



dated

2013

The London Borough of Barnet
and
Capita Business Services Limited

Partnering Agreement

relating to the provision of the New Support and Customer Services Organisation
Partnership

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This Agreement is made by deed

dated the day of 2013

Between

- (1) **The London Borough of Barnet** of North London Business Park, Oakleigh Road South, London N11 1NP (the **Authority**); and
- (2) **Capita Business Services Limited** incorporated and registered in England and Wales with company number 02299747 whose registered office is at 71 Victoria Street, Westminster, London SW1H 0XA (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 21 June 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 New Support and Customer Services Organisation services for the Authority.
- (C) Following the completion of the dialogue process, the Authority has selected the Service Provider 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.
- (E) The principal purpose of this contractual arrangement is to establish a long term partnering relationship between the Authority and the Service Provider to provide the Services to the Authority.
- (F) In recognition of the central role the Service Provider will take in the provision of an ICT service platform accessed by the Authority's partners, the Service Provider has entered into appropriate interface documentation.
- (G) Prior to entering into this Agreement, the parties entered into an interim services agreement (the **Interim Agreement**) on Friday 28 June 2013 for the provision by the Service Provider of emergency services to the Authority. By entering into this Agreement, the Interim Agreement expires in accordance with its terms and any works or services (to the extent relevant) provided by the Service Provider pursuant to the Interim Agreement shall be subject to the terms of this Agreement.
- (H) At the same time as the parties entered into the Interim Agreement the parties entered into a side letter (the **Letter Agreement**) under which the parties agreed that they would make all necessary adjustments to this Agreement to take account of any charges paid by the Authority to the Service Provider pursuant to the Interim Services Agreement and the

services and projects delivered under it. This Agreement has been amended in accordance with the Letter Agreement.

It is now agreed as follows:

Part 1 – Preliminary and Partnership Ethos

1 Definitions and Interpretation

1.1 In this Agreement words and phrases with a first capital letter (or any derivation thereof) shall have the following meanings:

Abandons means wilfully ceases to provide a material element of the Services for five (5) consecutive Business Days or during twenty (20) Business Days (whether consecutive or not) in any Contract Year except when relieved of the obligation to do so by the express provisions of this Agreement (and **Abandonment** shall have the same meaning);

Actual Transferring Agreement Cost Data has the meaning given to it in clause 7.2.5 (Apportionment of Charges and Reconciliation);

Administering Authority means the Authority;

Administration Regulations means the Local Government Pension Scheme (Administration) Regulations 2008;

Admission Agreement means an admission agreement entered into in accordance with Regulation 6 of the Administration Regulations by the Authority and the Service Provider and/or any Sub-Contractor;

Admission Body means a transferee admission body for the purposes of regulation 6 of the LGPS Regulations;

Adviser Conflict of Interest has the meaning given to it in clause 58.4 (Professional Advisers)

Affected Party has the meaning given to it in the definition of Force Majeure Event in this clause 1 (Definitions and Interpretation);

Affiliate means in respect of a relevant company, a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that relevant company, and in the case of the Service Provider shall include its holding company and each of the Shareholders. References to “holding company” and “subsidiary” shall have the meaning given to them in Section 1159 of the Companies Act 2006;

Aggregate Liability Cap has the meaning given to it in clause 30.10.1(b) (Limitation on liability – Service Provider)

Agreement means this agreement (including its Schedules);

Agreement Date means the date of this Agreement;

Annual Internal Audit Plan means the plan prepared on an annual basis by the Service Provider in relation to its internal audit;

Annual Liability Cap has the meaning given to it in clause 30.10.1(a) (Limitation on liability – Service Provider);

Annual Service Charge has the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Annual Service Plan has the meaning given to it in clause 10.1.5 (Annual Service Report and Annual Service Plan);

Annual Service Report has the meaning given to it in clause 10.1.1 (Annual Service Report and Annual Service Plan);

Annual Service Report Date means each and every anniversary of the Service Transfer Date during the Service Period;

Anti Money Laundering Framework means the document listed in Schedule 22 (Authority's Policies);

Appropriate Limit has the meaning given to it in clause 40.9 (Freedom of Information);

Approved Sub-Contractor means those organisations set out in Schedule 36 (Approved Sub-contractors) who the Authority has consented in writing to provide part of the Services as a Sub-Contractor of the Service Provider as at the Agreement Date;

Aspirational Commitment means a commitment (as updated from time to time) set out in Schedule 35 (Service Provider Commitments) designated as "aspirational" in the column titled Certain/Aspirational of the excel document set out in that Schedule (which the Service Provider shall seek to deliver pursuant to Schedule 3 (Continuous Improvement Plan)) and which, if agreed between the parties, may become a Certain Commitment;

Assessor has the meaning given to it in clause 55.9.2 (Law, Policies and Related Matters);

Assets means all assets and rights to enable the Service Provider or a successor contractor to own, operate and maintain the Partnership and/or Services in accordance with this Agreement, including:

- (a) any land or buildings; Software, hardware, computer or telecommunication devices;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights; and

- (f) any Intellectual Property Rights,

and Assets shall include all Service Provider Assets but shall exclude any Authority Assets or any other assets and rights in respect of which the Authority is full legal and beneficial owner.

