
 - 1.2.3 a reference in this Agreement to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Agreement;

- 1.2.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
 - 1.2.5 any reference to any enactment, order, regulation, code, guidance or other similar instrument shall be construed as a reference to the enactment, order, regulation, code, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
 - 1.2.6 references to any documents being "in the agreed form" means such documents have been initialled by or on behalf of each of the parties for the purpose of identification;
 - 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
 - 1.2.8 headings are for convenience of reference only;
 - 1.2.9 words preceding include, includes, including and included shall be construed without limitation by the words which follow those words;
 - 1.2.10 the Schedules to this Agreement form part of this Agreement; and
 - 1.2.11 references to a "party" or "the parties" shall be to a party or the parties to this Agreement.
- 1.3 No review, comment or approval by the Authority under the provisions of this Agreement shall operate to exclude or limit the Service Provider's obligations or liabilities under this Agreement (or the Authority's rights under this Agreement) unless it is agreed in writing that this is the Parties intention.

1.4 **Precedence of Documentation**

In the event of any inconsistency between the provisions of clauses 1 to 73 inclusive of this Agreement and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:

- 1.4.1 clauses 1 to 74 inclusive, Schedule 1 (Definitions);
- 1.4.2 Schedule 36 (Service Provider Commitments);
- 1.4.3 Schedule 2 (The Output Specifications, KPIs and PIs) (unless any of the other Schedules expressly states that a particular requirement set out in Schedule 2 (The Output Specifications, KPIs and PIs) shall not apply);
- 1.4.4 Schedule 4 (The Payment Mechanism) (and in the event of any inconsistency between the Financial Model and the Financial Proforma, the Financial Proforma shall take precedence).
- 1.4.5 Schedule 14 (Change Protocol),
- 1.4.6 Schedule 15 (Special Projects Approval Procedure)

- 1.4.7 the licence and provisions set out in Schedule 9 (Access to Authority's Premises);
- 1.4.8 Schedule 3 (The Service Delivery Plan); and
- 1.4.9 the other Schedules of this Agreement equally.

1.5 **Consultation**

The Service Provider shall conduct, and/or assist the Authority with, a consultation exercise with Service Users, Members and/or relevant third parties upon the occurrence of a Consultation Event. In accordance with clause 7 (Special Projects and Change in Service), the scope, cost implications (only where such consultation exercise is required other than pursuant to limb (c) of the definition of Consultation Event and where the Authority is satisfied that such costs have not already been accommodated within the Periodic Service Payment), parameters and timeframe for the consultation exercise shall be agreed by the parties acting reasonably, in good faith and based upon the relevant Consultation Event. The parties agree to have due regard to the outcome of any such consultation exercise in the execution of their obligations and/or rights pursuant to this Agreement.

2 **Commencement and Duration**

- 2.1 This Agreement and the rights and obligations of the parties to this Agreement shall take effect on the date of this Agreement.
- 2.2 The Service Period will commence on the Service Transfer Date and terminate or expire on the earlier of:
 - 2.2.1 the Expiry Date; and
 - 2.2.2 the Termination Date,subject to clauses 2.3 and 2.4.
- 2.3 At its sole discretion the Authority shall be entitled to serve a written notice upon the Service Provider at least eighteen (18) months prior to the Expiry Date to extend the Service Period by a further period of five (5) years from the Expiry Date.
- 2.4 If the Authority serves a notice in accordance with clause 2.3, the Service Provider shall serve a written counter notice upon the Authority at least fifteen (15) months prior to the Expiry Date notifying the Authority that either:
 - 2.4.1 it does not wish to continue to provide the Services after the Expiry Date and this Agreement shall expire on the Expiry Date; or
 - 2.4.2 that it will continue to provide the Services for a period of five (5) years following the Expiry Date on the terms and conditions of this Agreement and, subject to the agreement by the parties of the terms of such extension including any consequential variations to the Agreement, the Periodic Service Payment, the Key Documents (within the procurement rules), the definition of Expiry Date shall be amended accordingly and this Agreement shall remain in full force and effect until the earlier of the Expiry Date (as amended) or the Termination Date.

3 Key Documents

3.1 Delivery of Initial and Changed Key Documents

3.1.1 The Service Provider shall provide to the Authority copies of the Key Documents. A list of these Key Documents shall be included at Schedule 24 (**Key Documents**).

3.1.2 Without prejudice to the provisions of clause 3.2 (Changes to Key Documents), if at any time an amendment is made to any Key Document, or the Service Provider enters into a new Key Document (or any agreement which affects the interpretation or application of any Key Document), the Service Provider shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Service Provider.

3.2 Changes to Key Documents

The Service Provider shall perform its obligations under, and observe all of the provisions of, the Key Documents and shall not and shall procure that any counterparty to a Key Document shall not:

3.2.1 terminate or agree to the termination of all or part of any Key Document;

3.2.2 make or agree to any material variation of any Key Document;

3.2.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that any counterparty to a Key Document in any material respect departs from its obligations (or waives or allows to lapse any rights they may have in a material respect), under any Key Document; or

3.2.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any key Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority for review and there has been no objection made by the Authority within twenty (20) Business Days of receipt by the Authority of such submission, or such shorter period as may be agreed by the parties, and provided, in the circumstances specified in clause 3.2.1 and 3.2.4, that the Service Provider has complied with the provisions of clause 45 (Assignment and Sub-Contracting).

Part 2: The Services

4 Exclusivity

4.1 Subject to the express provisions of this Agreement and clauses 4.2 to 4.6 inclusive, the Service Provider shall have the sole and exclusive right to provide the Transition Services and the Services to the Authority on the terms and subject to the conditions of this Agreement for the Service Period.

- 4.2 The Authority shall have the right to provide the Services (or any part) itself (or engage a third party to provide the Services (or any part) on its behalf) as set out in clause 42 (Authority Step-In) and the Collateral Warranties.
- 4.3 The Service Provider's rights under clause 4.1 shall not apply where agreed or determined to the contrary under clause 7.2 (Change in Service) and Schedule 14 (Change Protocol), clause 34 (Change in Law) or as otherwise agreed under this Agreement.
- 4.4 The Service Provider's rights under clause 4.1 shall not prevent the Authority from executing its rights or engaging a third party to provide that part of the Services on its behalf under clause 30 (Maintenance).
- 4.5 The Service Provider's rights under clause 4.1 shall not apply to any Special Projects unless and until:
- 4.5.1 such Special Projects have received Stage 2 Approval pursuant to the Special Projects Approval Procedure in Schedule 15 (Special Projects Approval Procedure); and
- 4.5.2 the Authority has agreed that the rights in clause 4.1 shall apply to such Special Projects.
- 4.6 Clause 4.1 shall not apply to:
- 4.6.1 any Non-Outsourced Activities or any activities which the Authority is prohibited by law from contracting out to the Service Provider (either at the date of this Agreement or at any time during the course of this Agreement); or
- 4.6.2 any Services which the Authority or another contractor is entitled to provide under this Agreement (including where the Authority has exercised its rights of suspension, termination or step-in under this Agreement).

5 The Services

5.1 Transition

- 5.1.1 During the Transition Period:
- (a) the Service Provider shall provide the Transition Services to the Authority; and
- (b) each party shall perform and comply with their respective obligations as set out in Schedule 34 (the Transition Plan).

5.2 The Services

- 5.2.1 The Service Provider shall provide to the Authority or procure the provision to the Authority of the Services to the Contract Standard and on the terms of this Agreement with effect from the Service Transfer Date where provision of the Services to the Contract Standard shall require the Service Provider throughout the Service Period to:
- (a) perform the Services in accordance with Good Industry Practice;

- (b) provide the Services to the Authority in accordance with the Output Specifications and, to the extent that they do not conflict with the Output Specifications, the Service Delivery Plan(s);
- (c) warn the Authority of any matter of which it is aware and believes is likely to prejudice the quality or purpose of the Services;
- (d) ensure that the Services meet and satisfy the Service Performance Levels set out in the Output Specifications and provide the Services in accordance with the Performance Indicators and KPIs and Super KPIs;
- (e) perform its obligations under, and observe and enforce all of the provisions of, the Key Sub-Contracts to which it is a party;
- (f) as necessary from time to time at its own cost obtain maintain and perform the Services in accordance with the terms and requirements of all Consents which are necessary to provide the Services and shall supply to the Authority upon request a copy of every Consent obtained and any variation, relaxation or waiver agreed with the Relevant Authority;
- (g) at all times ensure that the Services comply with and meet all the requirements of this Agreement and all Legislation and applicable Authority Policies and where relevant the Service Provider Policies (as reviewed, developed, updated and/or created by the Authority);
- (h) perform its obligations in full co-operation with the Authority and its contractors, Authority Related Parties, stakeholders and other relevant service users and all other persons employed at the Authority's Premises;
- (i) perform the Services (and procure that any Service Provider Related Party performs the Services) in compliance with Equalities Legislation; and
- (j) ensure the Services are performed by appropriately qualified and trained personnel.

5.2.2 The Service Provider:

- (a) shall not undertake any Non-Outsourced Activities;
- (b) shall perform the Cooperation Obligations and its obligations under the Cooperation Agreement.

5.2.3 The Service Provider shall indemnify the Authority for any Direct Losses suffered or incurred as a result of:

- (a) failure to comply with the Service Provider's obligations under clause 5.2.2;

- (b) failure to comply with or breach of Legislation, Guidance, Authority Policies or Good Industry Practice arising from the Service Provider's performance, non-performance, defective or negligent performance of the Services, Third Party Services or Special Projects.

5.2.4 The Service Provider shall, in relation to the Authority Policies contained in Schedule 33 (Authority Policies), be entitled to follow the practices and procedures outlined in the corresponding Service Provider Policies, provided that the Service Provider:

- (a) demonstrates to the Authority (and obtains the Authority's written approval) that the Service Provider Policies are of an equivalent or more stringent standard than the corresponding Authority Policies;
- (b) notifies the Authority of any material amendments made to the Service Provider Policies from time to time;
- (c) warrants to the Authority on an ongoing basis that the Service Provider Policies remain of an equivalent or more stringent standard to the corresponding Authority Policy.

5.3 The Service Delivery Plan(s)

5.3.1 The Output Specifications shall to the extent that there is any inconsistency have priority over the Service Delivery Plan(s) and the Service Provider shall be obliged to comply with the Output Specifications and provide the Services in accordance with the Output Specification.

5.3.2 The Service Provider may not make any material amendment to any Service Delivery Plan without the prior written consent of the Authority such consent not to be unreasonably withheld or delayed.

5.3.3 The Authority may propose an amendment to any Service Delivery Plan(s) at any time, which shall be regarded as an Authority Change unless the amendment arises from Legislation or from a default by the Service Provider.

5.3.4 Neither the incorporation of any Service Delivery Plan (save in the case of an amended Service Delivery Plan prepared by the Authority under clause 5.3.3) in this Agreement nor the receipt or approval of any proposal for any modification of a Service Delivery Plan nor any supporting or further information shall constitute a waiver or variation by the Authority of any obligation of the Service Provider under this Agreement and/or the Output Specifications.

5.4 Third Party Contracts

5.4.1 Assisted by the Service Provider, the Authority shall use all reasonable efforts to arrange the novation of each Third Party Contract effective from the Service Transfer Date. Such novation shall be subject to the Authority, the Service Provider and the Third Party Contractors agreeing the form of a novation agreement. The Service Provider shall assist the Authority to obtain all requisite consents and approvals and reasonable co-operation from all applicable third parties to the Third Party Contracts and all reasonable and

proper costs incurred by the Service Provider in obtaining such consents shall be met by the Authority.

5.4.2 If any novation referred to in clause 5.4.1 does not occur for any reason and until it occurs and subject to any requisite consents of third parties, the Authority shall appoint the Service Provider as its agent for the purposes of managing the Third Party Contract in question. The Authority shall notify all relevant third parties of its appointment of the Service Provider as its agent for the purposes of the Third Party Contracts.

5.4.3 In managing a Third Party Contract, the Service Provider shall act in accordance with the Managing Agent Protocol at Schedule 35 (Managing Agent Protocol).

5.4.4 Whilst managing a Third Party Contract, the Service Provider shall do nothing which would put the Authority in breach of its obligations in the Third Party Contracts. After the novation of a Third Party Contract, the Authority shall do nothing which would put the Service Provider in breach of its obligations in the Third Party Contract. Each party shall be liable for any breach of their respective obligations under each Third Party Contract as follows:

(a) The Authority shall indemnify the Service Provider against all Direct Losses suffered or incurred as a result of the Authority's non-performance or defective or negligent performance prior to the Service Transfer Date provided that the Service Provider has used reasonable endeavours to fully mitigate any losses suffered or incurred whilst the Service Provider manages a Third Party Contract on the Authority's behalf; and/or.

(b) The Service Provider shall indemnify the Authority against all Direct Losses suffered or incurred as a result of the non-performance or defective or negligent performance by it of its obligations under the Third Party Contracts on or after the Service Transfer Date whilst managing a Third Party Contract or after the novation of a Third Party Contract to the Service Provider

5.4.5 Whilst managing a Third Party Contract, the Service Provider shall not terminate, extend or vary the Third Party Contract (or purport to do so) without the prior written approval of the Authority.

5.4.6 Upon the termination or expiry of a Third Party Contract and for the remainder of the Service Period, the Service Provider shall have responsibility for performing and delivering the services that were comprised within the Third Party Contract and such services shall form part of the Services.

5.5 **Managed Expenditure**

5.5.1 At least one month prior to the start of each of the Authority's financial years, the Authority and the Service Provider shall seek to agree in writing:

- (a) a maximum amount that the Authority shall commit for expenditure for Third Party Contracts in the Authority's following financial year (**Managed Expenditure Maximum**);
- (b) the works, timescales for works and payment and the Third Party Contracts (**Managed Third Party Contract**) in relation to which the Managed Expenditure shall be applied in the Authority's following financial year (the **Managed Third Party Contract Terms**),

and if the Authority and Service Provider cannot agree the Managed Third Party Contract Terms by the start of the Authority financial year, the Authority shall in its absolute discretion notify the Service Provider of the Managed Third Party Contract Terms. The Authority and the Service Provider may from time to time agree changes in writing to the Managed Third Party Contract Terms.

5.5.2 Within two Business Days of receipt of an invoice under a Managed Third Party Contract (**Managed Third Party Contract Invoice**), the Service Provider shall:

- (a) forward Managed Third Party Contract Invoices to the Authority (provided that the Managed Expenditure Maximum has not been exceeded);
- (b) provide a valid VAT invoice to the Authority in relation to the Managed Third Party Contract Invoice in so far as the Service Provider is in receipt of the same from the Third Party;
- (c) notify the Authority for the due date for payment of the invoice and the method of payment;
- (d) notify the Authority if the Service Provider disputes the amount in the Managed Third Party Contract Invoice;
- (e) notify the Authority if any element of the Managed Third Party Contract Invoice relates to the non-performance, defective performance or negligence performance by the Service Provider of its obligations under this Agreement or the Third Party Contract; and
- (f) notify the Authority if any part of the Managed Third Party Contract Invoice is in excess of the Managed Expenditure Maximum.

5.5.3 The Authority may request supporting evidence in relation to the Managed Third Party Contract Invoice and the Service Provider shall promptly provide this.

5.5.4 The Authority shall inform the Service Provider within five (5) Business Days of receipt of the Managed Third Party Contract Invoice (or in accordance with the terms of the Third Party Contract) if it disputes any amounts under a Managed Third Party Contract Invoice and the Service Provider shall seek to resolve any such disputes with the Third Party Contractor. The Service Provider shall obtain the prior written consent of the Authority in relation to the settlement of any dispute and shall notify the Authority of any settlement or determination of a dispute.

5.5.5 The Authority shall not be liable for and shall not pay any Managed Expenditure or any element of a Managed Third Party Contract Invoice:

- (a) which has not been agreed by the Authority in writing under clause 5.5.1 or is not completed in accordance with the works, timescales and Third Party Contracts agreed in writing in clauses 5.5.1;
- (b) which is in excess of the Managed Expenditure Maximum and the Service Provider shall be liable for Managed Expenditure in excess of the Managed Expenditure Maximum; or
- (c) which relates to the non-performance, defective performance or negligence performance by the Service Provider of its obligations under this Agreement or the Managed Third Party Contract,

and in all such cases, the Service Provider shall be liable for such Managed Third Party Contract Invoices and liabilities under Managed Third Party Contracts.

5.5.6 Save as provided for in clause 5.5.5, the Authority shall settle undisputed Managed Third Party Contract Invoices with the Third Party Contractor (the Service Provider shall not receive any Managed Expenditure from the Authority at any stage). The Authority may withhold payment of any disputed amounts in Managed Third Party Contract Invoices pending agreement or determination of such disputes.

5.6 Service Provider Commitments

5.6.1 The Service Provider and Authority acknowledge and agree that the Service Provider Commitments as set out in Schedule 36 (Service Provider Commitments) shall form binding obligations on the Service Provider as if those commitments were set out as legal obligations in this Agreement therein and the Service Provider shall use all reasonable endeavours to comply with the Service Provider Commitments.

5.6.2 As set out in paragraph 34 of Schedule 4 (the Payment Mechanism) the Service Provider commits that on or before the anniversary of the twelfth month following the Agreement Date a report shall be presented by the Service Provider to the Authority that identifies opportunities for the Authority, at its absolute discretion to reduce the Annual Guaranteed Contract Price by allowing the Service Provider to cease performance of elements of any Output Specification provided always that such cessation of performance will not be to the detriment of overall performance of the Services. If the Authority elects to approve an opportunity it shall be treated as a Service Provider Change.

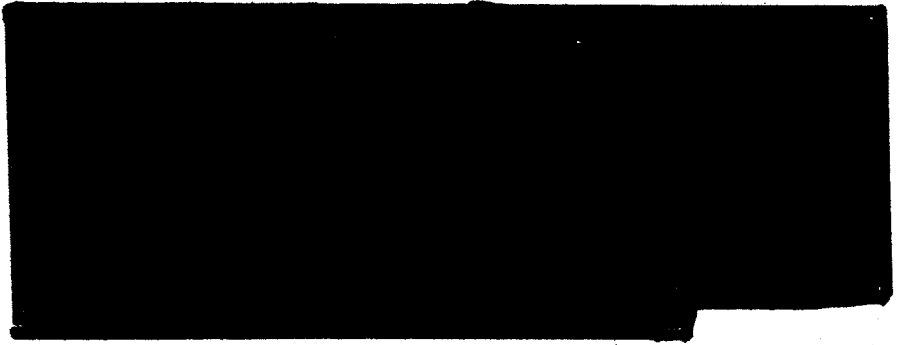
5.7 Commercial Development Plan and Service Provider Commitments Remedy

5.7.1 (a) The Service Provider guarantees it will achieve and shall be liable for savings and Guaranteed Income in relation to the Services set out in Financial Proforma 1 (Net Contract Cost – Column G to AL, Row 492, Income – Column G to AL, Row 489, Contract Price – Column

G-AL, Row 490) in each of the Authority's financial years during the Contract Period.

- (b) The Service Provider shall be liable to the Authority for the Income and the Guaranteed Income, including without limitation for all Income and any shortfall of such Income below the Guaranteed Income calculated in accordance with Schedule 4 (Payment Mechanism).
- (c) The Service Provider shall be liable for the Guaranteed Income in all circumstances regardless of any act or omission of the Authority, any Authority Related Party or any other third party and liability for such amounts shall be absolute and shall not be dependent on any other terms of this Agreement or any internal or external factors including but not limited to the grant of permissions or consents or the implementation of any proposals.
- (d) The Service Provider shall provide evidence and demonstrate to the Authority that the Guaranteed Income and other such savings and income have been achieved for the Authority's previous financial year within the Certificate of Expenditure and Income prepared pursuant to clause 35 (Open Book Accounting).
- (e) The Service Provider shall apply the Guaranteed Income in the calculation of the Income Payment in accordance with Schedule 4 (The Payment Mechanism).
- (f) In addition to the commitment set out in clause 5.7.1 (a), the Authority and the Service Provider shall:
 - i aspire to achieve savings and income in relation to the Services in the sums equal to, or in excess of those set out in Column G – AL, Row 66 of the Financial Proforma 2, in each of the Authority's corresponding financial year during the Contract Period;
 - ii encourage and facilitate the aspirational savings and income referred to in clause 5.7.1(f)i by implementing a number of initiatives (as authorised by the Authority from time to time) including but not limited to those set out in the Commercial Development Plan;
 - iii provide on an annual basis satisfactory evidence to demonstrate to the Authority the amount of such aspirational savings and income which have been achieved for the Authority's preceding financial year.
- (i) For the avoidance of doubt the Service Provider does not guarantee nor shall it be liable for any shortfall in such savings or income set out in Column G – AL, Row 66 of the Financial Proforma 2 which it does not achieve through the aspirational savings and income activities.

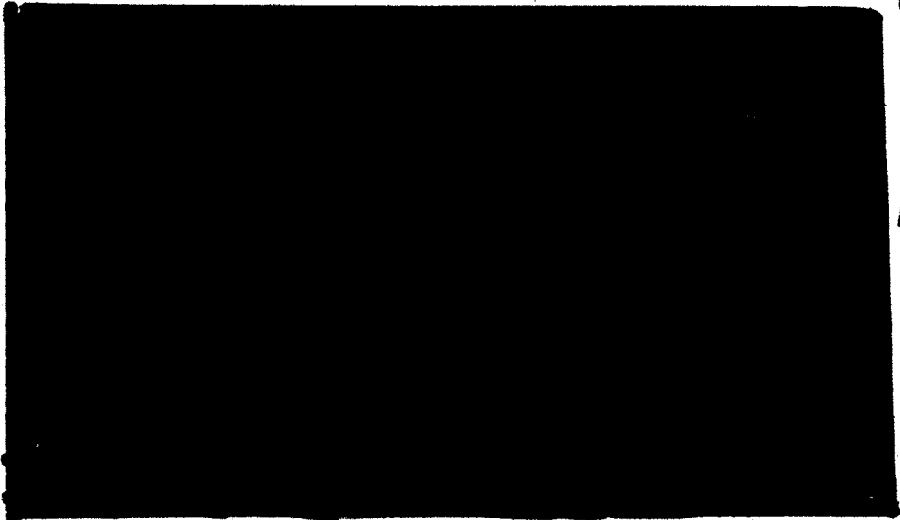
(g)



(h)



(i)



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5.7.2 The Service Provider shall deliver each Service Provider Commitments within the relevant timescale set out in Schedule 36 (Service Provider Commitments).

5.7.3 The Service Provider shall submit a draft updated annual CDP for the information of the Authority at least three (3) months prior to the end of each Authority financial year during the Contract Period and the Parties shall discuss

and agree its contents provided that the Service Provider shall pay due regard to the Authority's reasonable representations with regard to any proposed update to the CDP, which shall then be deemed to replace the immediately preceding CDP.

5.7.4 The Service Provider shall submit a written report quarterly and two weeks in advance of the Strategic Partnership Board during each Contract Year to the Contract Manager which shall indicate the Service Provider's progress towards achievement of the Service Provider Commitments which shall include the following information:

- (a) commercial performance during the immediately preceding quarter compared to forecast for the same quarter in the CDP;
- (b) forecast performance for the forthcoming quarter;
- (c) activities undertaken in the previous quarter to progress the Service Provider Commitments ;
- (d) planned activities for the forthcoming quarter to progress the Service Provider Commitments ;
- (e) a report of activities actually performed and the Service Provider Commitments actually fulfilled in comparison with the planned activities with a report provided in good faith as to the extent of the Service Provider Commitments unfulfilled, together with an explanation for any underperformance (if applicable); and
- (f) any remedial actions proposed to address any underperformance identified pursuant to clause 5.7.4(e).

5.7.5 In the event that the Service Provider fails to rectify any underperformance of the CDP Commitments within the immediately following quarter, then the Authority shall deduct from the Service Charge the value of the remedy (excluding VAT) indicated in Schedule 36 (Service Provider Commitments) as attributable to the relevant CDP Commitment, and in the event that such value exceeds the amount of Service Charge due to the Service Provider, then that amount shall be due and payable to the Authority as a debt and the Service Provider shall henceforth be relieved from its obligation to deliver the relevant CDP Commitment. The Authority shall not have the right to make a deduction in respect of a failed CDP Commitment where the Authority Benefit identified in Schedule 36 (Service Provider Commitments) has been achieved for that relevant CDP Commitment.

5.7.6 In the event that a value to a remedy has not been attributed in Schedule 36 (Service Provider Commitments) to a CDP Commitment, the value shall be the fair open market value as agreed between the Parties, or in default of an agreement, the fair open market value attributed by an independent valuer appointed by the Authority who is a member of the Institute of Chartered Accountants of England and Wales. The cost of the appointment of such valuer shall be borne by the Service Provider and added to the deduction or debt attributable to failure to deliver the CDP Commitment.

5.7.7 The Service Provider shall be permitted to deliver only those CDP Commitments which form part of the Business Plan. In respect of those CDP Commitments which have not been approved as part of the Business Plan, the Service Provider shall provide the following information in advance to the Authority in respect of each proposed commitment:

- (a) all direct costs associated with employees, supplies and services;
- (b) all indirect costs associated with profit margin, interest and overhead recovery; or
- (c) the agreed day rates set out in Schedule 4 (Payment Mechanism) and separately itemised any profit, expenses or overheads.

The Service Provider may only include a CDP Commitment in the Business Plan when the Authority has given its prior written consent.

6 Continuous Improvement and 7 Year Review

6.1 Year 7 Review

- 6.1.1 Within twenty (20) Business Days of the 7th anniversary of the Service Transfer Date, the Authority and the Service Provider shall meet to discuss whether each party may wish to proceed with a 5 year extension to the Service Period.
- 6.1.2 If both Parties agree that they may wish to proceed with a 5 year extension to the Service Period, the Authority may conduct a review to identify any improvements or savings the Authority may reasonably wish to implement in respect of the Services following such review (**7 Year Review**) and the Service Provider shall cooperate with such review and clauses 6.1.4 to 6.1.12 shall apply.
- 6.1.3 If either party does not agree or does not respond that it may wish to extend the Service Period, then the Authority may carry out a Benchmarking Exercise under clause 37.4.1.
- 6.1.4 If the Authority requires a 7 Year Change it will notify the Service Provider in writing, setting out the improvements to the Services or reduction to the Periodic Service Payment is required.
- 6.1.5 The Service Provider shall provide the Authority within fifteen (15) Business Days of receipt of a notice from the Authority pursuant to clause 6.1.4 an outline proposal setting out the Authority's options in order to achieve the reduction or increase to the sums payable to the Service Provider and the estimated change in costs for each option (the **7 Year Options Proposal**).
- 6.1.6 If the Service Provider is preparing a proposal to reduce the Periodic Service Payment, in preparing the 7 Year Options Proposal the Service Provider shall consider (without limitation) in the following order of precedence:
 - (a) changes to improve the efficiency of the provision, performance or delivery of the Services or particular part of the Services;

- (b) adjustments to Service Performance Levels; and
- (c) relief from compliance with its obligations under this Agreement,

as may be proportionate to the required reduction or increase to the sums payable to the Service Provider.

6.1.7 The 7 Year Options Proposal shall include:

- (a) a comprehensive range of options which address different aspects of the Services with the adoption of one or more options enabling the Services to be delivered to the proposed 7 Year Change; and
- (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services.

6.1.8 No later than thirty (30) Business Days after the Authority receives the 7 Year Options Proposal, the Authority shall notify the Service Provider as to the Authority's preferred option and the Service Provider shall within ten (10) Business Days provide a detailed proposal for that option which shall include:

- (a) the change in costs; and
- (b) any amendments required to this Agreement (including without limitation the Output Specifications),

(the **7 Year Change Proposal**).

6.1.9 As soon as practicable after the Authority receives the 7 Year Change Proposal the parties shall discuss and agree the issues set out in the 7 Year Change Proposal.

6.1.10 After a 7 Year Change Proposal has been agreed or otherwise determined the Authority and the Service Provider shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both parties (and in the absence of agreement the form of such documentation shall be determined in accordance with the Dispute Resolution Procedure) and thereafter the parties shall promptly sign or execute (as appropriate) such documentation (**7 Year Implementation Plan**).

6.1.11 Within twenty (20) Business Days of the 8th anniversary of the Service Transfer Date, the Service Provider shall provide a report to the Authority about whether it has met the targets in the 7 Year Implementation Plan. The Authority may take account of such report when deciding whether to extend the Service Period under clause 2.3.

6.1.12 Nothing in this clause 6.1 (Year 7 Review) shall fetter the Authority's decision (in its sole discretion) as to whether to extend the Service Period under clause 2 (Commencement and Duration) of this Agreement.

7 **Special Projects and Change in Service**

7.1 **Special Projects**

The Authority and the Service Provider shall review which Special Projects will be taken forward and on what terms in accordance with the Special Projects Approval Procedure set out in Schedule 15 (Special Projects Approval Procedure).

7.2 **Change in Service**

Any Change in the Services or in this Agreement including the Schedules shall be dealt with in accordance with the Change Protocol in Schedule 14 (Change Protocol).

7.3 **Service Provider Purchasing Services from the Authority**

The Service Provider may purchase services from the Authority, as agreed by the parties from time to time and in accordance with the Authority's standard terms and conditions (as applicable).

8 **Conflicts of Interest and Funding Protocol**

8.1 **Conflicts of Interest**

8.1.1 The Service Provider shall not (and shall procure that the Service Provider Related Parties shall not) allow a Conflict of Interest to occur or arise.

8.2 **Conflict of Interest Prevention Arrangements**

8.2.1 Without prejudice to clause 8.1.1, the Service Provider shall:

- (a) follow the Conflict of Interest Protocol as set out in Schedule 33 (Authority's Policies) to avoid a Conflict of Interest arising, such arrangements to meet, as a minimum, the Authority Conflict of Interest Protocol and relevant guidance from time to time; and
- (b) put in place and maintain an Information Barrier within the Service Provider, any Affiliates of Hold Co and Sub-Contractors to ensure:
 - i this Service and the Service Provider's, Affiliates of Hold Co's and Sub-Contractors' other business are entirely separate; and
 - ii information relating to the Services is only accessible for the purpose of the Services and not in relation to any other aspects of the Service Provider's, Affiliates of Hold Co's or Sub-Contractor's business.

(the **Conflict of Interest Arrangements**),

8.2.2 The Service Provider shall ensure that the Service Provider Related Parties engaged in the provision of the Services are aware of and comply with the Conflict of Interest Arrangements (including providing training to Service Provider Related Parties regarding the Conflict of Interest Arrangements).

- 8.2.3 The Service Provider shall make available to the Authority or any other party the Contract Manager may specify (including auditors, government agencies and/or consultants) on request from time to time a copy of the Conflict of Interest Arrangements and shall make any reasonable amendments to such Conflict of Interest Arrangements as requested by the Authority.
- 8.2.4 The Service Provider shall indemnify the Authority against all Direct Losses arising in relation to any potential or actual Conflict of Interest, Adviser Conflict of Interest or breach of the Conflict of Interest Arrangements.

8.3 Funding Protocol

- 8.3.1 The Service Provider shall comply with the Funding Protocol as set out in Schedule 38 (Funding Protocol) in respect of its Staff who are required as part of the Services to make funding applications on behalf of the Authority.
- 8.3.2 The Authority shall provide all necessary information and guidance as soon as practicable to assist the Service Provider in making any funding application.
- 8.3.3 The Service Provider shall be liable for those Direct Losses set out in clause 46.10B.1(g) in respect of any breach of the Funding Protocol.
- 8.3.4 If the Service Provider fails to comply with the Funding Protocol and the Direct Losses suffered by the Authority exceed the amount recoverable under this Agreement or if the Authority suffers a shortfall in funding or detriment which materially affects the Services, a Special Project or other deemed material service of the Authority and arises directly as a result of a breach by the Service Provider of the Funding Protocol, this shall be deemed a Service Provider Default which is not capable of remedy.

8.4 Legal and other Professional Advisers

The Service Provider shall provide sufficient appropriately qualified and suitably experienced solicitors dedicated to advising and supporting the Services in accordance with the Output Specifications and Service Delivery Plans (including, but not limited to providing regular legal updates and training for staff to ensure the highest standards of professional practice are maintained in delivery of the Services). The Service Provider shall refer any decision by the Authority to prosecute, defend or appear in legal proceedings to the Authority's Monitoring Officer or in their absence, the duly authorised Deputy Monitoring Officer and thenceforth the Authority shall bear the costs of such proceedings including the benefits of any costs awarded.

- 8.4.1 The Service Provider shall include provisions in all contracts with professional advisers who provide the Services (including legal advisers) requiring the professional adviser to:
- (a) prioritise the interests of the Authority above the interests of the Service Provider and owe a primary duty of care to the Authority in relation to any professional advice notwithstanding the fact that both Parties shall be entitled to rely on the professional advice unless there is an Adviser Conflict of Interest; and

- (b) immediately notify the Authority and the Service Provider where there is an actual or Potential Conflict of Interest between the Authority and the Service Provider or if there is an Adviser Conflict of Interest.

An Adviser Conflict of Interest shall be deemed to have arisen where there is an actual or Potential Conflict of Interest between the Service Provider and the Authority on a matter on which the adviser is advising on and where the adviser owes a duty of care to one or both of the Parties (**Adviser Conflict of Interest**)

8.4.2 If the Service Provider's professional advisers notify the Authority under clause 8.4.1 or the Authority reasonably believes there is an Adviser Conflict of Interest, the Authority may:

- (a) appoint its own professional advisers; or
- (b) instruct the Service Provider to appoint an independent professional adviser on the Authority's behalf from a list of professional advisers approved by the Authority and in a form approved by the Authority.

8.4.3 If the Authority notifies the Service Provider that the Authority has appointed its own professional advisers or the Service Provider has appointed an independent professional adviser on the Authority's behalf under clause 8.4.2, the Service Provider shall:

- (a) procure that the Service Provider's professional advisers shall immediately cease to act in relation to the Adviser Conflict of Interest;
- (b) procure that the Service Provider's professional adviser:
 - i transfer all relevant information to the Authority or as directed by the Authority (including all information on the matter on which the Authority has appointed its own professional adviser or to the independent professional adviser);
 - ii delete from its records any copies of such information; and
 - iii cooperates with the Authority or as directed by the Authority in relation to the relevant matter; and
- (c) indemnify the Authority for any costs of appointing its own professional advisers or independent legal adviser under clause 8.4.2.

9 Performance Monitoring

9.1 Service Provider Monitoring

The Service Provider shall monitor its performance in the delivery of the Services in accordance with the Monitoring Procedure set out in Schedule 13 (Monitoring Procedure).

9.2 Authority Monitoring

9.2.1 The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage during the Service Period for any purpose, including in

order to ensure that the Services are being provided in accordance with this Agreement.

9.2.2 The Service Provider shall use its reasonable endeavours to assist the Authority in any performance monitoring exercise under clause 9.2.1. The Authority shall be entitled to notify the Service Provider of the outcome of the performance monitoring exercise, and the Service Provider shall have due regard to the Authority's comments in relation to the future provision of the Services.

9.2.3 Without prejudice to the Authority's rights under clauses 49 (Practical Remedies and Persistent Breach) and 50 (Termination on Service Provider Default Incapable of Remedy) and to any other express rights under this Agreement, where the Service Provider has been found to be fraudulent or have submitted erroneous reports or the Authority reasonably believes such reports to be misleading the Authority may, by notice to the Service Provider, increase the level of its monitoring of the Service Provider, or (at the Authority's option), of the Service Provider's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Service or Services the subject of such fraudulent, erroneous or misleading reporting until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Agreement, in which case, the following provisions shall apply:

- (a) any such notice to the Service Provider shall specify in reasonable detail the reasonable additional measures to be taken by the Authority or by the Service Provider (as the case may be) in monitoring the performance of the Service Provider;
- (b) if the Service Provider (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Authority in writing within two (2) Business Days of the receipt of the notice of the measures objected to (and of any changes necessary in order to prevent prejudice to the Service Provider's performance of its obligations under this Agreement);
- (c) the measures to be taken by the Authority and the Service Provider (as the case may be) shall be agreed between the parties or, in the absence of agreement within five (5) Business Days of the Authority's receipt of the Service Provider's objection, determined pursuant to the Dispute Resolution Procedure; and
- (d) the Service Provider shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring if it is evident that from the result of any implemented measures and increased monitoring that the Service Provider was found to be fraudulent or had submitted an erroneous or misleading report.

9.3 Service Provider Responsible

The Service Provider acknowledges and agrees that, notwithstanding any provision of this Agreement which contemplates that the Authority will or may from time to time:

- 9.3.1 monitor or inspect any performance of the Services;
- 9.3.2 check compliance by the Service Provider with its obligations;
- 9.3.3 confirm; or indicate approval of; or non objection to proposals made by the Service Provider; or
- 9.3.4 request that the Service Provider makes a Change to the Services,

it will always be fully the responsibility of the Service Provider, and not the responsibility of the Authority, to ensure that the Services are performed in all respects in accordance with the Service Provider's obligations under this Agreement and no such action by or on behalf of the Authority will in any way limit or affect such obligations.

9.4 Quality Management Systems

- 9.4.1 The Service Provider shall procure that all aspects of the Services are the subject of, and are conducted in accordance with the approved quality assurance systems as set out in clauses 9.4.2 and 9.4.3 below.
- 9.4.2 Not later than ten (10) Business Days following the Agreement Date, the Service Provider shall submit to the Contract Manager a proposed quality assurance system for the Services complying with ISO 9000 and in relation to information security and data ISO 27001/27002 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent or such other quality assurances system acceptable to the Authority (acting reasonably in relation to the Services or, where it does not so comply, the system set out in the Service Delivery Plan.
- 9.4.3 The Service Provider shall procure that the Services Provider is, at all times during the Contract Period, registered pursuant to BS 5750 or ISO 9001 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent or such other quality assurance system acceptable to the Authority (acting reasonably)) in relation to the Services.
- 9.4.4 The Service Provider shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the date of this Agreement a quality manager, who may be directly involved in the day-to-day performance of the Services, and who shall in respect of the Services:
 - (a) ensure the effective operation of and implementation of the aforementioned quality assurance system;
 - (b) audit the aforementioned quality assurance system at regular intervals and report the findings of such audit to the Service Provider and the Authority;

- (c) review the aforementioned quality assurance system at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
- (d) liaise with the Authority on all matters relating to quality assurance.

9.4.5 The Authority may carry out periodic audits of the aforementioned quality assurance systems at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of the Service Provider's quality systems. The Service Provider shall procure that the Authority shall have a like right in respect of any relevant sub-contractors. The Service Provider shall co-operate and shall procure that any relevant sub-contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its right under this clause 9.4 (Quality Management Systems).

10 Health, Safety and Welfare [*Authority Policy Clause*]

10.1 The Service Provider shall:

- 10.1.1 ensure the health and safety of its employees and any other person who may come into contact with, or be affected by, its activities and ensure the provision of welfare and first aid facilities for its employees;
- 10.1.2 comply with the requirements of all Legislation and codes of practice relating to health, safety and fire, which may apply to employees and other persons in the performance of its obligations under the Agreement;
- 10.1.3 carry out all necessary statutory tests and inspections and shall provide the Contract Manager with details on request;
- 10.1.4 employ, or have arrangements for access to, competent health and safety advice and shall notify the Contract Manager of these arrangements. The Service Provider will also be required to nominate a representative to liaise with the Contract Manager on all health and safety matters;
- 10.1.5 have a written health and safety policy which must be at least equivalent to the Authority's equivalent policy in scope and effectiveness and shall ensure that employees comply with this health and safety policy;
- 10.1.6 have in place health and safety management systems that comply with the guidance contained in HSG 65, or equivalent, to include assessing and controlling risk for any activity that may affect staff or any other person who may come into contact with those activities. The Service Provider shall also produce method statements for high risk activities, as requested by the Contract Manager, and provide that information to the Contract Manager on request;
- 10.1.7 have in place procedures and arrangements for emergencies and notify the Contract Manager of these on request;
- 10.1.8 be responsible for managing and reporting on Sub-Contractors, and any changes to those sub-contracts;

- 10.1.9 keep its health and safety policies, procedures and risk assessments under review and comply with any changes, amendments or further lawful instructions reasonably requested or issued by the Authority in connection with the Service Provider's health and safety policies, procedures or working methods. The Service Provider shall notify the Authority of any changes made;
 - 10.1.10 ensure that all equipment is installed, used and maintained to meet statutory requirements, appropriate British, European or International standards and manufacturers' recommendations;
 - 10.1.11 ensure that any equipment supplied or loaned to it by the Authority is properly maintained and that users of this equipment are competent in its use;
 - 10.1.12 promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Authority shall notify the Service Provider of any health and safety hazards which may exist or arise and which may affect the Service Provider in the performance of its obligations under the Agreement;
 - 10.1.13 ensure that all its employees are notified and adhere to all health and safety rules, including emergency procedures and means of escape, when working on Authority premises;
 - 10.1.14 inform the Contract Manager immediately of any fatality and, within twenty four (24) hours, of any major injury, reportable disease or reportable dangerous occurrence that occurs in the performance of its obligations under this Agreement; and
 - 10.1.15 in all instances, ensure the Contract Manager or their representative, have reasonable access to the Service Provider's premises, sites and activities and co-operate and provide such reasonable assistance as may be necessary to facilitate monitoring.
- 10.2 The Contract Manager, or their representative, may periodically undertake spot checks to ensure that the Service Provider is complying with its health and safety obligations under this Agreement and the Service Provider shall co-operate fully, at its own cost, with the Authority.
- 10.3 The Authority may step-in and suspend the provision of the Services by the Services Provider in the event of non-compliance by the Service Provider with the health and safety requirements of this Agreement or for breaches of health and safety Legislation or Authority Policies and where relevant the Service Provider Policies under clause 42 (Authority Step-In).
- 10.4 The Service Provider shall ensure the provision of health and safety training to ensure that the Service Provider Related Parties are competent, and remain competent throughout their employment, to safely carry out their role and undertake any health and safety responsibilities or functions given to them under this Agreement.
- 10.5 **Performance**

- 10.5.1 The Service Provider will provide the Contract Manager with an annual report on the previous year's health and safety performance and health and safety performance targets for the subsequent twelve (12) month period to include indicators agreed with the Contract Manager.
- 10.5.2 The Authority may require the Service Provider to provide the Contract Manager with more regular health and safety performance reports or additional health and safety performance indicators dependent on the nature and level of risk.

11 Authority's Obligations

11.1 The Authority shall comply with the Authority's Obligations set out in Part 1 (Authority's Obligations) of Schedule 8 (Specific Obligations).

11.2 If an Authority Cause has a material and adverse effect on the Service Provider's ability to comply with its obligations under this Agreement, then to the extent that the Service Provider's failure to comply with its obligations arises as a direct result of such Authority Cause:

11.2.1 the Service Provider shall provide the Authority with full details of a proposed Workaround Solution and the Service Provider shall demonstrate:

- (a) that it could not have avoided the consequences of the Authority Cause by undertaking steps which it would have been reasonable of the Service Provider to undertake in accordance with Good Industry Practice;
- (b) that the Service Provider has used, and continues to use, all reasonable endeavours to continue to perform or resume performance of the Services affected by the Authority Cause; and
- (c) that it has used all reasonable endeavours to mitigate the impact of the Authority Cause and continues to provide that part of the Services and observe those obligations unaffected by the Authority Cause.

11.2.2 Upon receipt of the proposed Workaround Solution pursuant to clause 11.2.1 the parties shall meet promptly to agree the implementation of:

- (a) a Workaround Solution; and
- (b) the terms of the co-operation required to implement such Workaround Solution;

and the Service Provider shall provide any further reasonable information or support requested by the Authority in order to resolve the matters set out in this clause 11 failing which the matter shall be referred to the Dispute Resolution Procedure.

Part 3: Contract Governance

12 Relationship

12.1 Co-operation

12.1.1 The parties acknowledge that the Services will require the long term co-operation and assistance of both parties to deliver a successful outcome. Subject to any express provisions in this Agreement to the contrary each party agrees to co-operate with the other party and relevant third party contractors in good faith with the intent that there shall be a seamless interface between the provision of the Services and the Authority's other operations and services. For the purposes of this clause 12.1 (Co-operation) **good faith** shall include:

- (a) acting reasonably when exercising discretion or making objections or giving or withholding consent under this Agreement (save where otherwise explicitly specified in this Agreement that a party may act in its sole discretion when exercising discretion or giving or withholding consent under this Agreement or save where this would constitute a fetter on the Authority's discretion in exercising its functions as a public / local authority);
- (b) alerting the other party to any failures by that party (of which the notifying party is aware) to perform obligations under this Agreement or respond to requests for information or assistance in a timely manner, particularly if such failure is hindering or delaying the performance of the Services by the Service Provider; and
- (c) using reasonable endeavours to avoid unnecessary Disputes and claims against the other party.

12.1.2 The Service Provider shall co-operate in good faith with the Authority, Related Contracts bidders for Related Procurements and Related Contractors in relation to any Related Procurement with the intent to promote a seamless interface between the Related Procurements, Related Contracts and the provision of the Services under this Agreement and in particular the Service Provider shall:

- (a) promptly supply information as may from time to time be requested by the Authority in relation to Related Procurements and for Related Contracts and which is within the control of the Service Provider or a Service Provider Related Party;
- (b) upon reasonable written notice from the Authority attend meetings convened by the Authority in relation to Related Procurements or Related Contracts and which may be attended by bidders (their advisers, subcontractors and/or lenders) for Related Procurement or Related Contractors.

12.1.3 The Service Provider shall co-operate in good faith with other relevant public bodies, stakeholders and partners (including without limitation community forums, the police, Middlesex University, Barnet College and the National Health Service) with regard to the Services and shall assist the Authority to

cooperate with such bodies with regard to the Services including providing relevant information and attending appropriate meetings reasonably requested by the Authority.

- 12.1.4 The Service Provider shall indemnify the Authority for any Direct Losses and Indirect Losses suffered or incurred as a result of failure by the Service Provider to comply with clause 12.1.2 or clause 12.1.3 of this Agreement.

12.2 **Liaison [Authority Policy Clause]**

12.2.1 The Service Provider shall liaise with other bodies, groups or individuals with regard to the Services to the extent that may be required by Legislation, Guidance and Good Industry Practice and in accordance with the Information Sharing Protocol and Information Sharing Agreement including:

- (a) relevant members (including members of the Authority, Parliament, European Parliament and the Greater London Authority) (**Members**), officers and employees of the Authority;
- (b) third party contractors who perform other services for the Authority which need to use or interface with the Services including Related Contractors;
- (c) relevant consultative and user groups and trade unions;
- (d) Service Users;
- (e) Local Government Ombudsman;
- (f) Housing Ombudsman; and
- (g) Relevant Authorities.

12.2.2 The Service Provider shall:

- (a) respond to queries from Members within ten (10) Business Days of receipt of such query; and
- (b) subject to clause 24 (Information and Confidentiality) of this Agreement, provide to Members information reasonably requested by Members. If information requested by Members is subject to clause 24 (Information and Confidentiality), the Service Provider shall liaise with the Authority regarding such request and shall not release the information without the prior written consent of the Authority. The Authority may in its absolute discretion consent to the release of such information and may provide such consent subject to conditions;
- (c) copy all information sent to Members to the Authority;
- (d) maintain a log of all information sent to Members, which the Authority may access upon reasonable notice.

12.3 Information and Assistance

12.3.1 Subject to any obligation in respect of confidentiality, the DPA and Commercially Sensitive Information and in accordance with the Information Sharing Protocol and Information Sharing Agreement, the parties shall use all reasonable endeavours to provide and share information and data reasonably required by the other:

- (a) to enable it to perform its obligations under this Agreement; and/or
- (b) (in the case of the Service Provider) which is reasonably necessary to enable the Authority to perform its statutory obligations insofar as such provision forms part of the Services.

12.3.2 Neither party shall hinder, delay or prevent the other party in the performance of the other party's obligations under this Agreement.

12.4 Inquiries, Investigations and Inspections

12.4.1 The Service Provider shall at all times during the Service Period and for a period of six (6) years afterwards fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other contract of the Authority. Such inquiry, investigation or inspection may include, inter alia:-

- (a) an investigation by the Authority into a complaint about the acts or omissions of the Service Provider, its employees or agents made under the Equalities Legislation;
- (b) the Benefits Fraud Inspectorate;
- (c) the Commission for Social Care Inspection/Care Quality Commission;
- (d) the Inspectorate for children and learners in England (Ofsted);
- (e) the Authority's auditors (whether internal or external);
- (f) the Local Government Ombudsman;
- (g) an investigation by the Authority into an accident or incident or complaint about health and safety failures;
- (h) an investigation by the Authority into Fraud, or alleged Fraud, by Service Users, staff and the Service Provider in connection with the Services;
- (i) any investigation/enquiry by the Information Commissioner;
- (j) any investigation/enquiry by the Lead Commissioner; and/or
- (k) any other public body responsible for the scrutiny of the provision of services by local authorities.

12.4.2 Such co-operation shall include the following:-

- (a) providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, (in hard copy format or otherwise) which relate to the subject or service under investigation;
- (b) providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Service Provider in the performance of this Agreement;
- (c) providing access to the Service Provider's staff (of whatever seniority) involved in this Agreement (including managerial or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
- (d) maintaining the confidentiality of the enquiry or investigation when requested to do so;
- (e) making such explanations (whether written or oral) as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of this Agreement, the Authority's standing orders and financial regulations and statutory provisions relating to this Agreement are being complied with;
- (f) at all times and without notice allow access to the Local Government Ombudsman, Relevant Authority or to any investigating officer appointed by the Local Government Ombudsman or Relevant Authority, in connection with any complaint, investigation or inspection relating to this Agreement or the Services. This shall extend to the Service Provider's Premises; and to all documentation and information relating to this Agreement to which the Service Provider has access; and to the Service Provider's agents, employees and Sub-Contractors.

12.4.3 The Service Provider shall, if requested by the Authority, co-operate with the Authority, at its own expense, in connection with any legal proceedings, arbitration, court proceedings or ombudsman enquiries in which the Authority may become involved, arising from breaches of the Authority's duties under the Equalities Legislation due to the alleged acts or omissions of the Service Provider, its employees, Sub-Contractors or agents.

12.4.4 The Service Provider shall ensure that the terms of any Key Sub-Contract include identical provisions to this clause 12 (Relationship) and shall indemnify the Authority against any losses, damages or claims it suffers in consequence of a failure to ensure the inclusion of such identical items.

12.5 Without prejudice to the specific requirements noted in this clause 12 (Relationship), the Service Provider shall fully co-operate with any of the Authority's statutory officers whilst such statutory officers are exercising and performing their statutory powers and duties. For the purposes of this clause 12.5 "fully co-operate" shall include the matters set out in clauses 12.4.2(a) to 12.4.2(f) inclusive.

- 12.6 The Service Provider shall respond to inquiries from the Local Government Ombudsman advice team within ten (10) Business Days and shall respond to formal inquiries made by the Local Government Ombudsman within 28 days (or such shorter timescales specified by the Local Government Ombudsman). Without prejudice to any other remedies under this Agreement, in the event of any complaint to or any enquiry or investigation by the Local Government Ombudsman in connection with the delivery of the Services as a result of the Service Provider's failure to provide the Services in accordance with this Agreement, the Service Provider shall indemnify the Authority in respect of all Direct Losses and Indirect Losses whatsoever incurred by the Authority and in respect of any order, finding or recommendation made by the Local Government Ombudsman in connection with such complaint, enquiry or investigation.
- 12.7 Subject to clause 12.8, the Service Provider shall investigate complaints in relation to the Services in accordance with the Authority's corporate complaints procedure.
- 12.8 The Service Provider shall assist and co-operate with appointed service professionals in investigating any such statutory complaint and any such statutory complain shall be investigated in accordance with the Statutory Complaints Procedure.
- 12.9 Without prejudice to any other remedies under this Agreement, in the event of any complaint in relation to the Services which requires a stage 3 review the Authority's Corporate Complaints Procedure or Statutory Complaints Procedure as relevant, the Service Provider shall indemnify the Authority in respect of all Direct Losses and Indirect losses whatsoever incurred by the Authority in respect of such stage 3 review.
- 12.10 If an investigation by the Local Government Ombudsman or review of a complaint under the Authority's Corporate Complaints Procedure or Statutory Complaints Procedure as relevant identifies any changes which should be made to the Services to avoid the complaint recurring, the Service Provider shall implement such change as a Service Provider Change.
- 12.11 The Service Provider shall provide monthly, quarterly and annual reports to the Authority regarding complaints received in relation to the Services or as otherwise requested by the Authority.

13 **Representatives**

13.1 **Contract Manager**

- 13.1.1 The Authority shall appoint a Contract Manager to act in the name of the Authority for the purposes of this Agreement. The Contract Manager shall have full authority to act on behalf of the Authority for all purposes of this Agreement.
- 13.1.2 The Contract Manager shall be entitled at any time, by notice to the Service Provider, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Contract Manager and all references to the "Contract Manager" in this Agreement (apart from this clause) shall be taken as reference to such person so far as they concern matters within the scope of such person's authority.

- 13.1.3 The Authority may by notice to the Service Provider change the Contract Manager. The Authority shall (as far as practicable) consult with the Service Provider prior to the appointment of any replacement for the Contract Manager, taking account of the need for liaison and continuity in respect of the Project and Services. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of an Emergency, be such date as will not cause material inconvenience to the Service Provider in the execution of its obligations under this Agreement).
- 13.1.4 The Authority may appoint more than one Contract Manager or representative and shall give notice in writing to the Service Provider of the establishment of further postholders as representatives of the Authority and of the areas of responsibility and extent of authority of these postholders or if any of the postholders previously holding such post cease to be representatives. Until such notice is given, the Service Provider shall be entitled to treat as representatives only those postholders last notified to the Service Provider as being representatives.
- 13.1.5 The Authority shall throughout the Contract Period ensure that the Contract Manager (or duly authorised deputy) is available for consultation with the Service Provider at all reasonable times.
- 13.1.6 Save where notified in writing by the Authority before such act or instruction and save for the appointment or replacement of Contract Managers, the Service Provider and the Partnership Manager shall be entitled to treat any act or instruction by the Contract Manager which is authorised by this Agreement as being expressly authorised by the Authority and the Service Provider and the Partnership Manager shall not be required to determine whether authority has in fact been given.

13.2 Partnership Manager

- 13.2.1 The Service Provider shall ensure that at all times from the Agreement Date and throughout the Contract Period a senior person with suitable, sufficient and relevant experience and qualifications is appointed as the Partnership Manager and is available to be contacted by the Contract Manager at all times during usual office hours in each Business Day. An out of office hours telephone number shall be made available which provides access to the Contract Manager or a person acting in his place at all times.
- 13.2.2 The Service Provider shall appoint as the first Partnership Manager the person named in Schedule 19 (Key Personnel). The Partnership Manager shall have full authority to act on behalf of the Service Provider for all purposes of this Agreement. Except as previously notified in writing before such act by the Service Provider to the Authority, the Authority and the Contract Manager shall be entitled to treat any act of the Partnership Manager in connection with this Agreement as being expressly authorised by the Service Provider and the Authority and the Contract Manager shall not be required to determine whether any express authority has in fact been given.
- 13.2.3 The Service Provider shall within ten (10) Business Days of the Agreement Date give written notice to the Contract Manager of the identity of any person it

proposes to authorise to act for any period as a deputy for the Partnership Manager together with details of their qualifications and experience. The Service Provider shall forthwith give written notice to the Contract Manager of any subsequent proposed appointments or authorisations with similar details. The Service Provider shall consult with the Authority prior to appointing any person as Partnership Manager or as deputy for the Partnership Manager.

13.2.4 The Service Provider may by notice to the Authority change the Partnership Manager. Where the Service Provider wishes to do so, it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project and Services. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

13.3 **Other Key Personnel**

13.3.1 The Other Key Personnel are listed in Schedule 19 (Key Personnel) and the Service Provider shall not replace these posts without complying with the provisions relating to such posts as set out in Schedule 19 (Key Personnel).

14 **Partnering Governance Arrangements**

14.1 **Strategic Partnership Board**

The strategic direction of the Services and the Project shall be the prime responsibility of the Strategic Partnership Board. The Strategic Partnership Board shall meet and undertake the duties set out in Schedule 12 (Partnering Governance).

14.2 **Partnership Operations Board**

The monitoring and review of the operational performance of the Services will be the prime responsibility of the Partnership Operations Board. The Service Provider and the Authority acknowledge the importance of having in place a forum for communication whereby any matters relating to the Services can be discussed between the parties, with a view to:

14.2.1 ensuring the successful and efficient operation of the Services and this Agreement;

14.2.2 ensuring the Authority complies with the Authority's Obligations;

14.2.3 ensuring compliance with the duty of Best Value;

14.2.4 reviewing the Service Provider's performance in the provision of the Services (including whether there is continuous improvement) and the introduction of Special Projects;

14.2.5 considering operational issues, costs and the development of the Services; and

14.2.6 avoiding Disputes or settling them without the need to invoke the mediation stages of the Dispute Resolution Procedure.

14.3 The Partnership Operations Board shall meet and undertake the duties set out in Schedule 12 (Partnering Governance).

15 **Dispute Resolution**

Any Dispute shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 16 (Dispute Resolution Procedure).

Part 4: IPR, Data and Confidentiality

16 **Intellectual Property Rights**

IPR Indemnity

16.1 The Service Provider shall be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors from all IPR Liability and against all IPR Claims except to the extent that any IPR Liability or IPR Claim is caused by:-

16.1.1 any use by or on behalf of the Authority of the Software, or the use of the Authority Software by or on behalf of the Service Provider, in either case in combination with any item not supplied pursuant to this Agreement; or

16.1.2 the use by the Authority of the Software in a manner not reasonably to be inferred from the Output Specifications or the provisions of this Agreement or the purpose for which that Software was intended to be used by the Authority (as the same was notified to the Service Provider or could reasonably have been inferred from information supplied to the Service Provider); or

16.1.3 the modification of the Software by the Authority or a third party on the Authority's behalf without the Service Provider's prior written consent or in a manner inconsistent with any agreement between the Authority and the Service Provider, and further provided that the relevant IPR Liability and/or IPR Claim arose as a direct result of such modification.

16.2 Either party shall promptly notify the other when it becomes aware of any IPR Claim being brought or any IPR Liability arising.

16.3 Any IPR Claim brought shall be managed by the Service Provider at its own expense. The Service Provider shall take such action as is necessary to minimise the impact of any IPR Claim on the Authority and the delivery of the Services pending the outcome of the IPR Claim.

16.4 The Authority shall, at the request of the Service Provider, assist the Service Provider in the management of any IPR Claim and where the Authority does so assist the Service Provider shall reimburse the Authority for any reasonable costs and reasonable expenses properly incurred in doing so.

16.5 The Authority shall not make any admissions which could be prejudicial to the defence or settlement of the IPR Claim (or could increase the IPR Liability) without first obtaining the written permission of the Service Provider, such permission not to be unreasonably withheld or delayed.

16.6 If an IPR Claim is made, or the Service Provider anticipates that an IPR Claim might be made, the Service Provider may, at its own expense and sole option, either:

- 16.6.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
- 16.6.2 replace or modify the relevant item with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other Services;
 - (c) there is no additional cost to the Authority; and
 - (d) the terms of this Agreement shall apply to the replaced or modified Services.

16.7 If the Service Provider elects to modify or replace an item pursuant to clause 16.6.2 or to procure a licence in accordance with clause 16.6.1, but this has not avoided or resolved the IPR Claim, then, without prejudice to the indemnity set out in clause 16.1, the Service Provider shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs in implementing and maintaining the substitute items.

Ownership of Intellectual Property Rights

16.8 Except as expressly set out in this Agreement, during the course of this Agreement:

- 16.8.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Service Provider or its licensors in:-
- (a) the Service Provider Software;
 - (b) the Third Party Software;
 - (c) the Background IPRs; and
- 16.8.2 the Service Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors in:-
- (a) the Authority Software;
 - (b) the Authority Data;
 - (c) the Databases;
 - (d) any documentation relating to the Services prepared by the Authority;
 - (e) the Specially Written Software; and
 - (f) the Project Specific IPRs

- 16.9 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 16.8, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).

Licences granted by the Service Provider

- 16.10 The Service Provider hereby grants, or shall procure the direct grant, to the Authority of a licence of any Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Specially Written Software or the Project Specific IPRs (together the **Licensed IPRs**) on the Enhanced Licence Terms. For the avoidance of doubt such licence shall be granted on a non exclusive basis (unless the Service Provider otherwise agrees in writing).
- 16.11 The Authority shall be permitted to Use the Licensed IPRs for any purpose relating to the Services or to the exercise of the Authority's business or function or as required by the Authority for the full and unfettered Use and enjoyment of the Specially Written Software and the Project Specific IPRs on the Enhanced Licence Terms (which shall, for the avoidance of doubt, be granted on a non exclusive basis unless the Service Provider otherwise agrees in writing), including the right to sub-licence the Licensed IPRs to other authorities, to any Future Service Provider or to any other third party providing the Services to the Authority, provided in each case that such rights shall not extend to the commercial exploitation of the Licensed IPRs.
- 16.12 The Service Provider hereby grants to the Authority a licence of the Service Provider's Software on the Standard Licence Terms.
- 16.13 The Service Provider shall use all reasonable endeavours to procure that the owners or the authorised licensors of any Third Party Software hereby grants a direct licence to the Authority on the Standard Licence Terms. If the Service Provider cannot obtain for the Authority a licence materially in accordance with the Standard Licence Terms the Service Provider will consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority or whether the Service Provider should seek to use an alternative provider of software.
- 16.14 The Service Provider shall in the event of termination or expiry of this Agreement, if requested by the Authority in accordance with clause 55 (Consequences of Termination and Expiry) or clause 56 (Exit Arrangements) or Schedule 17 (Exit Arrangements), assign or transfer to the Authority (or as directed by the Authority) or grant or procure the grant to the Authority or any Future Service Provider (or as directed by the Authority) of a licence to Use any Service Provider's Software, Background IPRs or Third Party Software on the Standard Licence Terms.
- 16.15 The Service Provider hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose in connection with the receipt of the Transition Services and the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.

Licences granted by the Authority

- 16.16 The Authority hereby grants to the Service Provider a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use:

- 16.16.1 the Authority Software;
 - 16.16.2 the Databases; and
 - 16.16.3 the Authority's documentation, processes and procedures;
 - 16.16.4 the Specially Written Software from the date the relevant rights are transferred to the Authority in accordance with clause 18 (Project Specific IPR and Specially Written Software);
 - 16.16.5 the Project Specific IPRs from the date the relevant rights are transferred to the Authority in accordance with clause 18 (Project Specific IPR and Specially Written Software);
 - 16.16.6 the Authority Data; and
 - 16.16.7 any user documentation (such as manuals) or similar technical information supplied by the authors or distributors of the items referred to at clauses 16.16.1 to 16.16.6 (inclusive and in all cases only to the extent applicable) and required for the proper use and/or operation of the same for the purposes of this Agreement.
- 16.17 The licence granted in clause 16.16:
- 16.17.1 includes the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Service Provider no less onerous as set out in clause 24 (Information and Confidentiality) or such other confidentiality obligations as the Authority may reasonably specify; and
 - 16.17.2 is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Service Provider shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
 - 16.17.3 includes the right to copy, distribute and (in both cases only with the Authority's prior written consent) decompile and make derivative works using those items listed in clauses 16.16.1 to 16.6.7 inclusive, and always subject to clauses 16.17.1 and 16.17.2 above; and
 - 16.17.4 shall permit the Service Provider to Use the relevant licensed materials for its own business from time to time provided that such Use (1) does not, and might not reasonably be expected to, adversely affect the Authority's business, reputation or goodwill, and (2) the Authority and the Service Provider agree the reasonable royalties payable by the Service Provider for such licence.
- 16.18 Neither party shall have any right to use any of the other party's names, logos or trade marks on any of its products or services without the other party's prior written consent.
- 16.19 In the event of the termination or expiry of this Agreement, the licence referred to in clause 16.16 any sub-licence granted in accordance with clause 16.17 and any licence granted in accordance with clause 16.18 shall terminate upon completion of any Exit Plan

(pursuant to clause 56 (Exit Arrangements) and to Schedule 17 (Exit Arrangements)) that may require the licences to continue and the Service Provider shall deliver to the Authority (or at the Authority's request, destroy) all material licensed to the Service Provider pursuant to clause 16.16 or clause 16.18 in the Service Provider's possession or control as soon as reasonably practicable following such completion.

17 Databases

17.1 The Service Provider hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Databases or shall procure that the first owner of the Databases assigns them to the Authority on the same basis.

17.2 The assignment under clause 17.1 shall either take effect on the Agreement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Databases, as appropriate.

17.3 The Service Provider shall waive or procure a waiver of any moral rights in the Databases assigned to the Authority under this Agreement.

17.4 To the extent that it is necessary for the Authority to obtain the full benefits of ownership of the Databases, the Service Provider hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Databases.

18 Project Specific IPR and Specially Written Software

18.1 The Service Provider hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software or shall procure that the first owner of the Project Specific IPRs and the Specially Written Software assigns them to the Authority on the same basis.

18.2 The assignment under clause 18.1 shall either take effect on the Agreement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate.

18.3 The Service Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.

18.4 If requested to do so by the Authority, the Service Provider shall, without charge to the Authority, execute all documents and do all such further acts as the Authority may require to perfect the assignment under clause 18.1 or shall procure that the owner of the Project Specific IPRs and the Specially Written Software does so on the same basis.

18.5 The Service Provider shall deliver to the Authority the Specially Written Software in both Source Code and binary code forms within five (5) Business Days of the Authority's request for the same from time to time following its creation and shall provide updates of the Source Code on each new release of the Specially Written Software on media that is reasonably acceptable to the Authority.

19 **Escrow**

- 19.1 The Service Provider shall within such periods as the Authority may require deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with the Authority's nominated escrow agent on the basis of the escrow agent's standard terms and conditions. The Service Provider shall at its own cost ensure that the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded.
- 19.2 Where the Service Provider is unable to procure compliance with the provisions of clause 19.1 in respect of any Third Party Software, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall agree with the Authority a suitable alternative to escrow that affords the Authority the nearest equivalent protection. The Service Provider shall be excused from its obligations under clause 19.1 only to the extent that the parties have agreed on a suitable alternative.
- 19.3 In circumstances where the Authority obtains the release of the Source Code from escrow, the Service Provider hereby grants to the Authority a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any replacement services or the Authority's normal business undertakings.

20 **Data Protection [*Authority Policy Clause*]**

20.1 **General**

- 20.1.1 Without prejudice to the specific requirements noted in this clause 20 (Data Protection), each party shall comply with the requirements of the DPA and any equivalent or associated Legislation in relation to the provision of the Services and will not knowingly do anything or permit anything to be done which might lead to a breach by the other party of the DPA.
- 20.1.2 Where the Service Provider pursuant to its obligations under this Agreement, processes Personal Data on behalf of the Authority, it shall:
- (a) process Personal Data only in accordance with instructions from the Authority or its representative (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Service Provider during the Contract Period); and
 - (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Legislation or any regulatory body.
- 20.1.3 All Processing of Personal Data undertaken by the Service Provider in accordance with this Agreement shall at all times comply with the eight Data Protection Principles under the DPA in accordance with the interpretation or view of the Authority from time to time notified in writing to the Service Provider. In particular, the Service Provider shall:

- (a) ensure that, subject to any exemption under the DPA, all Processing of Personal Data is done fairly and lawfully;
- (b) ensure that Personal Data processed for the purposes of this Agreement is not used for any other purpose or provision by or on behalf of the Service Provider;
- (c) ensure that all Personal Data processed for the purposes of this Agreement is no more than is necessary for the purposes of the Services;
- (d) ensure that checks are undertaken to ensure accuracy of the Personal Data maintained for the purposes of the Services;
- (e) ensure that Personal Data maintained for the purposes of the Services is not kept for any longer than is necessary, in accordance with the guidelines which shall be provided from time to time by the Authority;
- (f) notify the Authority (within four Business Days) if it receives:
 - i a request from a Data Subject to have access to that person's Personal Data; or
 - ii a complaint or request relating to the Authority's obligations under the Data Protection Requirements;
- (g) provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:
 - i providing the Authority with full details of the complaint or request;
 - ii complying with a data subject access request within the relevant timescales set out in the Data Protection Requirements and in accordance with the Authority's instructions;
 - iii providing the Authority with any Personal Data it holds in relation to a Data Subject (within 5 Business Days); and
 - iv providing the Authority with any information reasonably requested by the Authority;
- (h) bring into effect and maintain Technical and Organisational Security Measures to prevent unauthorised or unlawful Processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data, in particular, with regard to sensitive personal data as defined in the DPA;
- (i) promptly notify the Authority of any breach of such security measures;
- (j) comply with the provisions of ISO27001 or equivalent European standard; and

- (k) not transfer any Personal Data to any country or territory outside the EEA without the express written consent of the Authority.

20.1.4 All employees and temporary staff of all Sub-Contractors and the Service Provider who have access to Personal Data for the purposes of this Agreement shall be trained in data protection to accord with the requirements of this Agreement and shall undergo refresher training at regular intervals.

20.2 No Disclosure

20.2.1 The Service Provider shall not disclose Personal Data to any third parties other than:

- (a) to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Service Provider to perform the Services;
- (b) to the extent required under a court order or Legislation; or
- (c) disclosures made with the Data Subject's express written consent,

provided that disclosure under clause 20.2.1(a) (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 20.2.1 (No Disclosure). The Service Provider shall give notice in writing to the Authority of any disclosure of Personal Data which either the Service Provider or a Sub-Contractor is required to make under clause 20.2.1(b) (No Disclosure) immediately upon becoming aware of such a requirement.

20.2.2 The Authority may, at reasonable intervals, request a written description of the Technical and Organisational Security Measures employed by the Service Provider or the Sub-Contractors referred to in clause 20.2.1 (No Disclosure). Within twenty (20) Business Days of such a request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

20.3 Data Protection Sub-contracting

20.3.1 The Service Provider shall not sub-contract any of its rights or obligations under this clause 20 (Data Protection) without the prior written consent of the Authority (and such consent is required in addition to any other consent to sub-contracting provided by the Authority under this Agreement).

20.3.2 Where the Service Provider sub-contracts its obligations in relation to this clause 20 (Data Protection), the Service Provider shall procure that the same provisions regarding security of the processing are included in the Sub-Contract as are imposed on the Service Provider under this Agreement.

20.3.3 Where the Sub-Contractor fails to fulfil its obligations in relation to data protection under any such Sub-Contract, the Service Provider shall remain fully

liable to the Authority for the fulfilment of such obligations under this Agreement.

20.4 Indemnity

The Service Provider shall indemnify and keep indemnified the Authority against all Direct Losses incurred by the Authority in respect of any breach of this clause 20 (Data Protection) by the Service Provider and/or any act or omission of any Sub-Contractor.

21 Authority Data

21.1 The Service Provider acknowledges that (subject to the provisions of the DPA) the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data.

21.2 The Service Provider shall take all steps to ensure that any Authority Data which comes into its possession or control is protected in accordance with the DPA and appropriate security procedures and in compliance with Good Industry Practice (having regard to the nature of their other obligations under this Agreement and under the DPA) The Authority shall indemnify and keep indemnified the Service Provider against all Direct Losses incurred by the Service Provider to the extent that the liability resulted from the Authority's own breaches or failure to comply with the requirements of the DPA prior to the date of this Agreement or when the Service Provider comes into possession or control of the Authority Data (whichever the earlier).

21.3 In the event that Authority Data used in the provision of the Services is corrupted or lost by the Service Provider as a result of a breach by the Service Provider of clause 21.2, the Authority shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:-

21.3.1 the Authority may require the Service Provider at its own expense to restore or procure the restoration of such Authority Data using the back-up copy referred to in clause 22 (Back Up Copies); or

21.3.2 the Authority may itself restore or procure restoration of such Authority Data using the back-up copy referred to in clause 22 (Back Up Copies), and shall be repaid by the Service Provider any reasonable expenses so incurred.

21.4 The Service Provider shall:-

21.4.1 not use the Authority Data, except as may be required to provide the Services or as instructed by the Authority;

21.4.2 not disclose the Authority Data to any third party, other than in accordance with the requirements of the DPA for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Authority or as required by this Agreement;

21.4.3 undertake its obligations under this Agreement in such a manner as to preserve so far as reasonably possible the integrity and prevent any loss, disclosure, theft, manipulation or interception of the Authority Data; and/or

- 21.4.4 upon request provide the Authority with full access to any systems of the Service Provider or its Key Sub-Contractors where Authority Data is stored or held for the purpose of viewing, retrieving, copying or otherwise dealing with the Authority Data.

Security [Authority Policy Clause]

- 21.5 The Service Provider shall comply, and shall procure the compliance of the Service Provider's staff, with the Authority's Information Security Policy and Acceptable Use Policy.
- 21.6 The Authority shall notify the Service Provider of any changes or proposed changes to the Authority's Information Security Policy and Acceptable Use Policy.
- 21.7 If the Service Provider believes that a change or proposed change to the Authority's Information Security Policy and Acceptable Use Policy will have a material and unavoidable cost implication to the Services it may submit a Service Provider Notice of Change. In doing so, the Service Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Periodic Service Payment shall then be agreed in accordance with the Change Protocol.
- 21.8 Until and/or unless a change to the Periodic Service Payment is agreed by the Authority pursuant to clause 21.7 the Service Provider shall continue to perform the Services in accordance with its existing obligations.
- 21.9 The Service Provider shall comply with and shall establish and maintain quality management systems which comply with ISO27001/27002 in relation to information security and data in accordance with clause 9.4 (Quality Management Systems).

Malicious Software

- 21.10 The Service Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor and in accordance with Good Industry Practice to check for and delete Malicious Software from the ICT Environment.
- 21.11 Notwithstanding clause 21.9 and clause 21.10, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 21.12 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 21.10 shall be borne by the parties as follows:
- 21.12.1 by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Service Provider); and

- 21.12.2 by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).
- 21.13 In addition to the Service Provider's obligations under clause 20 (Data Protection), the Service Provider shall establish and maintain reasonable and appropriate security measures and procedures to provide for the safe custody of the Authority Data and to prevent unauthorised access thereto or use thereof.
- 21.14 **Viruses**
- 21.14.1 The Service Provider shall use its reasonable endeavours to ensure that no electronic viruses or similar items are introduced into any software or solution or equipment of the Authority or the Service Provider (if used for the provision of the Services) and the Service Provider shall, promptly upon the discovery of any such virus, use its reasonable efforts to eliminate such virus and mitigate its effect.
- 21.14.2 The Service Provider shall ensure that at all times, its anti-virus software is up to date and in accordance with Good Industry Practice.
- 22 **Back Up Copies**
- 22.1 The Service Provider shall at all times from the Agreement Date and throughout the Contract Period ensure that it has arrangements in place for back-up copies of all Authority Data in non proprietary electronic form held by the Service Provider on any hardware to be stored and secured safely in a building (not being an Authority's Premises or Service Provider's Premises) which is approved by the Authority, such approval not to be unreasonably withheld (the **Back-Up Location**).
- 22.2 Without prejudice to the obligations set out clause 22.1, the Service Provider shall submit to the Contract Manager for approval its proposals for the back-up and storage in safe custody of the data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Service Provider shall comply, and shall procure that all relevant Sub-Contractors comply, with all procedures to which the Contract Manager has given its approval. The Service Provider may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Contract Manager, who shall be entitled to object on the basis set out above.
- 22.3 As a minimum requirement back-up copies of all Authority Data in electronic form held by the Service Provider on any hardware shall be transferred to the Back-Up Location for the periods and in the number of copies proposed by the Service Provider and agreed by the Authority and shall be clearly marked with the date and the fact that the back-up copies are the Service Provider's responsibility but are the property of the Authority. Back-up copies of Authority Data shall comply with relevant Authority retention policies.
- 23 **Emergencies [Authority Policy Clause]**
- 23.1 Where the Authority requires the Service Provider to assist the Authority to comply with, or otherwise satisfy, its obligations pursuant to the Civil Contingencies Act 2004, the Service Provider shall:

- 23.1.1 ensure that plans and procedures are in place to enable the continued operation of the Services during any form of Emergency on the basis set out in such plans and procedures;
 - 23.1.2 co-operate with other London boroughs in relation to mutual aid arrangements including Haringey and the North Central boroughs (including other relevant public sector bodies and the successors during any form of Emergency);
 - 23.1.3 during any form of Emergency, assist with the National Emergency Mortuary Association including equipping a nominated site or sites and providing appropriately skilled personnel;
 - 23.1.4 ensure that the emergency response team (as proposed in the emergency plan) are able to attend and assist with the Emergencies before during and outside working hours;
 - 23.1.5 ensure that it is able to provide emergency data recovery and data back up services; and
 - 23.1.6 ensure that is able to provide increased support for the provision of the Services and any emergency support and/or backup to enable the continued provision of the Services in accordance with the emergency plans.
- 23.2 The Service Provider shall undertake a test of their continued operation plans and procedures annually, or more frequently as required by the Authority; and
- 23.2.1 the Service Provider shall inform the Authority when such tests or exercises are scheduled (providing at least one (1) month's notice) and, if requested to do so provide outcomes of these tests or exercises to the Authority in writing;
 - 23.2.2 the Authority reserves the right to audit the Service Provider's continued plans and procedures, but at its discretion may accept audits as an alternative audits that cover the Services carried out by a United Kingdom Accreditation Service (or equivalent) accredited auditor, provided that the scope of the audit covers the services delivered by the Agreement; and
 - 23.2.3 the Service Provider shall promptly (and in any case within three (3) months' notice) implement any actions or remedial measures which the Service Provider or Authority reasonably considers to be necessary as a result of audits, tests or exercises, business interruptions, emerging risks, or a change to the Services.
- 23.3 If an Emergency arises at any time during the Contract Period which cannot be dealt with by a Repriorisation Change, the Authority may instruct the Service Provider to use all reasonable endeavours to procure that such additional or alternative services are undertaken by the Service Provider as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the Services resumes as soon as is reasonably practicable.
- 23.4 As soon as reasonably practicable following each occasion on which an Emergency arises in accordance with clause 23.3 the parties shall liaise and seek to agree upon the additional charge (if any) to the Authority of providing any such additional or alternative services. If such charges are not agreed or determined by the parties the matter shall be

resolved in accordance with Schedule 15 (Special Projects Approval Procedure) and Schedule 16 (Dispute Resolution Procedure).