Asset Inadequacy means a failure of one or more of the Critical Initial Transferring Assets resulting in Service Users being unable to access such systems for a period greater than four (4) hours;

Auditor means the auditor appointed by the Authority for the purposes of carrying out some or all of the types of audit set out in clause 28.6.1 (Auditor) and who will have entered into a confidentiality undertaking substantially in the form as set out in Schedule 37 (Form of Confidentiality Undertaking) (unless the parties acting reasonably agree in writing that such undertaking can be waived);

Authority means the London Borough of Barnet and its successors and assigns;

Authority Assets means the:

- (a) Authority Lease Assets;
- (b) Authority Shared Assets;
- (c) Controlled Authority Assets; or
- (d) Authority Traded Services Assets;

Authority Background IPRs mean any and all IPRs that are owned by or licensed to the Authority and which are or have been developed independently of this Agreement (whether prior to the Agreement Date or otherwise);

Authority Cause means a failure of the Authority to undertake or satisfy the Authority's Obligations;

Authority Change has the meaning given to it in the Change Protocol;

Authority Claim Subject has the meaning given to it in clause 31.11.1;

Authority Data means any data (including metadata), documents, text, drawings, diagrams, images or sounds (together with any database made up of these) owned by the Authority or embodied in any medium, communicated or supplied to the Service Provider by or on behalf of the Authority or an Authority Related Party whether in writing, orally, electronically or by any other means, or which the Service Provider is required to or does generate, process, store or transmit pursuant to or otherwise for the purposes of this agreement;

Authority Default means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Service Provider Assets and/or shares of the Service Provider by the Authority or other Relevant Authority;

- (b) a failure by the Authority to make payment of any amount of money equal to or exceeding four million pounds (£4,000,000) that is due and payable by the Authority under this Agreement within twenty (20) Business Days of service of a Formal Written Demand by the Service Provider, where the amount fell due and payable two (2) (or more) months prior to the date of service of the Formal Written Demand;
- (c) a breach by the Authority of clause 53.1 (Transfer of the Agreement by the Authority) occurs;

Authority Default Termination Payment means the amount calculated in accordance with paragraph 1 of Part 1 of Schedule 27 (Compensation on Termination);

Authority ID means any form of identification reasonably required by the Authority;

Authority Lease Assets means assets leased by the Authority from a third party and to which the Authority consents to transfer control and responsibility for maintenance either by novation of the lease agreement or through a managing agent process to the Service Provider, for exclusive use in provision of the Services;

Authority Notice of Change means a notice containing the information set out in paragraph 5.1 of Schedule 14 (Change Protocol);

Authority Policies means:

- (a) the policies of the Authority referred to in Schedule 22 (Authority's Policies); and
- (b) the Authority's Constitution, standing orders (in accordance with the financial and contract procedure rules), procedures, strategies and regulations and any policy formally adopted by the Authority from time to time which relates to, affects, or impacts on the provision of the Services by the Service Provider as such policies (and any amendments, additions and substitutions thereto) are communicated to the Service Provider;

Authority Related Party means any officer, agent, employee of the Authority acting in the course of his office or employment including any sub-contractors supplied by the Authority in relation to the direct provision of the Services (but excluding the Service Provider, Service Provider Related Parties and Third Party Contractors);

Authority Shared Assets means those assets owned by the Authority which are used by the Service Provider in provision of the Services and that are also used by the Authority in the provision of Third Party Services and/or Retained Services;

Authority Software means any software which is owned by the Authority, or any Affiliates of the Authority, other than pursuant to this Agreement, and which is used by the Service Provider and/or the Authority (or by a third party on their behalf) for the purpose of providing or receiving (as the case may be) the Services, as set out in Part 3 of Schedule 11 (as updated from time to time);

Authority Traded Services Assets means those assets owned by the Authority which are used by the Service Provider in the provision of the Services and the Traded Services;

Authority's Constitution means the constitution of the Authority adopted on 8 May 2001 as amended from time to time and available at the Agreement Date on the Authority's website at http://www.barnet.gov.uk/downloads/download/240/council_constitution;

Authority's Information Security Policy and Acceptable Use Policy means the Information Security Policy and the Acceptable Use Policy listed in Schedule 22 (Authority's Policies);

Authority's Obligations means the obligations of the Authority specified in Schedule 8 (Authority's Obligations);

Authority's Premises means any premises owned or occupied by the Authority where any of the Services are required to be carried out by the Service Provider;

Averaged Monthly Periodic Service Charges Reduction means for any given month the aggregate of:

- (a) the Service Credits made that month in respect of KPIs that are measured monthly;
- (b) one third of the Service Credits made that month or any of the preceding two months in respect of any KPI that is measured quarterly;
- (c) one twelfth of the Service Credits made in that month or any of the preceding eleven months in respect of any KPI that is measured annually;

Avoidance Plan has the meaning given to it in clause 58.2.1(a) (Conflict of Interest Notification);

Background IPRs means any and all IPRs that are owned by or licensed to either party and which are or have been developed independently of this Agreement (whether prior to the Agreement Date or otherwise);

Back-Up Location has the meaning given to it in clause 38.1 (Back-Up Copies);

Baseline Level means the Reported Baseline (as updated or supplemented pursuant to paragraph 3.2 (Baselining) of Schedule 4 (Payment and Performance Mechanism));

Baseline Transferring Agreement Cost Data shall have the meaning given to it in clause 7.2.3i);

Benefit Regulations means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 as amended from time to time;

Best Value Duty means the duty imposed on the Authority by Section 3 of the 1999 Act in relation to, inter alia, the Services;

Best Value Inspector means an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Authority's compliance with Part 1 of the 1999 Act;

Bribery Act means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

Budget Change means a change sought by the Authority to the sums payable to the Service Provider as a result of a reduction or increase in the Authority's annual budget for the relevant expenditure;

Budget Change Proposal has the meaning given to it in clause 10.2.5 (Budget Control);