24 Information and Confidentiality

24.1 The parties agree that the provisions of this Agreement shall, subject to clause 24.2, not be treated as Confidential Information and may be disclosed without restriction.

24.2 Clause 24.1 shall not apply to provisions of this Agreement designated as Commercially Sensitive Information and listed in Schedule 21 (Commercially Sensitive Information) to this Agreement which shall, subject to clause 24.4, be kept confidential for the periods specified in that Part.

24.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and shall use all reasonable endeavours to prevent their employees officers, representatives, advisers and agents from making any disclosure to any person of any such Confidential Information.

24.4 Clauses 24.2 and 24.3, shall not apply to:-

24.4.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;

24.4.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 24 (Information and Confidentiality);

24.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure;

24.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

24.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

24.4.6 any disclosure by the Authority, of information relating to the design, implementation, performance, operation and maintenance of the Services and Assets and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to:

- (a) any proposed new Service Provider, its advisers and lenders and subcontractors, should the Authority decide to re-tender this Agreement; or

- (b) any person in connection with a benchmarking exercise or market testing; or
 - (c) any proposed new provider of all or part of the Services, its advisers, lenders and subcontractors, should the Authority wish to enter into another contract for the provision of all or part of the Services upon expiry or early termination of this Agreement (in whole or in part);
- 24.4.7 any registration or recording of the Consents and property registration required;
- 24.4.8 any disclosure of information by the Authority to any department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Agreement;
- 24.4.9 any disclosure by the Authority of any document related to this Agreement to which it is a party and which the Service Provider (acting reasonably) has agreed with the Authority contains no Commercially Sensitive Information;
- 24.4.10 any disclosure for the purpose of:-
- (a) the examination and certification of the Authority's or the Service Provider's accounts;
 - (b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has performed its functions;
 - (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (d) (without prejudice to the generality of clause 24.4.4) compliance with the FOIA and/or the Environmental Information Regulations;
- 24.4.11 any disclosure of information to bidders (their advisers, sub-contractors or funders) for future procurements or third party contracts selected under future procurements in relation to future procurements;
- 24.4.12 any disclosure of information to relevant public bodies, stakeholders and partners (including without limitation community forums, the police and the National Health Service) to enable the Authority to cooperate with such bodies; and
- 24.4.13 any disclosure of information relating to the Services for the purposes of benchmarking to Chartered Institute of Public Finance Accountants or the London Authorities Performance Systems or other relevant benchmark clubs.
- 24.5 Where disclosure is permitted under clause 24.4, other than under clauses 24.4.2, 24.4.4, 24.4.5, 24.4.7 and 24.4.10 the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- 24.6 For the purposes of:

- 24.6.1 the examination and certification of the Authority's accounts;
- 24.6.2 the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts); and
- 24.6.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness of which the Authority has performed its functions,

the Audit Commission (or other relevant body) and their appointed external auditors may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Service Provider and any Sub-Contractor and may require the Service Provider and any Sub-Contractor to produce such oral or written explanations as he or it considers necessary.

- 24.7 The Service Provider shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of the Authority.
- 24.8 Where the Service Provider, in carrying out its obligations under this Agreement, is provided with information relating to people/users, the Service Provider shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Service Provider has sought the prior written consent of that person/user and has obtained the prior written consent of the Authority.
- 24.9 On or before termination or expiry of this Agreement, the Service Provider shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to Service Users including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority.
- 24.10 The parties acknowledge that the Audit Commission (or other relevant body) has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.

25 **Freedom of Information [Authority Policy Clause]**

- 25.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to and in the manner provided for in this clause 25 (Freedom of Information).
- 25.2 Where the Authority receives a Request for Information in relation to Information that the Service Provider is holding on behalf of the Authority and which the Authority does not hold itself, the Authority shall refer to the Service Provider such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Service Provider shall:
 - 25.2.1 as soon as practicable and in any event within five (5) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request provide the Authority with a copy of all such Information in the form of a draft response to the Request for Information, containing the relevant Information, and/or applying with reasoning any relevant exemptions or

exceptions as the case may be together with, where applicable, a fully reasoned public interest test arguments ; and

- 25.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 25.3 The Authority shall consult as soon as practicable with the Service Provider and shall determine in its absolute discretion (and notwithstanding any other provision in this Agreement or any other agreement) whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 25.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 25.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 24 (Information and Confidentiality) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the FOIA Code), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Project or the Services:
- 25.5.1 in certain circumstances without consulting with the Service Provider provided that the Authority shall as soon as practicable notify the Service Provider in every case where information about the Service Provider has been disclosed under the FOIA or the Environmental Information Regulations; or
- 25.5.2 following consultation with the Service Provider and having taken its views into account.
- 25.6 The Service Provider shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six (6) years (from the date it is acquired) and subject to the Service Provider's obligation to comply with this Agreement and all applicable Legislation shall permit the Authority to inspect such Information as requested from time to time.
- 25.7 The Service Provider shall transfer to the Authority any Request for Information received by the Service Provider as soon as practicable and in any event within two (2) Business Days of receiving it.
- 25.8 The Service Provider acknowledges that any lists provided to it listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.3.
- 25.9 In the event of a request from the Authority pursuant to clause 25.2 above, the Service Provider shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs

(either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the **Appropriate Limit**) the Authority shall inform the Service Provider in writing whether or not it still requires the Service Provider to comply with the request and where it does require the Service Provider to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service Provider incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

25.10 Notwithstanding any other term of this Agreement, the Service Provider hereby gives its consent for the Authority to publish the Agreement in its entirety or such information contained herein as determined by the Authority (but with any information designated as Commercially Sensitive Information and listed in Schedule 21 (Commercially Sensitive Information) and which is exempt from disclosure in accordance with the provisions of the FOIA redacted for the periods specified in that Part), including without limitation any charges to the Agreement, to the general public.

25.11 The Service Provider hereby irrevocably consents that where the Authority pays any sum to the Service Provider, the Authority may publish the details of such payment pursuant to the Authority's interests of providing greater transparency including without limitation the following details:

25.11.1 the Service Provider's full name;

25.11.2 the Service Provider's registered number (as a company or charity);

25.11.3 the Agreement identification number;

25.11.4 the date of payment;

25.11.5 the net amount paid to the Service Provider;

25.11.6 the transaction number; and

25.11.7 a description of the nature of the transaction.

Part 5: Workforce Issues

26 TUPE [Authority Policy Clause]

26.1 Application of TUPE

26.1.1 With effect from the Service Transfer Date the Transferring Employees shall transfer to the Service Provider pursuant to and in accordance with TUPE and such transfer shall have effect as a Relevant Transfer.

- 26.1.2 Upon the transfer of the Transferring Employees to the employment of the Service Provider, it is agreed that the Authority will employ those employees identified in Schedule 40 together with such employees recruited pursuant to the provisions of clause 26.14.2 (**Joint Employees**) jointly with the Service Provider for all purposes save for the performance of those elements of their role (including through a delegation under Section 101 of the Local Government Act 1972 (the **Statutory Functions**), in relation to which the Authority will be the sole employer of the Joint Employees.
- 26.1.3 For all purposes save for the performance of the Statutory Functions and as expressly referred to in clause 26.14 (Joint Employment) below the Authority appoints the Service Provider and the Service Provider will act as agent for the Authority.
- 26.1.4 The parties agree that, where the identity of a provider (including the Authority) of any of the Services is changed pursuant to this Agreement (including on expiry of the Contract Period), the change shall constitute a Relevant Transfer.
- 26.1.5 On the occasion of a Relevant Transfer (other than a Relevant Transfer on expiry or termination of the Contract Period), the Service Provider shall and shall procure that any replacement service provider shall comply with its obligations under TUPE and the Directive in respect of the Transferring Employees.

26.2 Emoluments and Outgoings

- 26.2.1 The Authority shall be responsible for all emoluments and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Service Transfer Date, save that the Authority shall be responsible for all emoluments and outgoings in respect of the Joint Employees' performance of the Statutory Functions.
- 26.2.2 The Service Provider shall be or shall procure that any sub-contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of the Service Transfer Date, save that the Authority shall be responsible for all emoluments and outgoings in respect of the Joint Employees' performance of the Statutory Function.
- 26.2.3 The Service Provider agrees that it will not vary the terms and conditions of employment of any Transferring Employee (except insofar as the Authority is added as an employer to the contracts of employment of the Joint Employees and the additional clauses mutually agreed between the Service Provider and the Authority to effect such Joint Employment) for the first 12 months immediately following the Service Transfer Date and, if legally obliged to do so will honour the NJC pay awards while Transferring Employees remain on the terms and conditions of employment they benefited from on the Service Transfer Date. If the Service Provider seeks to vary the terms and conditions of

employment of any Transferring Employee after the expiry of 12 months following the Service Transfer Date, it shall comply with its consultation obligations as the employer of the Transferring Employees and conduct all reasonable negotiations with any recognised trade unions. The parties agree that the Service Provider may make such changes to the Transferring Employees' terms and conditions of employment as are reasonably necessary to effectively manage the organisational structure of its workforce. The parties agree that the Transferring Employees' terms and conditions are deemed to include the relevant HR policies and procedures as set out in Schedule 20 (Relevant HR Policies and Procedures).

- 26.2.4 During the first 12 months following the Service Transfer Date, the Service Provider shall apply the same job evaluation schemes to Transferring Employees as those applied by the Authority before the Service Transfer Date. If the Service Provider seeks to apply different job evaluation schemes to those applied by the Authority as at the Service Transfer Date, it shall comply with its consultation obligations as the employer of the Transferring Employees and conduct all reasonable negotiations with any recognised trade unions.

26.3 Pensions

26.3.1 **Service Provider to Become an Admission Body**

Where the Service Provider or a Sub-Contractor employs any Eligible Employees on and after the occasion of a Relevant Transfer it shall offer those Eligible Employees membership of the Local Government Pension Scheme, and the Service Provider shall procure that it and/or each relevant Sub-Contractor shall become an Admission Body. The Service Provider shall before the Relevant Transfer or as soon as reasonably practicable thereafter execute and procure that each relevant Sub-Contractor executes an Admission Agreement which will have effect from and including the occasion of a Relevant Transfer.

26.3.2 **Service Provider Admission Agreement**

The Authority shall before the occasion of a Relevant Transfer or as soon as reasonably practicable thereafter execute the Admission Agreement referred to in clause 26.3.1 (Service Provider to Become an Admission Body).

26.3.3 **Indemnity for a Breach of the Service Provider Admission Agreement**

Without prejudice to the generality of this clause 26.3.3 (Indemnity for a Breach of the Service Provider Admission Agreement), the Service Provider hereby indemnifies the Authority and, in each case, their sub-contractor on demand from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Service Provider or any Sub-Contractor of the terms of the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused).

26.3.4 **Indemnity or Bond**

Without prejudice to the generality of the requirements of this clause 26.3, the Service Provider shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Admission Agreement.

26.3.5 **Right of Set-Off**

The Authority shall have a right to set off against any payments due to the Service Provider under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Service Provider under the Admission Agreement for the purposes only of paying such set off amounts on behalf of the Service Provider to the Authority in accordance with the Admission Agreement for immediate credit to the LGPS.

26.3.6 **Funding**

- (a) the Authority shall procure that the Contribution Rate is calculated on the basis that the liabilities for the Eligible Employees at the occasion of the Relevant Transfer are Notionally Fully Funded as at the occasion of the Relevant Transfer on the basis of the ongoing funding assumptions set out in the Pension Funding Strategy Statement and used by the actuary to the Pension Fund in the last statutory valuation of the Pension Fund updated to reflect current market assumptions. For the avoidance of doubt, this clause 26.3.6(a) and the obligation of the Authority to ensure the liabilities for the Eligible Employees are Notionally Fully Funded does not apply to any underfunding in respect of such liabilities which arises after the occasion of the Relevant Transfer for Eligible Employees whether it relates to their service before or after such date any such underfunding shall form part of the past service deficit recovery element of the valuation of the Pension Fund in respect of those Eligible Employees in accordance with Regulation 36 of the LGPS Administration Regulations. "Notionally Fully Funded" means the Service Provider's (and/or any Sub Contractor's) contribution to the Pension Fund shall be determined as if the Service Provider (and/or any Sub-Contractor) were notionally credited with a fund at the Relevant Transfer (the Notional Fund). The amount of the Notional Fund shall, at the Relevant Transfer, be equal to the amount of the assets equal to the liability of the Eligible Employees in the Pension Fund to provide the benefits of these Eligible Employees which accrued in the Pension Fund before the Relevant Transfer.
- (b) The Service Provider (or any relevant Sub-Contractor) shall pay all employer contributions payable to the Pension Fund in respect of any Eligible Employees under the Admission Agreement and any sum due to the Pension Fund arising out of the termination of the Admission Agreement as required in accordance with the Admission Agreement, this clause 26.3 (Pensions) and the LGPS Administration Regulations. The Authority and the Service Provider (or any relevant Sub-Contractor) acknowledge that the Authority remains responsible for

those employer contributions attributable to the performance of Statutory Functions by Joint Employees under the Administration Regulations. The parties agree that the Service Provider (or any relevant Sub-Contractor) acts as agent for the Authority for the payment to the Pension Fund of those employer contributions received from the Authority, such contributions forming a component of the Periodic Service Payment.

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(c) the Authority agrees with the Service Provider (and/or any relevant Sub-Contractor) that:

i Subject to the provisions of clause 26.3.6(e), where from the Valuation following the calculation of the Contribution Rate under clause 26.3.6(a), the employer contribution rate which is payable under the Admission Agreement increases to a rate which is higher than the Contribution Rate, and/or where in each subsequent Valuation thereafter the employer contribution rate which is payable under the Admission Agreement increases to a rate which is higher than the Subsequent Contribution Rate, the Authority shall be responsible for the amount (where that amount is positive) above that rate. This amount shall be known as the Excess Amount which shall be the difference between A minus B where:

A equals the employer contributions which the Service Provider (and/or any relevant Sub-Contractor) actually pays to the Pension Fund in respect of the Eligible Employees during the previous month pursuant to the Admission Agreement; and

B equals the employer contributions which the Service Provider (and/or any relevant Sub-Contractor) would have been obliged to pay to the Pension Fund in respect of the Eligible Employees during the previous month had that rate been the Contribution Rate (in respect of the initial contribution of the Excess amount), and in each subsequent Valuation such contributions had that rate been the Subsequent Contribution Rate:

An amount equal in value to the Excess Amount shall be refunded to the Service Provider (and/or any relevant Sub-Contractor) through an adjustment to the Periodic Service Payment. The Excess Amount shall be paid subject to the provisions of clause 26.3.5 (Right of Set-Off) and revisions made to the Periodic Service Payment subject to the provisions of clause 26.3.6(e). Adjustments shall be made to the Periodic Service Payment at the end of the month following the change in the contribution rate payable under the Admission Agreement.

ii if the Service Provider (and/or any relevant Sub-Contractor) is required to pay any revised contribution under the Admission Agreement or under the LGPS Administration Regulations or Benefits Regulations to the Pension Fund arising on or after or in connection with the termination of the Admission Agreement whether as a consequence of

the termination of this Agreement or otherwise (the **Scheme Deficit Amount**) then if having reduced the Scheme Deficit Amount by:

- A such amounts as representing liabilities included within the Scheme Deficit Amount incurred as a result of matters in clause 26.3.6(e);
- B any sums included within the Scheme Deficit Amount which represent sums (whether contributions, payments, costs, interest and liabilities) due or in arrears before the point of termination of the Admission Agreement; and
- C any sums included within the Scheme Deficit Amount which represent sums charged by the Pension Fund and/or the Administering Authority in relation to the termination of the Admission Agreement which shall include any fees, expenses, charges or such like sums within the Scheme Deficit Amount which have been charged by the Pension Fund and/or the Administering Authority in relation to the termination of the Admission Agreement,

there is still a balance of the Scheme Deficit Amount (the **Remaining Scheme Deficit Amount**) then save where the Admission Agreement is terminated as a direct consequence of either (i) a breach of the terms of the Admission Agreement by the Service Provider (and/or any relevant Sub-Contractor) and/or (ii) a Service Provider default under this clause 26 (TUPE), the Authority shall reimburse the Service Provider (and/or any relevant Sub-Contractor) for any part of the Remaining Scheme Deficit Amount paid by the Service Provider (or any relevant Sub-Contractor). Any such payment required from the Authority shall be paid by applying the procedure set out in clause 26.3.6(d) and clause 26.3.6(f).

- (d) the Authority shall not be required to make a payment in accordance with clause 26.3.6(c) unless it has received a Pension Notice from the Service Provider (and/or any relevant Sub-Contractor) within fifteen (15) Business Days of the Scheme Deficit Amount being notified to the Service Provider (and/or any relevant Sub-Contractor) by the Administering Authority. Except in the case of manifest error in calculation, the Authority shall not dispute any sum certified by the actuary to the Pension Fund in the Pension Notice. If the Authority, within thirty (30) Business Days of receipt of the Pension Notice disputes the amount claimed by the Service Provider (and/or any relevant Sub-Contractor) it shall inform the Service Provider (and/or any relevant Sub-Contractor) what element of the claim under the Pension Notice is disputed (**the Disputed Amount**) and the Authority shall not be required to pay the Disputed Amount until such liability is established by agreement between the Parties, such agreement to be reached within sixty (60) Business Days, or by reference by either party for determination by an independent actuary whose decision shall be final and binding on the Parties. If after any relevant Pension

Notice has been served by the Service Provider (and/or any relevant Sub-Contractor) there is any reduction in the Scheme Deficit Amount, the parties agree that there shall be recalculation of the Remaining Scheme Deficit Amount and subsequent Authority liability.

- (e) The Service Provider shall procure that the Service Provider (and/or any relevant Sub-Contractor) shall at all times be liable for all pension contributions and costs in respect of the Eligible Employees to the extent that they relate to the following matters:
 - i any increases made by the Service Provider to Pensionable Pay (as defined in Regulation 4 of the Benefits Regulations) of Eligible Employees from the award of pay increases by the Service Provider in respect of the Eligible Employees as a whole in excess of the greater of either:
 - A the pay increases assumed in the Pension Fund's most recent actuarial valuation; or
 - B any pay increases required to be made by law and any pay increases required in accordance with the terms and conditions of employment in force as at the occasion of a Relevant Transfer if higher;
 - ii any payment of benefits under Regulation 18 or 19 of the Benefit Regulations or any payment of benefit under Regulation 30 of the Benefit Regulations;
 - iii any exercise by the Service Provider (and/or any relevant Sub-Contractor) of its discretion under Regulation 12 or 13 of the Benefit Regulations or, the Compensation Regulations;
 - iv any payment of benefits on grounds of ill health or infirmity of mind or body (including any such payment under Regulation 31 of the Benefit Regulations) (to the extent that any such payments are not already included in the calculation of the Contribution Rate by the actuary to the Pension Fund); and
 - v the Service Provider (and/or any relevant Sub-Contractor) being in breach of its obligations to pay employer contributions under the Admission Agreement.
- (f) Where sub-clause 26.3.6(c)ii is applicable the Service Provider shall invoice the Authority (on behalf of the Service Provider (and/or any relevant Sub-Contractor) as applicable) within 3 (three) months of it (or any relevant Sub-Contractor) being notified in writing by the Administering Authority of any payments required following any termination of the Admission Agreement for a payment of an amount due pursuant to sub-clause 26.3.6(c)ii. Subject to clause 26.3.6(d), within 15 (fifteen) Business Days of receipt of an invoice from the Service Provider (on behalf of the Service Provider (and/or any relevant sub-contractor) as applicable), the Authority will make a payment to the Service Provider (and/or any relevant Sub-Contractor)

as appropriate for an amount equal to the monetary amount set out in the invoice less any Disputed Amount. For the avoidance of doubt once any Disputed Amount has been determined by an independent actuary under clause 26.3.6(d) the Authority will make a payment to the Service Provider (and/or any relevant Sub-Contractor) as appropriate for an amount equal to the amount determined by the independent actuary under clause 26.3.6(d) within 15 (fifteen) Business Days.

- (g) Where from the Valuation following the calculation of the Contribution Rate under clause 26.3.6(a) the Service Provider or any relevant Sub-Contractor (as applicable) is obliged under the Admission Agreement to pay employer contributions at a rate which is lower than the Contribution Rate and/or where in each subsequent Valuation thereafter, the employer contribution rate which is payable under the Admission Agreement is lower than the Subsequent Contribution Rate, the Authority and the Service Provider or any relevant Sub-Contractor (as applicable) agree that an appropriate adjustment in favour of the Authority shall be made to the Periodic Service Payment. The amount to be refunded shall be the Lower Amount and it shall be the difference between C minus D where:

C equals the employer contributions which the Service Provider and/or any relevant Sub-Contractor (as applicable) would have been obliged to pay to the Pension Fund in respect of the Eligible Employees during the previous month pursuant to the Admission Agreement had that rate been the Contribution Rate (in respect of the initial calculation of the Lower Amount), and in subsequent Valuations, such contributions had that rate been the Subsequent Contribution Rate; and

D equals the employer contributions which the Service Provider and/or any relevant Sub-Contractor (as applicable) actually pays to the Pension Fund in respect of the Eligible Employees during the previous month pursuant to the Admission Agreement.

The Lower Amount shall be calculated subject to the provisions of clause 26.3.6(e) and adjustments shall be made to the Periodic Service Payment at the end of the month following the change in the contribution rate payable under the Admission Agreement.

26.3.7 **Service Provider Ceases to be an Admission Body**

If the Service Provider or any Sub-Contractor employs any Eligible Employees on and after the occasion of a Relevant Transfer and:

- (a) the Authority and the Service Provider are both of the opinion that it is not possible to operate the provisions of clauses 26.3.1 (Service Provider to Become an Admission Body) to 26.3.6 (Funding) inclusive; or
- (b) if for any reason after the Relevant Transfer the Service Provider or any Sub-Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible Employees,

then the provisions of clauses 26.3.1 (Service Provider to Become an Admission Body) to 26.3.6 (Funding) inclusive shall not apply (without prejudice to any rights of the Authority under those clauses) and the provisions of clause 26.3.8 (Service Provider Scheme) shall apply.

26.3.8 Service Provider Scheme

Where this clause 26.3.8 (Service Provider Scheme) applies pursuant to clause 26.3.7 (Service Provider ceases to be an Admission Body), the following shall apply:

- (a) The Service Provider shall not later than on the occasion of the Relevant Transfer or the Cessation Date (as the case may be) nominate to the Authority in writing the occupational pension scheme or schemes which it proposes shall be the Service Provider Scheme for the purposes of this clause 26.3.8 (Service Provider Scheme). Such pension scheme or schemes must be:
 - i established within 3 (three) months prior to the occasion of a Relevant Transfer or Cessation Date (as the case may be) and maintained until any payment to be made under Schedule 32 (Bulk Transfer Terms) is made;
 - ii reasonably acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed);
 - iii registered pension scheme for the purposes of Part A of the Finance Act 2004; and
 - iv certified by an actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are the same as, broadly comparable to or better than those provided by the Local Government Pension Scheme.
- (b) The Service Provider undertakes and shall procure that any Sub-Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that it shall procure that:
 - i the Eligible Employees shall by 3 (three) months before the occasion of a Relevant Transfer or such other date as the Authority may propose or the Cessation Date (as the case may be) be offered membership of the Service Provider Scheme with effect from and including the occasion of a Relevant Transfer or Cessation Date (as the case may be);
 - ii the Service Provider Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the occasion of a Relevant Transfer or Cessation Date (as the case may be) which the actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be the same as, broadly comparable to or better than the benefits which the Eligible Employees would have been entitled to

under the Local Government Pension Scheme had they continued in membership of the Local Government Pension Scheme;

iii if the Service Provider Scheme is terminated or the Service Provider's or any Sub-Contractor's participation in the Service Provider Scheme terminates, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Service Provider. The replacement scheme must comply with this clause 26.3.8 (Service Provider Scheme) as if it were the Service Provider Scheme; and

iv **NOT USED**

v where the Service Provider Scheme has not been established at the occasion of a Relevant Transfer or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service benefits provided by the Local Government Pension Scheme immediately before the occasion of a Relevant Transfer or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Service Provider Scheme.

(c) The parties shall use best endeavours to agree the terms of Schedule 32 (Bulk Transfer Terms) which shall apply in relation to the terms for bulk transfers from the Local Government Pension Scheme to the Service Provider's Scheme following the occasion of a Relevant Transfer and any subsequent bulk transfers on termination or expiry of this Agreement.

(d) The Service Provider undertakes and shall procure that any Sub-Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that the Service Provider shall and shall procure that any Sub-Contractor shall use best endeavours to procure that before the occasion of a Relevant Transfer or Cessation Date (as the case may be) the trustees of the Service Provider Scheme shall undertake by deed to the Authority that they shall comply with the provisions of clause 26.3.8 (Service Provider Scheme).

26.3.9 **Undertaking from the Service Provider**

(a) The Service Provider undertakes and shall procure that any Sub-Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that:

i all information in the Service Provider's or any Sub-Contractor's possession which the Authority or their respective professional advisers may reasonably request from the Service Provider for the administration of the Local Government Pension Scheme or concerning any other matters raised in clause 26.3.8 (Service Provider Scheme), clause

26.3.9 (Undertaking from the Service Provider) or Schedule 32 (Bulk Transfer Terms) shall be supplied to them as expeditiously as possible;

- ii it shall not, without the consent in writing of the Authority (which shall only be given subject to the payment by the Service Provider or any Sub-Contractor of such reasonable third party professional costs as the Authority may require) consent to instigate, encourage or assist any event which could impose on the Local Government Pension Scheme or on the Authority a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
- iii until the occasion of a Relevant Transfer, it shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in clauses 26.3.1 (Service Provider to Become an Admission Body) to 26.3.7 (Service Provider ceases to be an Admission Body) inclusive without the consent in writing of the Authority (not to be unreasonably withheld or delayed);
- iv it shall not take or omit to take any action which would materially affect the benefits under the Local Government Pension Scheme or under the Service Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Authority (not to be unreasonably withheld or delayed) provided that the Service Provider will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- v it shall offer any of its Eligible Employees who permanently cease to be engaged in the provision of any part of the Services and thereby cease to be eligible for membership of the Local Government Pension Scheme membership of the then current Service Provider scheme for which the avoidance of doubt will not include the Service Provider Scheme as defined in Schedule 1 (Definitions) as soon as reasonably practicable after ceasing to be so engaged unless such an Eligible Employee has voluntarily agreed to the loss of his Local Government Pension Scheme membership as part of the change.

26.3.10 Discretionary Benefits

- (a) Where the Service Provider or any Sub-Contractor is an Admission Body, the Service Provider or any Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority.
- (b) Where the award of benefits in clause 26.3.10(a) (Discretionary Benefits) is not permitted under the Compensation Regulations and/or the Local Government Pension Scheme or the Service Provider is not an Admission Body, the Service Provider or any Sub-Contractor shall

award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority.

- (c) Under clause 26.3.10(a) and (b) (Discretionary Benefits), where such benefits are of a discretionary nature, they shall be awarded on the basis of the Authority's written policy in relation to such benefits at the time of the occasion of a Relevant Transfer (which the Authority shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Service Provider shall and/or shall procure that any relevant sub-contractor shall compensate the Eligible Employees in a manner which is in the reasonable professional opinion of an actuary appointed by the Service Provider broadly comparable or equivalent in cash terms.

26.3.11 Claims from Eligible Employees or Trade Unions

- (a) The Service Provider hereby indemnifies the Authority and/or any future service provider and, where relevant, their Sub-Contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Service Provider and/or any sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
 - i relate to pension rights in respect of periods of employment on and after the Relevant Transfer until the date of termination or expiry of this Agreement; or
 - ii arise out of the failure of the Service Provider to comply with the provisions of this clause 26.3 (Pensions) before the date of termination or expiry of this Agreement,and the Authority and the Service Provider agree that clause 70 (Third Party Rights) of this Agreement shall not apply to this clause 26.3.11.

26.3.12 Liability for Costs

The costs of the Authority necessarily and reasonably incurred in connection with the Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with clause 26.3.8 (Service Provider Scheme) shall be borne by the Service Provider.

26.3.13 Transfer to Another Employer

- (a) Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer from the Service Provider or Service Provider Related Party during the Contract Period (by way of a transfer under TUPE) the Service Provider shall:

- i consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- ii procure that the employer to which the Eligible Employees are transferred (the **New Employer**) complies with the provisions of this clause 26.3 (Pensions) provided that references to the sub-contractor will become references to the New Employer, references to Relevant Transfer will become references to the date of the transfer to the New Employer and references to Eligible Employees will become references to the Eligible Employees so transferred to the New Employer.

26.3.14 Pension Issues on Expiry or Termination

The Service Provider shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Authority such documents and information mentioned in clause 26.3.14(a) (Pension Issues on Expiry or Termination) which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and
- (c) fully co-operate (and procure that the trustees of the Service Provider Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider in the provision of the Services on the expiry or termination of this Agreement.

26.3.15 Compliance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

- (a) The Authority and the Service Provider shall and the Service Provider shall procure that any Sub-Contractor shall comply with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 in respect of the Eligible Employees.
- (b) Save to the extent necessary to give effect to the Eligible Employees right to enforce their rights under clause 26.3 (Pensions) against the Service Provider or any Sub-Contractor in accordance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007, the Authority and the Service Provider agree that any of the terms of this clause 26.3 (Pensions) shall not be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any party not a party to this Agreement.

26.3.16 Pension Cost Modelling

- (a) the Service Provider (or any relevant Sub-Contractor) shall be entitled to update their Pension Cost Modelling at or near the Service Transfer Date in respect of the:
 - i initial Contribution Rate; and/or
 - ii costs of providing any indemnity or bond required under clause 26.3.4 and/or
 - iii Eligible Employees who are eligible to join the Fund but have opted out of membership of the Fund and who subsequently become automatically enrolled into the Fund from 1 October 2012 under the Administration Regulations or by operation of Part 1 of the Pensions Act 2008;

such updated pricing assumptions shall be reflected in the Financial Model.

- (b) The Authority and the Service Provider agree that the assumptions used by the Service Provider (and/or any relevant sub-contractor) in the Pension Cost Modelling may not accurately reflect the actual cost of complying with the requirements of this clause 26.3 (Pensions) throughout the course of the Contract Period. The Authority and the Service Provider (and/or any relevant sub-contractor) agree that where the aggregate value of the assumptions in the Pension Cost Modelling put forward by the Service Provider (and/or any relevant sub-contractor) in respect of the Eligible Employees does not match the actual aggregate cost in relation to the Eligible Employees' membership of the Pension Fund, then the provisions of clauses 26.3.16(c) and 26.3.16(d) shall apply. For the avoidance of doubt, any assumptions in the Pension Cost Modelling that relate to ill health retirement under Regulation 20 of the Benefits Regulations or any actual cost or payment to the Administering Authority arising in respect of benefits under Regulation 20 of the Benefits Regulations that is not included in the Contribution Rate shall form part of the comparison in each Contract Year under clauses 26.3.16(c) and 26.3.16(d).
- (c) Subject to clause 26.3.6(a), in each Contract Year the Authority and the Service Provider (and/or any relevant Sub-Contractor) shall, on an open book basis, compare the actual aggregate cost of complying with the requirements of this clause 26.3 (Pensions) with the corresponding aggregate amounts set out in the Pension Cost Modelling.
- (d) Where, under clause 26.3.16(c), the actual aggregate cost of complying with the requirements of this clause 26.3 (Pensions) is lower than the aggregate estimated amounts set out by the Service Provider (and/or any relevant Sub-Contractor) in the Pension Cost Modelling, a corresponding adjustment in favour of the Authority shall be made to the Payment Mechanism in the following Contract Year. Where the Service Provider (and/or any relevant Sub-Contractor) employs a New Employee to replace an Eligible Employee from the

date of that Eligible Employee retiring or leaving employment of the Service Provider (and/or any relevant Sub-Contractor) then the amount of the adjustment in favour of the Authority shall be the difference between the employer contribution rate paid to the Pension Fund in respect of an Eligible Employee and the employer contribution rate paid to the pension arrangement (plus any additional employer's National Insurance contributions as a result of the pension arrangement not being contracted-out of the State Second Pension Scheme) in respect of the New Employee from the actual date of the Eligible Employee's retirement, or leaving employment until the date assumed by the Service Provider (and/or relevant Sub-Contractor) in the Pension Cost Modelling.

- (e) Where under clause 26.3.16(c), the aggregate cost of complying with the requirements of this clause 26.3.16(e) is greater than the aggregate estimated amounts set out by the Service Provider (or any relevant Sub-Contractor) in the Pension Cost Modelling, a corresponding adjustment in favour of the Service Provider shall be made to the Payment Mechanism in the following Contract Year in the following ~~circumstance~~ ^{circumstance}, where the Authority had provided its prior approval for the Service Provider to engage additional Joint Employees performing Statutory Functions, and where such Joint Employees have been engaged and where the number of Joint Employees performing Statutory Functions admitted to or retained in the LGPS increases, then the amount of the adjustment in favour of the Service Provider (or relevant Sub-Contractor) shall be the difference between the employer contribution rate paid to the Pension Fund in respect of such additional Joint Employees performing Statutory Functions engaged and the employer contributions assumed by the Service Provider (or relevant Sub-Contractor) in the Pension Cost Modelling.

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26.4 Provision of information

- 26.4.1 Authority has supplied to the Service Provider in a readily accessible electronic format information pursuant to regulation 11 of TUPE in a list which is contained in the Schedule 18 (the "First Employee List") regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those employees of the Authority and of any sub-contractor of the Authority who it is expected, if they remain in the employment of the Authority or of the sub-contractor of the Authority as the case may be until immediately before the Service Transfer Date, would be Transferring Employees. The Authority gives no warranty as to the accuracy or completeness of the information set out in the First Employee List.
- 26.4.2 The Authority shall also supply to the Service Provider within five (5) Business Days after the respective Service Transfer Date information, which was correct as at the Relevant Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the "Final Employee List".

26.4.3 As soon as reasonably practicable, and in any event within three (3) Business Days of the Service Transfer Date, the Service Provider shall notify the Authority if it believes there are were any inaccuracies in or omissions from the First Employee List and/or any new information which it considers should be included in the Final Employee List.

(a) the Service Provider has provided to the Authority, and the Authority has agreed, the details set out in the Financial Proforma 1 which identify at columns G to AN (inclusive) rows 224, 238, 252, 266, 280, 294, 308, 322, 336, 350, 364, 378 (inclusive) the Service Provider's remuneration costs. These costs (the "Remuneration Costs") have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and

(b) the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the proposed workforce or a workforce which is as close as reasonably practicable to the proposed workforce. These costs (the "Reorganisation Costs") have been calculated by the Service Provider on the basis of (amongst other things) the information contained in the First Employee List.

26.4.4 Subject to clause 26.4.5 below, if after the submission of the Final Employee List, the Remuneration Costs and/or the Reorganisation Costs require adjustment on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the Final Employee List then there shall be a corresponding adjustment to the Periodic Service Payment to compensate for any such difference save that the Remuneration Costs shall only be adjusted in respect of Transferring Employees appearing on both the First Employee List and the Final Employee List whose salary has changed in the normal course of their employment with the Authority, excluding any changes from any NJC pay award. There shall be a corresponding temporary adjustment to the Periodic Service Payment to compensate for any such difference, the timing of which shall be agreed in writing between the Parties.

26.4.5 The Service Provider shall notify the Authority as soon as reasonably practicable, and in any event within one (1) month of the Service Transfer Date, if it identifies that an adjustment to the Periodic Service Payment should be made in accordance with clause 26.4.4 above and before any such adjustment is made.

26.4.6 If the circumstances described in clause 26.4.4 arise:

(a) in circumstances where there are more Transferring Employees than shown on the Final Employee List then the parties shall discuss the implications for the provision of Services; and

(b) the Service Provider shall take all reasonable steps to mitigate any additional costs and any adjustment to the Periodic Service Payment shall be calculated as if they had done so.

- 26.4.7 In calculating any adjustment to be made to the Periodic Service Payment pursuant to clause 26.4.4 and subject always to clause 26.4.5 above:
- (a) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Transferring Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the proposed workforce;
 - (b) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Service Provider has been or will be compensated as a result of any indexation of the Periodic Service Payment under this Agreement. For the avoidance of doubt, the Remuneration Cost or Reorganisation Cost used for calculating the Periodic Service Payment shall be prior to any indexation of the Periodic Service Payment under this Agreement;
 - (c) no adjustments under clause 26.4.4 shall be made in respect of overpayments made by the Service Provider to Transferring Employees which arise from reliance on the Final Employee List to the extent that the Service Provider is able to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
 - (d) if there are underpayments by the Service Provider to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract or as a result of any and all failures of the Authority to comply with the Equal Pay Act 1970 or Chapter 3 of Part 5 of the Equality Act 2010 (both as may be amended from time to time), which arise from reliance on the Final Employee List, there shall be an increase to the Periodic Service Payment in respect of all such liabilities of the Service Provider for all such underpayments which are retrospective and/or those which represent ongoing costs; and
 - (e) in order to prevent duplication, no adjustment shall be made under this clause 26.4 if any indemnity or warranty given by the Authority under any other provision of this Agreement would apply.
- 26.4.8 The Authority will provide the Service Provider with HR policies and procedures, including but not limited to those relating to equality, health and safety and whistle blowing, that apply to the Transferring Employees and are in force as at the Service Transfer Date.
- 26.4.9 The Service Provider shall apply to the Transferring Employees such workplace policies as are at least broadly equivalent to the equality policy provided by the Authority in accordance with clause 26.4.8 above.
- 26.4.10 The Service Provider agrees to ensure equality of pay for the Transferring Employees where it has a legal obligation to do so.

26.4.11 The Service Provider will put in place arrangements to provide support to employees experiencing difficulties in their personal or business life.

26.5 **Service Provider to inform Authority of any measures**

The Service Provider shall or shall procure that any sub-contractor shall within fourteen (14) days of receiving a request from the Authority, provide the Authority with any information which is reasonably necessary concerning any measures (within the meaning of TUPE and the EC Business Transfers Directive) that the Service Provider intends to take in relation to any Transferring Employee and shall indemnify the Authority against all Direct Losses in relation to any breach of this clause 26.5.

26.5.1 **Trade Unions**

- (a) The Authority will provide the Service Provider with details of the Trade Union and Employee Engagement Framework and the Service Provider agrees to consider it and discuss how it can be utilised in setting up a comparable framework between any recognised trade unions and the Service Provider. The Service Provider agrees to provide access and facilities, where practicable, to recognise trade unions at its premises. The Service Provider will contribute an amount to the Authority's fund for trade union release time calculated in accordance with the formula in Schedule 29 (Formula for Calculating Contribution to Trade Union Fund). The Authority agrees to allow the Service Provider to claim some of the costs incurred by agreed trade union release time from normal duties from the Authority's central fund. The Service Provider agrees and acknowledges that there will be no mark up or other increase to the amount calculated in accordance with the formula set out in Schedule 29 (Formula for Calculating Contribution to Trade Union Fund).
- (b) To the extent that the Service Provider recognises any trade unions, it shall provide a facility for the deduction of trade union subscriptions from the salaries of any applicable Transferring Employees.
- (c) The Service Provider agrees to recognise any trade union which the Authority recognises in respect of the Transferring Employees to the same extent as the Authority does at the point immediately before the Service Transfer Date. The Service Provider's obligation under this clause shall continue for as long as the Transferring Employees continue to work exclusively on the Services provided under this Agreement.

26.6 **Indemnities**

26.6.1 Subject to the provisions of clause 26.6.4 below, the Authority shall indemnify and keep indemnified the Service Provider from and against all Direct Losses as a result of any claim or demand by any:

- (a) Transferring Employee arising out of the employment of any such employee provided that this arises from any act, fault or omission of the Authority prior to the Service Transfer Date.

- (b) Joint Employee arising out of any such employee's performance of the Statutory Functions whilst employed by the Authority (save where such claim or demand arises out of any acts, fault or omission of the Service Provider).
- 26.6.2 The Service Provider shall indemnify and keep indemnified the Authority from and against all Direct Losses in connection with or as a result of any claim or demand by any Transferring Employee or Joint Employee who is not a Transferring Employee arising out of the employment by the Service Provider or any of its Sub-Contractors of such employee provided that this arises from any act, fault or omission of the Service Provider or any sub-contractor on or after the Service Transfer Date, and which, for the avoidance of doubt, shall include the Service Provider's obligations as the Authority's agent pursuant to clause 26.1.3.
- 26.6.3 The Service Provider shall indemnify and keep indemnified the Authority from and against all Direct Losses in connection with or as a result of:
- (a) any claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider in respect of all or any of the Transferring Employees) arising from or connected with any failure by the Service Provider or any sub-contractor to comply with any legal obligation to such trade union, staff association or other employee representative under TUPE or the EC Business Transfers Directive and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer; and
- (b) any step or measure envisaged by the Service Provider and/or any sub-contractor in relation to employees affected by this Agreement; and save for the joint employment arrangements referred to in clause 26.1.2 above; and the change of identity of the employer occurring by virtue of TUPE to the Service Provider being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of the change in employer and whether such claim arises before or after the Service Transfer Date;
- 26.6.4 The Service Provider shall notify the Authority as soon as reasonably practicable of any claim or demand by a Transferring Employee and/or a Joint Employee who is not a Transferring Employee in relation to which the Service Provider will seek to rely upon the provisions of clause 26.6.1 and shall take no action to settle such claim without the Authority's consent (not to be unreasonably withheld or delayed). The Service Provider will agree to any reasonable request from the Authority to assume responsibility for the conduct of such claim and will provide the Authority with all reasonable assistance and co-operation requested by the Authority in relation thereto.
- 26.6.5 Notwithstanding any provision of this clause 26.6, if any dispute arises with regard to the indemnities given under clause 26.6.1 to 26.6.3, the Parties shall

seek to resolve the matter or matters in question in accordance with the Dispute Resolution Procedure.

26.7 TUPE Compliance on Termination

26.7.1 During the twelve (12) months prior to the expiry of the Contract Period or after the Authority has given notice of its intention to retender or terminate this Agreement and within twenty one (21) Calendar Days of being so requested to do so, the Service Provider shall fully and accurately disclose to the Authority any and all information in relation to all persons engaged in providing the Services including:

- (a) a list of employees employed by the Service Provider or any sub-contractor in the provision of the Services;
- (b) a list of agency workers, agents and independent contractors engaged by the Service Provider or any sub-contractor in the provision of the Services;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those persons; and
- (d) the terms and conditions of employment or other contract with such persons including the details set out in Schedule 18 (TUPE Information).

The Parties acknowledge that the TUPE Information may be anonymised.

26.7.2 The Service Provider shall notify the Authority as soon as reasonably practicable of any variation in the information provided under clause 26.7.1 above and shall provide the Authority with the revised and accurate information.

26.7.3 During the twelve (12) months prior to expiry of the Contract Period or where notice to terminate this Agreement for whatever reason has been given, the Service Provider shall not and shall procure that any sub-contractor shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (b) materially increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services or assign or re-deploy any employee employed to carry out duties unconnected with the Services to the duties connected with the Services.

26.8 **Obligations on Termination**

- 26.8.1 The Service Provider shall discharge all obligations and liabilities in respect of the Relevant Employees up to and including the Relevant Transfer Date.
- 26.8.2 The Service Provider shall indemnify and keep indemnified the Authority against Direct Losses caused to the Authority or any Future Service Provider by any inaccuracy or incompleteness in such information as is provided under 26.7.1 above or by any changes in the information which have not been communicated to the Authority (whether relating to the number, identity or details of the Relevant Employees or otherwise) which occur prior to the Relevant Transfer Date.
- 26.8.3 The Service Provider shall indemnify the Authority in full from and against all Direct Losses which the Authority and/or any Future Service Provider incurs arising from:
- (a) any act or omission of the Service Provider or any sub-contractor in relation to the Relevant Employees;
 - (b) any claim by an employee or former employee of the Service Provider or any sub-contractor (who is not a Relevant Employee), save where the employment liabilities arise as a result of any act or omission of the Authority or any Future Service Provider. For the avoidance of doubt, any claims arising out of the performance by the Joint Employees of the Statutory Functions are not included in this indemnity unless such claim or demand arises out of any act, fault or omission of the Service Provider; and
 - (c) any representations made by the Service Provider or any sub-contractor in relation to employment by the Authority and/or any Future Service Provider.
- 26.8.4 The Authority shall indemnify the Service Provider in full from and against all Direct Losses which the Service Provider incurs arising from any act or omission of the Authority in relation to the Relevant Employees.

26.9 **TUPE Transfer Commitments**

The parties agree that, unless provided for in these clauses already, they shall use their reasonable endeavours to act in accordance with the principles set out in Schedule 27 (TUPE Transfer Commitments), as applicable to each party.

26.10 **Staffing**

- 26.10.1 The Service Provider shall ensure that there are at all times employed in and about the provision of the Services sufficient staff who are properly and sufficiently trained, qualified, competent, careful, skilled, honest and experienced to ensure that the Services are provided at all times and shall ensure that adequate training is provided and maintained to all such staff to ensure that they are comprehensively trained to perform to the standard required especially in regard to:

- (a) the task or tasks to be performed;
- (b) all relevant Authority Policies and Legislation, and such other relevant guidelines as are reasonably notified to the Service Provider by the Authority from time to time;
- (c) all relevant provisions of this Contract;
- (d) all statutory requirements relevant to the Services; and
- (e) the need to maintain the highest standards of courtesy and consideration.

26.10.2 The Service Provider agrees that:

- (a) where any staffing or skill levels have been agreed as part of the Specification, those levels will be maintained throughout the Contract Term;
- (b) where any named staff have been agreed to be provided as part the Specification, those staff will be assigned to work on this Contract;
- (c) it has sufficient reserves of trained and competent staff within each skill level to provide the Services including sufficient reserves to provide cover for staff holidays, staff sickness, emergencies or other absence and any anticipated or actual peaks in demand for the Services; and
- (d) it will replace promptly any staff who are assigned to this Contract and who cease to be in its employment or under its control for whatever reasons and that such replacements shall have the broadly equivalent skill levels and shall in every way be suitable for the performance of the Services.

26.10.3 The Service Provider shall employ and/or train staff in accordance with all relevant Legislation and industry best practice.

26.11 Abuse of Staff

The Service Provider and the Authority shall liaise with the police in relation to the prosecution of any person for abuse of a member of the Service Provider's staff, agents or sub-contracts who is involved in the provision of the Services.

26.12 Disclosure and Barring Service checks on staff

26.12.1 The Service Provider shall procure that in respect of all potential staff or persons performing any of the Services who are identified as such on the list of Transferring Employees (each a **Named Employee**) before a Named Employee begins to perform any of the Services:

- (a) each Named Employee is questioned as to whether he or she has any Convictions; and

- (b) the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service including a check against the barred lists or in accordance with safeguarding legislation and guidance relating to working with children and/or vulnerable adults as appropriate in force from time to time in respect of each Named Employee; and
- (c) to the extent permitted by Legislation or Guidance a copy of the results of such check are notified to the Authority.

26.12.2 The Service Provider shall procure that no person who discloses any Convictions or who is found to have any Convictions following the results of a check with the Disclosure and Barring Service, or who has been placed on a barred list or otherwise identified as being unsuitable to work with vulnerable adults and/or children as appropriate is employed or engaged without the Authority's prior written consent.

26.12.3 The Service Provider shall procure that the Authority is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Service Provider (or any employee of a Sub-contractor involved in the provision of the Services). The parties agree that where such notification is made it shall be reasonable for the Authority to request for such a Named Employee to be removed immediately from the provision of the Services.

26.13 **Sub-contractors**

In the event that any of the Services are provided by a sub-contractor of any tier, the Service Provider shall impose or shall procure the imposition of obligations on the sub-contractors in the same terms as those imposed on the Service Provider pursuant to Clause 26 and shall procure that the sub-contractor complies with such terms. The Service Provider shall indemnify and keep the Authority indemnified in full against all Direct Losses incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Service Provider to comply with this Clause and/or any Sub-Contractors' failure to comply with such terms.

26.14 **Joint employment**

26.14.1 The Parties agree that in relation to the Joint Employees the Authority will have sole responsibility for the management, direction, instruction and appraisal of the performance of the Statutory Functions and will, in good faith, cooperate and assist the Service Provider in the handling of any disciplinary or grievance matters arising therefrom.

26.14.2 Neither the Service Provider nor the Authority will dismiss any Joint Employee or recruit a replacement for any Joint Employee whose employment terminates for any reason or recruit any additional employee who is to be employed jointly by the Authority and the Service Provider without the agreement of the other (such agreement not to be unreasonably withheld or delayed).

- 26.14.3 The Service Provider agrees that the Joint Employees will be permitted to perform the Statutory Functions at all times required by the Authority.
- 26.14.4 In circumstances where the termination by the Authority of the Joint Employee's obligation to perform the Statutory Functions gives rise to the redundancy of the Joint Employee (within the definition set out in section 139 of the Employment Rights Act 1996) the Authority will indemnify the Service Provider for any statutory and contractual redundancy costs payable to the Joint Employee, subject to the Service Provider having used all reasonable endeavours to redeploy the Joint Employee. The Parties will co-operate in order that the obligations on both employers with respect to any potential redundancy process are met fully, including, for the avoidance of doubt, where Joint Employees are pooled with Service Provider employees giving rise to a potential right to seek alternative employment or a re-deployment opportunities in the Authority as well as the Service Provider's Organisation.
- 26.14.5 In circumstances where the Authority ceases to be required to be an employer of the Joint Employees, the Parties agree and acknowledge that the Joint Employee will continue in the sole employment of the Service Provider. For the avoidance of doubt, where such cessation of requirement implies the activities delivered by the Joint Employees are subsequently carried out by the Service Provider there may be a Relevant Transfer in relation to the Authority's employment of the Joint Employee.

27 Compliance with Anti-discrimination Legislation [Authority Policy Clause]

- 27.1 The Service Provider (including its agents and employees) shall not, and shall procure that any Sub-Contractor shall not in the provision of the Services:
- 27.1.1 discriminate directly or indirectly, by way of victimisation or harassment against any person on grounds of race, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, sex or sexual orientation contrary to part 5 of the Equality Act 2010; and/or
- 27.1.2 discriminate directly or indirectly, by way of victimisation or harassment against any person on grounds of race, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, sex or sexual orientation contrary to any of the applicable provisions of the Equality Act 2010 which are or may come in to force and any codes of practice issued thereunder.
- 27.2 Insofar as the delivery of the Services constitutes the exercise of a public function, the Service Provider shall in the exercise of that function comply with the Public Sector Equality Duty and shall use its reasonable endeavours to:
- 27.2.1 eliminate (in each case whether direct or indirect) discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- 27.2.2 advance equality of opportunity between persons who share a relevant Protected Characteristic and persons who do not share it, which shall include:

- (a) removing or minimising disadvantages suffered by persons who share a relevant Protected Characteristic that are connected to that Protected Characteristic;
 - (b) taking steps to meet the needs of persons who share a relevant Protected Characteristic that are different from the needs of persons who do not share such relevant Protected Characteristic;
 - (c) encouraging persons who share a relevant Protected Characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low,
- 27.2.3 foster good relations between persons who share a relevant Protected Characteristic and persons who do not share it, which shall include:
- (a) tackling prejudice, and
 - (b) promoting understanding.
- 27.3 Where, in connection with this Agreement the Service Provider (including its agents and employees) or any Sub-Contractor is required to carry out work on the Authority's Premises or alongside the Authority's employees on any other premises they shall comply with the Authority's own employment policy and codes of practice relating to equality.
- 27.4 The Service Provider shall, and shall procure that any Sub-Contractor shall, notify the Contract Manager in writing on each Quarterly Date of any investigation of or proceedings brought against the Service Provider or any Sub-Contractor under the Equality Act 2010.
- 27.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of its obligations under this Agreement being in contravention of the Equality Act 2010, the Service Provider shall, and shall procure that any employee, Sub-Contractor or agent shall, free of charge:
- 27.5.1 provide any information reasonably requested by the Authority, as soon as reasonably practicable;
 - 27.5.2 attend any meetings as required and permit any of the Staff to attend;
 - 27.5.3 promptly allow the Authority and/or any person conducting an investigation access to any documents or data deemed by the Authority to be relevant;
 - 27.5.4 allow itself or any of its Staff to appear as witnesses in any ensuing proceedings; and
 - 27.5.5 cooperate fully and promptly in every way required by the person or body or Authority Related Party or their legal representatives conducting such investigation or acting on behalf of the Authority during the course of that investigation.
- 27.6 The Service Provider (including its agents and employees) shall, and shall procure that any Sub-Contractor shall, use reasonable endeavours to and ensure that in the provision

of the Services all reasonable steps are taken to assist the Authority to meet its equality objectives as published by the Authority from time to time.

27.7 The Service Provider (including its agents and employees) shall, and shall procure that any Sub-Contractor shall, ensure that none of its employees or applicants receive less favourable treatment because of a Protected Characteristic and that wherever reasonable, the employee/applicant is given any help they need to obtain their full potential for the benefit of themselves or the Service Provider or the Authority.

27.8 The Service Provider (including its agents and employees) shall, and shall procure that any Sub-Contractor shall, ensure that none of the Service Users receive less favourable treatment because of a Protected Characteristic and that wherever reasonable, Service Users are given any help they need to obtain full access and benefit of the Services.

27.9 The Service Provider shall on reasonable notice and in any event within fourteen (14) Business Days from such a request provide such information as the Authority may reasonably request, for the purpose of:

27.9.1 assessing the Service Provider's compliance with this clause 27 (Compliance with Anti-discrimination legislation); and/or

27.9.2 assisting the Authority to comply with its Public Sector Equality Duty.

27.10 The Service Provider shall monitor the representation among its and any Sub-Contractor's employees engaged in the provision of the Services of persons of different Protected Characteristics, having regard to the Authority's procedures for monitoring representation among its own employees.

27.11 Where it appears to the Service Provider that there are groups of persons with a particular Protected Characteristic who are under-represented in the Service Provider's or any Sub-contractor's workforce engaged in the provision of the Services in comparison with the population as a whole, the Service Provider shall take such steps as are lawful under the Equality Act 2010 to improve the relevant representation.

27.12 The Service Provider shall as part of each Annual Service Report provide an update to the Authority detailing its and its Sub-Contractors' compliance with this clause 27 (Compliance with Anti-discrimination legislation). The Authority shall be entitled to request additional information and the Service Provider shall provide such additional relevant information within a reasonable period and in any event within fourteen (14) Business Days.

Part 6: Premises and Assets

28 Access to Authority Premises

The Authority shall give the Service Provider access to and/or use of the Authority's Premises for the provision of the Services on the terms set out in Schedule 9 (Access to Authority's Premises).

29 Assets and Equipment

29.1 The Service Provider shall be responsible for ensuring that it has at its disposal sufficient Assets, equipment and consumables to provide the Services in accordance with the

requirements of this Agreement, and shall maintain such Assets and Authority Assets in accordance with the provisions of clause 30 (Maintenance).

29.2 Initial Transferring Assets

29.2.1 The Authority shall transfer the Initial Transferring Assets to the Service Provider for use in the provision of the Services on the following terms:

- a) the price payable by the Service Provider for the Initial Transferring Assets shall be one pound (£1) (if demanded) unless otherwise agreed in writing. Within five (5) Business Days of receipt by the Service Provider of an invoice, the Service Provider shall pay the Authority the sum payable for the Initial Transferring Assets; and
- b) the Authority shall forthwith transfer to the Service Provider legal and beneficial title to all Initial Transferring Assets and shall forthwith release to the Service Provider the control of all such Initial Transferring Assets.

29.2.2 Save as notified to the Service Provider in writing prior to the Agreement Date, the Authority warrants that it has full legal title to the Initial Transferring Assets and has the legal right to transfer such Initial Transferring Assets to the Service Provider.

29.2.3 Neither the Authority, its agents nor employees shall be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever of the Initial Transferring Assets.

29.2.4 The Service Provider warrants that it has made all necessary inspections of the Initial Transferring Assets to satisfy itself of their conditions and suitability for the performance of the Services.

29.2.5 On expiry or termination of this Agreement, the Service Provider shall forthwith cease using the Initial Transferring Assets and forthwith transfer to the Authority (or an organisation nominated by the Authority) the legal and beneficial title to the Initial Transferring Assets at nil cost to the Authority.

29.3 Authority Assets

29.3.1 With effect from the Service Transfer Date, and for the full term of this Agreement, the Authority shall make the Authority Assets available to the Service Provider on the following basis:

- a) the Authority shall grant the Service Provider a right to use the Authority Assets, and
- b) the Authority shall grant the Service Provider access to the Authority Assets,

each to the extent necessary for the provision by the Service Provider of the Services.

- 29.3.2 The Service Provider acknowledges that the Authority Assets are made available by the Authority to the Service Provider on an "as is" basis and the Authority excludes all representations or warranties as to the merchantability, condition, quality, suitability or fitness for any purpose of the Authority Assets to the maximum extent permitted by law.
- 29.3.3 The Service Provider acknowledges that it has had the opportunity of inspecting the Authority Assets to satisfy itself as to the condition of such assets and their suitability and sufficiency to perform the Services.
- 29.3.4 Insurance risk in the Authority Assets (as are in the Service Provider's care and control), the Assets, the Exclusive Assets, the Initial Transferring Assets and the Shared Assets shall rest with the Service Provider. The Service Provider shall make such notifications as may be necessary to its insurer to ensure that any necessary insurances remain valid and in effect and where it is able to (having used its reasonable endeavours) the Service Provider shall note the Authority's interest in the Authority Assets in any such policy.
- 29.3.5 Where the Service Provider acquires Assets, including any replacement of any element of the existing Authority Assets, the Service Provider shall:
- a) first seek the written consent of the Authority to such acquisition or replacement;
 - b) ensure that all such new Assets are of a standard which meets Good Industry Practice and are fit for the purpose of providing the Services in accordance with the terms of this Agreement; and
 - c) ensure that the parties (acting reasonably) agree the categorisation of those Assets acquired as Exclusive Assets or Shared Assets and subject to clause 29.3.10 a description of the Assets shall then be added to the relevant part of the Rolling Inventory.
- 29.3.6 On expiry or termination of this Agreement the Service Provider shall cease using such Authority Assets as are then in the Service Provider's possession and shall return any such Authority Assets which are not located at the Authority's Premises, to nominated Authority premises within Barnet at nil cost to the Authority.
- 29.3.7 The Service Provider shall write down the Exclusive Assets and the Shared Assets to determine the Net Book Value.
- 29.3.8 The Service Provider shall demonstrate its compliance with clauses 29.3.10 and 29.3.7 by allowing the Authority access to its records from time to time in accordance with clauses 36 (Service Provider's Records and Audit) and 35 (Open Book Accounting).
- 29.3.9 In relation to Exclusive Assets and Shared Assets the Service Provider shall, as part of its proposal for:
- a) the implementation of a Change (made pursuant to Schedule 14 (Change Protocol)), or

- b) the implementation of a Business Case (made pursuant to Schedule 15 (Special Project Approval Procedure)).

in each case, provide details of the initial purchase price of any Exclusive Assets and/or Shared Assets and the period over which each such asset is to be written down in order to determine its Net Book Value.

29.3.10 The Service Provider shall in the Rolling Inventory compile and maintain a complete, accurate and up-to-date register of the Assets and Authority Assets which have a value of £250 or greater (indexed) (unless the Authority requests that Assets and Authority Assets of less than £250 (indexed) are also included on the Rolling Inventory). The Rolling Inventory shall as a minimum contain the following information (where relevant):

- (a) number of Assets and Authority Assets;
- (b) classification as Initial Transferring Asset, Authority Asset, Exclusive Asset or Shared Asset;
- (c) when the Asset or Authority Asset is to be replaced or is due for replacement;
- (d) name and description of the Asset or Authority Asset and associated peripherals;
- (e) location of the Asset;
- (f) whether the Asset is the subject of an operating lease, finance lease or licence;
- (g) identifier (serial number);
- (h) date the Asset was purchased, leased or licenced (as the case may be) and age of the asset;
- (i) original costs for the Assets;
- (j) depreciation details for the current year for Exclusive Assets and Shared Assets;
- (k) the period over which the Exclusive Asset and Shared Asset are to be written off in order to determine its Net Book Value and the Net Book Value; and
- (l) the service or services for which the Asset will be used.

29.3.11 The Service Provider shall not change the categorisation of any Assets or Authority Assets without the prior written consent of the Authority.

29.3.12 The Service Provider shall update the Rolling Inventory annually and provide a copy to the Contract Manager and the Partnership Operations Board no later than twenty (20) Business Days after each anniversary of the Service Transfer Date. The Authority may provide comments to the Service Provider on the

Rolling Inventory within fifteen (15) Business Days of receipt of the Rolling Inventory and if such comments are not agreed by the parties within fifteen (15) Business Days of the Authority issuing such comments, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Upon the parties agreeing the updated Rolling Inventory or the matter having been resolved as part of the Dispute Resolution Procedure, the updated Rolling Inventory shall be initialled in hard copy by both parties and an electronic version issued to the Authority by the Service Provider.

- 29.3.13 The Service Provider shall be permitted to use Shared Assets to provide services similar to the Services to other organisations provided that:
- (a) such use shall not adversely affect the delivery of the Services; and
 - (b) the Authority agrees in writing prior to the commencement of such use.
- 29.3.14 The Service Provider shall not use the Authority's name, logo or trade marks on any of the Assets without the Authority's prior written consent.
- 29.3.15 The Service Provider shall indemnify the Authority against all damages to any item of Authority Assets caused by a failure or defect in the Service Provider Software or Assets or by the acts or omission of the Service Provider or the Service Provider Related Parties.
- 29.3.16 Subject to clause 29.2.4 and 29.2.5 in the event of termination or expiry of this Agreement the Authority shall have the option exercisable within six (6) months of the Termination Date or Expiry Date to:
- (a) purchase from the Service Provider at their Net Book Value any or all of the Exclusive Asset(s), unless:
 - i. the cost of any such Exclusive Asset(s) has been fully paid for through the Periodic Service Payment or otherwise amortised at the time of expiry or termination of this Agreement; or
 - ii. any such Exclusive Asset(s) were transferred and delivered to the Service Provider as Initial Transferring Assets in accordance with clause 29.2, and in which case such Exclusive Asset(s) shall be transferred to the Authority at nil cost; and
 - iii. the cost of any such Exclusive Asset(s) has been partly paid for through the Periodic Service Payment or otherwise partly amortised at the Expiry Date or Termination Date then a proportional part payment shall be deducted from the Net Book Value;
 - (b) receive (or a nominated party receives) a non-exclusive licence on reasonable commercial terms and at a reasonable commercial rental for the non-exclusive use of the Shared Assets (or a part thereof as nominated by the Authority);
- 29.3.17 If the Authority exercises its option to purchase the Exclusive Assets (or any part of them), the Service Provider shall yield up the Exclusive Assets to the

Authority in accordance with its obligations contained in this Agreement and shall execute such instruments as are necessary to transfer its rights, title and interest in and to the Exclusive Assets to the Authority.

29.4 This clause 29 shall be without prejudice to the provisions of clauses 16 to 19 (inclusive) and the parties agree that, in the event of any conflict between those provisions and this clause 29 relating to Intellectual Property Rights, the provisions of clauses 16 to 19 (inclusive) shall prevail.

29.5 The Authority shall enter into a contract for minor works with the Service Provider to conduct the remedial / repair work to the crematorium as set out in Schedule 39 (Schedule of Works for the crematorium)¹.

30 **Maintenance**

30.1 The Service Provider shall ensure on a continuing basis that at all times the Assets and (to the extent relevant) the Authority Assets are maintained and refreshed at no additional cost to the Authority to ensure:

30.1.1 the Services are performed to the Contract Standard and the Service Performance Levels from the Service Transfer Date until the earlier of the Expiry Date or the Termination Date;

30.1.2 with the exception of any Software which shall be dealt with in accordance with clause 16 and/or clause 18, it owns the Intellectual Property Rights or obtains licences from the owner of those rights (to the extent they exist) in the Assets used to perform the Services and shall procure that such licences are freely transferable to the Authority on termination or expiry of this Agreement; and

30.1.3 the Assets and (to the extent relevant) the Authority Assets which are required by the Authority or any Future Service Provider are handed back to the Authority or the Future Service Provider (as the Authority shall direct) on the Expiry Date or the Termination Date in a condition complying with the requirements of this clause 30 (Maintenance) and the Output Specifications.

30.2 If the Authority reasonably believes that the Service Provider is in breach of its obligations under clause 30.1 (Maintenance) then it may carry out (or procure) a survey of the Assets and Authority Assets conducted by suitably qualified independent surveyor (not being an employee of the Authority) to assess whether the Assets and Authority Assets have been and are being maintained and refreshed by the Service Provider in accordance with its obligations under clause 30.1. The cost of the independent survey shall be borne by the Service Provider.

30.3 The Authority shall notify the Service Provider in writing a minimum of ten (10) Business Days in advance of the date on which it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Service Provider for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Service Provider's ability to provide the Services.

¹ [JCT Minor Works Contract – TBC.]

30.4 When carrying out any survey the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider. The cost of the survey shall, except where clause 30.5 below applies, be borne by the Authority. The Service Provider shall give the Authority, or any third party acting on its behalf, free of charge any reasonable assistance required by the Authority during the carrying out of any survey.

30.5 If the survey shows that the Service Provider has not complied or is not complying with its obligations under clause 30.1 the Authority shall:

30.5.1 notify the Service Provider of the rectification and/or maintenance work which is required to bring the condition of the Assets and Authority Assets to the standard they would have been in if the Service Provider had complied with or was complying with its obligations under clause 30.1 (Maintenance);

30.5.2 specify a reasonable period within which the Service Provider must carry out such rectification and/or maintenance work and/or technology refresh work; and

30.5.3 be entitled to be reimbursed by the Service Provider for the cost of the survey.

30.6 If the Service Provider has been notified under clause 30.5.1 that rectification and/or maintenance work is required, the Service Provider shall carry out such rectification and/or maintenance work and/or technology refresh work within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense. If the Service Provider fails to carry out such rectification, maintenance work and/or refresh work within the specified period the Authority shall be entitled to carry out such work itself or engage a third party to do so and be entitled to be reimbursed by the Service Provider for the reasonable cost of such work. The Service Provider shall provide all reasonable assistance to the Authority and any third party engaged by the Authority to facilitate the carrying out of the rectification, maintenance or refresh work.

30.7 Any Disputes arising out of this clause 30 (Maintenance) shall be resolved in accordance with the Dispute Resolution Procedure.

30.8 **Surveys on Expiry**

30.8.1 **Final Survey**

(a) Eighteen (18) months prior to the Expiry Date, the Authority shall be entitled to procure the carrying out by a suitably qualified independent surveyor (not being an employee of the Authority) of a final survey of the Assets to assess whether they have been and are being maintained by the Service Provider in accordance with its obligations under clause 30.1 (Maintenance).

(b) The Authority shall notify the Service Provider in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Service Provider for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that

carrying out the final survey on the notified date would materially prejudice the Service Provider's ability to provide the Services.

30.8.2 **Minimisation of Disruption**

Where the Authority carries out the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider. The Service Provider shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority and the Service Provider equally.

30.8.3 **Results of Survey**

If the final survey shows that the Service Provider has not complied with or is not complying with its obligations under clause 30.1 (Maintenance) the Authority shall:

- (a) notify the Service Provider of the rectification and/or maintenance work which is required to bring the condition of the relevant Assets to the standard it would have been in if the Service Provider had complied or was complying with its obligations under clause 30.1 (Maintenance) (the Required Standard);
- (b) specify a reasonable period within which the Service Provider must carry out such rectification and/or maintenance work; and
- (c) recover the cost of the survey from the Service Provider by means of a withdrawal from the Retention Fund Account or deduction from the next payment of the Periodic Service Payment.

30.8.4 **Maintenance Work**

The Service Provider shall carry out such rectification and/or maintenance work notified pursuant to clause 30.8.3(a) (the **Outstanding Work**) in order to reach the Required Standard within the period reasonably specified and any costs it incurs in carrying out the Outstanding Works shall be at its own expense.

30.8.5 **Retention Fund**

If the Service Provider has been notified under clause 30.8.3 (Results of Survey) that rectification and/or maintenance work is required, twelve (12) months prior to the Expiry Date the Authority shall (to the extent that the Outstanding Work has not been carried out in the interim) deduct the costs of that work as quantified by that survey referred to in clause 30.8.1 (Final Survey) from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Periodic Service Payment and pay such amount into an interest bearing account (the **Retention Fund Account**) until this Agreement has expired or terminated (subject to clause 30.8.6 (Costs)).

30.8.6 **Costs**

If and to the extent that the Service Provider carries out the Outstanding Work to the Required Standard within the specified period, the Authority, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, shall reimburse the Service Provider's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Service Provider. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Service Provider's costs the Service Provider shall bear the balance of such costs itself.

30.8.7 **Failure to Carry Out Work**

If and to the extent that the Service Provider fails to carry out Outstanding Work to the Authority's reasonable satisfaction within the period specified in clause 30.8.3(b), the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Service Provider's expense and shall make withdrawals from the Retention Fund Account or, where there is insufficient funds in the Retention Fund Account, make deductions from the Periodic Service Payment to pay for such rectification and/or maintenance work or recover such amounts from the Service Provider as a debt payable on demand.

30.8.8 **Balance of Fund**

If:

- (a) all the rectification and/or maintenance work identified by the Authority has been carried out to the Authority's reasonable satisfaction;
- (b) all such work has been paid for by the Service Provider; and
- (c) no termination notice given in accordance with this Agreement is outstanding,

then the Authority shall pay any credit balance on the Retention Fund Account to the Service Provider as soon as practicable.

31 **Business Continuity and Exit Plan**

31.1 The parties shall comply with the provisions of the Business Continuity Plan and the Exit Plan and the Service Provider shall ensure that it is able to implement the Business Continuity Plan and Exit Plan at any time in accordance with their terms.

31.2 The Service Provider shall review, update and test the Business Continuity Plan and Exit Plan on a regular basis (and in any event not less than once in every twelve (12) month period and within six months before the expiry of this Agreement). Subject to clause 31.3, the Authority may require the Service Provider to conduct additional reviews and tests of the Business Continuity Plan and Exit Plan where the Authority (acting reasonably) considers it necessary, including where there has been any change to the Services, the introduction of Special Projects in accordance with Schedule 15 (Special Projects Approval Procedure) or any underlying business processes, or on the occurrence of any

event which may increase the likelihood of the need to implement the Business Continuity Plan.

- 31.3 If the Authority requires an additional review and/or test of the Business Continuity Plan and the Exit Plan it shall give the Service Provider written notice and the Service Provider shall conduct the review and/or test in accordance with the Authority's requirements and the relevant provisions of the Business Continuity Plan and Exit Plan. The Service Provider's costs of the additional test shall be borne by the Authority unless the Business Continuity Plan and/or Exit Plan fail the additional review and/or test in which case the Service Provider's costs of that failed review/test shall be borne by the Service Provider.
- 31.4 Following each review/test, the Service Provider shall send to the Authority a written report summarising the results of the review/test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those review/tests.
- 31.5 During the Service Period the Service Provider shall provide the Authority with a pack of information for the purpose of covering circumstances when the Service Provider shall cease to perform the Services (the **Data Pack**). The Data Pack shall contain the following:
- 31.5.1 information relating to its workforce, its pay and terms and conditions of employment (as may be required and specified by the Authority);
 - 31.5.2 a Rolling Inventory maintained and updated by the Service Provider so that it provides a comprehensive record of the Initial Transferring Assets (categorised in the Rolling Inventory as Exclusive Assets or Shared Assets) as the same may be repaired, refreshed and replaced from time to time; and
 - 31.5.3 such other data and information as is necessary for business continuity purposes.
- 31.6 The first Data Pack shall be provided no later than six (6) months after the Service Transfer Date. The Service Provider shall update the Data Pack annually throughout during the Service Period and within six months before the expiry of this Agreement.
- 31.7 Any Disputes arising out of this clause 31 (Business Continuity and Exit Plan) shall be resolved in accordance with the Dispute Resolution Procedure provided that pending such resolution the Service Provider shall nevertheless perform its obligations under this clause 31 including the implementation of the Business Continuity Plan and Exit Plan.

Part 7: Payment and Audit Provisions

32 Payment and Reporting

32.1 Report, Invoice and Payment for Periodic Payment

- 32.1.1 The Authority shall pay the Service Provider the Periodic Service Payment in respect of each Service Charge Payment Period, calculated in accordance with Schedule 4 (Payment Mechanism).
- 32.1.2 No later than twelve (12) days prior to the beginning of each Service Charge Payment Period the Service Provider shall submit to the Authority:

- (a) a report in the form set out in Schedule 4 (Payment Mechanism) detailing the amount which the Service Provider believes it is entitled to be paid by the Authority for that Service Charge Payment Period in relation to the Periodic Service Payment, the amount (if any) which the Service Provider believes the Authority is entitled to deduct from the Periodic Service Payment in respect of previous Service Charge Payment Period and the amount of all adjustments to be applied to the Periodic Service Payment in accordance with paragraph 19 of the Payment Mechanism (a **Report One**); and
- (b) an invoice (an Invoice One) for the amount shown by the relevant Report One as owing by the Authority to the Service Provider and for any VAT payable by the Authority in respect of that amount.

32.1.3 Subject to clause 32.3 (Disputed Amounts), the Authority shall pay the amount stated in any Invoice One submitted under clause 32.1.2 (Report and Invoice) on or before the later of:

- (a) twelve (12) days following submission of such an Invoice One; or
- (b) the fifth (5th) day of the Service Charge Payment Period,

The Authority shall be not be liable to pay the Periodic Service Payment in relation to a Service Charge Payment Period until the later of limb (a) or (b) above has occurred and interest shall not be payable in relation to the Periodic Service Payment prior to such dates (subject to clause 32.3).

32.1.4 Where any Report One shows a net amount owed by the Service Provider to the Authority, the Service Provider shall at the option of the Authority either:

- (a) pay that amount to the Authority within twenty (20) Business Days of that Report One; or
- (b) carry forward that amount to the Report One submitted by the Service Provider to the Authority in the following Service Charge Payment Period in reduction of amounts which would otherwise have been owed by the Authority to the Service Provider.

32.1.5 The parties agree that the first Report One and Invoice One shall be issued on or shortly after the date of this Agreement, and that payment shall be made within ten (10) days of receipt of this Report One and Invoice One. This first payment shall relate to the first Service Charge Payment Period.

32.2 **Report, Invoice and Payment for Special Projects**

32.2.1 The Authority shall pay the Service Provider in respect of Special Project following completion of each work stage agreed pursuant to Schedule 15 (Special Projects Approval Procedure), calculated in accordance with Schedule 4 (Payment Mechanism) and Schedule 15 (Special Projects Approval Procedure).

32.2.2 The Service Provider shall give not less than five (5) Business Days' notice to the Contract Manager of the date when it considers a work stage will be completed and the Contract Manager shall, within such five (5) Business Days or longer notice period carry out any inspections necessary to confirm that the relevant work stage has been completed. As soon as practicable, and in any event, within five (5) Business Days of any such inspection, the Contract Manager shall either:

- (a) confirm that the relevant work stage has been completed; or
- (b) advise what further works need to be carried out or what further steps need to be taken before the relevant work stage can be certified as being complete.

If the work stage is not completed, the procedure set out in this clause shall be repeated as often as is necessary (but with the notice period being reduced from five (5) to two (2) Business Days) until the relevant work stage is confirmed by the Authority as completed. A work stage shall be deemed to have been completed when the Contract Manager confirms it has been completed.

32.2.3 Within ten (10) Business Days of confirmation of completion of each work stage in accordance with clause 32.2.2, the Service Provider shall submit to the Authority:

- (a) a report in the form set out in Schedule 4 (Payment Mechanism) detailing the amount which the Service Provider believes it is entitled to be paid by the Authority in relation to the confirmed work stage of the Special Projects (**Report Two**);
- (b) a copy of the confirmation provided by the Authority in relation to the relevant work stage; and
- (c) an invoice (an Invoice Two) for the amount shown by the report as owing by the Authority to the Service Provider and for any VAT payable by the Authority in respect of that amount.