Business Continuity Plan means any plan prepared pursuant to clause 61 (Business Continuity), as may be amended from time to time;

Business Day means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

Capital Expenditure means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

Central Overheads shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Certain Commitment means a commitment set out in Schedule 35 (Service Provider Commitments) designated as "certain" in the column titled Certain/Aspirational of the excel document set out in that Schedule, the cost of which the Service Provider acknowledges is included within the Periodic Service Payment;

Certificate of Expenditure and Income means a certificate prepared in accordance with and including the information required under clause 29 (Open Book Accounting);

Cessation Date means any date on which the Service Provider and/or any Sub-Contractor ceases to be an Admission Body other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees;

Change means any change to the Services or this Agreement initiated through the Change Protocol;

Change in Costs means in respect of any Relevant Event, the direct effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Service Provider and/or any Key Sub-Contractors or Third Party Contractors (without double counting), including, as relevant, the following (provided that such costs are directly attributable to the Relevant Event and in the case of a Relevant Event which is a Qualifying Change in Law such costs for which the Authority is responsible):

- (a) the reasonable costs of complying with the requirements of clauses 21 (Authority Step-In) and/or 27 (Financial Adjustments);

- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;
- (d) reasonable and audited professional fees;
- (e) the costs to the Service Provider of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, and any finance required pending receipt of a lump sum payment or adjustments to the Periodic Service Payment;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Service Provider (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure; and
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy;

Change in Law means the coming into effect after the Agreement Date of:

- (a) Legislation, other than any Legislation which on the Agreement Date has been published:
 - i in a draft bill as part of a government departmental consultation paper;
 - ii in a Bill;
 - iii in a draft statutory instrument; or
 - iv as a proposal in the Official Journal of the European Communities;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

Change in Revenue means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual Periodic Service Payment or anticipated Traded Services income of the Service Provider and/or any Key Sub-Contractors (without double counting);

Change of Ownership means

- (a) (other than as a result of a bona fide reconstruction/solvent amalgamation or reconstruction of the Service Provider's Group) any sale, transfer or disposal of any legal, beneficial or equitable interest in fifty-one per cent (51%) or more (taken in aggregate) of the shares in the Service Provider and/or HoldCo and/or the Guarantor (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above.

Change Protocol means the change procedures set out in Schedule 14 (Change Protocol);

Chief Executive Officer means the head of paid service of the Authority;

Chief Internal Auditor means the auditor of the Authority, as notified by the Authority to the Service Provider from time to time;

Children's Service means the children's service as more specifically defined in paragraph 4 of the Customer Services Output Specification set out in Schedule 1 (Output Specification);

Collateral Warranty means a collateral warranty executed as a deed between the Authority and a Sub-Contractor in the relevant form as set out in Schedule 5 (Collateral Warranty);

Commercially Sensitive Information means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 23 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 23 (Commercially Sensitive Information);

Commitments means the Certain Commitments and the Aspirational Commitments;

Compensation Regulations mean the Local Government (Discretionary Payments) Regulations 1996 (as amended) and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;

Compliant Date has the meaning given to it in clause 16.1.5 (Staffing);

Conditions Precedent means those conditions set out in clause 2.5 (Conditions Precedent);

Confidential Information means any information, however conveyed or presented or stored, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by

a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential, including but not limited to all personal data and sensitive personal data within the meaning of the DPA;

Conflict Circumstances have the meaning given to them in clause 58.3.1 (Conflict of Interest Notification);

Conflict of Interest means a situation in which the Service Provider or a Service Provider Related Party:

- (a) permits its or their commercial or other interests to interfere with or conflict with its or their respective duties (which the Service Provider hereby acknowledges) to provide the Services and comply with the Service Provider's obligations under this Agreement;
- (b) uses any information gained through the operation of this Agreement in any way which is or is likely to be detrimental to or in conflict with the interests of the Authority;
- (c) submits a bid or enters into a contract to be a member of a supply chain (including as a contractor, a sub-contractor or as a party to a framework agreement) for the provision of any of the Services or for any other service the management of which the Service Provider is responsible for or involved with under this Agreement;
- (d) acquires any legal, beneficial or equitable interest in any body corporate (including the acquisition of shares, control over exercise of voting rights conferred on those shares or control over the right to appoint or remove directors or the rights to dividends in a company limited by shares or other arrangements which may have such effect) which has submitted a bid or entered into a contract to be a member of a supply chain (including as a contractor, a sub-contractor or as a party to a framework agreement) for the provision of any of the Services or for any other service the management of which the Service Provider is responsible for or involved with under this Agreement; or
- (e) in providing the Services and/or carrying out this Agreement, does not conduct its or their business, operations or activities in a politically neutral fashion;

Conflict of Interest Arrangements has the meaning given to it in clause 58.2.1 (Conflict of Interest Prevention Arrangements);

Consents means all permissions, consents, approvals, certificates, permits, licenses and authorisations of a Relevant Authority required for the performance of any of the Service Provider's obligations under this Agreement;

Consultation Event means one or more of the following:

- (a) where there is a statutory duty upon the Authority to undertake consultation;

- (b) in order to comply with the operating practice of the Authority (as updated from time to time);
- (c) where consultation is required pursuant to an Authority Policy;
- (d) where the Authority, acting reasonably, believes consultation would be appropriate,

Continuous Improvement Plan means the plan set out in Schedule 3 (Continuous Improvement Plan) as updated in accordance with the terms of this Agreement;

Contract Difference has the meaning given to in in clause 7.2.5(a) (Apportionment of Charges and Reconciliation);

Contract Manager means the person (including any officer, consultant or contractor) appointed by the Authority under clause 18.1 (Contract Manager) to act as contract manager;