32.2.4 Subject to clause 32.3 (Disputed Amounts), the Authority shall pay the amount stated in any Invoice Two submitted under clause 32.2.3 within twenty-five (25) Business Days of its submission.

32.2.5 Where a Report Two shows a net amount owed by the Service Provider to the Authority, the Service Provider shall at the option of the Authority either:

- (a) pay that amount to the Authority within twenty (20) Business Days of the report; or
- (b) carry forward that amount to the Report Two submitted by the Service Provider to the Authority in the following Payment Period in reduction of amounts which would otherwise have been owed by the Authority to the Service Provider.

32.2A

Report, Invoice and Payment for Income Payment

- 32.2A.1 Where paragraph 14.3.4 of Schedule 4 (Payment Mechanism) applies (in relation to Payment Three), the Authority shall pay the Service Provider the Income Payment calculated in accordance with paragraph 14.3 and 28 of Schedule 4 (Payment Mechanism).
- 32.2A.2 Within five (5) days of the beginning of each Payment Period the Service Provider shall submit to the Authority a report in the form set out in paragraph 14.3.6 of Schedule 4 (Payment Mechanism) detailing inter alia the amount of Income received during that Service Charge Payment Period.
- 32.2A.3 Within five (5) days of the beginning of each Guaranteed Income Payment Period (but excepting the first Guaranteed Income Payment Period) the Service Provider shall submit to the Authority:
- (c) a report in the form set out in paragraph 14.3.6 of Schedule 4 (Payment Mechanism) detailing the amount (if any) which the Service Provider believes it is entitled to be paid by the Authority or which is payable to the Authority by the Service Provider for the previous Guaranteed Income Payment Period in relation to the Income Payment, in accordance with paragraph 28 of the Payment Mechanism (**Report Three**); and
 - (d) an invoice for the amount (if any) shown by the Report Three as owing by the Authority to the Service Provider and for any VAT payable by the Authority in respect of that amount.
- 32.2A.4 Subject to clause 32.3 (Disputed Amounts), the Authority shall pay the amount stated in any invoice submitted under clause 32.2A.3 by the later of:
- (e) twelve (12) days following submission of such invoice; and
 - (f) the seventeenth (17th) day of the Guaranteed Income Payment Period in which the invoice was submitted.-

The Authority shall not be liable to pay the Income Payment in relation to a Guaranteed Income Payment Period until the later of limb (a) or (b) above occurs and interest shall not be payable in relation to the Income Payment prior to such dates (subject to clause 32.3).

- 32.2A.3 Where a Report Three shows a net amount owed by the Service Provider to the Authority (in accordance with the provisions of paragraph 14.3.5 of Schedule 4 (Payment Mechanism)), the Service Provider shall pay that amount to the Authority within ten (10) Business Days of that Report Three or, at the option of the Authority, carry forward that amount to the next Guaranteed Income Payment Period in reduction of amounts which would otherwise have been owed by the Authority to the Service Provider.

32.3

Disputed Amounts

If the Authority disputes:

- (a) the Service Provider's entitlement to any part of the amount claimed by the Service Provider pursuant to clause 32.1 (Report, Invoice and Payment for Periodic Payment) in respect of any Service Charge Payment Period;
- (b) the Service Provider's entitlement to any part of the amount claimed by the Service Provider pursuant to clause 32.2 (Report, Invoice and Payment for Special Projects) in relation to Special Projects,
- (c) the Service Provider's entitlement to any part of the amount claimed by the Service Provider pursuant to clause 32.2A (Report, Invoice and Payment for Income Payment) in respect of any Guaranteed Income Payment Period;

the following provisions of this clause 32 (Payment) shall apply.

- 32.3.2 The Authority shall notify the Service Provider in writing within twelve (12) days of receipt by the Authority of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority disputes (a **Disputed Amount**) and submit to the Service Provider such supporting evidence as the Authority may have.
- 32.3.3 The Authority may withhold payment of any Disputed Amount in relation to clause 32.1 (Payment and Reporting) or clause 32.2 (Report, Invoice and Payment for Special Projects), or clause 32.2A (Report, Invoice and Payment for Income Payment) pending agreement or determination of the Service Provider's entitlement in relation to the Disputed Amount.

32.4 Response to Authority Notice

- 32.4.1 Within ten (10) Business Days following receipt by the Service Provider of any notice served by the Authority pursuant to clause 32.3 (Disputed Amounts), the Service Provider shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Service Provider indicates that it does agree, or if the Service Provider fails to make such a response within that time limit, in relation to disputed amounts under clause 32.1 (Report, Invoice and Payment for Periodic Payment), clause 32.2 (Report, Invoice and Payment for Special Projects) or clause 32.2A (Report, Invoice and Payment for Income Payment) the Authority shall be entitled:
 - (a) to retain on a permanent basis any amounts withheld pursuant to clause 32.3 (Disputed Amounts); and
 - (b) to reclaim from the Service Provider the amount of any over-payment which may have been made to the Service Provider together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

32.5 Dispute

If the Service Provider responds (pursuant to clause 32.4 (Response to Authority Notice)) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause 32.3 (Disputed Amounts), the matter or matters in question shall be resolved in accordance with the Dispute Resolution Procedure.

32.6 Determination of Dispute

If the determination of any Dispute conducted pursuant to clause 32.5 (Dispute) shows that:

- 32.6.1 the Authority has withheld any amount which the Service Provider was entitled to be paid; or
- 32.6.2 the Service Provider has claimed under clause 32.1 (Report, Invoice and Payment for Periodic Payment) or clause 32.2 (Report, Invoice and Payment for Special Projects), or clause 32.2A (Report, Invoice and Payment for Income Payment) any amount which it was not entitled to be paid; or
- 32.6.3 the Service Provider has not paid any amount which the Authority was entitled to be paid,

the Authority shall either pay such amount to the Service Provider or the Service Provider shall repay such amount to the Authority with interest as the case may be on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over payment was made (in the case of excessive claims by the Service Provider) until all relevant monies have been paid in full and whether before or after determination.

32.7 Rights of Set Off

The Service Provider shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Service Provider under this Agreement which has fallen due and payable against any amount due to the Service Provider under this Agreement.

32.8 Set Off and Disputed Amounts

If the payment or deduction of any amount referred to in clause 32.7 (Rights of Set Off) is disputed then any undisputed element of that amount shall be paid and the disputed element shall be resolved in accordance with the Dispute Resolution Procedure.

32.9 VAT on Payments

- 32.9.1 All amounts due under this Agreement are exclusive of VAT.
- 32.9.2 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the **Recipient**) shall in addition pay the person making the supply (the **Supplier**) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

32.9.3 Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

32.9.4 The Service Provider shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Service Provider.

32.10 **Indexation**

32.10.1 The Periodic Service Payment shall be indexed in accordance with the provisions of Schedule 4 (Payment Mechanism).

32.10.2 In the event of a Dispute regarding the adjustments to be made in accordance with clause 32.10 (Indexation), or as to the proper adjustment to be made pursuant to clause 32.10.1, such Dispute shall be resolved in accordance with Schedule 16 (Dispute Resolution Procedure).

32.11 **Capital Contribution**

32.11.1 On or following the date of this Agreement, the Service Provider shall issue an invoice to the Authority for the Capital Contribution, in accordance with Schedule 4. This invoice shall be paid by the Authority within ten (10) days of the date of issue.

32.12 **Payment of Service Deductions by the Service Provider**

32.12.1 The Authority shall on a monthly basis (excluding any months in which no Service Deductions apply), raise an invoice on the Service provider in respect of Service Deductions payable in accordance with Schedule 4 (Payment Mechanism). The Service Provider shall pay the sum stated in such invoice to the Authority within twenty (20) Business Days of receiving the invoice.

33 **Financial Adjustments**

33.1 In calculating the amount of any payment of the Periodic Service Payment the Authority shall be entitled to:

33.1.1 make any adjustments to the amount claimed in accordance with the Payment Mechanism;

33.1.2 make adjustments as a result of any budgetary change in accordance with clause 37.5(Budget Control);

33.1.3 make adjustment as a result of a Year 7 Review in accordance with clause 6.1 (Year 7 Review);

33.1.4 make adjustments to the amount claimed in accordance with clause 23 (Emergencies);

- 33.1.5 make adjustments to the amount claimed for any Change as may arise from the application of the Change Protocol;
- 33.1.6 make adjustments as a result of a partial termination in accordance with clause 54 (Partial Termination);
- 33.1.7 make any arithmetical or mathematical corrections to any errors in the amount claimed that it considers necessary;
- 33.1.8 set-off any amounts due under clause 32.7 (Rights of Set-Off); and
- 33.1.9 deduct or withhold any other amounts which may be properly deducted or withheld under this Agreement, including the Payment Mechanism.

33.2 **Updating the Financial Model and Financial Proforma**

Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Agreement or where the parties agree otherwise) be determined in accordance with this clause 33 (Financial Adjustments). Where for the purposes of this clause 33 (Financial Adjustments) the Financial Model and Financial Proforma are to be adjusted by reference to a Relevant Event, this shall be carried out by the Service Provider, and agreed by the Authority. The adjustments to the Financial Model and Financial Proforma shall reflect the impact of any prior Relevant Event on the version of the Financial Model and Financial Proforma applicable immediately prior to the relevant adjustment and shall reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken, including the effect of Estimated Change in Project Costs. In calculating any Change in Costs and any Change in Revenue, and in assessing other adjustments to be made to the Financial Model and Financial Proforma, the Service Provider shall be entitled to take into account, inter alia:

- 33.2.1 reasonable economic assumptions prevailing at the time; and
- 33.2.2 changes in the prospective Services arising as a result of the Relevant Event,

provided that the Authority shall not be required (and the Service Provider shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Service Provider bears under the terms of this Agreement, including (to the extent so borne by the Service Provider under this Agreement) changes in VAT rates and taxation rates.

33.3 **Replacement of Financial Model and Financial Proforma**

Any Financial Model and Financial Proforma produced following adjustments in accordance with this clause 33 (Financial Adjustments) shall become the Financial Model and Financial Proforma for the purposes of this Agreement until its further amendment in accordance with this Agreement.

33.4 **Amendments to Logic and/or Formulae**

Where it is necessary to amend the logic or formulae incorporated in the Financial Model and Financial Proforma to permit adjustments to be made, this shall be done to the extent

necessary and in accordance with generally accepted accounting principles so that the Financial Model and Financial Proforma is fit for purpose.

33.5 Errors in the Financial Model and Financial Proforma

33.5.1 The Financial Model and Financial Proforma shall be the sole responsibility of the Service Provider and the Service Provider shall be liable for any errors or omissions therein.

33.5.2 The Service Provider shall not be entitled to claim any adjustment to the Periodic Service Payment or otherwise arising from any such errors or omissions.

33.6 Copies of the Revised Financial Model and Financial Proforma

Following any change to the Financial Model and Financial Proforma under the provisions of this clause 33 (Financial Adjustments), the Service Provider shall promptly deliver a copy of the revised Financial Model and Financial Proforma to the Authority in the same form as is established at the date of this Agreement or in such other form as may be agreed between the parties.

34 Change In Law

34.1 Qualifying Change in Law

34.1.1 If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects.

34.1.2 If the Service Provider provides a notice under Clause 34.1.1 to the Authority, the Authority shall within five Business Days notify the Service Provider as to whether such changes constitutes in whole or in part a Qualifying Change in Law or is a project connected with the Services and may constitute a Special Project.

34.1.3 Upon the Service Provider receiving notice from the Authority that such change constitutes a Qualifying Change in Law, the Service Provider shall give written details of its opinion of:

- i any necessary change to the Services giving full details of the procedure for implementing the change in the Services;
- ii whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;
- iii whether relief from compliance with obligations is required, including the obligation of the Service Provider to meet the requirements in the Output Specifications during the implementation of any relevant Qualifying Change in Law;
- iv any loss of revenue or additional costs that will result from the relevant Qualifying Change in Law;

- v any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and
- vi any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Contract Period, in each case giving in full detail the procedure for implementing the change in the Services.

Responsibility for the costs of implementation (and any resulting variation of the Periodic Service Payment) shall be dealt with in accordance with clauses 34.2 to 34.5 below.

34.1.4 If the Authority notified the Contractor that the change constitutes a Special Project, the Council may seek a business case from the Service Provider in relation to the change at its absolute discretion in accordance with the Special Project Approval Procedure under Schedule 15 (Special Projects Approval Procedure).

34.2 Parties to Discuss

As soon as practicable after receipt of any notice from the Service Provider under clause 34.1 above, the parties shall discuss and agree the issues referred to in clause 34.1 above and any ways in which the Service Provider can mitigate the effect of the Qualifying Change in Law, including:-

- 34.2.1 providing evidence that the Service Provider has used reasonable endeavours (including (where practicable) the use of competitive quotes) to minimise any increase in its own costs and maximise any reduction in its own costs and to oblige its Sub-Contractors to do likewise;
- 34.2.2 demonstrating how any expenditure (including without limitation any Capital Expenditure) to be incurred or avoided is being measured and will be managed in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Service Provider in estimating the revised expenditure;
- 34.2.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Services, including similar businesses in which the Service Provider or its Affiliates carry on business; and
- 34.2.4 demonstrating any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under clause 34.1.3iv) and/or 34.1.3v) above.

34.3 Funding for Qualifying Changes in Law

34.3.1 If the parties agree or it is determined under the Dispute Resolution Procedure that the Service Provider is required to incur additional expenditure due to a Qualifying Change in Law (excluding the Service Provider's Share of such additional expenditure), then the Authority shall compensate the Service

Provider for the expenditure under clause 34.5. The Service Provider shall use its reasonable endeavours to obtain funding for such expenditure on reasonable terms.

34.3.2 The Service Provider's Share of any additional expenditure agreed or determined due to a Qualifying Change in Law shall be solely for the account of the Service Provider.

34.4 **Funding for General Changes in Law**

All expenditure incurred by the Service Provider (including its Sub-Contractors) in relation to a General Change in Law shall be for the Service Provider's sole account and borne entirely by the Service Provider and no amendment shall be made to the Periodic Service Payment nor shall any payment be made by the Authority to the Service Provider in respect of such General Change in Law.

34.5 **Adjustment to the Periodic Service Payment**

Any compensation payable under this clause 34 (Change in Law) shall be calculated in accordance with clause 33 (Financial Adjustments) and shall, at the Authority's absolute discretion be made by means of an adjustment to or reduction in the Periodic Service Payment or by way of an immediate lump sum payment.

35 **Open Book Accounting [Authority Policy Clause]**

35.1 Without prejudice to Schedule 14 (Change Protocol) the Service Provider shall, at the request of the Authority, provide to the Authority a Certificate of Expenditure and Income within fifteen (15) Business Days of such request. The Certificate of Expenditure and Income shall be prepared in accordance with generally accepted accounting principles (UK GAAP) and Good Industry Practice such as that provided by the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Green Book. The Service Provider shall arrange for the Certificate of Expenditure and Income to be audited by the Service Provider's external auditor as soon as practicable after submission to the Authority and a copy of the audited version of the Certificate of Expenditure and Income shall be provided to the Authority.

35.2 The Certificate of Expenditure and Income shall include a representation of the Financial Model and Financial Proforma setting out the Service Provider's actual expenditure, income and profits in providing the Services and the Third Party Services over the preceding Contract Year including the following details:-

- 35.2.1 actual Capital Expenditure, including capital replacement costs;
- 35.2.2 actual Operating Expenditure relating to the provision of the Services and Third Party Services with an analysis showing the costs of staff, goods or equipment, sub-contracted and bought in services;
- 35.2.3 all interest expenses and other third party financing costs incurred in relation to the Services and Third Party Services;
- 35.2.4 details of the overhead recoveries that have been made in relation to the Services and Third Party Services; and

- 35.2.5 the profit which the Service Provider or Key Sub-Contractor has achieved in the provision of the Services and Third Party Services including any profit element forming any part of the overhead recoveries disclosed by reason of clause 35.2.4 above or any part of sub-contracted or bought in services from Key Sub-Contractors or Affiliates of Hold Co;
- 35.2.6 where an Affiliate of Hold Co has provided any services to the Service Provider for the provision of the Services then in addition to the other provisions of this Agreement the Service Provider shall provide the breakdown and origin of all charges levied by such Affiliate on the Service Provider including either:
- (a) all direct costs associated with employees, supplies and services;
 - (b) all indirect costs associated with profit margin, interest and overhead recovery; or
 - (c) the agreed day rates set out in Schedule 4 and separately itemised any profit, expenses or overheads;
- each as it relates to that Affiliate's involvement in the provision of the Services;
- 35.2.7 income from charges to the Authority and any Third Party in relation to provision of these services.
- 35.3 Following receipt of the Certificate of Expenditure and Income the Service Provider shall provide to the Authority such additional information as it may reasonably request so that the Authority can verify the accuracy of the Certificate of Expenditure and Income. The Authority shall have the right to appoint an independent third party auditor (Auditor) not being a direct competitor of the Service Provider on confidentiality terms substantially the same as those set out in clause 24 (Information and Confidentiality) to verify the Certificate of Expenditure and Income.
- 35.4 The Auditor shall be paid for by the Authority unless the Certificate of Expenditure and Income prepared by the Service Provider is found to be manifestly inaccurate, incomplete or misleading in which case the Service Provider shall be solely responsible for paying the Auditor's costs.
- 35.5 The Service Provider shall allow the Authority, or its Auditor and its authorised agents the right of reasonable access to (and, the right to take copies of) the books of account and other source data in whichever form held of the information identified in any Financial Model and Financial Proforma or such other information as may be necessary or reasonably desirable for the purpose of verifying the Certificate of Expenditure and Income or for the purpose of monitoring and calculating the Service Provider's profit margins and applying the provisions of the Payment Mechanism (Schedule 4) and Schedule 25 (Compensation on Termination).
- 35.6 The Certificate of Expenditure and Income may be used by the Authority for verification of cost expenditure or estimated expenditure in particular but without limitation for the purpose of calculating the effect of a Change, introduction of Special Projects or Qualifying Change in Law or compensation payable on Termination.

36 **Service Provider's Records and Audit [Authority Policy Clause]**

36.1 **Records of Expenditure and Income**

The Service Provider shall:-

- 36.1.1 at all times maintain a full record of particulars of the costs of performing the Services, including those relating to design, implementation, transition, maintenance, management, operation and finance;
- 36.1.2 at all times maintain a full record of particulars of the income of performing the Services, Third Party Services and related to third party trading;
- 36.1.3 when requested by the Authority, provide a written summary of any of the costs or income figures referred to in clause 36.1.1 and 36.1.2, including details of any funds held by the Service Provider specially to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Service Provider of its obligations under this Agreement or to calculate its potential liabilities under Schedule 25 (Compensation on Termination); and
- 36.1.4 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause.

36.2 **Books of Account**

Compliance with clause 36.1 shall require the Service Provider to keep (and where appropriate to procure that the Sub-Contractors shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:-

- 36.2.1 administrative overheads;
- 36.2.2 payments made to Sub-Contractors;
- 36.2.3 Capital Expenditure and Revenue Expenditure and Income (including, amongst other matters, assets purchased, leased or licensed by the Service Provider, and an asset register (including previous and pending expenditure to maintain the assets));
- 36.2.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of clause 7 (Special Projects and Change in Services) of the Change Protocol, clause 34 (Change in Law) and clause 38 (Benchmarking and Market Testing) and Schedule 25 (Compensation on Termination),

and the Service Provider shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items in clauses 36.2.1 to 36.2.4 available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a written report of these to the Authority as and when requested.

36.3 Maintenance of Records

The Service Provider shall maintain or procure that the following are maintained:-

- 36.3.1 a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and
- 36.3.2 full records of all maintenance procedures carried out during the Contract Period;
- 36.3.3 reports and management information in relation to the performance and management of the Services in accordance with the requirements in the Output Specifications and Schedule 13 (Monitoring Procedure),

and the Service Provider shall have the items referred to in clauses 36.3.1 and 36.3.3 above available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

36.4 Reports and Accounts

The Service Provider shall:-

- 36.4.1 provide to the Authority copies of its annual report and accounts within 30 days of publication;
- 36.4.2 promptly upon the occurrence of a material breach under any Key Sub-Contract notify the Authority of such material breach; and
- 36.4.3 use all reasonable endeavours to assist the Authority in its preparation of any report required by a Relevant Authority or HM Treasury, from time to time; and
- 36.4.4 provide data and use all reasonable endeavours to assist the Authority in providing information relating to the Services for the purposes of benchmarking to the Chartered Institute of Public Finance Accountants or the London Authorities Performance Systems or other relevant benchmark clubs as required by the Authority.

36.5 Internal Control Environment [*Authority Policy Clause*]

- 36.5.1 The Service Provider shall comply with relevant governance standards (including Cadbury and Nolan) and shall provide written confirmation to the Authority of such compliance within five (5) Business Days of a request by the Authority.
- 36.5.2 The Service Provider shall operate a sound system of internal control, this includes (amongst other matters) appropriate risk management processes, control systems, accounting records and governance arrangements. The Service Provider shall give the Authority's Chief Internal Auditor assurances regarding the adequacy of the Service Provider's internal control environment by:
 - (a) establishing its own internal audit function;

- (b) consultation with the Authority prior to finalising its Annual Internal Audit Plan;
- (c) submitting its Annual Internal Audit Plan, in a form agreed with the Authority, to the Authority no later than the end of April in each Contract Year;
- (d) submitting internal audit reports to the Authority within fifteen (15) Business Days of the agreed Quarterly Date; and
- (e) immediately submit all limited or no assurance internal audit reports relating to the Service Provider's Annual Internal Audit Plan to the Authority.

36.5.3 Where the Service Provider has its own internal audit function the Authority shall, on an annual basis, review the quality of that audit provision to enable it to place reliance on the assurances obtained from the Service Provider. The Authority shall have a right of access to such Service Provider resources including records, personnel, computer files and property to enable the Chief Internal Auditor to report an opinion to the Chief Executive Officer on the adequacy of the Service Provider's internal audit service. The Authority will give the Service Provider reasonable notice of its intention to review the internal control arrangements. The Service Provider shall provide such explanations and take such actions as are deemed necessary by the Chief Internal Auditor concerning any matter under examination.

36.5.4 If:

- (a) the Service Provider has an internal audit service, but the Authority's internal audit service is unable to rely on the audits and work carried out by the Service Provider's internal audit service; or
- (b) the Service Provider does not have an internal audit service,

the Authority's internal audit service shall carry out a risk based audit programme in relation to the Services. The Service Provider shall cooperate with the Authority in relation to such audit programme in accordance with clause 12 (Relationship). The Service Provider shall reimburse the Authority in relation to the costs of undertaking the audit programme.

36.6 Auditor

36.6.1 The Authority or its appointed Auditor may conduct audits for the following purposes:

- (a) to verify the accuracy of the Periodic Service Payment (and proposed or actual variations to the Periodic Service Payment in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of the Authority Data;

- (c) to review the Service Provider's compliance with the DPA, the FOIA in accordance with clauses 20 (Data Protection) and 25 (Freedom of Information) and any other Legislation applicable to the Services;
- (d) to review the Service Provider's compliance with its obligations under clauses 5 (the Services) and 9 (Performance Monitoring);
- (e) to review any records created during the design and development of the Services ;
- (f) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (g) to carry out the audit and certification of the Authority's accounts;
- (h) to carry out an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (i) to verify the accuracy and completeness of any management information delivered or required by this Agreement;
- (j) to inspect any Authority's assets, including the Authority's IPRs, equipment, facilities and maintenance and Assets, for the purposes of ensuring that the Authority's assets and Assets are secure and that the Rolling Inventory or any other register of assets is up to date;
- (k) to ensure that the Service Provider is complying with the Authority Policies and where relevant the Service Provider Policies and any British or equivalent European standards insofar as they are relevant to the provision of the Services; and
- (l) any other audit that may be required by any Relevant Authority.

36.6.2 Subject to the Authority's obligations of confidentiality, the Service Provider shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:-

- (a) all information reasonably requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any Service Provider's Premises controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Service Provider's systems; and
- (d) access to Service Provider personnel.

36.6.3 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Services against the applicable Service Performance Levels

and the Performance Indicators at a level of detail sufficient for the Authority to verify compliance with the Service Performance Levels.

36.6.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material breach by the Service Provider in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

36.6.5 If an audit identifies that:

- (a) the Service Provider has failed to perform its obligations under this Agreement in any material manner, the Service Provider shall prepare a remedial plan within ten (10) Business Day for the Authority to approve. Such approval not to be unreasonably withheld. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Periodic Service Payment, proposed Periodic Service Payment or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Authority has overpaid any Periodic Service Payment, the Service Provider shall pay to the Authority the amount overpaid (including interest) within twenty (20) Business Days. The Authority may deduct the relevant amount from the Periodic Service Payment if the Service Provider fails to make this payment; and
- (c) the Authority has underpaid any Periodic Service Payment, the Authority shall pay to the Service Provider the amount of the underpayment less the cost of the audit incurred by the Authority.

36.6.6 The Service Provider shall permit records referred to in this clause 36.6 to be examined and copied from time to time by the Authority's auditor and inspectors and their representatives and other representatives of the Authority.

36.7 Retention

The records referred to in this clause 36 shall be retained in accordance with the Authority Records Retention and Disposal Guidelines for a period of at least 12 years after the Service Provider's obligations under this Agreement have come to an end pursuant to the Expiry Date or Termination date (whichever the earlier).

36.8 Information on Termination or Expiry

Upon termination or expiry of this Agreement and in the event that the Authority wishes to enter into another contract for the provision of the Services, the Service Provider shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Authority to provide information relating to the Service Provider's costs of providing the Services.

36.9 Confidentiality of Information

- 36.9.1 All information referred to in this clause 36 is subject to the obligations set out in clause 24 (Information and Confidentiality) and clause 25 (Freedom of Information).
- 36.9.2 For the purposes of the examination and certification of the Authority's accounts and/or any examination of the economy, efficiency and effectiveness with which the Authority has used its resources, the Audit Commission (or other relevant body), internal or external auditor may examine such documents premises, systems and Staff as he may reasonably require which are owned, held or otherwise within the control or employ of the Service Provider or Sub-Contractors (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide access) and may require the Service Provider to produce such oral or written explanation as he considers reasonably necessary.

37 Best Value

37.1 Authority's Best Value Duty

- 37.1.1 The Service Provider acknowledges that:
- (a) the Authority is subject to the Best Value Duty;
 - (b) the provisions of this clause 37 (Best Value) are intended to assist the Authority in discharging its Best Value Duty in relation to the Services; and
 - (c) the provisions of this clause 37.1.1 shall apply in respect of the obligations of the Service Provider and the Authority concerning the Best Value Duty and the 1999 Act generally.
- 37.1.2 The Service Provider shall, throughout the Service Period, but only to the extent of its obligations in this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 37.1.3 The Service Provider shall undertake or refrain from undertaking such actions as the Authority shall reasonably request to enable the Authority to comply with Part 1 of the 1999 Act, including:
- (a) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:
 - i facilitate the Authority preparing any statement, in response to an Authority's auditor's report;
 - ii facilitate any inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the

Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;

- iii assist the Authority in relation to any action taken by the Secretary of State;
- iv enable the Authority to produce and submit data listed in the Single Data List and to comply with any other data reporting requirements that may be prescribed by any Relevant Authority;
 - (b) complying with all requests by the Authority to procure the attendance of specific officers or employees of the Service Provider or any Sub-Contractor (or any of its or their sub-contractors) at any meetings of the Authority at which the Services are to be discussed (but not, otherwise in exceptional circumstances, more than twice in any one year);
 - (c) cooperating in audits and other Best Value Inspections; and
 - (d) permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - i the Service Provider's Premises;
 - ii any document or data relating to the Services; and
 - iii any Sub-Contractor, agent or employee of the Service Provider.

37.2 Customer Satisfaction Surveys

37.2.1 The Service Provider shall, on each Customer Satisfaction Survey Date, undertake (or procure the undertaking of) customer satisfaction surveys (**Customer Satisfaction Surveys**) the purpose of which shall include:

- (a) assessing the level of satisfaction among Service Users with the Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services;
- (b) assisting in the preparation of the Service Provider's Annual Service Report and Annual Service Plan; and
- (c) monitoring the compliance by the Service Provider with the Output Specifications.

37.2.2 The Customer Satisfaction Surveys shall be undertaken by means of distributing to Service Users within ten (10) Business Days of each Customer Satisfaction Survey Date a questionnaire or other survey method as agreed between the parties in a form to be agreed with the Authority.

37.2.3 The content of the questionnaire or other material to be used for any other survey method referred to in clause 37.2.2 (Customer Satisfaction Survey) and

the method of undertaking the Customer Satisfaction Surveys shall comply with all applicable Legislation and Guidance.

- 37.2.4 The Authority shall provide reasonable assistance and information (subject to compliance with all Legislation) to the Service Provider to enable the Service Provider to undertake the Customer Satisfaction Surveys.
- 37.2.5 Within one month of each Customer Satisfaction Survey Date, the Service Provider shall prepare a summary of the results of the Customer Satisfaction Surveys in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Service Provider) as the Authority shall reasonably require.

37.3 **Annual Service Report and Annual Service Plan**

- 37.3.1 Without prejudice to any other provision in this Agreement the Service Provider shall on the Annual Service Report Date at its own cost, provide to the Authority a written report (the **Annual Service Report**) in accordance with the requirements of Schedule 13 (Monitoring Procedure) and such report shall include those items listed in paragraphs 3 (Annual Performance Review) and 5 (Annual Service Report and Best Value Service Plan) of Schedule 13 (Monitoring Procedure).
- 37.3.2 The Service Provider shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
- 37.3.3 If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Authority may serve a written notice upon the Service Provider (a **Best Value Service Change Notice**) within thirty (30) Business Days of receipt of the Annual Service Report stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires.
- 37.3.4 The Service Provider shall, within twenty (20) Business Days of the date of receipt of the Best Value Service Change Notice, provide the Authority at its own cost with a written statement (the **Annual Service Plan**) containing the Service Provider's proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change Notice.
- 37.3.5 As soon as practicable after the Authority receives the Annual Service Plan, the parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Authority may modify the Best Value Service Change Notice, in which case the Service Provider shall, as soon as practicable, and in any event not more than twenty (20) Business Days after the receipt of such modification, notify the Authority of any consequential changes to the Annual Service Plan.

- 37.3.6 If the parties cannot agree on the contents of the Annual Service Plan then the Dispute will be determined in accordance with the Dispute Resolution Procedure.
- 37.3.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the Dispute Resolution Procedure the Authority shall:
- (a) confirm in writing the Annual Service Plan; or
 - (b) withdraw the Best Value Service Change Notice.
- 37.3.8 If the Authority either withdraws the Best Value Service Change Notice or does not confirm the Annual Service Plan within twenty (20) Business Days of the Annual Service Plan having been agreed or determined pursuant to the Disputes Resolution Procedure then the Annual Service Plan and the Best Value Service Change Notice shall be deemed to have been withdrawn.
- 37.3.9 If the Authority confirms the Annual Service Plan then the Authority shall in accordance with the Change Protocol issue an Authority Notice of Change (which shall include all the information set out in the Best Value Service Change Notice).
- 37.3.10 Unless otherwise provided for in the Payment Mechanism, to the extent that the implementation of the proposals contained in the Annual Service Plan will result in a decrease in the costs of the Service Provider, the Periodic Service Payment shall be adjusted downwards in accordance with clause 33 (Financial Adjustments) to reflect the sharing in the decrease in costs 50:50 as to the Authority and the Service Provider respectively.
- 37.3.11 To the extent that the implementation of the proposals contained in the Annual Service Plan will result in an increase in the costs of the Service Provider, the Periodic Service Payment shall be adjusted upwards in accordance with clause 33 (Financial Adjustments).
- 37.3.12 The Service Provider shall take all reasonable steps to mitigate any costs arising as a consequence of a Best Value Service Change Notice and an Authority Change Notice served pursuant to clause 37.3.9 (Annual Service Report).

37.4 **Year 4 and Year 7 Reviews**

Year 4 Review

- 37.4.1 Following the Benchmarking Exercise in Clause 38 undertaken on the fourth anniversary of the commencement of the Agreement, the Authority shall conduct a full review of the Services and the performance of the Service Provider in fulfilling its obligations under this Agreement and in accordance with paragraph 32.4 (Schedule of Rates) of Schedule 4 (Payment Mechanism) in order to identify any improvements or savings the Authority may wish to implement in respect of the Services (**Year 4 Outcome Review**). If a Benchmarking Exercise has not been carried out within three months of the

fourth anniversary of the commencement of the Agreement then the Authority may conduct the Year 4 Review independently of any Benchmarking Exercise.

- 37.4.2 The parties agree that the Year 4 Outcome Review shall be carried out in good faith and each party shall act reasonably in relation to any such Year 4 Outcome Review.
- 37.4.3 The Year 4 Outcome Review shall be carried out by the Authority at its own cost.
- 37.4.4 If the Authority requires any changes to be implemented it will notify the Service Provider in writing, setting out the improvements to the Services or reduction to the Periodic Service Payment sought.
- 37.4.5 The Service Provider shall provide the Authority within fifteen (15) Business Days of receipt of such notice from the Authority (or as otherwise agreed between the parties in writing) an outline proposal setting out the Authority's options in order to achieve the improvements to the Services or alteration to the Periodic Service Payment required by the Authority and the estimated costs for each option (the **Year 4 Options Proposal**).
- 37.4.6 The Year 4 Options Proposal shall include:
- (a) a comprehensive range of options which directly address the different aspects of the Services identified for improvement in the Year 4 Outcome Review;
 - (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services and whether such option is feasible in the context of the Public Contracts Regulations 2006 (as updated); and
 - (c) information within each option as to the steps that the Service Provider shall take to ensure that the overall level of Guaranteed Income payable to the Authority is maximised.
- 37.4.7 No later than thirty (30) Business Days after the Authority receives the Year 4 Options Proposal, the Authority shall notify the Service Provider as to the Authority's preferred option and the Service Provider shall within twenty (20) Business Days (or such other longer period as agreed to between the parties) provide a detailed proposal for that option which shall include:
- (a) all the information required as part of a Full Business Case submitted pursuant to Schedule 15 (Special Projects Approval Procedure) and the relevant provisions of Schedule 15 shall apply as if references to Special Project were to the Year 4 Detailed Proposal;
 - (b) the Change in Costs and Change in Revenue;
 - (c) any amendments required to this Agreement (including without limitation the Output Specifications), and

(d) any Consents or regulatory approvals that may be required

(the **Year 4 Detailed Proposal**).

37.4.8 As soon as practicable after the Authority receives the Year 4 Detailed Proposal:

(a) the Service Provider shall provide the Authority with all additional information it requires in order to verify the Year 4 Detailed Proposal,

(b) the Authority shall advise the Service Provider whether it proposes that the Year 4 Detailed Proposal be addressed pursuant to the Change Protocol;

(c) the Authority shall advise the Service Provider whether the Authority elects to exercise any of its further rights under the Agreement; and/or

(d) the parties shall discuss and agree the issues set out in Year 4 Detailed Proposal.

37.4.9 After a Year 4 Detailed Proposal has been agreed or otherwise determined the Authority and the Service Provider shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both parties (and in the absence of agreement the form of such documentation shall be determined in accordance with the Dispute Resolution Procedure) and thereafter the parties shall promptly sign or execute (as appropriate) such documentation (**Year 4 Implementation Plan**).

37.4.10 Within twenty (20) Business Days of the fifth (5th) anniversary of the Service Transfer Date, the Service Provider shall provide a report to the Authority detailing whether it has met the targets in the Year 4 Implementation Plan insofar as they were set for the preceding year and confirmation of whether on-going targets have been or will be met.

37.4.11 **Year 7 Review**

Following the Benchmarking Exercise in Clause 38 undertaken on the seventh anniversary of the commencement of the Agreement, the Authority may conduct a review in accordance with paragraph 32.4 (Schedule of Rates) of Schedule 4 (Payment Mechanism) and to identify any improvements or savings the Authority may reasonably wish to implement in respect of the Services following such review (**Year 7 Review**) and the Service Provider shall cooperate with such review and clauses 37.4.12 - 37.4.20 shall apply. If a Benchmarking Exercise has not been carried out within three months of the seventh anniversary of the commencement of the Agreement then the Authority may conduct the Year 7 Review independently of any Benchmarking Exercise.

37.4.12 The parties agree that the Year 7 Review shall be carried out in good faith and each party shall act reasonably in relation to any such Year 7 Review.

37.4.13 The Year 7 Review shall be carried out by the Authority at its own cost.

- 37.4.14 If the Authority requires any changes to be implemented it will notify the Service Provider in writing, setting out the improvements to the Services or alteration to Periodic Service Payment sought.
- 37.4.15 The Service Provider shall provide the Authority within fifteen (15) Business Days of receipt of such notice from the Authority an outline proposal setting out the Authority's options in order to achieve the improvements to the Services or alteration to the Periodic Service Payment required by the Authority and the estimated costs for each option (the **Year 7 Options Proposal**).
- 37.4.16 The Year 7 Options Proposal shall include:
- (a) a comprehensive range of options which directly address the different aspects of the Services identified for improvement in the Year 7 Review;
 - (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services and whether such option is feasible in the context of the Public Contracts Regulations 2006 (as updated); and
 - (c) information within each option as to the steps that the Service Provider shall take to ensure that the overall level of Guaranteed Income payable to the Authority is maximised.
- 37.4.17 No later than thirty (30) Business Days after the Authority receives the Year 7 Options Proposal, the Authority shall notify the Service Provider as to the Authority's preferred option and the Service Provider shall within twenty (20) Business Days (or such other longer period as agreed between the parties) provide a detailed proposal for that option which shall include:
- (a) all information required as part of a Full Business Case submitted pursuant to Schedule 15 (Special Projects Approval Procedure) and the relevant provisions of Schedule 15 shall apply as if references to Special Project were to Year 7 Detailed Proposal;
 - (b) the Change in Costs and Change in Revenue;
 - (c) any amendments required to this Agreement (including without limitation the Output Specifications); and
 - (d) any Consents or regulatory approvals that may be required,
- (the **Year 7 Detailed Proposal**).
- 37.4.18 As soon as practicable after the Authority receives the Year 7 Detailed Proposal:
- (a) the Service Provider shall provide the Authority with all additional information it requires in order to verify the Year 7 Detailed Proposal,
 - (b) the Authority shall advise the Service Provider whether it proposes that the Year 7 Detailed Proposal be addressed pursuant to the Change Protocol;

- (c) the Authority shall advise the Service Provider whether the Authority elects to exercise any of its further rights under the Agreement; and/or
- (d) the parties shall discuss and agree the issues set out in Year 7 Detailed Proposal.

37.4.19 After a Year 7 Detailed Proposal has been agreed or otherwise determined the Authority and the Service Provider shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both parties (and in the absence of agreement the form of such documentation shall be determined in accordance with the Dispute Resolution Procedure) and thereafter the parties shall promptly sign or execute (as appropriate) such documentation (**Year 7 Implementation Plan**).

37.4.20 Within twelve (12) months of the execution of the Year 7 Implementation Plan, the Service Provider shall provide a report to the Authority detailing whether it has met the targets in the Year 7 Implementation Plan insofar as they were set for the preceding year and confirmation of whether on-going targets have been or will be met. The Authority may take account of such report when deciding whether to extend the Service Period under clause 2.3 (Commencement and Duration).

37.4.21 Nothing in this clause 37.4 shall fetter the Authority's decision (in its sole discretion) as to whether to seek an extension of the Service Period under clause 2.3 of this Agreement.

37.5 **Budget control**

37.5.1 If the Authority requires a Budget Change it will notify the Service Provider in writing, setting out the level of the reduction or increase to the Periodic Service Payment payable to the Service Provider and identifying the affected Services.

37.5.2 The Service Provider shall provide the Authority within fifteen (15) Business Days of receipt of a notice from the Authority pursuant to clause 37.5.1 an outline proposal setting out the Authority's options in order to achieve the reduction or increase to the sums payable to the Service Provider and the estimated change in costs for each option (the **Options Proposal**).

37.5.3 In preparing the Options Proposal the Service Provider shall consider (without limitation) in the following order of precedence:

- (a) changes to improve the efficiency of the provision, performance or delivery of the Services or particular part of the Services,
- (b) adjustments to Key Performance Indicators / Service Performance Levels / Super KPIs including if any change will impact on compliance with Legislation and Guidance,
- (c) relief from compliance with its obligations under this Agreement,

as may be proportionate to the required reduction or increase to the sums payable to the Service Provider.

37.5.4 The Options Proposal shall include:

- (a) a comprehensive range of options which address different aspects of the Services with the adoption of one or more options enabling the Services to be delivered to the proposed Budget Change, and
- (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services.

37.5.5 No later than thirty (30) Business Days after the Authority receives the Options Proposal, the Authority shall notify the Service Provider as to the Authority's preferred option and the Service Provider shall within ten (10) Business Days provide a detailed proposal for that option which shall include:

- (a) the change in costs,
- (b) any amendments required to this Agreement (including without limitation the Output Specifications),

(the **Budget Change Proposal**).

37.5.6 As soon as practicable after the Authority receives the Budget Change Proposal the parties shall discuss and agree the issues set out in the Budget Change Proposal.

37.5.7 After a Budget Change Proposal has been agreed or otherwise determined the Authority and the Service Provider shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both parties (and in the absence of agreement the form of such documentation shall be determined in accordance with the Dispute Resolution Procedure) and thereafter the parties shall promptly sign or execute (as appropriate) such documentation.

38 **Benchmarking and Market Testing**

38.1 The Service Provider shall undertake all Benchmarking Exercises at its own cost in relation to the Benchmarked Services in accordance with the procedure identified in this clause 38 (Benchmarking and Market Testing) and the Benchmarking Plan on the fourth and seventh anniversary date of the commencement of this Agreement. The Authority shall be entitled to request further Benchmarking Exercises at any time during the Service Period for all or any of the Benchmarked Services provided that this request is not made within twenty four (24) months of the Agreement Date and up to a maximum of one additional Benchmarking Exercise per Benchmarked Service.

38.2 Each Benchmarking Exercise will be undertaken to ascertain the relative quality and competitiveness of the Benchmarked Services in question and shall include as a minimum the Benchmark Comparators to the extent that they are relevant. The Benchmarking Exercise will be undertaken by the appointment of a Bench-marker who shall be jointly instructed by the Authority and Service Provider. The Bench-marker shall be agreed between the parties and shall be chosen from the Management Consultancies Association

list of membership organisations and will be required to have demonstrable experience in service benchmarking in the same or similar service areas. The Parties shall:

- 38.2.1 require the Bench-marker to enter into a tripartite agreement with the Authority and Service Provider which shall contain an appropriate confidentiality undertaking in respect of any information disclosed during the Benchmarking Exercise; and
 - 38.2.2 instruct the Bench-marker to carry out the Benchmarking Exercise on the basis of an objective and like for like comparison by comparing the standards and prices of the Benchmarked Services in question and the costs of providing them with the standards and prices of equivalent services and the costs of providing them.
- 38.3 All Benchmarking Exercises shall be conducted on an open book basis and shall be fully transparent (for example there shall be no locked spreadsheets). The Service Provider shall maintain suitably detailed records of all aspects of the Benchmarking Exercise in accordance with clause 35.2 (Service Provider's Records and Audit).
- 38.4 Without prejudice to the generality of clause 38.3 the Service Provider shall disclose all data used and proposed to be used in any Benchmarking Exercise and provide all such assistance and other documentary evidence as may be required by the Authority to enable the Authority to:
- 38.4.1 confirm the reliability of such data and verify its appropriateness as an accurate comparator for the Services;
 - 38.4.2 confirm the suitability of the Benchmark Organisations as appropriate comparator organisations; and
 - 38.4.3 interrogate the Benchmarking Exercise.
- 38.5 The Service Provider shall procure that the Bench-marker prepare and deliver to the Authority no later than ten (10) months before the first Benchmarking Date a plan (the **Benchmarking Plan**) for approval by the Authority setting out (without limitation):
- 38.5.1 the Bench-marked Services
 - 38.5.2 the names of the proposed Benchmark Organisations;
 - 38.5.3 the nature of the costs, standards and specifics that will be sought from the Benchmark Organisations in order to carry out the Benchmarking Exercise;
 - 38.5.4 the method by which the costs from the Benchmark Organisations shall be determined (the **Benchmark Costs**) and the extent to which factors relating to risks inherent in a change of Sub-Contractor (such as transition costs) will be taken into account;
 - 38.5.5 the method by which the costs of the Benchmarked Services shall be determined (the **Baseline Costs**) including how the Service Provider will ensure that the Baseline Costs only include those associated with the

- Benchmarked Services and that the Baseline Costs do not include the Service Provider's own costs;
- 38.5.6 the reporting and communications procedures to be put in place for keeping the Authority updated on the progress of the Benchmarking Exercise; and
 - 38.5.7 the roles and responsibilities (and resourcing implications) of the parties in implementing the Benchmarking Plan;
 - 38.5.8 the method (including pro forma document) by which the Baseline Costs and Benchmark Costs shall be compared and the results of the Benchmarking Exercise shall be reported to the Authority (the **Benchmarking Report**); and
 - 38.5.9 the deadline by which the Service Provider shall deliver the Benchmarking Report to the Authority.
- 38.6 The Benchmarking Plan shall include appropriate deadlines and milestones and allow sufficient time for the parties to discuss, clarify and agree the Benchmarking Plan and Benchmarking Exercise and for the Authority to agree the Benchmarking Report.
- 38.7 The Service Provider shall instruct the Bench-marker to implement the Benchmarking Plan once agreed with the Authority, and deliver to the Authority within the timescales set out in the Benchmarking Plan, on-going progress reports and the Benchmarking Report (in each case supported by all relevant supporting documentation as required by clause 38.4).
- 38.8 NOT USED
- 38.9 If the Baseline Costs are more than the Benchmark Costs:
- 38.9.1 the Service Provider shall provide a reasonable explanation as to why this is the case; and
 - 38.9.2 the Periodic Service Payment shall be reduced to reflect the sharing in the benefit of the costs reduction in the ratio of 50 per cent to the Authority and 50 per cent to the Service Provider.
- 38.10 If the Authority disputes the Baseline Costs, Benchmark Costs or the findings of Benchmarking Report, the issues shall be discussed within the Partnership Operations Board. The Service Provider shall implement any mutually agreed decision of the Partnership Operations Board within twenty (20) Business Days of agreement.
- 38.11 After completing and agreeing the first Benchmarking Exercise, the Service Provider shall prepare and provide to the Authority a draft 'lessons learnt document' to be agreed between the parties for use in the second Benchmarking Exercise, such document to provide details of:
- 38.11.1 the Benchmarking Exercise procedure;
 - 38.11.2 the outcome of the Benchmarking Exercise;
 - 38.11.3 what worked well;
 - 38.11.4 problems encountered; and

38.11.5 recommendations to improve the process.

38.12 If within thirty (30) Business Days of the Authority receiving the Benchmarking Report the parties cannot agree on any price adjustment or the Authority is not satisfied that there has been a robust Benchmarking Exercise, the Benchmark Services (or any one or more of them) shall be subject to Market Testing as set out in this clause 38 (Benchmarking and Market Testing).

38.13 Following notification by the Authority pursuant to clause 38.12 that there shall be a Market Testing, the parties shall agree the Market Testing Date, such date to be no more than eight (8) months from the date of such notification and shall meet together as often as may be necessary in respect of all Market Tested Services to be Market Tested on that date to:

38.13.1 to consider any changes required to the Market Tested Services;

38.13.2 to discuss and seek to agree the appropriate manner of advertising the Market Tested Services and identifying the prospective tenderers;

38.13.3 to discuss and seek to agree the tender requirements which shall be in sufficient detail to allow the Service Provider to determine the preferred tenderer and shall include, without limitation:

- (a) a statement of the tender validity period;
- (b) details of the tender evaluation criteria, which shall be reflected in a tender evaluation methodology;
- (c) the information related to employees and their conditions of employment;
- (d) the information tenderers are required to provide;
- (e) the terms and conditions under which the Market Tested Services will be contracted;
- (f) how many tenders are required for the Market Test to be valid;
- (g) whether or not an independent tender manager needs to be appointed by the Service Provider to manage the tender process.

38.14 Unless the Service Provider can demonstrate to the Authority that it will optimise its ability to obtain best value for money for the Authority if Market Tested Services are tendered separately or in particular groupings, or if any Market Tested Service is divided into separate parts, the grouping of any Market Tested Services shall be left to the discretion of tenderers on the basis that the tender requirements shall specify that:

38.14.1 tenderers may submit tenders for all or any of the Market Tested Services; and

38.14.2 where a tenderer submits a tender for a group or groups of Market Tested Services, it may be required to provide all or any of the services in such group or groups and shall, in any event, provide separate pricing for each service in such group or groups.

- 38.15 Notwithstanding any failure of the parties to agree any matter referred to in clause 38.13.3, the Service Provider shall prepare and deliver to the Authority no later than three (3) months before the relevant Market Testing Date a draft Proposal for the Market Testing describing in detail the Service Provider's proposals for the Market Testing of each Market Tested Service (the **Draft Proposal**). The Draft Proposal shall describe all of the matters referred to in, and agreed pursuant to, clause 38.13.3 and the form of contract which the preferred tenderer will be required to accept.
- 38.16 The Service Provider shall procure that, in respect of any Market Testing, the information for inclusion in the tender requirements allow:
- 38.16.1 the consequences of TUPE compliance on any change of Sub-Contractor to be assessed; and
- 38.16.2 so far as practicable, the cost of such change to the Authority to be minimised.
- 38.17 If the Service Provider and the Authority are unable to agree on any matter relating to the Draft Proposal within twenty (20) Business Days of the Authority's receipt of the Draft Proposal any party may refer the matter for resolution in accordance the Dispute Resolution Procedure.
- 38.18 The Service Provider shall be responsible for compiling the list of prospective tenderers and selecting the tenderers from the list of prospective tenders on the basis of their:
- 38.18.1 financial standing; and
- 38.18.2 technical, managerial and other relevant experience and ability (taking into account any relevant customer references).
- 38.19 The Authority shall have the right to review the list of prospective tenderers. The Service Provider shall provide the Authority with an explanation of the reasons behind the non-inclusion on the list of prospective tenderers of any person identified as suitably by the Authority, if so required by the Authority.
- 38.20 The Authority shall have a right to prevent the selection of any person as a prospective tenderer if it reasonably believes such person does not (or could not reasonably be considered to) comply with any of the criteria referred to in clause 38.18 above.
- 38.21 A person shall not be disqualified from selection as a tenderer merely by virtue of the existence of the contractual relationship with any other member of the Project, subject to:
- 38.21.1 compliance with all Laws; and
- 38.21.2 the establishment of, and compliance with, arrangements reasonably satisfactory to the Authority to avoid any conflict of interest or unfair advantage. Failure by the Service Provider to comply with any such arrangements shall automatically lead to the disqualification of the person in question and the provisions of clause 38.5 shall apply.
- 38.22 The Authority shall, in its absolute discretion, have the right to prevent the selection of any person as a tenderer on the grounds that the prospective tenderer has committed a Prohibited Act.

- 38.23 The Service Provider shall (after consultation with the Authority) provide any prospective tenderer which is unsuccessful in being selected as a tenderer with an appropriate explanation of the reasons behind its non-selection, if so requested by the person in question.
- 38.24 Where, in respect of any Market Tested Service or group of Market Tested Services or any part of any Market Tested Service, there is only one prospective tenderer (or the Service Provider intends to select only one of the prospective tenderers as tenderer), the Service Provider shall not be entitled to proceed with the Market Testing of the same without the prior written consent of the Authority.
- 38.25 The Service Provider shall be responsible for managing and co-ordinating the Market Testing in an efficient and fair manner in accordance with the Market Testing Proposal (and in particular, but without limitation, the tender requirements) and shall procure that only tenderers selected in accordance with this clause 38 (Benchmarking and Market Testing) are invited to submit tenders. The Service Provider shall ensure that the principle of equality of information to, and treatment of, tenderers shall apply at all times.
- 38.26 The Service Provider shall send all necessary documents and information to tenderers (including, without limitation, the tender requirements) in a timely manner.
- 38.27 Tenders must be assessed for compliance with the tender requirements.
- 38.28 The Service Provider and Authority shall equally divide the costs, fees and expenses associated with Market Testing.
- 38.29 Following expiry of the tender validity period, the Service Provider shall (subject to the provisions of this clause 38 (Benchmarking and Market Testing)) determine which compliant tenderer (the **Preferred Tenderer**) in respect of any Market Tested Service, group of Market Tested Services or individual part of any Market Tested Service, represents (as the case may be) the best value for money for the Authority.
- 38.30 Immediately upon making the determination referred to in clause 38.29 the Service Provider shall supply to the Authority a copy of its tender evaluation together with sufficient supporting information concerning the tender evaluation to enable the Authority to analyse and understand the basis for the Service Provider's determination.
- 38.31 If the Authority does not agree with the Service Provider's determination in the case of any compliant tender, the Authority may, within fifteen (15) Business Days of being provided with the tender evaluation pursuant to clause 38.30 above, dispute such determination and, if the parties do not resolve such dispute within a further fifteen (15) Business Days, the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.
- 38.32 The Service Provider shall procure that all preferred tenderers (as agreed or determined in accordance with clause 38.31 above) are appointed to provide the relevant Market Tested Service or group of Market Tested Services or individual parts of any Market Tested Service (as the case may be) on the basis set out in their compliant tender prior to the relevant Market Testing Date.
- 38.33 Without prejudice to clause 38.24, where the Service Provider believes that only one compliant tender is likely to be submitted, or where only one compliant tender is submitted, the Service Provider shall not be entitled to proceed further with the Market Testing or (as

the case may be) to appoint a Preferred Tenderer without the prior written approval of the Authority.

38.34 The Service Provider shall (after consideration with the Authority) provide any tenderer which is unsuccessful in being selected as a Preferred Tenderer with an appropriate explanation of the reasons behind its non-selection, if so requested by the party in question.

38.35 Without prejudice to any of the Service Provider's general obligations under this Agreement, including without limitation to the other provisions of this clause 38 (Benchmarking and Market Testing), the Service Provider shall:

38.35.1 maintain a full record and audit trail of each Market Testing and make all such records (including details of all tenders received) available for inspection by the Authority and its authorised representatives (including, without limitation, the National Audit Office) on reasonable notice from the Authority;

38.35.2 provide to the Authority, in a comprehensive and accurate manner, all information necessary to enable the Authority to review and assess all matters relating to the Market Testing;

38.35.3 certify to the Authority within twenty (20) Business Days of expiry of the tender validity period that:

(a) neither it, nor, to the best of its knowledge and belief, any Service Provider Related Party intends to or will obtain any direct or indirect financial or other benefit from such appointment (other than the benefit of the contract itself);

(b) neither it, nor, to the best of its knowledge and belief, any Service Provider Related Party has colluded in connection with the Market Testing; and

(c) there has been full compliance with all requirements relating to ensuring equality of information provided to, and treatment of, tenderers.

38.36 The Service Provider shall indemnify and keep the Authority fully indemnified at all times for and against all claims (including any claim made by any person (including any prospective tenderer, tenderer or preferred tenderer) that is not awarded a contract), demands or notices which may be brought or alleged or threatened against the Authority and from and against all Direct Losses or fines which the Authority may suffer or incur in relation to any such claims, demands or notices which occur as a result of or in connection with:

38.36.1 the implementation of this clause 38 (Benchmarking and Market Testing); and

38.36.2 any breach of the provisions of this clause 38 (Benchmarking and Market Testing),

save and to the extent that any such breach or claim results from any failure of the Authority to comply with the express provisions of this clause 38 (Benchmarking and Market Testing).

38.37 Where the Service Provider is required by this Agreement to carry out Market Testing, for the purpose of clause 53 (Termination on Corrupt Gifts and Fraud) of this Agreement it shall be an additional Prohibited Act for the Service Provider or any Service Provider Related Party (or anyone acting on its behalf) to:

38.37.1 accept or agree to accept any gift or consideration of any kind as an inducement or reward:

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of any sub-contract to the Agreement; or

(b) for showing or not showing favour or disfavour to any person in relation to any sub-contract to this Agreement;

38.37.2 enter into any sub-contract relating to the Agreement in connection with which commission has been paid or has been agreed to be paid unless, before the sub-contract is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Authority and it has consented in writing to the same (in its absolute discretion),

and the provisions of clause 53 (Termination on Corrupt Gifts and Fraud) (changed according to context) shall apply and be construed accordingly.

38.38 Where the Service Provider is required by this Agreement to carry out Market Testing and any prospective tenderer or tenderer (or anyone acting on its or their behalf or any of its or their directors, officers or employees) offers or agrees to give to the Service Provider or any Service Provider Related Party any gift or consideration of any kind as inducement or reward:

38.38.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of any sub-contract to this Agreement; or

38.38.2 for showing or not showing favour or disfavour to any person in relation to any sub-contract to this Agreement,

the Authority may (without prejudice to any of its other rights) by notice to the Service Provider require the Service Provider to procure, as soon as practicable, the termination of that person's involvement in the Market Testing or, if discovered after the award of the relevant contract, the termination of the relevant sub-contract (and the provisions of clause 53 (Termination on Corrupt Gifts and Fraud) shall not apply and be construed accordingly).

38.39 The Service Provider shall notify the Authority of the occurrence (and details) of any Prohibited Act promptly on Service Provider becoming aware of its occurrence.

Part 8: Corporate General

39 **Service Provider Warranties**

39.1 **Service Provider Warranties**

The Service Provider warrants, represents and undertakes to the Authority that:

- 39.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 39.1.2 it has the power to enter into and to exercise its rights and perform its obligations under this Agreement, the Project Documents, the Key Documents and the other contractual documents envisaged by this Agreement to be entered into by the Service Provider (**Other Contract Documents**);
- 39.1.3 all necessary action to authorise the execution of and the performance of its obligations under this Agreement and the Project Documents and Key Documents has been taken or in the case of any Project Documents and Key Documents or other Contract Documents executed after the date of this Agreement, will be taken before such execution;
- 39.1.4 the obligations expressed to be assumed by the Service Provider under this Agreement and the Project Documents and Key Documents are (or in the case of Project Documents and Key Documents and any Other Contract Documents executed after the date of this Agreement will be) legal, valid, binding and enforceable to the extent permitted by Legislation;
- 39.1.5 the execution, delivery and performance by it of this Agreement, the Project Documents and Key Documents or Other Contract Documents does not contravene any provision of:
- (a) any existing legislation either in force, or enacted but not yet in force and binding on the Service Provider;
 - (b) the memorandum and articles of association of the Service Provider;
 - (c) any order or decree of any court or arbitrator which is binding on the Service Provider; or
 - (d) any obligation which is binding upon the Service Provider or upon any of its assets or revenues;
- as at the date of the Agreement or for the purposes of the Project Documents, the Key Documents or Other Contract Documents the date that they are separately entered into
- 39.1.6 as at the date of this Agreement, the Service Provider Warranted Data is true and accurate in all respects;
- 39.1.7 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Service Provider, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the

Service Provider to perform its obligations under this Agreement as at the date of this Agreement;

- 39.1.8 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under this Agreement;
- 39.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Service Provider, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 39.1.10 as at the date of this Agreement, no Service Provider Default has occurred which is continuing;
- 39.1.11 this Agreement, each of the Key Sub-Contracts, Project Documents, Key Documents and Other Contract Documents (insofar as the Other Contract Documents are currently in full force and effect) is or, when executed, will be in full force and effect and constitutes or, when executed, will constitute the valid, binding and enforceable obligations of the parties thereto;
- 39.1.12 the copies of the Key Sub-Contracts, Project Documents, Key Documents and any Other Contract Documents which the Service Provider has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Key Sub-Contracts, Project Documents, Key Documents and any Other Contract Documents which would materially affect the interpretation or application of any of the Key Sub-Contracts, Project Documents, Key Documents and any Other Contract Documents;
- 39.1.13 there are no material facts or circumstances in relation to the financial position or operational constitution of the Service Provider which have not been fully and fairly disclosed to the Authority and which if disclosed might reasonably have been expected to affect the decision of the Authority to enter into this Agreement; and
- 39.1.14 as at the date of this Agreement in so far as the parties have not already agreed to refer the potential or actual Conflict of Interest to the Conflict of Interest Protocol, there are no actual or potential Conflicts of Interest or Adviser Conflicts of Interest

and the Authority relies upon such warranties, representations and undertakings.

39.2 **Service Provider Undertakings**

The Service Provider undertakes with the Authority that for so long as this Agreement remains in full force:

- 39.2.1 it will give the Authority notice of all litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or

Relevant Authority which would adversely affect, to an extent which is material in the context of the Project and/or Services, the Service Provider's ability to perform its obligations under this Agreement; such notice shall be given as soon as reasonably practicable after the Service Provider becomes aware that the proceedings may be threatened or pending and immediately after they are commenced;

39.2.2 it will not without the prior written consent of the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Service Provider to perform its obligations under this Agreement;

39.2.3 it will not undertake the performance of its obligations under this Agreement for the provision of the Services otherwise than through itself or a Sub-Contractor and then only in accordance with the requirements of clause 45 (Assignment and Sub-Contracting).

39.3 **Status of Warranties**

Subject to clause 58 (Entire Agreement), all warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Service Provider in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

40 **Exclusion From Warranty**

40.1 **No Warranty by Authority**

Subject to clause 40.3 (Fraudulent Statements) the Authority does not give any warranty or undertaking as to:

40.1.1 the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data; or

40.1.2 the condition, fitness for purpose or suitability for use in the provision of the Services of the Initial Transferring Assets

40.2 **No Liability to Service Provider**

Neither the Authority nor any of its agents or employees shall be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

40.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data;

40.2.2 any failure to make available to the Service Provider any materials, documents, drawings, plans or other information relating to the Project and/or Services; or

40.2.3 the unsatisfactory quality or condition, unsuitability or non fitness for purpose of any of the Initial Transferring Assets, whether for the provision of the Services or for any other purpose.

40.3 **Fraudulent Statements**

Nothing in this clause 40 (Exclusion from Warranty) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Service Provider in respect of any statements made fraudulently prior to the date of this Agreement.

40.4 **Service Provider's Due Diligence**

The Service Provider shall be deemed to have:

40.4.1 satisfied itself as to the assets to which it will acquire rights (including the Initial Transferring Assets) and the nature and extent of the risks assumed by it under this Agreement; and

40.4.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed.

40.5 **No Relief**

40.5.1 The Service Provider shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that:

(a) any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information; or

(b) any of the Initial Transferring Assets are not of satisfactory quality or fit for their purpose.

40.6 **Deemed Knowledge**

Without limitation to its actual knowledge, the Service Provider shall for all purposes of this Agreement, be deemed to have such actual knowledge in respect of the Project and Services as is held by any Service Provider Related Parties.

41 **Bond, Deed of Guarantee and Collateral Warranties**

41.1 The Service Provider shall procure the execution on or before the Agreement Date a Guarantee by the Guarantor in favour of the Authority substantially in the form annexed at Schedule 6 (Bond and Guarantee) to secure the due performance by the Service Provider of its obligations to the Authority.

41.2 As at the Agreement Date the Guarantor shall be Capita plc (Company number 02081330) and the Service Provider's group shall include all Affiliates of the Service Provider;

41.3 Unless and until otherwise agreed by the parties the forms of Bond and Guarantee set out in Schedule 6 (Bond and Guarantee) shall be the relevant specified forms for the purposes of this Agreement.

41.4 If during the Contract Period the Guarantor shall cease to meet any of the Guarantee Criteria (as defined in clause 41.5) the Service Provider shall procure that another

company within the Service Provider's group which at the relevant time and thereafter shall meet all the Guarantee Criteria shall become the Guarantor and shall provide a Guarantee substantially in the form referred to in clause 41.1 to secure due performance by the Service Provider of its obligations to the Authority;

41.5 The Guarantee Criteria for the purposes of clause 41.4 shall be that in respect of the Guarantor, the latest statutory accounts shall demonstrate that the Guarantor has:-

41.5.1 an annual turnover representing at least ten times that of the annual contract value, or annual turnover of at least £150,000,000 (one hundred and fifty million pounds), whichever is the greater;

41.5.2 cash at bank of a minimum of £8,000,000 (eight million pounds);

41.5.3 consolidated net asset value of not less £20,000,000 (twenty million pounds);

The Authority requires that:

41.5.4 the Guarantor's credit opinion as per its Experian report must not fall to "Above Average Risk" or worse; and

41.5.5 at all times shall have visibility of the Guarantor's Contingent liabilities as reported in the Annual Accounts.

41.6 In the event that the Service Provider shall have failed to comply with clause 41.4 within twenty (20) Business Days of a written notice to do so, the Service Provider shall provide to the Authority such alternative form of security to a value which is able to satisfy the Service Provider's obligations under this Agreement (which may take the form (without limitation) of an alternative guarantee, the provision of funds or reserves by a third party (under guarantee performance bond cash deposit or escrow account) as the Authority may approve (such approval not to be unreasonably withheld or delayed).

41.7 If the Service Provider shall provide alternative security under clause 41.6 and at any time thereafter the Service Provider can demonstrate that the Guarantor referred to in clause 41.2 or other company within the Service Provider's group meets the Guarantee Criteria the Service Provider shall have the right by notice to the Authority to provide a Guarantee by such company as aforesaid and if the Service Provider shall provide such Guarantee within twenty (20) Business Days of such notice the Authority shall accept such Guarantee in place of any then existing alternative security provided under clause 41.6.

41.8 The Service Provider shall procure that the Key Sub-Contractors enter into Collateral Warranties in favour of the Authority substantially in the form annexed at Schedule 5 (Collateral Warranty) on or before the date of this Agreement. The Service Provider shall not engage any new Key Sub-Contractor in connection with the Project and/or the Services unless the relevant new Key Sub-Contractor has delivered to the Authority an agreement substantially in the form of the Collateral Warranty Key Sub-Contract Guarantee and Key Sub-Contract Bond duly executed as a deed.

41.9 **Financial distress**

41.9.1 If Hold Co or the Guarantor falls within Level One Financial Distress then the following provisions shall apply:

- (a) the Service Provider shall notify the Authority in writing within five (5) Business Days of Level One Financial Distress being reached;
- (b) the Service Provider shall provide to the Authority within ten (10) Business Days of Level One Financial Distress being reached with a remediation plan which shall include:
 - i actions Hold Co and/or Guarantor is taking and will take to remedy the Level One Financial Distress and to address the circumstances which caused the Level One Financial Distress; and
 - ii if the Level One Financial Distress relates to the Guarantor, actions the Service Provider is taking to identify a replacement for the Guarantor and replace the Guarantor; and
 - iii the timescales for such actions and for the remediation of the Level One Financial Distress;
- (c) the Service Provider shall provide monthly updates to the Authority regarding progress and implementation of the remediation plan referred to in clause (b); and
- (d) the Service Provider shall promptly provide to the Authority all financial information that the Authority reasonably requests,

provided that the provisions of this clause 41.9 shall not apply if and to the extent that it would cause any party referenced herein to breach any regulatory or stock exchange requirements.

41.9.2 For the purposes of this clause 41.9, **Level One Financial Distress** means when one or more of the following conditions are met:

- (a) there is a public investigation into improper financial accounting and reporting, suspected fraud or other impropriety of either:
 - i Hold Co where the sum of money at question in that investigation is in excess of two hundred and fifty thousand pounds (£250,000); or
 - ii the Guarantor where the sum of money at question in that investigation is in excess of one million pounds (£1,000,000); or
- (b) there is a material breach of covenant to any lenders by Hold Co and/or the Guarantor; or
- (c) Hold Co or the Guarantor issuing a public profit announcement that demonstrates material adverse movement against planned profit (a "**Profit Warning**") to a stock exchange which indicates a material deterioration in its ability to meet banking covenants; or
- (d) The Turnover of the Guarantor is below a multiplier of 5 when compared to the Service Provider Turnover; or

- (e) The liquidity (when measured using UK GAAP) of the Service Provider is insufficient to cover the amounts of the Bonds.

42 Authority Step-In

42.1 Right to Step-In

Without prejudice to any other rights or remedies which the Authority may have under this Agreement, if the Authority reasonably believes that it needs to take action in connection with the Services:-

- 42.1.1 following the Service Provider's Failure to rectify a serious breach of this Agreement on the part of the Service Provider. A serious breach is a breach of this Agreement which:
 - (a) causes the Authority financial loss exceeding two hundred and fifty thousand pounds (£250,000); or
 - (b) results in fifty (50) per cent of the Under Performance Points accruing in relation to any Service during a three (3) month period; or
 - (c) causes material interruption to the provision of any Service exceeding three (3) months; or
 - (d) results in the Service Provider achieving 20% or less of the performance target for any single priority 3 or 4 KPI for two (2) consecutive measurement periods or achieving 20% or less of the performance target for any single priority 3 or 4 KPI for three (3) or more measurement periods in any six (6) month period.
- 42.1.2 to comply with a direction, judgment or order made by a Relevant Authority or any other body with whose jurisdiction the Authority or the Service Provider is required to comply (including the Mayor of London and a Secretary of State);
- 42.1.3 because a serious risk exists to the health or safety of persons or property or to the environment;
- 42.1.4 to discharge a statutory duty;
- 42.1.5 as may be required by the outcome of a statutory inspection;
- 42.1.6 on the occurrence of a Prohibited Act or a significant, substantial or repeated act of Fraud committed by any member of the Service Provider's employees in relation to the provision of any of the Services and in contravention of the Authority's Policies;
- 42.1.7 because an actual Conflict of Interest or Adviser Conflict of Interest has arisen, the Authority reasonably believes there is a potential Conflict of Interest or a potential Adviser Conflict of Interest or there is a breach of the Conflict of Interest Arrangements;

- 42.1.8 because Level One Financial Distress has arisen or occurred in relation to the Service Provider and/or any Service Provider Related Party which in the reasonable opinion of the Authority could give rise to an Insolvency Event; or
- 42.1.9 the circumstances in clause 49.4.2 (Remedy Notice) (Persistent Breach and Service Provider Default Capable of Remedy) have arisen; or
- 42.1.10 because of a failure by the Service Provider to comply with a material provision of any of the Corporate Centric Policies.

the Authority shall be entitled to take action in accordance with clauses 42.2 (Notice to the Service Provider) to 42.5 (Step-In on Service Provider Breach) below either through itself or through (or with the assistance of) third party contractors.

42.2 **Notice to the Service Provider**

If clause 42.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Service Provider in writing (**Step-in Notice**) of the following:-

- 42.2.1 the action it wishes to take and in particular the Services it wishes to control;
- 42.2.2 the reason for such action;
- 42.2.3 the date it wishes to commence such action;
- 42.2.4 the time period which it believes will be necessary for such action; and
- 42.2.5 to the extent practicable the effect on the Service Provider and its obligation to provide the Services during the period such action is taken.

42.3 **Action by Authority**

42.3.1 Following service of a Step-in Notice the Authority shall take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary including without limitation the Authority providing or performing, or having performed for it, using its own staff or another contractor or the Authority managing the Services referred to in the Step-In Notice (together the **Required Action**) and the Service Provider shall give all reasonable assistance to the Authority while it is taking such Required Action, including without limitation:

- (a) granting or obtaining licences or permissions for systems and data required to deliver the Services;
- (b) providing access to the Service Provider's employees and those of any Sub-Contractor and using all reasonable endeavours to ensure that such staff cooperate with the Authority and/or other contractors; and
- (c) making available to the Authority and/or other relevant contractors information, documentation and dates in relation to the Services as may reasonably be required.

42.3.2 Required Action may include any measures to address any aspect of the performance of the Services including the introduction of management intervention into a discrete part or the whole of the Services where in the reasonable opinion of the Authority, such intervention is required, and the right to enter upon any premises occupied by the Service Provider and to use any Assets in each case to the extent reasonably required in the provision of the Services that are the subject of the Required Action.

42.3.3 Where the Required Action has been taken otherwise than as a result of a breach by the Service Provider, the Authority shall use reasonable endeavours to mitigate the Service Provider's costs arising as a direct result of the Required Action.

42.4 **Step-In without Service Provider Breach**

If the Service Provider (or any of its Sub-Contractors) are not in breach of their obligations under this Agreement, then for so long as and to the extent that the Required Action is taken and this prevents the Service Provider from providing any part of the Services:

42.4.1 the Service Provider shall be relieved from its obligations to provide such part of the Services; and

42.4.2 in respect of the period in which the Authority is taking the Required Action and provided the Service Provider provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent additional costs are incurred) the Periodic Service Payment due from the Authority to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

42.5 **Step-In on Service Provider Breach**

42.5.1 If the Required Action is taken as a result of a breach of the obligations of the Service Provider under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any part of the Services:

(a) the Service Provider shall be relieved of its obligations to provide such part of the Services; and

(b) In respect of the period in which the Authority is taking Required Action the Periodic Service Payment due from the Authority to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action. In the event that the Authority's costs of operation in taking the Required Action exceed the amount of the Periodic Service Payment the Authority shall be entitled to be indemnified by the Service Provider for such costs.

42.5.2 If the Authority intends to engage or employ an external Service Provider or organisation to undertake the Required Action (or any part thereof) it shall first procure from such Service Provider or organisation a confidentiality agreement in favour of the Service Provider in the form agreed by the parties prior to commencement of any services by such third party.

42.6 Step-Out

42.6.1 Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Service Provider (Step-Out Notice), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Authority plans to end the Required Action (Step-Out Date) subject to the Authority being satisfied with the Service Provider's ability to resume the provision of the Services and the Service Provider's plan developed in accordance with clause 42.6.2,

provided that the Authority may at any time serve a notice under clauses 49 or 50 if there is a Service Provider Default or if the Authority believes a Level One Financial Distress has occurred in relation to the Service Provider or a Service Provider Related Party or if the Guarantor does not meet the Guarantee Criteria.

42.6.2 The Service Provider shall, following receipt of a Step-Out Notice and not less than fifteen (15) Business Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (Step-Out Plan) relating to the resumption by the Service Provider of the Services, including any action the Service Provider proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

42.6.3 If the Authority, acting reasonably does not approve the draft Step-Out Plan, the Authority shall inform the Service Provider of its reasons for not approving it. The Service Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

43 Relief Events

43.1 Without prejudice to clause 23 (Emergencies) and clause 31 (Business Continuity and Exit Plan) if and to the extent that a Relief Event:

- 43.1.1 is the direct cause of a delay in the Service Transfer Date; and/or
- 43.1.2 adversely affects the ability of the either party to perform any of its obligations under this Agreement,

then that party (referred to in this clause 43 as the **Relevant Party**) is entitled to apply for relief from any rights of the other party (referred to in this clause 43 as the **Other Party**)

arising under clause 49 (Practical Remedies and Persistent Breach), clause 52 (Termination on Authority Default).

43.2 To obtain relief, the Relevant Party must:

43.2.1 as soon as is practicable, and in any event within fourteen (14) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Relevant Party to perform its other obligations give to the Other Party a notice of its claim for relief from its obligations under the Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

43.2.2 within fourteen (14) Business Days of receipt by the Other Party of the notice referred to in clause 43.2.1, give full details of the relief claimed; and

43.2.3 demonstrate to the reasonable satisfaction of the Other Party that:

(a) the Relevant Party and its Sub-Contractors could not have avoided such occurrence or its consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

(b) the Relief Event directly caused the delay and/or adversely affected the ability of the Relevant Party to perform its other obligations; or

(c) the time lost and/or relief from the obligations under the Agreement claimed could not reasonably be expected to be mitigated or recovered by the Relevant Party acting in accordance with Good Industry Practice, without incurring material expenditure;

(d) the Relevant Party is using reasonable endeavours to perform or resume performance of its obligations under the Agreement; and

(e) (if the Relevant Party is the Service Provider) the Service Provider is, where relevant, implementing the Business Continuity Plans as required by clause 31(Business Continuity).

43.3 In the event that the Relevant Party has complied with its obligations under clause 43.2, then:

43.3.1 in the case of a delay, the Service Transfer Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

43.3.2 subject to the Authority's rights under clause 43.7, the Other Party shall not be entitled to exercise its rights to terminate the Agreement under clause 49 (Practical Remedies and Persistent Breach), clause 50 (Termination on Service Provider Default Incapable of Remedy) or clause 52 (Termination on Authority Default) (as appropriate); and/or

43.3.3 subject to clause 43.10 below, the Other Party shall give such other relief as is reasonable for the particular Relief Event.