Contract Period means the period from and including the Agreement Date to the Expiry Date, or if earlier, the Termination Date;

Contract Standard means the standard to which the Services are to be provided as defined in clause 4.2 (The Services) of the Agreement;

Contract Year means a period of twelve (12) months commencing on 1 April, provided that:

- (a) the first Contract Year shall be the period commencing on the Service Transfer Date and ending on the immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;

Contribution Rate means 24.8% (twenty-four point eight per cent) of Pensionable Pay of Eligible Employees who transfer to the Service Provider and/or any Sub-Contractor on the occasion of a Relevant Transfer or such rate as is notified by the Authority at or near to the Agreement Date or occasion of a Relevant Transfer;

Controlled Authority Assets means those assets owned by the Authority which are used by the Service Provider solely and exclusively in the provision of the Services (unless otherwise agreed by the Authority in writing);

Convention Rights have the meaning given to them in clause 55.11 (Laws, Policies and Related Matters);

Convictions means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the

Protection of Children Act 1999 or being made subject of a prohibition or restriction under section 218 (6) of the Education Reform Act 1988);

Corporate Centric Policies means the Authority Policies and/or the Service Provider Policies marked as remedy category 3 in Schedule 22 (Authority Policies);

Corporate Complaints Policy means the Authority's corporate complaints policy as listed in Schedule 22 (Authority's Policies) and reviewed, developed and updated by the Authority from time to time;

Counter Fraud Framework means the Counter Fraud Framework listed in Schedule 22 (Authority's Policies);

Critical ICT System means Civica Open Revenues (including any replacements of the same from time to time) for the delivery of that part of the Services;

Critical Initial Transferring Assets means those Initial Transferring Assets nominated by the Service Provider and agreed to by the Authority which are critical to the provision of the Services and are set out in Schedule 38 (Critical Initial Transferring Assets);

Critical Service Failure means the failure of a Critical ICT System which renders the Service Provider unable to provide a material part of the Services for a period greater [REDACTED];

Critical Third Party Contract means those Third Party Contracts identified as being so in Schedule 24 (Third Party Contracts), or as designated as such by the Service Provider, and agreed to in writing by the Authority (acting reasonably) after the Agreement Date;

Critical Third Party Contract Failure Event means where in relation to a Critical Third Party Contract the following occurs prior to the first anniversary of the Service Transfer Date:

- (a) the Authority fails to novate a Critical Third Party Contract to the Service Provider in accordance with clause 7.2.1; and
- (b) the Authority fails to appoint the Service Provider as agent to a Critical Third Party Contract in accordance with clause 7.2.2; and
- (c) the Service Provider has failed to implement a Workaround Solution which shall include (but not be limited to) using all reasonable endeavours to provide the Services without the benefit of the relevant Critical Third Party Contract and attempting (at its own cost) to enter into an alternative contract of a similar nature to the relevant Critical Third Party Contract, the terms of which have been agreed to in writing by the Authority in advance of execution;

Data Pack has the meaning given to it in clause 61.5 (Business Continuity);

Data Protection Principles means the data protection principles as set out in Part 1 of Schedule 1 to the DPA;

Data Protection Requirements means any requirements, obligations, restrictions or protections imposed by the DPA or any other legislation or regulations in place which

relate to the processing of personal information, including the obtaining, holding, use or disclosure of such information;

Data Subject has the meaning given to it in the DPA;

Database means the compilation of any data, howsoever presented, compiled or stored, created wholly or partially by the Service Provider (or by a third party on behalf of the Service Provider) in accordance with the terms of this Agreement or otherwise for the purposes of this Agreement (whether or not using the Authority's or its own premises or resources);

Deferred Services means the Out of Hours Service, Library Service, Children's Service, Electoral Service and Electoral Registration Service which are referred to in Schedule 1 (Output Specifications) which will be subject to further agreement between the parties;

Deferred Services Commencement Date means the date the Service Provider will be obliged to provide the Deferred Services in accordance with the terms of the Agreement;

Delivery Unit(s) means that constituent part of the Authority (or where the context so requires a third party (other than the Service Provider or Service Provider Related Parties) acting on behalf of the Authority) responsible for the delivery of the Retained Services;

Deposited Material shall have the meaning given to that term at clause 35;

Direct Losses means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses;

Disclosed Data means information relating to the Partnership and/or Services disclosed to the Service Provider and advisers including:

- (a) the Invitation to Participate in Dialogue, the Invitation to Submit Detailed Solutions and the Invitation to Submit Final Tenders issued as part of the procurement process for the Partnership;
- (b) the information memorandum issued by the Authority in relation to the Partnership;
- (c) the contents of the data room at the Agreement Date located at 4Ps website (<https://n3g.4projects.com/>) which is appended to the Agreement in the form of CD Rom(s) initialled by the parties;
- (d) information provided pursuant to the Special Projects Approval Procedure and the Change Protocol;
- (e) all other information shared with the Service Provider by the Authority directly or through its advisers during the procurement process;

Discloser has the meaning given to it in clause 55.9.2 (Laws, Policies and Related Matters);

Dispute means any difference or dispute between the Authority and the Service Provider arising out of or in connection with this Agreement (including any question as to the validity or interpretation of this Agreement and including any dispute arising before or after termination of this Agreement);

Disputed Amount shall have the meaning given to it in clause 26.5.2 (Disputed Amounts);

Dispute Resolution Procedure means the procedure for the resolution of disputes set out in Schedule 16;

Documentation means all documentation, including without limitation technical specifications, user manuals, operating manuals, process definitions and procedures, and all other documentation as:

- (a) is required to be supplied by the Service Provider to the Authority under this Agreement;
- (b) is required by the Service Provider in order to provide the Services; or
- (c) has been or shall be supplied, produced or generated for the purpose of providing the Services;

DPA means the Data Protection Act 1998;

DRS Contract means the contract to be entered into by the Authority relating to the development and regulatory services that are being procured by the Authority at the Agreement Date;

DRS Contractor means the actual or proposed counterparty to the DRS Contract;

EC Business Transfers Directive means the EC Business Transfers Directive 2001/23, as amended from time to time;

EEA means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

Efficiency Notice has the meaning given to it in clause 10.1.4 (Annual Service Report and Annual Service Plan);

Electoral Service means the electoral service as more specifically defined in paragraph 4 of the Customer Services Output Specification set out in Schedule 1 (Output Specification);

Electoral Registration Service means the electoral registration service as more specifically defined in paragraph 4 of the Customer Services Output Specification set out in Schedule 1 (Output Specification);

Eligible Employees means

- (a) the Transferring Employees who are active members of or eligible to join the Local Government Pension Scheme on a Relevant Transfer; and
- (b) any other individuals nominated by the Service Provider and/or any Sub-Contractor and agreed by the Authority,

for so long as they are employees in connection with the provision of the Services or part of such Services as set out in the Admission Agreement;

Emergency means an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment or giving rise to financial losses as specified in the Civil Contingencies Act 2004, in each case on a scale beyond the capacity of the emergency services or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;

Emergency Response Team means the team prepared by the Authority and the Service Provider in order to respond to and assist with an Emergency and major civil or other disruptions in accordance with clause 24 (Emergencies);

Enhanced Licence Terms means the licence terms set out in Part 6 of Schedule 11;

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

Equalities Legislation means all Legislation which makes unlawful discrimination on grounds of sex, sexual orientation, gender reassignment, age, disability, colour, race, ethnic or national origin or religion, marital status, part-time or temporary status in employment or otherwise including the Race Relations Act 1976 (as amended), the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Human Rights Act 1998 the Race Relations Amendment Act 2001 and the Equality Act 2010;

Escrow Agent means the agent appointed to such role from time to time;

Euro Compliant means, save in respect of any Authority Software which the Service Provider uses and maintains pursuant to this Agreement and is not itself Euro Compliant as at the Agreement Date, that: (i) the introduction of the euro within England and Wales shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- (a) be able to perform all such functions in any number of currencies and/or in euros;

- (b) during any transition phase applicable to England and Wales, be able to deal with multiple currencies and in relation to the euro and the national currency of England and Wales dual denominations;
- (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (d) incorporate protocols for dealing with rounding and currency conversion;
- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of England and Wales and/or the euro; and
- (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of England and Wales;

Excess Amount has the meaning given to it in clause 15.3.6(c)i) (Funding);

Existing Related Contract shall have the meaning given to it in Clause 4.5.3 (Co-operation);

Exit Plan means the exit management plan referred to in Schedule 18 (Exit Arrangements);

Expiry Date means the tenth (10th) anniversary of the Service Transfer Date;

Expiry Payment means the amount calculated in accordance with paragraph 1 of Part 3 of Schedule 27 (Compensation on Termination);

Fees Regulations means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

Final Warning Notice means a notice containing the information set out in clause 41.4.3 (Remedy Notice);

Financial Guarantees shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Financial Model means the financial model as at the Agreement Date in the Agreed Form and as set out in Appendix 1 of Schedule 4 (Payment and Performance Mechanism) as updated from time to time in accordance with this Agreement for the purpose of, amongst other things, calculating the Periodic Service Payment;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Act;

FOIA Code has the meaning given to it in clause 40.5 (Freedom of Information);

Force Majeure Event means the occurrence after the date of this Agreement of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Service Provider or its Sub-Contractors; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this Agreement;

Formal Written Demand means a written notice produced on the Service Provider's headed note paper and sent by Special Delivery to the Chief Executive Officer, the Authority's section 151 officer and the Contract Manager detailing any amounts payable by the Authority under this Agreement and including a statement that the failure to pay such amounts may result in the occurrence of an Authority Default;

Fraud means any offence under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud the Authority;

Full Business Case has the meaning given to it in Schedule 15 (Special Projects Approval Procedure);

Future Service Provider means each and every service provider who shall provide any service equivalent to any of the Services after expiry or early termination of this Agreement;

Gainshare means a distribution of benefits between the Authority and Service Provider in relation to a benefit calculated by reference to the relevant provision within Schedule 4 (Payment and Performance Mechanism), or business case developed under the provisions of Schedule 15 (Special Projects Approval Procedure);

General Change in Law a Change in Law which is not a Qualifying Change in Law;

Good Industry Practice means that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the provision of the same type of services as the Services) or any Sub-Contractor under the same or similar circumstances;

Green Book means the HM Treasury guidance on the appraisal and evaluation of all policies, programmes and projects for central government;

Guarantee means a guarantee in the form set out in Schedule 6 (Guarantee);

Guarantor means Capita Plc (company registered number 2081330) whose registered office is at 71 Victoria Street, Westminster, London SW1H 0HX and any permitted successor in title pursuant to the Agreement or the Guarantee;

Guidance means any applicable guidance or directions published to accompany any UK statute, or issued by government or professional or regulatory bodies relevant to the Services and with which the Service Provider is bound to comply;

HoldCo means Capita Holdings Limited (company registered number 06027254) whose registered office is 17 Rochester Row, London, SW1P 1QT and any permitted successor in title;