- 43.4 If after a further twenty (20) Business Days the Service Provider has failed to provide the information required by clause 43.2, then the Relevant Party shall not be entitled to any relief during the period for which the information is delayed.
- 43.5 Each party shall notify the other if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 43.6 If the parties cannot agree the extent of the relief required, or the Other Party disagrees that a Relief Event has occurred or that the Relevant Party is entitled to relief under this clause 43, the matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 43.7 If, as a consequence of a Relief Event, the Service Provider is prevented from providing all or a substantial part of the Services for a continuous period of more than forty (40) Business Days, then the Authority may serve a notice terminating the Agreement by giving thirty (30) Business Days' written notice to the Service Provider. This Agreement shall terminate on expiry of the period in this notice. If this Agreement is terminated under this clause 43.7:
- 43.7.1 compensation shall be payable by the Authority in accordance with Part 3 (Compensation on Termination for Force Majeure) of Schedule 25 (Compensation on Termination); and
- 43.7.2 the Authority may require the Service Provider to transfer its title, interest and rights in and to any Exclusive Assets to the Authority in accordance with clause 29 and clause 55 (Consequences of Termination or Expiry) and clause 56 (Exit Arrangements) shall apply;
- and to the extent that they are applicable, both Parties shall comply with the obligations set out in clause 55 (Consequences of Termination or Expiry) and clause 56 (Exit Arrangements)
- 43.8 Notwithstanding, and without prejudice to, the other provisions of this clause 43, if the Relevant Party believes its obligation to use all reasonable endeavours to continue to perform, or resume the performance of, its obligations during a Relief Event would necessitate the allocation of levels of expenditure or other resources disproportionate to any benefit likely to be achieved, it may raise the matter in writing with the Other Party and the parties shall enter good faith discussion and/or negotiations to determine what action it is reasonable for the Relevant Party to be required to undertake given all the prevailing circumstances.
- 43.9 The Relevant Party shall notify the Other Party immediately of the cessation of the Relief Event.
- 43.10 Nothing in clause 43 shall affect any entitlement of the Authority to make deductions or any deductions made as a result of the operation of the Payment Mechanism during the period in which the Relief Event is subsisting.
- 43.11 If a Relief Event leads to the Service Provider claiming relief under this clause 43, the Service Provider shall advise the Authority of any alternative actions involving additional

expenditure which the Authority may wish to consider in order to alleviate the consequences of the Relief Event. The Authority shall have complete discretion to consider and agree to such alternative actions and, if it deems them desirable, may issue written instructions to the Service Provider to undertake such alternative actions in accordance with the Change Protocol.

43.12 **Excusing Causes**

43.12.1 **Relief from Deductions**

If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Services and provided that the effect of such Excusing Cause is claimed within thirty (30) Business Days of the date on which the Service Provider become aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then to the extent such failure or interference arises as a result of such Excusing Cause:

- (a) such failure by the Service Provider to perform, and any poor performance of, any affected Service shall not constitute a breach of the provisions of this Agreement by the Service Provider;
- (b) such interference shall not be taken account of in measuring the performance of the Services in accordance with clause 9 which shall be operated as though the relevant Services had been performed free from such adverse interference; and
- (c) any such failure to perform the Services shall be deemed not to have occurred,

so that the Service Provider shall be entitled to the payment under this Agreement if there had been no such interference with the performance of the Services.

43.12.2 For the purposes of clause 43.12 **Excusing Cause** means:

- (a) the implementation of any instruction of the Authority pursuant to clause 23.3 on the occurrence of an Emergency where the implementation of such instruction interferes adversely with, or causes a failure of, the performance of the Services, in each case in accordance with the Agreement (but does not apply to the performance of the revised Service instructed by the Authority).

43.12.3 **Insured exposure**

Without prejudice to clause 47 (Insurances), the Service Provider shall not be entitled to any payment which would not have been due under this Agreement but for clause 43.12.1 (Relief from Deductions) to the extent that the Service Provider is or should be able to recover under any policy of insurance required to be maintained by the Service Provider or any Service Provider Related Party in accordance with this Agreement (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of an act or omission of the Service Provider (or any Service Provider Related Party), including but

not limited to non disclosure or under insurance) or any other policy of insurance which the Service Provider has taken out and maintained.

43.12.4 Mitigation of Excusing Cause

The Service Provider shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Service Provider's ability to perform its obligations under this Agreement. To the extent that the Service Provider does not take such steps, the Service Provider shall not be entitled to and shall not receive, the relief specified in this clause 43.12 (Excusing Causes).

44 Force Majeure

- 44.1 No party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event. The Authority shall not be entitled to terminate this Agreement for a Service Provider Default if a Service Provider Default arises from a Force Majeure Event (but without prejudice to clauses 44.5 or 44.7 below).
- 44.2 Nothing in clause 44.1 above shall affect any entitlement to make deductions or any deductions made as a result of Schedule 4 (Payment Mechanism) in the period during which the Force Majeure Event is subsisting.
- 44.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 44.4 As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
- 44.5 If no such terms are agreed on or before the date falling one hundred and twenty (120) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and eighty (180) Business Days, then, subject to clause 44.7 below, either party may terminate this Agreement by giving forty (40) Business Days' written notice to the other party.
- 44.6 If this Agreement is terminated under clause 44.5 and clause 44.7:
- 44.6.1 compensation shall be payable by the Authority in accordance with Part 3 (Compensation on Termination for Force Majeure) of Schedule 25 (Compensation on Termination); and
- 44.6.2 the Authority may require the Service Provider to transfer its title, interest and rights in and to any Exclusive Assets to the Authority in accordance with clause

29 and clause 55 (Consequences of Termination or Expiry) and clause 56 (Exit Arrangements) shall apply.

44.7 If the Service Provider gives notice to the Authority under clause 44.5 that it wishes to terminate this Agreement, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Agreement to continue. If the Authority gives the Service Provider such notice, then:

44.7.1 the Authority shall pay to the Service Provider the Periodic Service Payment from the day after the date on which this Agreement would have terminated under clause 44.5 as if the Services were being fully provided; and

44.7.2 this Agreement will not terminate until expiry of written notice (of at least thirty (30) Days) from the Authority to the Service Provider that it wishes this Agreement to terminate.

44.8 The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Service Provider shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event. The Service Provider shall immediately implement the Business Continuity Plan in accordance with clause 31.

44.9 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

45 **Assignment and Sub-Contracting**

45.1 **Transfer of the Agreement by the Authority**

The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:

45.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

45.1.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement; or

45.1.3 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Service Provider) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement.

45.2 Restriction on the Service Provider

Subject to clause 45.3 (Exception) the Service Provider shall not assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of the Authority.

45.3 Exception

- 45.3.1 Nothing in this Agreement shall prohibit the Service Provider from providing or procuring the provision of the Services from a Sub-Contractor of sound economic and financial standing or technical or professional ability and eligibility (as referred to in Regulation 24 and 25 of the Public Contracts Regulations 2006) and whose identity has been notified to the Authority by the Service Provider and where such Sub-Contract (or series of similar Sub-Contracts) is to be entered into for a value (or aggregate value where there is a series of similar Sub-Contracts) greater than five hundred thousand pounds (£500,000) such Sub-Contractor has been approved by the Authority in writing prior to the appointment of such Sub-Contractor (such approval not to be unreasonably withheld or delayed), provided that the Service Provider shall remain primarily and directly liable for the Service Provider's obligations under this Agreement. The Authority shall have the right to require the Service Provider to submit such information as the Authority shall reasonably require regarding the economic and financial standing or technical or professional ability and eligibility (as referred to in Regulation 24 and 25 of the Public Contracts Regulations 2006) of the relevant Sub-Contractor.
- 45.3.2 The Authority shall be entitled to refuse to give consent pursuant to clause 45.3.1 where, in the Authority's reasonable opinion.
- (a) the proposed new or replacement Key Sub-Contractor fails to meet the Authority's minimum standard of economic and financial standing or technical or professional ability (as referred to in Regulation 24 and 25 of the Public Contracts Regulations 2006 (the **Regulations**)) to provide any of the Services or perform the relevant obligations in this Agreement or is ineligible to be selected as an economic operator under Regulation 23(1) of the Regulations or the Authority would be entitled to treat it as ineligible under Regulation 23(4) of the Regulations;
 - (b) the proposed new or replacement Key Sub-Contractor has a reputation such that there is a substantial risk that the Authority or the Services may be brought into disrepute;
 - (c) the proposed new or replacement Key Sub-Contractor is not being engaged in accordance with terms and conditions which are consistent with Good Industry Practice or there is not a sufficient passthrough of the provisions in this Agreement to the Key Sub-Contract;
 - (d) the proposed new or replacement Key Sub-Contractor will not fully and properly perform all the duties, obligations or responsibilities of the Service Provider to be sub-contracted to it or the Service Provider has not included provision for the regular monitoring and review of the Key

Sub-Contractor's compliance with key provisions of the Key Sub-Contract as set out in Schedule 13;

- (e) the proposed new or replacement Key Sub-Contract contains terms materially less advantageous to the Authority than the Key Sub-Contract entered into at the date of this Agreement (including without limitation the quantum of breakage costs payable by the Authority on termination and any terms which increase the Authority's liability on a termination);
- (f) the proposed new or replacement Key Sub-Contractor does not have the legal capacity, power or authority to become a party to the replacement Key Sub-Contract;
- (g) the new or replacement Key Sub-Contractor does not have the competence, technical ability or sufficient financial standing to satisfactorily carry out Services proposing to be sub-contracted to it; or
- (h) the proposed new or replacement Key Sub-Contractor:
 - i is not subject to provisions equivalent to those set out in Schedule 4 (Payment Mechanism);
 - ii will not enter into a Collateral Warranty; or
 - iii will not provide a Key Sub-Contractor Guarantee or Bond.

45.3.3 The Authority shall provide its approval of a Sub-Contractor (pursuant to clause 45.3.1) or rejection of a Sub-Contractor (pursuant to clause 45.3.2) within ten (10) Business Days of the Service Provider notifying the Authority of the Sub-Contractor in accordance with clause 45.3.1.

45.4 **Service Provider's Obligations**

The Service Provider shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

45.5 **Sub-Contractors**

Nothing in this Agreement shall prohibit or prevent any Sub-Contractor employed by the Service Provider from being employed by the Authority at any establishments of the Authority.

45.6 The Service Provider shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor or any other delegation of its duties under this Agreement.

46 Indemnities and Liability

46.1 Notwithstanding the provisions of clauses 46.2 to 46.11, neither party excludes or limits its liability (if any) to the other party for:

46.1.1 death or personal injury resulting from its negligence; nor

46.1.2 deceit or fraudulent misrepresentation.

46.2 Service Provider's Indemnity

Each party shall, subject to clause 46.4 (Party Not Responsible) be responsible for, and shall release and indemnify the other party from and against, all liability for:

46.2.1 death or personal injury resulting from its negligence or that of a Service Provider Related Party or Authority Related Party (as appropriate);

46.2.2 loss of or damage to property belonging to either party caused by the negligence or fraud of the other party or a Service Provider Related Party or an Authority Related Party (as appropriate);

46.2.3 any third party claims arising directly out of a breach by either party or a Service Provider Related Party or an Authority Related Party (as appropriate) of its obligations under this Agreement; and

46.2.4 any fraud by the Service Provider or a Service Provider Related Party, or by the Authority or an Authority Related Party (as the case may be).

46.3 Subject to clause 46.4, the Service Provider shall be responsible for, and shall release and indemnify the Authority and any Authority Related Party on demand from and against all liability for Direct Losses arising from third party actions, claims or demands brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Service Provider of its obligations under this Agreement.

46.4 Party Not Responsible

A party shall not be responsible nor be obliged to indemnify the other party where any liability is caused by:

46.4.1 the negligent act, or omission or wilful default of that other party (or where neither party is the Service Provider or a Service Provider Related Party or where the other party is the Authority or Authority Related Party);

46.4.2 by the breach by such other party of its obligations under this Agreement; or

46.4.3 arises as a direct result by acting on a written instruction issued by other party which contradicts or otherwise exceeds the terms of this Agreement,

provided that where reasonable such party notifies the other promptly if an event has occurred which is likely to cause such liability.

46.5 Limitation of Indemnity

An indemnity by either party under any provision of this Agreement shall be without limitation to any indemnity by that party under any other provision of this Agreement.

46.6 Responsibility for Related Parties

The Service Provider shall be responsible as against the Authority for the acts or omissions of the Service Provider Related Parties as if they were the acts or omissions of the Service Provider, and the Authority shall be responsible as against the Service Provider for the acts or omissions of the Authority Related Parties as if they were the acts or omissions of the Authority.

46.7 Notification of Claims

Where either party (the Indemnified Party) wishes to make a claim under this clause 46 against the other (the Indemnifying Party), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

46.8 Conduct of Claims

The Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have the conduct of the claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim.

46.9 Costs of Claims

The Indemnifying Party shall, if it wishes to have conduct of any claim, be liable for any cost or liability arising out of the conduct of the claim by the Indemnifying Party.

The Service Provider's liability to the Authority pursuant to this clause 46 shall be without prejudice to any other right or remedy available to the Authority under this Agreement and in particular (but without limitation) shall not prejudice in any way the Authority's right to enforce at any time and in any manner whatsoever any Guarantee or Collateral Warranty.

46.10

[REDACTED]

46.10.1

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

[REDACTED]

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(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

(e)

[REDACTED]

(f)

[REDACTED]

(g)

[REDACTED]

(h)

[REDACTED]

46.11 Limitation on Liability – Authority

46.11.1 Without prejudice to the Authority's obligation to pay the Service Provider the Periodic Service Payment pursuant to clause 32 (Payment) of this Agreement, the maximum aggregate liability of the Authority under or in relation to this Agreement shall not exceed:

(a) five (5) million pounds (£5,000,000) for each Contract Year; or

(b) For the Contract Period seven and a half million pounds (£7,500,000)

provided that such limitation shall not apply to any liability of the Authority for:

i payments by the Authority to the extent corresponding payments are received by the Authority pursuant to an insurance policy (or would be recoverable under an insurance policy other than as a result of an act or omission of the Authority or an Authority Related Party). For the avoidance of doubt, this clause shall exclude any payments that are received pursuant to the Authority's professional indemnity insurance policy of which the Liability Cap shall apply;

ii liability in the event of any fraud, wilful default, fraudulent misrepresentation, abandonment or corruption on the part of the Authority or an Authority Related Party;

- iii liability in respect of death or personal injury; or
- iv any liability of the Authority to the Service Provider arising under paragraph 13.3 of Part 1 of Schedule 9 (Access to Authority's Premises).

46.11.2 The Authority shall be permitted to apply any Service Deductions in accordance with Schedule 4 (Payment Mechanism), and any such Service Deductions shall not be deducted from the Service Provider's aggregate cap on liability pursuant to clause 46.10 (Limitation on Liability – Service Provider).

47 Insurance [Authority Policy Clause]

47.1 Requirement to Maintain

47.1.1 Without prejudice to its liability to indemnify the Authority under clause 46 (Indemnities and Liability) the Service Provider shall during the Contract Period take out and maintain in force or procure the taking out and maintenance of the Required Insurances in accordance with Schedule 31 (Insurance) and any other insurances as may be required by law. Such insurances shall be effective in each case no later than the Agreement Date.

47.1.2 The Authority may review the minimum indemnity limits specified for the insurance policies referred to in clause 47.1.1 or for PI insurance on an annual basis or at any time that Special Projects have received Stage 2 Approval pursuant to the Special Projects Approval Procedure and are included within the Services. Any Change that is required to the minimum indemnity limits as a result of the Authority's review shall be implemented in accordance with the Change Protocol or the Special Projects Approval Procedure.

47.2 Professional Indemnity Insurance

The Service Provider undertakes to procure that the Service Provider and Key Sub-Contractor take out and maintain in force professional indemnity insurance (**PI Insurance**) (covering any and all financial losses arising from the provision of the Services) and to:

47.2.1 provide evidence satisfactory to the Authority (as and when reasonably required by the Authority) of the PI Insurance being in full force and effect from the date of this Agreement until the date twelve (12) years from and including the date of termination of this Agreement (such evidence to include details of the cover) including confirmation of territorial limits, levels of excess, insurers, policy number and indemnity limit (which shall be a minimum of ten million pounds £10,000,000) in respect of any one occurrence and in annual aggregate;

47.2.2 provide the Authority with notice of:

- (a) any cancellation of the PI Insurance if practicable but in any event not less than thirty (30) days prior to the relevant cancellation date; and
- (b) any adverse material changes to or suspension of cover relevant to the Project if practicable but in any event not less than thirty (30) days prior to the relevant change or suspension;

47.2.3 inform the Authority as soon as reasonably practicable of any claim under the PI Insurance in respect of the Project of in excess of one million pounds (£1,000,000), provide such information to the Authority as the Authority may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit.

47.3 **Obligation on Parties**

No party to this Agreement shall (and the Service Provider will use all reasonable endeavours to procure that none of its Sub-Contractors shall) take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

47.4 **Nature of the Insurance**

With the exception of any insurances required by law, the Required Insurances shall without prejudice to the obligation to indemnify the Authority in accordance with clause 46.2, the Service Provider shall take out and maintain insurance in respect of claims arising out of the Service Provider's liability referred to in clause 46.2 which shall indemnify the Authority in like manner to the Service Provider (but only to the extent that the Service Provider may be liable to the Authority under the terms of the Agreement) and shall be in a sum not less than that stated in Schedule 31 (Insurance) in respect of any one occurrence or series of occurrences arising out of one event.

47.5 **Evidence of Policies**

47.5.1 The Service Provider shall provide to the Authority:

- (a) evidence in the form of brokers' letters confirming that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 47 (Insurance) and Schedule 31 (Insurance); and
- (b) on the date of expiry or as soon as reasonably practical after date of expiry in respect of any insurance required by clause 47.1 (Requirement to Maintain), satisfactory evidence that the relevant insurance has been or is being renewed.

47.6 **Renewal Certificates**

Renewal certificates or cover notes in relation to any of the insurances required by clause 47.1 (Requirement to Maintain) shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible after the renewal date.

47.7 **Breach**

If the Service Provider is in breach of clause 47.1 (Requirement to Maintain), the Authority may pay any premiums required to keep such insurance in force or itself procure such

insurance and may, in either case, recover such amounts from the Service Provider on written demand, together with all costs and expenses incurred in procuring such insurance.

47.8 Notification of Claims

47.8.1 In the event that the Authority receives a claim relating to the Services or this Agreement, the Service Provider shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

47.8.2 The Service Provider shall:

- (a) give the Authority notification within ten (10) Business Days after any claim in excess of ten thousand pounds (£10,000) relating to the provision of the Services on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) by full details of the incident giving rise to the claim;
- (b) promptly and diligently deal with all claims received relating to the Required Insurances and in accordance with insurers' requirements; and
- (c) in relation to all claims relating to the Required Insurances, give the Authority details of the value and nature of all such claims under this Agreement as may from time to time be reasonably required by the Authority provided always that such information shall be supplied by the Service Provider no less frequently than once every twelve (12) months.

47.9 Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Service Provider of its liabilities and obligations under this Agreement.

47.10 Premiums

The insurance premiums for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of the Service Provider.

47.11 NOT USED

47.12 Capita's Letter of Undertaking

47.12.1 On the Agreement Date and within thirty (30) days following each renewal of Required Insurances, the Service Provider shall deliver to the Authority a letter of undertaking as set out in Part 3 (Letter of Undertaking) of Schedule 31 (Insurance).

47.13 **Indexation**

The limit of indemnity and maximum deductibles for each of the Required Insurances shall be indexed, provided such limits of indemnity and maximum deductibles shall only be increased on each renewal date such that the limit that is indexed becomes equal to or exceeds the whole insurable amount or deductible (as the case may be) available in the insurance market.

48 **Change of Control**

48.1 NOT USED

48.2 The Service Provider shall inform the Authority as soon as reasonably practicable and, in any event, within twenty (20) Business Days of any Change of Ownership occurring.

48.3 The Service Provider represents and warrants to the Authority that at the date of this Agreement the legal and beneficial ownership of the Service Provider and Hold Co is as set out in Schedule 7 (Warranted Data) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Service Provider and Hold Co.

48.4 The Service Provider shall obtain the Authority's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer of the Service Provider.

48.5 Any Change of Ownership arising as a consequence of:

48.5.1 the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Service Provider, Hold Co or the Guarantor provided that any document conferring security over any shares has been approved by the Authority. (such approval not to be unreasonably withheld or delayed); or

48.5.2 any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or

48.5.3 any transfer by a Shareholder to an Affiliate of such transferor,

shall be disregarded for the purpose of clauses 48.1, 48.2, 48.3 and 48.4 above.

Where clause 48.5.3 applies and subsequent to any such transfer (the **Original Transfer**) the transferee ceases to be an Affiliate of the original transferor, it shall be a breach of this clause 48 if the shares or interests which were the subject of the Original Transfer are not within twenty (20) days of the transferee ceasing to be an Affiliate of the original transferor transferred to that original transferor or any Affiliate of such transferor.

48.6 The Authority may, not more than twice in any Contract Year, or at any time when a Service Provider Default is outstanding, request that the Service Provider inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Authority's request for details of any Change of Ownership.

48.7 The Service Provider's obligations under clauses 48.2 and 48.3 above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Service Provider's awareness, having made all reasonable enquiries.

Part 9: Termination and Exit Management

49 Persistent Breach and Service Provider Default Capable of Remedy

49.1 The following is without prejudice to any other right or remedy in equity, common law, under statute or pursuant to this Agreement.

49.2 Persistent Breach

49.2.1 If a particular breach during the Contract Period (other than any breach for which adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) could have been made) has continued for more than ten (10) days or occurred more than three (3) times in any three (3) month period then the Authority may serve a notice on the Service Provider:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of the breach; and
- (c) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

49.2.2 If, following service of a warning notice the breach specified has continued beyond ten (10) Business Days or recurred two (2) or more times in the three (3) month period after the date of service, then the Authority may serve another notice (a **Persistent Breach Final Warning Notice**) on the Service Provider:

- (a) specifying that it is a Persistent Breach Final Warning Notice;
- (b) stating that the breach specified has been the subject of a warning notice served within the three (3) month period prior to the date of service of the Persistent Breach Final Warning Notice; and
- (c) stating that if the breach continues or recurs for more than ten (10) days or recurs three (3) or more times within the three (3) month period after the date of service of the Persistent Breach Final Warning Notice, this Agreement may be terminated.

49.2.3 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

49.3 Service Provider Default

49.3.1 Subject to clauses 49 and 50, the Authority shall be entitled to terminate this Agreement by notice in writing to the Service Provider if a Service Provider Default has occurred.

49.3.2 If a Service Provider Default has occurred and the Authority wishes to terminate this Agreement, it must serve either a Remedy Notice, a Key-Subcontractor

Insolvency Remedy Notice or a Default Termination Notice on the Service Provider.

49.4 Remedy Notice

49.4.1 If a Service Provider Default falling within limbs (a), (d), (e) (m) of the definition of Service Provider Default has occurred, the Authority may serve a written notice on the Service Provider (a **Remedy Notice**) and such Remedy Notice must specify:

- (a) the type and nature of the Service Provider Default or breach that has occurred, giving reasonable details;
- (b) that the Service Provider:
 - i puts forward a rectification programme reasonably acceptable to the Authority within twenty (20) Business Days of receipt of the Remedy Notice; or
 - ii rectifies the Service Provider Default or breach within forty (40) Business Days of receipt of the Remedy Notice or (where later) within the period specified in the Remedy Notice; and
- (c) that the Authority may exercise its powers under clauses 49.4.2(c) and/or 49.4.2(d) by taking Required Action and/or serving a Final Warning Notice (as relevant) if the Service Provider fails to comply with the requirements specified in the Remedy Notice and set out in clauses 49.4.1(a) and 49.4.1(b) above (as relevant).

49.4.2 If:

- (a) the Service Provider fails to:
 - i put forward a rectification programme reasonably acceptable to the Authority within twenty (20) Business Days; or
 - ii rectify the Service Provider Default or breach within forty (40) Business Days of receipt of the Remedy Notice or (where later) within the period specified in the Remedy Notice; or
 - iii implement a rectification programme within forty (40) Business Days of receipt of the Remedy Notice or (where later) within the period specified in the Remedy Notice; or
- (b) the Service Provider Default having been rectified occurs again at any time within a three month period of receipt of the Remedy Notice,

then the Authority shall be entitled to:

- (c) take Required Action in accordance with clause 42 (Authority Step-In) including making the deduction from the Periodic Service Payment of the Authority's costs of operation in taking the Required Action in accordance with clause 42.5; and/or

- (d) serve a Final Warning Notice in accordance with clause 49.4.3.

49.4.3 A Final Warning Notice served on the Service Provider shall:

- (a) specify that it is a Final Warning Notice;
- (b) state that the Service Provider Default or breach specified has been the subject of a Remedy Notice served pursuant to clause 49.4.1 (if relevant); and
- (c) state that if the Service Provider Default or breach continues or recurs within twenty (20) Business Days of the date of service of the Final Warning Notice,

this Agreement may then be terminated immediately in whole or in part at the sole discretion of the Authority.

49.4.4 In the event that the Service Provider fails to comply with the Final Warning Notice, the Authority may then terminate this Agreement in whole or in part at its sole discretion by giving written notice of termination to the Service Provider and this Agreement shall terminate on the date falling five (5) Business Days after the date the Service Provider receives such notice.

49.4.5 If the Service Provider either rectifies the Service Provider Default or implements the rectification programme, if applicable, in accordance with its terms, within the time period specific in the Remedy Notice, the Remedy Notice will be deemed to be revoked and this Agreement will continue.

49.4.6 The Service Provider shall co-operate with the Authority in respect of any Authority action pursuant to this clause 49 including providing information and giving access to the Service Provider's staff or personnel and access to the premises from which the Services are being performed.

49.4.7 Any Disputes arising as out of this clause 49 shall be referred to the Dispute Resolution Procedure.

49.5 **Key Sub-contractor Insolvency Remedy Notice**

49.5.1 If a Service Provider Default falling within limb (c) of the definition of Service Provider Default affecting a Key Sub-Contractor has occurred, the Authority may serve written notice on the Service Provider (**Key Sub-Contractor Insolvency Remedy Notice**) and such Key Sub-Contractor Insolvency Remedy Notice must specify:

- (a) the type and nature of the Service Provider Default that has occurred, giving reasonable details; and
- (b) the relevant part of this Agreement will terminate unless the Key Sub-Contractor is replaced within ninety (90) Business Days after the date the Service Provider receives the Key Sub-Contractor Insolvency Remedy Notice in accordance with clause 45 (Assignment and Sub-Contracting) of this Agreement.

- 49.5.2 If the Service Provider replaces the Key Sub-Contractor within ninety (90) Business Days after the date the Service Provider receives the Key Sub-Contractor Insolvency Remedy Notice in accordance with clause 45 (Assignment and Sub-Contracting) of this Agreement, the Key Sub-Contractor Insolvency Remedy Notice will be deemed to be revoked and this Agreement will continue.
- 49.5.3 Subject to clause 49.5.4, in the event that the Service Provider fails to replace the Key Sub-Contractor within ninety (90) Business Days after the date the Service Provider receives the Key Sub-Contractor Insolvency Remedy Notice or does not replace the Key Sub-Contractor in accordance with clause 45(Assignment and Sub-Contracting) of this Agreement, the Authority may then terminate the relevant part of this Agreement at its reasonable discretion by giving written notice of termination to the Service Provider and this Agreement shall terminate on the date falling five (5) Business Days after the date the Service Provider receives such notice.
- 49.5.4 In the event the Service Provider identifies a replacement Key Sub-Contractor and notifies the Authority of the same and the Authority refuses consent pursuant to Clause 45.3.2 then the Parties, acting reasonably, shall agree an extension time to the time period set out in clause 49.5.1(b).The Service Provider shall indemnify the Authority for any Direct Losses it may suffer during the extension period until a replacement Key Subcontractor is appointed by the Service Provider.

50 Termination on Service Provider Default Incapable of Remedy

- 50.1 If a Service Provider Default has occurred falling within:
- 50.1.1 any limb of the definition of Service Provider Default (other than limbs (a), (d), (e) (m) and, where affecting a Key-Subcontractor, limb (c)); or
- 50.1.2 limbs (a), (d), (e) or, where affecting a Key-Subcontractor, limb (c) of the definition of Service Provider Default and the Authority reasonably believes such Service Provider Default is incapable of remedy, the Authority may serve a written notice on the Service Provider (a **Default Termination Notice**) and such Default Termination Notice must specify:
- (a) the type and nature of the Service Provider Default or breach that has occurred, giving reasonable details; and
 - (b) that this Agreement will terminate on the date falling forty (40) Business Days after the date the Service Provider receives the Default Termination Notice.
- 50.2 This Agreement will terminate on the date falling forty (40) Business Days after the date the Service Provider receives a Default Termination Notice.
- 50.3 The provisions of Part 2 (Compensation following Termination for the Service Provider's Break Option, Service Provider Default, Corrupt Gifts and Fraud) of Schedule 25 (Compensation on Termination) shall apply in respect of compensation in relation to termination under clause 49 and clause 50.

51 Termination by Break Point Options

51.1 Termination on the Authority's Break Option

- 51.1.1 Without prejudice to its rights under clause 51.1 (Termination on the Authority's Break Option), the Authority may terminate this Agreement at any time before the Expiry Date by complying with its obligations under clauses 51.1.2 to 51.1.5 below.
- 51.1.2 If the Authority wishes to terminate this Agreement or any part of it under this clause 51.1 (Termination on the Authority's Break Option), it must give notice to the Service Provider stating:
- (a) that the Authority is terminating this Agreement or any part of it under this clause 51.1 (Termination on the Authority's Break Option);
 - (b) the date on which this Agreement or any part of it will terminate, which must be a minimum of twelve (12) months after the date of receipt of the notice; and
 - (c) whether the Authority has chosen to exercise its option under clause 51.1.3 below.
- 51.1.3 On termination, the Authority shall have the option to require the Service Provider to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.
- 51.1.4 This Agreement or any part of it will terminate on the date specified in the notice referred to in clause 51.1.2.
- 51.1.5 The provisions of Part 1 (Compensation following Termination on the Authority's Break Option or an Authority Default) of Schedule 25 (Compensation on Termination) shall apply in respect of compensation in relation to termination under this clause 51.1 (Termination under the Authority's Break Option).

51.2 Termination on the Service Provider's Break Option

- 51.2.1 The Service Provider may terminate this Agreement at any time between the fourth anniversary of the Service Transfer Date and the Expiry Date by complying with its obligations under clauses 51.2.2 to 51.2.5 below.
- 51.2.2 If the Service Provider wishes to terminate this Agreement under this clause 51.2, it must give notice to the Authority stating:
- (a) that the Service Provider is terminating this Agreement under this clause 51.2 (Termination on the Service Provider's Break Option); and
 - (b) the date on which this Agreement will terminate which must be a minimum of twenty-four (24) months after the date of receipt of the notice by the Authority.

- 51.2.3 On termination, the Authority shall have the option to require the Service Provider to transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority.
- 51.2.4 Provided the notice has been provided in accordance with clause 51.2.2 above this Agreement will terminate on the date specified in such notice.
- 51.2.5 The provisions of Part 2 (Compensation following Termination for the Service Provider's Break Option, Service Provider Default, Corrupt Gifts and Fraud) of Schedule 25 (Compensation on Termination) shall apply in respect of compensation in relation to termination under this clause 51.2 (Termination under the Service Provider's Break Option).

52 Termination on Authority Default

- 52.1 If an Authority Default has occurred and the Service Provider wishes to terminate this Agreement, it must serve a termination notice (the **Service Provider Termination Notice**) on the Authority within thirty (30) Business Days of becoming aware of the Authority Default.
- 52.2 The Service Provider Termination Notice must specify the type of Authority Default which has occurred entitling the Service Provider to terminate.
- 52.3 This Agreement (or relevant part) will terminate on the day falling sixty (60) Business Days after the date the Authority receives the Service Provider Termination Notice, unless the Authority rectifies the Authority Default within forty (40) Business Days of receipt of the Service Provider Termination Notice or such other period agreed by the parties.
- 52.4 The provisions of Part 1 (Compensation following Termination on the Authority's Break Option or on Authority Default) of Schedule 25 (Compensation on Termination) shall apply in respect of compensation in relation to termination under this clause 52 (Termination on Authority Default).

53 Termination on Corrupt Gifts and Fraud [*Authority Policy Clause*]

53.1 Prevention of Fraud and Bribery

- 53.1.1 The Service Provider shall take all reasonable steps, in accordance with the Authority's Counter Fraud Framework, the Authority's Constitution (including Part 4 of Financial Regulations) and the Anti Money Laundering Framework, to prevent Fraud by Service Users, Staff and the Service Provider in connection with the receipt of monies from the Authority.
- 53.1.2 The Service Provider shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 53.1.3 If the Service Provider or its Staff or any other Service Provider Related Party not acting independently of the Service Provider commits Fraud and/or a Prohibited Act in relation to this or any other contract with the Authority, the Authority may:

- (a) by written notice terminate this Agreement and recover from the Service Provider the amount of any Direct Losses suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services throughout the remainder of the Contract Period for the purposes of this sub-clause "not acting independently of" means acting with the actual or ostensible authority or actual or constructive knowledge of any Key Personnel or any directors of the Service Provider or of the Service Provider Related Party (as the case may be).

53.1.4 If the Service Provider's Staff or any employee of a Service Provider Related Party acting independently of the Service Providers or of the Services Provider Related Party (as the case may be) commits a Fraud then the Authority may serve a Termination Notice to the Service Provider and this Agreement will terminate in accordance with this clause unless within twenty (20) Business Days of receipt of the Termination Notice, the employment of the individual committing the Fraud is terminated and as soon as reasonably practicable;

- (a) the Service Provider and/or Service Provider Related Party (as appropriate) puts in place effective measures to mitigate the risk of any re-occurrence; and
- (b) the Service Provider notifies the Authority in writing of the measures put in place pursuant to clause 53.1.4(a); and

if the relevant individual is also a Joint Employee of the Authority, the Authority agrees that it will terminate that Joint Employee's employment contract as soon as reasonably practicable.

53.1.5 The Service Provider:

- (a) shall not, and shall procure that any Service Provider Related Party or any of its agents or shareholders shall not, in connection with this Agreement commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.

53.1.6 The Service Provider shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within ten (10) Business Days of the Agreement Date, and annually thereafter, certify to the Authority in writing (such certification to be

signed by the Partnership Manager) compliance with clause 53.1.5 to 53.1.10 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 53.1.7 The Service Provider shall comply with the Authority's anti-bribery policy to prevent any Service Provider Related Party from committing a Prohibited Act and shall enforce the Authority's anti-bribery policy where appropriate.
- 53.1.8 If any breach of clause 53.1.5(a) is suspected or known, the Service Provider must notify the Authority immediately.
- 53.1.9 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 53.1.5(a) the Service Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for 6 years following the expiry or termination of this Agreement.
- 53.1.10 Any Termination Notice given under clause 53.1.4 must specify:
- (a) the nature of the Fraud and/or Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Fraud and/or Prohibited Act; and
 - (c) the date on which this Agreement will terminate.
- 53.1.11 Any dispute shall be determined in accordance with the procedure for the resolution of Disputes set out in clause 15 (Dispute Resolution).
- 53.1.12 The provisions of Part 2 (Compensation following Termination for the Service Provider's Break Option, Service Provider Default, Corrupt Gifts and Fraud) of Schedule 25 (Compensation on Termination) shall apply in respect of compensation in relation to termination under this clause 53 (Termination on Corrupt Gifts and Fraud).

54 Partial Termination

54.1 Termination of Part

- 54.1.1 Where the Authority serves a termination notice under this Agreement in accordance with clauses 43, 44, 49, 50, 51.1 or 53 and specifies in such notice that the termination notice relates to an identifiable part or parts of the Services (the **Partial Termination Services**):
- (a) the Authority shall be entitled to terminate the Agreement in respect of the Partial Termination Services only (pursuant to the timescales set out in the relevant notice) without prejudice to the Authority's right to terminate this Agreement as a whole (a **Partial Termination Notice**);

- (b) on termination of the Agreement in respect of the Partial Termination Services the Authority shall pay to the Service Provider the appropriate compensation on termination payment set out in Schedule 25 (Compensation on Termination) pro-rated in accordance with the percentage value which the Partial Termination Services represented of the Annual Service Charge paid by the Authority (less any Service Deductions) to the Service Provider in the previous Contract Year or in the case of a Partial Termination Notice served in the first Contract Year, of the first Contract Year's Annual Service Charge; and
- (c) unless the Service Provider elects to terminate the remainder of the Agreement in accordance with clause 54.2 (Termination of Remaining Services) below, the provisions of clauses 55 (Consequences of Termination and Expiry) and 56 (Exit Arrangements) shall apply mutatis mutandis to such Partial Termination Services and with effect from such termination the Annual Service Charge shall be reduced by the amount of the Annual Service Charge in the previous Contract Year relating to the Partial Termination Services, or in the case of a Partial Termination Notice served in the first Contract Year, of the first Contract Year's Annual Service Charge which related to the Partial Termination Services.

54.2 Termination of Remaining Services

54.2.1 Where the Authority has served a Partial Termination Notice, the Service Provider shall be entitled to serve a termination notice (a Remainder Termination Notice) with respect to the rest of the Services (the Remaining Services) if (and provided that the Service Provider shall have provided the Authority with detailed reasoning and financial assessments (on an open book, auditable, justifiable basis) evidencing its determination under limbs (a) or (b) below):

- (a) the Service Provider, acting reasonably, determines that as a result of the termination of the defaulted Services or affected Services (as applicable) it will be commercially unsustainable or operationally impossible or not feasible for the Service Provider to deliver the Remaining Services in accordance with the agreed Performance Standards and Key Performance Indicators and Super KPIs or it would otherwise be uneconomic; or
- (b) the aggregate value of the Partial Termination Notice (as applicable) is equivalent to twenty per cent (20%) or more of the value of the Annual Service Charge payable by the Authority (less any Service Deductions) to the Service Provider in the previous Contract Year or, in the case of a Remainder Termination Notice served in the first Contract Year, the value of the first Contract Year's gross Annual Service Charge.

54.2.2 In the event that the Service Provider serves a Remainder Termination Notice, such termination shall take effect on the same date as termination of the Partial Termination Services (as applicable) takes effect and on such termination the

Authority shall pay to the Service Provider compensation on termination under part 2 (Compensation following Termination for the Service Provider's Break Option, Corrupt Gifts and Fraud) of schedule 25 (Compensation on Termination) pro-rated in accordance with the percentage value which the Remaining Services represented of the Annual Service Charge payable by the Authority (less any Deductions) to the Service Provider in the previous Contract Year or, in the case of a Remainder Termination Notice served in the first Contract Year, of the first Contract Year's Annual Service Charge.

55 Consequences of Termination and Expiry

55.1 The provisions of Part 4 (Compensation following Expiry) of Schedule 25 (Compensation on Termination) shall apply in respect of compensation in relation to expiry of this Agreement.

55.2 Accrued Rights

55.2.1 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses of this Agreement which expressly or impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination in accordance with clause 71 (Continuing Obligations).

55.2.2 On or before the Expiry Date or Termination Date, the Service Provider shall ensure that all documents or computer records in its possession, custody or control which contain information relating to the Services including any documents in the possession, custody or control of a Sub-Contractor are delivered up to the Authority or as otherwise directed by the Authority. The Service Provider shall be entitled to retain a copy of all information and records supplied or produced under the Agreement for insurance and liability purposes only which shall be subject to the ongoing confidentiality obligations in Clause 24 (Information and Confidentiality).

55.3 Transfers upon Expiry or Termination

55.3.1 Transfer of documents etc to the Authority

The Service Provider shall within twenty (20) Business Days of the Expiry Date (or, if earlier the Termination Date) hand over to the Authority or as otherwise directed by the Authority all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Service Provider relating to and/or touching upon the Assets, the design, installation, maintenance and/or replacement of the Assets and the carrying out of the Services other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Services after the Termination Date or the Expiry Date (as the case may be). Documents, records, books, data and/or information kept or stored on computer shall be surrendered, released and/or handed-over to the Authority by whatever means and in whatever format the Authority may reasonably require.

55.3.2 Provision of Information

The Service Provider shall (subject to any condition imposed on the Service Provider or any Sub-Contractor by Legislation):

- (a) following the service of a Termination Notice;
- (b) following termination of this Agreement when a Termination Notice is not served;
- (c) at any time during the Contract Period upon request from the Authority; and
- (d) no later than six (6) months and no earlier than twelve (12) months before the Expiry Date,

supply to the Authority within twenty (20) Business Days of the relevant date or request all information reasonably required by the Authority to carry out the Services (including information on the identity, terms and conditions of employment of all employees of the Service Provider or any sub-contractor (including the Sub-Contractors) employed in the provision of the Services and information relating to the Assets) and the Service Provider warrants that, to the best of its knowledge and belief, such information is accurate in all material respects except for information originally supplied to the Service Provider by the Authority to the extent that it has not been subsequently amended and/or updated by the Service Provider.

55.3.3 Assignment of Rights, etc.

On the Expiry Date (or if earlier, on the Termination Date) the Authority shall have the right to require the Service Provider to:

- (a) assign to the Authority or any person nominated by the Authority the benefit of all and any contracts or arrangements (as may be reasonably required by the Authority) it may have with any third parties in relation to the Services (in so far as such contracts or arrangements are required in the delivery of the Services) and shall, if for any reason it cannot assign the same, declare a trust of all its beneficial interest in the same for the benefit of the Authority; and
- (b) assign or transfer to the Authority or as directed by the Authority or provide the Authority or as directed by the Authority with a non-exclusive licence for the Intellectual Property Rights in the Assets that are not transferrable but used to perform the Services free of charge and shall take such action in relation to Intellectual Property Rights as is required pursuant in clause 16 (Intellectual Property Rights),

and the Service Provider hereby irrevocably and unconditionally appoints the Authority as the Service Provider's lawful attorney for the purpose of executing such deeds or documents of novation to give effect to the provisions of this clause 55.3.3 (Assignment of Rights, etc) subject to the Authority notifying the Service Provider as soon as practicable of the proposed action.

55.3.4 Transfer of Assets

On termination or expiry of this Agreement, the Authority shall have the right to require the Service Provider to transfer its rights, title and interests in the Assets to the Authority or as directed by the Authority (including in accordance with clause 29 of this Agreement).

55.3.5 Duty to Co-operate

During the final six (6) months of the Contract Period (where this Agreement expires by effluxion of time) or during the period from service of any Termination Notice until the Termination Date of this Agreement, and in either case for three (3) months thereafter, the Service Provider shall co-operate fully with the transfer of responsibility for the Services (or any part of the Services) to the Authority or any New Contractor/successor contractor of such services the same or similar to the Services, and for the purposes of this clause 55.3.5 the meaning of the term "co-operate" shall include:

- (a) liaising with the Authority and/or any New Contractor/successor contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such New Contractor/successor contractor;
- (b) allowing any New Contractor/successor contractor access (at reasonable times and on reasonable notice) to the Authority's Premises or the Service Provider's Premises as may be the case but not so as to interfere with or impede the provision of the Services; and
- (c) providing to the Authority and/or to any New Contractor all and any information concerning the Site(s) and the Services which is reasonably required for the efficient transfer of responsibility for performance of the Project and Services.

55.3.6 Retendering the Service on Expiry

On or before a date falling no later than eighteen (18) months prior to the Expiry Date (where this Agreement expires by effluxion of time) or during the period from service of any Termination Notice until the Termination Date of this Agreement, the Authority shall notify the Service Provider in writing whether it wishes to retender the provision of the Services.

55.3.7 If the Authority wishes to retender the provision of the Services then:

- (a) the Service Provider shall use all reasonable endeavours to perform all necessary acts (including entering into any contracts) to ensure that the successor contractor obtains all of its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority) with effect on and from the Expiry Date or Termination Date; and
- (b) the Authority will bear all costs of any retendering of the Agreement on expiry.

55.3.8 If the Authority does not wish to retender the Services then subject to clause 55.3.4 (Transfer of Assets) and/or if required by the Authority under clause 29, the Assets (or such part of the Assets as may be required by the Authority) shall transfer to the Authority on the Expiry Date or Termination Date and the Service Provider shall use all reasonable endeavours to perform all necessary acts (including entering into any contracts) to ensure that the Authority obtains all of its rights, title and interest in the Assets (or such part of the Assets as may be required by the Authority) with effect on and from the Expiry Date or Termination Date.

55.3.9 **Transfer of Responsibility**

The Service Provider shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a New Contractor/successor contractor or to the Authority, as the case may be, and the Service Provider shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

56 **Exit Arrangements**

56.1 The Authority and the Service Provider shall comply with the exit arrangements set out in Schedule 17 (Exit Arrangements) and any current Exit Plan. Notwithstanding any other provision of this Agreement the Authority shall have the rights set out in clause 56.2:

56.1.1 if an Insolvency Event occurs, the Authority's rights under clause 56.2 shall be exercisable by the Authority at any time before the winding up of the Service Provider or the Guarantor or the Key Sub-contractor or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;

56.1.2 in the event of termination of this Agreement for any reason; and/or

56.1.3 upon the expiry of this Agreement.

56.2 The Service Provider shall not, without the Authority's written consent, encumber any Assets in any way which would require the consent of a third party to the exercise by the Authority of its rights under Schedule 17 (Exit Arrangements) or which would in some other way restrict the exercise by the Authority of its rights under that schedule. For the purposes of this clause 56.2 "encumber" shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement or which otherwise restricts the Service Provider's ability to use and deal with the relevant item of the Assets.

56.3 Unless the Authority otherwise requires, during the time between service of a notice of termination of this Agreement in whole or in part and such termination taking effect, the Service Provider shall take all reasonable steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Service Provider may incur as a result of the termination, including to:

- 56.3.1 cancel all capital and recurring cost commitments in connection with the Transition Plan and/or the provision of the Services on the most cost-effective terms;
- 56.3.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-Contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Authority whether such contracts are required to be transferred to the Authority or any Future Service Provider instead;
- 56.3.3 reduce labour costs by the redeployment or release of Service Provider's personnel other than Key Personnel to the extent possible in the circumstances; and
- 56.3.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in clauses 56.3.1 to 56.3.3 (inclusive).

56.4 If the Service Provider does not fulfil its obligations in accordance with clause 56.3, the Authority shall not pay any sums in excess of those which the Authority would have paid had such action been taken.

Part 10: General Provisions

57 Service of Notices

57.1 Any notice required to be given to by the Parties under this Agreement shall be in writing and may be served:

- 57.1.1 by delivering the notice by hand to the Contract Manager in which case the notice shall be deemed to have been served at the time it is so delivered provided a receipt is obtained; or
- 57.1.2 by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Authority and marked clearly for the attention of the Contract Manager, in which case the notice shall be deemed to have been duly served when a signature acknowledging its receipt has been obtained,

provided that the Authority may change its nominated representative or address by prior written notice to the Service Provider.

57.2 Any notice required to be given to the Service Provider under this Agreement shall be in writing and may be served:

- 57.2.1 by delivering the notice by hand to the Partnership Manager or to the Service Provider at the registered office of the Service Provider in which case the notice shall be deemed to have been duly served at the time it is so delivered; or
- 57.2.2 by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Partnership Manager or to the Service Provider, at the registered office of the Service Provider in which case the notice shall be deemed to have been duly served the day following posting,

provided that the Service Provider may change its nominated representative by prior notice to the other party.

58 Entire Agreement

58.1 Prior Representations etc Superseded

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

58.2 Acknowledgements

Each of the parties acknowledges that:

58.2.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement (including without limitation to those referred to in clause 39) and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

58.2.2 this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

59 Agency Arrangements

59.1 No Partnership or Employment

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and the Service Provider.

60 Power to Bind

60.1 Save as expressly provided otherwise in this Agreement or save where otherwise explicitly specified in the Output Specification, the Service Provider shall not be, or be deemed to be, an agent of the Authority and the Service Provider shall not hold itself out as having authority or power to bind the Authority in any way.

60.2 Save as expressly provided otherwise in this Agreement or save where otherwise explicitly specified in the Output Specification, the Authority shall not be, or be deemed to be, an agent of the Service Provider and the Authority shall not hold itself out as having authority or power to bind the Service Provider in any way.

61 Exercise of Statutory Authority

Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority's planning, highways, environmental health, building control, cemetery or

crematorium functions or other function relevant to the Services nor, without prejudice to the Service Provider's rights and remedies under this Agreement, on the exercise of any other statutory function by or on behalf of the Authority.

62 Public Relations and Publicity [Authority Policy Clause]

62.1 The Service Provider shall not by itself and procure that its staff shall not communicate with representatives of the press, television, radio or other communications media or outlets on any matter concerning this Agreement and/or the Services without the prior written approval of the Authority.

62.2 No permission to photograph or film in or upon any property used in relation to this Agreement and/or the Services shall be given or permitted by the Service Provider unless the Authority has given its prior written approval.

The Service Provider shall provide regular updates to the Authority regarding how the Service Provider is supporting the Authority's overall communications strategy in relation to the Services. Where requested by the Authority, the Service Provider shall carry out actions in relation to the Services to support the Authority's communications strategy.

63 Waiver

63.1 No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party.

63.2 No waiver under clause 63.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

64 Severability

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement or of any other documents referred to in this Agreement.

65 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

66 Law and Jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with it is governed by and construed in all respects in accordance with the laws of England and Wales and, subject to Disputes which are properly referred to and resolved in accordance with the Dispute Resolution Procedure, the parties submit to the exclusive jurisdiction of the courts of England and Wales.

67 **Interest on Late Payments**

The parties will pay interest on any amount payable under this Agreement not paid on the due date, for the period from that date to the date that payment is made at the Prescribed Rate accruing on a daily basis.

68 **Mitigation**

68.1 The Authority and the Service Provider shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle that party to relief and/or to claim compensation hereunder.

69 **Further Assurance**

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

70 **Third Party Rights**

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement except clause 26.3.15 which shall be enforceable by Eligible Employees to the extent set out in clause 26.3.15.

71 **Continuing Obligations**

71.1 Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any payment of compensation on termination pursuant to this Agreement:

71.1.1 the termination or expiry of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the Expiry Date or the Termination Date; and

71.1.2 the termination or expiry of this Agreement shall not affect the continuing rights or obligations of the Authority and the Service Provider under the clauses in the table below and/or under any other provision of this Agreement which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry or termination:

Clause/Schedule reference	Description
1	Definitions and interpretation
8	Conflicts of Interest
12	Relationship
15	Dispute Resolution
16	Intellectual Property Rights

Clause/Schedule reference	Description
17	Databases
18	Project Specific IPR and Specially Written Software
19	Escrow
20	Data Protection
21	Authority Data
24	Information and Confidentiality
25	Freedom of Information
26	TUPE and the Two Tier Workforce
35	Open Book Accounting
36	Service Provider's Records and Audit
43	Relief Events
44	Force Majeure
46	Indemnities and Liability
47	Insurance
49	Persistent Breach and Service Provider Default Capable of Remedy
50	Termination on Service Provider Default Incapable of Remedy
51	Termination by Break Point Options
52	Termination on Authority Default
53	Termination on Corrupt Gifts and Fraud
54	Partial Termination
55	Consequences of Termination and Expiry
56	Exit Arrangements
Part 10 (clauses 57 to 72 inclusive)	General Provisions
Schedule 16	Dispute Resolution Procedure
Schedule 17	Exit Arrangements
Schedule 21	Commercially Sensitive Information
Schedule 25	Compensation on Termination

72 No Double Recovery

Notwithstanding any other provisions of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

Part 11: Authority Policy Clauses

73 Sustainability

73.1 The Service Provider shall comply with all current environmental Legislation, Guidance, Consents, and codes of practice and shall co-operate and support the Authority in meeting the Authority's environmental targets and obligations, including, but not limited to, the Authority's carbon reduction commitments, reductions in energy and water usage and increased levels of recycling.

73.2 The Service Provider shall have, and shall use all reasonable endeavours to deliver the Services in accordance with, a written environmental management strategy which shall:

73.2.1 be at least equivalent to the Authority's corresponding policy in scope and effectiveness;

73.2.2 set targets for carbon emissions, water usage, increased recycling rates and procuring sustainability and sustainable transport usage; and

73.2.3 list any actions to be taken by the Service Provider in order to promote the efficient and sustainable operation of any property or assets of the Service Provider or (as the case may be) the Authority and to undertake viable improvement works when undertaking any alterations, works or services.

73.3 The Service Provider shall ensure that Staff are aware of, and comply with, the Service Provider's environmental management strategy.

73.4 The Service Provider shall:

73.4.1 co-operate with the Authority and shall provide the Authority (on reasonable request and within a reasonable time period) all energy and environment monitoring data related to the delivery of the Services; and

73.4.2 share energy and water usage, waste production and recycling data related to the delivery of the Services with the Authority no later than the end of April in each Contract Year, and at such other times as agreed between the parties.

74 Interface with the NSCSO Contract

74.1 General Cooperation

74.1.1 The Service Provider acknowledges that the Services under this Agreement and the services under the NSCSO Contract are interactive and interdependent and that the provision of the Services under this Agreement and the interface with the services under the NSCSO Contract will require the long term co-

operation and assistance of the Service Provider with the NSCSO Contractor to deliver a successful outcome.

74.1.2 The Service Provider agrees to co-operate with the NSCSO Contractor and the Authority in good faith to ensure there shall be a seamless interface between this Agreement and the NSCSO Contract. The Services Provider agrees to co-operate with the NSCSO Contractor to ensure that overall and as a whole the Services under this Agreement and the services under the NSCSO Contract are performed in a manner which benefits the Authority (by the Service Provider and the NSCSO Contractor respectively). The Service Provider shall deliver an integrated and flexible approach to the provision of the Services under this Agreement in relation to the services provided by NSCSO Contractor under the NSCSO Contract.

74.1.3 The Service Provider shall cooperate with the NSCSO Contractor to:

- (a) achieve the Key Performance Indicators in this Agreement and the NSCSO Contract including all Super KPIs;
- (b) deliver the Authority's strategic and corporate objectives;
- (c) use reasonable endeavours to ensure both this Agreement and the NSCSO Contract can be performed efficiently and to achieve whole system efficiency; and
- (d) to proactively work together to ensure an effective interface between the this Agreement and the NSCSO Contract and minimise management by the Authority of the interface between this Agreement and the NSCSO Contract;

74.1.4 The Service Provider shall not hinder, delay or prevent the NSCSO Contractor or the Authority in the performance of their obligations under the NSCSO Contract.

74.1.5 The Service Provider shall at all times take all reasonable steps to minimise and mitigate any circumstances in relation to this Agreement which would adversely affect the performance of the services under the NSCSO Contract.

74.1.6 The provisions of clause 12.1.2 shall apply to the Service Provider in relation to the NSCSO Contract and the NSCSO Contractor (whether the NSCSO Contract is entered into before or after the date of this Agreement).

74.2

[REDACTED]

74.2.1

[REDACTED]

(a)

[REDACTED]

74.2.3

[REDACTED]

i

[REDACTED]

ii

[REDACTED]

iii

[REDACTED]

74.2.4

[REDACTED]

i

[REDACTED]

ii

[REDACTED]

iii

[REDACTED]

74.3 Responsibility for the effect of terms of this Agreement and the performance of obligations under this Agreement on NSCSO Contract

74.3.1 The Service Provider shall perform the Services and its obligations under this Agreement (including any Changes, plans and Special Projects) in a manner which does not cause or contribute to (a) any breach of the NSCSO Contract by the Authority or the NSCSO Contractor or (b) any liability, losses, claims, compensation, costs, expenses, charges, fines, penalties suffered or incurred by the Authority or the diminution or loss of any other right, entitlements or other benefits of the Authority under, pursuant to or in relation to the NSCSO Contract.

74.3.2 The Service Provider confirms that the terms, obligations, design, specification (including the computing environment and services), transition plans, transition services and the services under this Agreement (and any changes thereto) (together the "DRS Terms") includes all the requirements of the NSCSO Contractor in connection with the NSCSO Contractor's interface obligations with this Agreement, the services and the transition services under this NSCSO Contract and will enable the NSCSO Contract to perform its obligations, the services and the transition services under this NSCSO Contract to the standard required by the NSCSO Contract and in accordance with the terms of the NSCSO Contract.

74.3.3

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

The Authority shall not be entitled to claim from the Service Provider under clause 74.3.3 in respect of loss it has incurred to the extent it has already been compensated in respect of that loss by the NSCSO Contractor pursuant to the NSCSO Contract and nor shall it be entitled to recover such loss to the extent that the foregoing is caused or substantially contributed to by:

- i an act or default of the Authority (or any Authority Related Party) which prevents the NSCSO Contractor from performing Services under the NSCSO Contract; or
- ii an act or default of the Authority (or its delegate) in relation to any Required Action carried out pursuant to Clause 42 (Authority Step-In) between the date of the Step-In Notice and the Step-Out Date, where that Required Action prevents the delivery of the NSCSO Contractor Interface Obligations;
- iii any relief event or force majeure event (as defined in the NSCSO Contract) arising under the NSCSO Contract.

The foregoing set out in clause 74.3.3 are deemed to be Direct Losses under this Agreement reasonably foreseeable at the date of this Agreement and shall not constitute Indirect Losses under this Agreement.

74.3.4 For the avoidance of doubt and notwithstanding any other provision of this Agreement, the Authority has no responsibility or liability to the Service Provider (under or for breach of this Agreement, tort or otherwise) for any liability of the Service Provider to the NSCSO Contractor (including in relation to breach of this Agreement, the NSCSO Contract, in tort or otherwise).

74.4 Exclusions for Step-In

74.4.1 Where the Required Action has been taken pursuant to clause 42 of this Agreement otherwise than as a result of a breach by the Service Provider, the Authority shall use reasonable endeavours to mitigate the NSCSO Contractor's costs arising as a direct result of the Required Action. The Service Provider shall procure that the NSCSO Contractor shall give all reasonable assistance to the Authority in relation to the interface with the NSCSO Contract whilst it is taking Required Action.

74.4.2 Clause 73.3.3 shall not apply in relation to any Required Action carried out by the Authority pursuant to clause 42 (Authority Step-In) between the date of the Step-Notice and the Step-Out Date.

74.5 Ambiguities and Inconsistencies

74.5.1

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

[REDACTED]

74.6 Early expiry or termination of the NSCSO Contract

74.6.1 If the NSCSO Contract expires or terminates prior to this Agreement, clause 74.1 to 74.5 shall cease to have effect from the date of such expiry or termination, except that this shall not affect or prejudice any claim or demand

that either the Authority or the Service Provider may have against the other relating to matters pursuant to clause 74.1 to 74.5 arising before the date of such expiry or termination.

74.6.2 If the NSCSO Contract expires or terminates (or is partially terminated) prior to the date of expiry or termination of this Agreement, the Service Provider shall:

- (a) use reasonable endeavours to mitigate and minimise the effect of such termination on the Services;
- (b) cooperate with the Authority and/or replacement services provider to achieve the effective on-going provision of services which were previously provided under the NSCSO Contract; and
- (c) consult and cooperate with the Authority in good faith to agree any changes and/or new interface clauses reasonably required by the Authority to this Agreement in relation to the expiry or termination of the NSCSO Contract and the provision of the services (previously carried out pursuant to the NSCSO Contract) by the Authority or a replacement service provider,

74.6.3

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

74.7 Where the NSCSO Contract expires or is terminated (or is partially terminated) prior to the date of expiry or termination of this Agreement due to Authority default, Authority break option, relief events or force majeure and at the date of termination or expiry of the NSCSO Contract there are any obligations in the Interfaces Specification relied upon by the Service Provider to deliver the Services (Interface Obligations), the Authority shall either:

74.7.1 provide itself or procure the provision of the Interface Obligations by a replacement NSCSO service provider (or provide such alternative arrangements as will enable the Service Provider to deliver the Services), at no cost to the Service Provider; or

74.7.2 agree with the Service Provider the terms upon which the Service Provider shall provide or procure the provision of the Interface Obligations (or suitable alternative arrangements) to ensure that the Service Provider can continue to deliver the Services in accordance with the terms of this Agreement. In

agreeing such terms, the parties shall, amongst other things, have due regard to:

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

74.7.3 Nothing in this clause 74.7 shall permit the Service Provider to derogate from its obligations and liabilities under this Agreement or shall relieve or excuse the Service Provider from its responsibilities and liabilities under this Agreement (unless agreed by the Authority in writing at its absolute discretion).

74.8 Termination of the DRS Contract

74.8.1 Clause 74.23 (Defined Terms), clause 74.19 (Disputes Related to the NSCSO Contract), clause 74.18 (Intellectual Property), clause 74.20 (Confidentiality), clause 74.14.3, clause 74.15 (Relief Events), clause 74.16 (Force Majeure) shall be deemed to be included in the list of clauses in clause 71.1.2 of this Agreement and shall be a continuing obligation.

74.8.2 The Service Provider shall ensure that all Business Continuity Plans and Exit Plans promote and facilitate the on-going interface with the services under the NSCSO Contract and the continuity of the services under the NSCSO Contract.

74.9 Subcontracting

74.9.1 For the purpose of clause 74.9.2, NSCSO Sub-Contracts means subcontracts, service level agreements and other joint working arrangements between the Service Provider and the NSCSO Contractor (and their respective sub-contractors).

74.9.2 Upon request from the Authority, the Service Provider shall promptly provide a report to the Authority containing the following information requested by the Authority:

(a) a list of all NSCSO Sub-Contracts;

(b) details of the services provided under the NSCSO-Contract;

74.10 Changes, Review and Special Projects

74.10.1 If there is a proposed change or review or special project under this Agreement (including a Change, a Budget Change, a Change in Law, a change to the Service Delivery Plans, the 7 Year Review or a Special Project) ("DRS Change"), the Service Provider shall consult with the NSCSO Contractor about the effect of such change on the NSCSO Contract and shall promptly provide

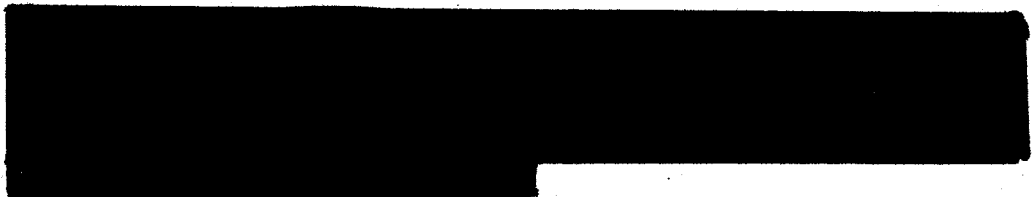
information to Authority about such effect and if requested by the Authority shall meet with the Authority to discuss such effects (unless the Authority notifies the Service Provider that the changes is confidential).

74.10.2 If a DRS Change under this Agreement relates to the NSCSO Contract (or a change, review or special project under the NSCSO Contract) or if a change, review or special project under the NSCSO Contract relates to this Agreement (or to a DRS Change under this Agreement) ("Related Changes"):

- (a) the Service Provider shall cooperate with the Authority and the NSCSO Contractor to achieve the best solution (optimising efficiency, costs and benefits) for the Authority across this Agreement and the NSCSO Contract taking account of the interfaces between the contracts;
- (b) the Service Provider shall proactively liaise and cooperate with the Authority and the NSCSO Contractor in developing, implementing and carrying out such Related Changes in an integrated manner (including providing information and attending meetings) including cooperating with the NSCSO Contractor;
- (c) the Service Provider shall cooperate with the NSCSO Contractor to ensure any DRS Change under this Agreement and any change or review or special project under the NSCSO Contract promotes an effective interface between this Agreement and the NSCSO Contract and ensures the continued performance of the Services under this Agreement and the services under the NSCSO Contract (in accordance with the terms thereof).

74.10.3 The Authority may elect that Related Changes under this Agreement and the NSCSO Contract are considered and developed concurrently and considering the impact on both this Agreement and the NSCSO Contract (provided always that the Related Changes shall be agreed separately under this Agreement and under the NSCSO Contract). The Authority may agree in writing with the Service Provider arrangements for a process for agreeing Related Changes under this Agreement and the NSCSO Contract jointly.

74.10.4



74.10.5 The Service Provider and the NSCSO Contractor may propose joint changes to this Agreement and the NSCSO Contract which are intended to promote the overall efficiency and/or improve the cost or benefits of the services to the Authority. The Service Provider and the NSCSO Contractor may prepare and submit to the Authority a joint impact assessment in relation to such change. Following the joint impact assessment, the changes to this Agreement and to the NSCSO Contract shall be agreed separately under the Change Protocol pursuant to this Agreement and the change protocol pursuant to the NSCSO Contract respectively (provided always that the Authority shall consider such

changes concurrently and considering the impact of such change / Change on both this Agreement and the NSCSO Contract).

74.11 Governance

- 74.11.1 Without prejudice to its functions set out in clause 14 and schedule 12 of this Agreement, the Partnership Operations Board's functions shall include:
- (a) ensuring the successful and efficient operation of the interface between this Agreement and the NSCSO Contract; and
 - (b) considering operational issues, costs and development of the interfaces between this Agreement and the NSCSO Contract.
- 74.11.2 Where, in the reasonable opinion of the Partnership Operations Board, there is a material issue affecting the relationship between the Service Provider and the NSCSO Contractor, the Authority may, upon reasonable notice, request that the Service Provider and the NSCSO Contractor attend a meeting with the Authority to consider interface issues between this Agreement and the NSCSO Contractor including:
- (a) reviewing any issues arising in the interface between this Agreement and the NSCSO Contract and considering methods for addressing these;
 - (b) ensuring that the Service Provider, the NSCSO Contractor and the Authority are kept informed of events that may affect the interface between this Agreement and the NSCSO Contract;
 - (c) keeping the programme manager and other interested parties informed about progress regarding the interface between this Agreement and the NSCSO Contract; and
 - (d) ensuring the successful and efficient operation of the interface between the services under this Agreement and the NSCSO Contract.
- 74.11.3 It is the purpose of these meetings to identify and consider methods for addressing interface any issues between this Agreement and the NSCSO Contract and highlighting any issues or concerns relating to interface which should be considered under the partnering governance arrangements of the NSCSO Contract. No discussion, review or recommendation by this meeting shall relieve the Authority or the Service Provider of any liability or vary any such liability or any right or benefit.
- 74.11.4 At least one and no more than three nominees from each of the Authority, the Service Provider and the NSCSO Contractor shall attend the meeting. A note of all such interface meetings shall be prepared by the Authority or as agreed by the attendees at the meeting.
- 74.11.5 In addition to its other rights under this clause 74.11, where, in the reasonable opinion of the Authority, there is a material issue affecting the relationship between the Service Provider and the NSCSO Contractor, then upon the

Authority's reasonable request, the Service Provider shall provide to the Partnership Operations Board on an ongoing basis:

- (a) a written explanation of the issue between the Service Provider and the NSCSO Contractor;
- (b) details of how the issue is being resolved between the Service Provider and the NSCSO Contractor;
- (c) details of any known impact of the issue on the delivery of the Services and/or the Interface Obligations;
- (d) Such other information as may be relevant to the circumstances

74.11.6 The Service Provider shall continue to update the Partnership Operations Board in accordance with clause 74.11.5 until the issue affecting the Interface relationship has been resolved and is no longer materially affecting the delivery of the Services and the Interface Obligations.

74.12 Information

74.12.1 The Service Provider shall promptly provide to the Authority information and data reasonably requested by the Authority in relation to (i) the interface between this Agreement and the NSCSO Contract and (ii) any information the Authority requires to perform its obligations under the NSCSO Contract and (iii) the overall performance of the services under the NSCSO Contract and this Agreement.

74.12.2 Upon request from the Authority, the Service Provider shall promptly provide to the Authority a copy of information provided by the Service Provider to the NSCSO Contractor.

74.13 Meetings

The Service Provider shall attend all meetings reasonably requested by the Authority which relate to matters arising in relation to the NSCSO Contract and this Agreement and the interface between these agreements.

74.14 Member Queries

74.14.1 If a query is raised by Members which affects this Agreement and the NSCSO Contract, the Service Provider shall comply with clause 12 of this Agreement and shall cooperate with the NSCSO Contractor in responding to the query to Members (and where appropriate responding jointly or concurrently).

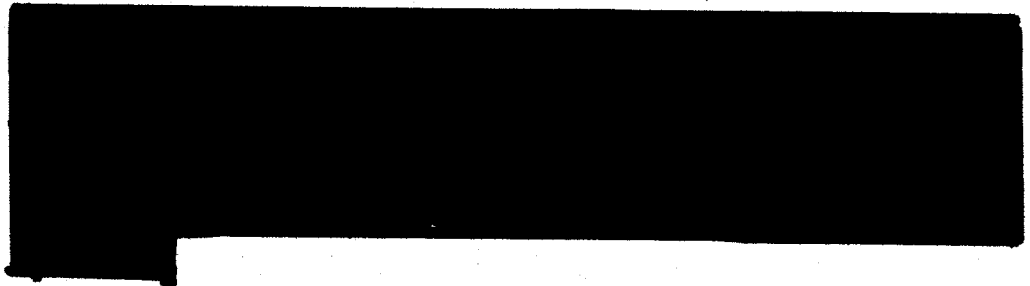
74.14.2 If there is an enquiry, investigation or inspection (including such enquiries, investigation and inspections set out in clause 12.4.1 of this Agreement) which affects this Agreement and the NSCSO Contract, the Service Provider shall comply with its obligations under clause 12 of this Agreement and shall cooperate with the NSCSO Contractor in relation to such enquiry, investigation or inspection.

74.14.3 If there is a Request for Information pursuant to this Agreement or a request for information pursuant to the NSCSO Contract which are related to this Agreement and the NSCSO Contract, the Service Provider shall comply with its obligations under clause 25 of this Agreement and shall cooperate with the NSCSO Contractor in responding to such Request for Information / request for information.

74.14.4 Nothing in this clause 74.14 shall permit the Service Provider to derogate from its obligations and liabilities under this Agreement or from any statutory obligations or shall relieve or excuse the Service Provider from its responsibilities and liabilities under this Agreement or from any statutory obligations.

74.15 Relief Events

74.15.1



74.15.2 If there is a Relief Event under the NSCSO Contract, the Service Provider shall cooperate with the NSCSO Contractor and shall use all reasonable endeavours to mitigate any adverse effects of such relief event on this Agreement and to facilitate the continued performance of the Services under this Agreement.

74.16 Force Majeure

74.16.1 If there is a notification of a Force Majeure Event, the terms agreed by the Service Provider pursuant to clause 44.4 of this Agreement shall mitigate any adverse effects of the Force Majeure Event on the NSCSO Contract and facilitate the continued performance of the services under the NSCSO Contract (without prejudice to clause 44.4). If there is a Force Majeure Event under this Agreement and a related force majeure event under the NSCSO Contract, the Service Provider shall cooperate with the NSCSO Contractor to agree terms to achieve the best solution (optimising efficiency, costs and benefits) for the Authority across this Agreement and the NSCSO Contract taking account of the interfaces between the contracts

74.16.2 If there is a force majeure event under the NSCSO Contract, the Service Provider shall cooperate with the NSCSO Contractor and shall use all reasonable endeavours to mitigate any adverse effects of such force majeure event on this Agreement and to facilitate the continued performance of the Services under this Agreement.

74.17 Emergencies


The Service Provider shall ensure that the plans and procedures in place pursuant to Clause 23 (Emergencies) of this Agreement take account of the equivalent plans pursuant to the NSCSO Contract and promote the continued overall operation of the services under

this Agreement and the NSCSO Contract (including any interfaces between these agreements) during any form of major civil or other disruption. The Service Provider shall mitigate the impact of an Emergency on the NSCSO Contract and shall cooperate with the Authority and the NSCSO Contractor to promote the continued effective operation of the Services under this Agreement and the services under the NSCSO Contract (including any interfaces between these agreements) during an Emergency.

74.18 Intellectual Property

74.18.1 The Service Provider acknowledges that the NSCSO Contractor will require the ability to access and use certain Service Provider Software and/or Third Party Software in order to provide the services to the Authority pursuant to the NSCSO Contract. The Service Provider undertakes that it will grant to the NSCSO Contractor, or shall procure the direct grant to the NSCSO Contractor of, licences to use such Service Provider Software and/or Third Party Software as the NSCSO Contractor may require from time to time, on terms no less favourable than those upon which the Authority is licensed to use the same Service Provider Software and/or Third Party Software pursuant to this Agreement. If the Service Provider cannot grant, or cannot procure the direct grant of, the licences required by the NSCSO Contractor in accordance with this clause then, in respect of licences to use Service Provider Software, the Service Provider acknowledges and agrees that the Authority shall be permitted to grant sub-licences of the relevant Service Provider Software to the NSCSO Contractor; and in respect of licences to use Third Party Software, the Service Provider undertakes to provide all such reasonable assistance as the NSCSO Contractor may require in order for the NSCSO Contractor to obtain for itself a licence on reasonable commercial terms to use the relevant Third Party Software.

74.18.2



74.19 Disputes related to the NSCSO Contract

74.19.1 In the event of a dispute (a Related Dispute) arising under, out of or in connection with the NSCSO Contract between the Authority and the NSCSO Contractor which relates to or arises out of the same (or substantially the same) facts, matters or issues relevant to a Dispute under this Agreement, the terms of this clause 74.19 shall apply.

- 74.19.2 The Service Provider shall, if so requested by the Authority, co-operate with the Authority and the NSCSO Contractor to expedite the resolution of the Dispute and Related Dispute in an efficient and cost-effective manner.
- 74.19.3 Where either the Dispute or the Related Dispute has been referred to expert determination pursuant to paragraph 5 of Schedule 16 (Dispute Resolution Procedure) (or the equivalent paragraph in the NSCSO Contract), the Authority may, at its absolute discretion, require that the same Expert is appointed in respect of both the Dispute and the Related Dispute (provided that the Expert is willing and able to perform the role of Expert in respect of both the Dispute and the Related Dispute in accordance with the timescales set out in this Agreement and the NSCSO Contract). If the Authority so requires, the Service Provider shall consent to this.
- 74.19.4 The Authority may, at its absolute discretion, use, serve, disclose or otherwise rely upon in any dispute resolution proceedings of any nature whatsoever in respect of the Related Dispute any document, submission or other information issued or served by the Service Provider in relation to the Dispute. If the Authority so requires, the Service Provider shall consent to this.

74.20 **Confidentiality**

74.20.1 **Confidentiality - Information Provided to the NSCSO Contractor**

Save for information which the Authority notifies to the Service Provider is confidential, Clauses 24.2 and 24.3 of this Agreement shall not apply to any disclosure of information that is reasonably required by the NSCSO Contractor in the performance of their obligations under the NSCSO Contract for the performance of those obligations.

74.20.2 **Confidentiality - Information Received by the Service Provider in relation to the NSCSO Contract**

- (a) The Service Provider shall keep confidential all Confidential Information received from the Authority and/or the NSCSO Contractor relating to NSCSO Contract and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- (b) The Service Provider shall keep confidential for the periods specified in the NSCSO Contract any information relating to the NSCSO Contract designated as commercially sensitive information under the NSCSO Contract.

74.21 **Customer Satisfaction Surveys**

- 74.21.1 The Service Provider acknowledges that if requested by the Authority in writing, the NSCSO Contractor shall undertake customer satisfaction surveys in relation to the services under this Agreement ("DRS Customer Satisfaction Surveys") for the purposes specified by the Authority.

- 74.21.2 The Service Provider consents to the NSCSO Contractor carrying out the DRS Customer Satisfaction Surveys and shall provide all reasonable assistance and information to the NSCSO Contractor to enable the NSCSO Contractor to carry out such DRS Customer Satisfaction Surveys.
- 74.21.3 The Authority may provide the DRS Customer Satisfaction Surveys to the DRS Contractor and the DRS Contractor may use the DRS Customer Satisfaction Surveys for the purposes of the DRS Contract.
- 74.21.4 The Service Provider shall not be required to carry out a customer satisfaction survey under this Agreement to the extent that such survey has been undertaken by the NSCSO Contractor as a DRS Customer Satisfaction Survey.

74.22 **Monitoring**

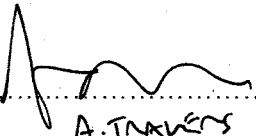
- 74.22.1 The Service Provider shall include in its report to the Partnerships Operations Board pursuant to schedule 13 (Monitoring Procedure) the following information:
- (a) any issues arising in the interface between this Agreement and the NSCSO Contract and methods for addressing these (including Related Changes, Related Disputes and any issues arising pursuant to clause 74 of this Agreement) during the period between the previous report and this report to the Partnership Operations Board;
 - (b) events that may affect the interface between this Agreement and the NSCSO Contract during the period until the next report is prepared for the Partnership Operations Board or thereafter;
 - (c) progress regarding the interface between this Agreement and the NSCSO Contract; and
 - (d) information regarding how the Service Provider is ensuring the successful and efficient operation of the interface between the services under this Agreement and the NSCSO Contract.

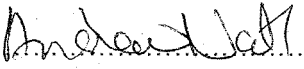
This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

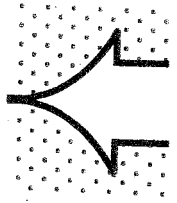
The Common Seal of the Mayor & Burgesses of)
The London Borough of Barnet was affixed to this)




Deed in the presence of:)

Authorised Signatory 
A. TRAVERS

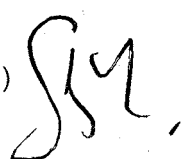
Authorised Signatory 
Head of Governance



Executed as a deed by Capita (BDRS) Limited)
acting by two Directors or a Director and its)

 DAN CREONSPAN

Company Secretary)


S. HURST.