ICS means the ICS Liquid Logic system;

ICT Environment means the software and computing hardware used in the provision of the Services or Retained Services;

Indemnified Party has the meaning given to it in clause 30.7 (Notification of Claims);

Indemnifying Party has the meaning given to it in clause 30.7 (Notification of Claims);

Indirect Losses means loss of profits, loss of use, loss of production, Loss of Business Revenue, loss of goodwill, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

Information has the meaning given to it under section 84 of the Freedom of Information Act 2000;

Information Barrier means arrangements to ensure the Services and Partnership are confidential and entirely separate from the Service Provider's, Affiliates' and Sub-Contractors' other business including:

- (a) that all members of the staff working in relation to the Services (the **Restricted Group**) have no involvement with or for other business at the Service Provider, Affiliate or Sub-Contractor unless otherwise agreed in writing in advance by the Authority;
- (b) that no member of the Restricted Group is managed or supervised in relation to that matter by someone from outside the Restricted Group;
- (c) that all members of the Restricted Group confirm at the start of the engagement that they understand that they possess or might come to possess information which is confidential, and that they must not discuss it with any other colleague unless that person is, or becomes, a member of the Restricted Group, and that is an ongoing obligation;
- (d) that each member of the Restricted Group confirms when the information barrier is established, that they have not done anything which would amount to a breach of the information barrier;
- (e) each member of the Restricted Group signs a confidentiality undertaking (to be nominated by the Authority acting reasonably) in relation to the Services and supplies any declarations of interest regarding the Services to the Authority;
- (f) that only members of the Restricted Group have access to documents in relation to the Services;

- (g) that the Restricted Group is physically separated from those acting for the other client, for example, by being in a separate building, on a separate floor, or in a segregated part of the offices, and that some form of "access restriction" be put in place to ensure that all physical segregation;
- (h) information in relation to the Services on computer systems is protected by use of a separate computer network or through use of password protection or similar means;
- (i) that the Service Provider, Affiliate and Sub-Contractors issue a statement that it will treat any breach, even an inadvertent one, of the information barrier as a serious disciplinary offence including that staff can be dismissed if they breach the information barrier and advises the Authority of the identity of such person;
- (j) that each member of the Restricted Group gives a written statement at the start of the engagement that they understand the terms of the information barrier and will comply with them;
- (k) that the Service Provider, Affiliate and Sub-Contractors undertake that they will do nothing which would or might prevent or hinder any member of the Restricted Group from complying with the information barrier;
- (l) that the Service Provider identifies a specific manager or other appropriate person within the Restricted Group with overall responsibility for the information barrier and advises the Authority of the identity of such person;
- (m) that the Service Provider provides formal and regular training for members of their staff on duties of confidentiality and responsibility under information barriers or will ensure that such training is provided before the work is undertaken; and
- (n) that the Service Provider, Affiliate and Sub-Contractor implement a system for the opening of post, receipt of faxes and distribution of e-mails, which will ensure that Confidential Information is not disclosed to anyone outside the Restricted Group.

Information Sharing Agreement means the agreement in the form set out in Schedule 17 (Information Sharing Agreement);

Initial Term means a period of ten (10) years from the Service Transfer Date;

Initial Transferring Assets means those assets of the Authority identified in the inventory in Schedule 10 (Authority Assets) which are transferred to the Service Provider in accordance with this Agreement for the purpose of being used exclusively by the Service Provider in the provision of the Services;

Insolvency Event means the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the Service Provider, Key Sub-Contractor, HoldCo or Guarantor:

- (a) the entity is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) the entity becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) the entity makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) the entity institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) the entity has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - i results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - ii is not dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation thereof;
- (f) the entity has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) the entity seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (h) a secured party take possession of all or substantially all of the entity's assets or the entity has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;
- (i) the entity takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts,

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

Intellectual Property Rights or IPR means patents, rights to inventions, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, copyright and related rights, database rights, rights in a designs, rights in computer software, rights in Confidential Information, know-how and trade secrets (howsoever recorded, communicated or displayed and including without limitation confidential information relating to methodologies, processes, employees and advisers), and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for), and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Intelligent Service Provider shall have the meaning given to it in clause 4.18 (Intelligent Service Provider);

Interface Documentation means:

- (a) a cooperation agreement between the Service Provider, the Authority and the DRS Contractor relating to cooperation between the Service Provider and the DRS Contractor regarding this Agreement and the DRS Contract; and
- (b) the deed of variation to this Agreement between the Authority and the Service Provider relating to the interface with the DRS Contract including amendments and additions to provisions in the main body of this Agreement, Schedule 1 (Output Specification) and dependencies between this Agreement and the DRS Contract;

Interim Agreement means the agreement referred to in Recital G;

Internal Control has the meaning given to it in clause 28.5 (Internal Control Environment);

IPR Claim means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used for the purpose of providing or receiving (as the case may be) the Services;

IPR Liability means any loss, damage, cost, charges, expenses and other liabilities (including legal fees) incurred by or awarded against the Authority or the Service Provider (as appropriate) arising from any IPR Claim;

Key Personnel means those members of the staff holding the posts set out in Schedule 21 (Key Personnel) as such is modified by agreement by the parties;

Key Performance Indicator (KPI) has the meaning as set out in the Payment Mechanism;

Key Sub-Contract means the agreements entered into by the Service Provider for the performance of its obligations under this Agreement to provide or supply (directly or

otherwise) a significant or important part of the Services (a significant or important part of the Services shall be deemed to be):

- (a) for a value greater than one hundred thousand pounds (£100,000) per annum (excluding licence purchasing costs in the case of Software providers); or
- (b) in relation to any part of the Services set out in the Revenues and Benefits Output Specifications;

Key Sub-Contract Guarantee shall have the meaning given to it in clause 51.1.3 (Deed of Guarantee and Collateral Warranties);

Key Sub-Contract Guarantor shall have the meaning given to it in clause 51.1.3 (Deed of Guarantee and Collateral Warranties);

Key Sub-Contractor means a counter party of the Service Provider to a Key Sub-Contract and shall include those parties as listed in Schedule 39 (Key Sub-Contractor) and may include Affiliates of the Service Provider;

Key Sub-Contractor Insolvency Remedy Notice has the meaning given in clause 41.5 (Key Sub-Contractor Insolvency Remedy Notice);

Legislation means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;

LGPS Regulations means The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and The Local Government Pension Scheme (Administration) Regulations 2008;

Library Service means the library service as more specifically defined in paragraph 4 of the Customer Services Output Specification set out in Schedule 1 (Output Specification);

Local Authority Services means the services to be provided to other local authorities by the Service Provider the same as, or similar to, the Services being provided under this Agreement;

Local Government Pension Scheme means the Local Government Pension Scheme made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972, as amended;

Lock-In Period means the period of three (3) years after the Service Transfer Date;

Loss of Business Revenue means any and all loss of revenue suffered by the Authority including:

- (a) amounts over and above the Financial Guarantees as detailed in Schedule 4 (Payment and Performance Mechanism);
- (b) from the point at which any scheme that results in the retention of business rates by the Authority becoming operable, any losses (agreed

to by the parties in writing) over and above the Financial Guarantees arising from the application of the such scheme;

Lower Amount has the meaning given in clause 15.3.6 (Funding);

Major Emergency Plan means the Authority's procedures for responding to, dealing with and recovering from an incident/Emergency (as updated from time to time);

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

Managing Agent Commencement Date means the date agreed between the parties in writing upon which the Service Provider shall commence provision of the Managing Agent Services;

Managing Agent Services means the managing agent services set out in Schedule 40 (Managing Agent) as updated and amended in accordance with the Agreement;

Members shall have the meaning given to it in clause 4.6.1(a);

Monitoring Procedure means the systems and procedures for monitoring the performance of the Service Provider's obligations in respect of this Agreement as set out in Schedule 13 (Monitoring Procedure);

Named Employee has the meaning set out in clause 16.4.1 (Criminal Bureau checks on staff);

Net Book Value means the amortised value of any item purchased by the Service Provider after accounting for depreciation in accordance with the Write Down Policy;

New Employer has the meaning given to it in clause 15.3.13(a)ii) (Transfer to Another Employer);

New Employee means those new employees employed by the Service Provider and/or any Sub-Contractor to provide the Services (including any Relevant Employee) who will be working alongside the Transferring Employees;

NJC means the National Joint Council for local government services;

NLBP Licence means the licence to occupy in the form annexed at Schedule 9 (NLBP Licence);

Notionally Fully Funded shall have the meaning given to it in clause 15.3.6(a);

Officers means an employee of the Authority;

Options Proposal has the meaning given to it in clause 10.2.2 (Budget Control);

Original Transfer has the meaning given to it in clause 57.5 (Change of Control);

Other Contract Documents have the meaning given to them in clause 19.1.4 (Service Provider Warranties);

Other Party has the meaning given to it in clause 22.1 (Relief Events);

Out of Hours Service means the out of hours service as more specifically defined in paragraph 4 of the Customer Services Output Specification contained in Schedule 1 (The Output Specifications);

Output Specifications means the output specifications set out in Schedule 1 (The Output Specifications) and any modifications or additions thereto as may from time to time be made in accordance with the provisions of this Agreement;

Outstanding Work has the meaning given to it in clause 47.4.4 (Maintenance Work);

Partial Termination Services have the meaning given to them in clause 46.1.1 (Termination of Part);

Partial Termination Notice shall have the meaning given to it in clause 46.1.1(a) (Termination of Part);

Partnership means the arrangements put in place for the provision of new support and customer services organisation services to the Authority by the Service Provider as contemplated by this Agreement including the provision of the Services (as updated and amended from time to time);

Partnership Centric Policies means the Authority Policies and/or the Service Provider Policies marked as remedy category 2 in Schedule 22 (Authority Policies);

Partnership Director means the person appointed by the Service Provider in accordance with clause 18.2 (Partnership Director);

Partnership Operations Board means the partnership operations board established and maintained by the parties throughout the Contract Period in accordance with Schedule 12 (Partnering Governance);

Partnership Transformation Board means the transformation board established and maintained by the parties throughout the Contract Period in accordance with Schedule 12 (Partnering Governance);

Payment Mechanism means the price and performance mechanism set out in Schedule 4 (Payment and Performance Mechanism);

Payment Period means each month during the Service Period, provided that:

- (a) the first contract month shall commence on the Service Transfer Date and end on the last day of the month in which the Service Transfer Date occurs; and
- (b) the last contract month shall begin on the first day of the month in which the last day of the Service Period occurs and end on the last day of the Service Period;

Pension Cost Modelling means the pricing assumptions set out by the Service Provider and/or any Sub-Contractor and provided to the Authority at or prior to the Agreement Date and updated at the occasion of a Relevant Transfer to document the pensions costs assumed in respect of Eligible Employees and New Employees (as appropriate) for the term of the Agreement;

Pension Fund means the London Borough of Barnet fund of the Local Government Pension Scheme;

Pension Funding Strategy Statement means the statement prepared in accordance with Regulation 35 of the Administration Regulations;

Pension Notice means a notice from the Service Provider and/or any Sub-Contractor which:

- (a) notifies the Authority of the Excess Amount or the Scheme Deficit Amount; and
- (b) notifies the Authority of the amount claimed by the Service Provider and/or any Sub-Contractor pursuant to clause 15.3.6(c);

Pension Notice Disputed Amount has the meaning given to it in clause 15.3.6(d);

Pensionable Pay has the same meaning as "Pensionable Pay" as defined in Regulation 4 of the Benefits Regulations;

Performance Review shall have the meaning given to it in Schedule 13 (Monitoring Procedure);

Performance Standard Benchmarking Exercise means the benchmarking exercise to be undertaken in accordance with clause 11.3 (Performance Standard Benchmarking);

Periodic Service Charges shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Periodic Service Payment shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Persistent Breach Final Warning Notice has the meaning given in clause 41.2.2 (Persistent Breach);

Persistent Breach means a breach for which a Persistent Breach Final Warning Notice (referred to in clause 41.2 (Persistent Breach)) has been issued (which has continued or recurred in the frequency and/or duration referred to in clause 41.2.2(c) after the date on which the Persistent Breach Final Warnings Notice is served on the Service Provider);

Personal Data shall mean any information as defined in the DPA which is supplied to the Service Provider by the Authority or is obtained by the Service Provider in the course of performing the Services; or any information relating to an identified or identifiable natural person (Data Subject); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity;

Prescribed Rate means two per cent (2%) above the base rate from time to time of the Bank of England;

Processing shall mean any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

Procurement Activities means the procurement activities which the Service Provider shall undertake on the Authority's behalf as further described in the Procurement Output Specification and associated Service Delivery Plan;

Profit Element shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Prohibited Act means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i induce that person to perform improperly a relevant function or activity; or
 - ii reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) offering, giving or agreeing to give to any servant of the Authority or any other public body or person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
 - ii for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (d) entering into this Agreement or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (e) committing any offence under the Bribery Act; or

- (f) Fraud,

Project Documents means:

- (a) the agreements entered into by the Service Provider (including all agreements with Approved Sub-Contractors, Key Sub-Contractors and novated Third Party Contractors (each as amended or replaced from time to time)) for the performance of the obligations under this Agreement; and
- (b) any other documents to which the Authority is not a party which are listed in Schedule 26 (Project Documents) as amended or replaced from time to time,

Project Specific IPRs means all IPRs created wholly or partially by the Service Provider (or by a third party on behalf of the Service Provider) in accordance with the terms of this Agreement or otherwise for the sole purposes of this Agreement (whether or not using the Authority's or its own premises or resources, and whether or not recorded in material form) relating to or capable of being used in the business for the time being carried on by the Authority, including but not limited to:

- (a) the IPRs subsisting in the Specially Written Software;
- (b) the IPRs subsisting in the Documentation; and
- (c) the IPRs subsisting in the Databases;

Protected Characteristics means any one or more of the following:

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) pregnancy and maternity;
- (e) race;
- (f) religion or belief;
- (g) sex;
- (h) sexual orientation,

Public Resources means funding and/or any other benefit provided by the Authority (and/or another Relevant Authority) which is used for or in connection with the Services or any obligation of the parties under this Agreement;

Public Sector Equality Duty means the duty set out in Section 149 of the Equality Act 2010 (as supplemented by guidance and updated from time to time).

Qualifying Change Implementation Costs means the costs (if any) of the Service Provider of implementing a Qualifying Change in Law as agreed to by the Authority in accordance with clause 14.2 (Parties to Discuss);

Qualifying Change in Law means:

- (a) any Change in Law which specifically refers to the provision of a service the same as or similar to the Services;
- (b) a Change in Law the terms of which apply expressly to the Partnership and to similar projects and/or the Service Provider and not to other persons;
- (c) any Legislation or Guidance coming into effect after the date of this Agreement giving effect to any of those documents or policies listed in Part 2 of Schedule 25 (Services Legislation List); or
- (d) a Change in Law coming into effect after the date of this Agreement which requires a material change to the Services or means or processes by which the Services are delivered,

which (save as in respect of limb (c)) was not foreseeable at the Agreement Date and/or does not constitute any Legislation or Guidance coming into effect after the date of this Agreement giving effect to any of those documents or policies listed in Part 1 of Schedule 25 (Services Legislation List);

Qualifying Change in Law Increase shall have the meaning given to it in clause 14.6 (Service Provider's Share);

Quarterly Date means 1 April, 1 July, 1 October and 1 January each year (or the next Business Day if such date is not a Business Day) or such other dates as the parties shall agree in writing;

Recipient has the meaning given to it in clause 26.13.2 (VAT on Payments);

Records Retention and Disposal Guidelines means the Records Retention and Disposal Guidelines listed in Schedule 22 (Authority's Policies);

Rectification Plan shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Related Contract means a contract between the Authority and a Related Contractor following a Related Procurement;

Related Contractor means any contractor selected pursuant to a Related Procurement and with whom the Authority enters into a Related Contract;

Related Procurement means any procurement of services undertaken by the Authority during the Contract Period which does or may relate to or interface with the Services under this Agreement;

Related Provider means a Related Contractor and the contractors selected pursuant to the Development and Regulatory Services and parking services procurements undertaken by the Authority and the adult social services trading company;

Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, officer or public or statutory person of the government of the United Kingdom or of the European Union;

Relevant Employees means all those employees subject to a Relevant Transfer on a Relevant Transfer Date;

Relevant Event means a Change, Qualifying Change in Law, Budget Change, Year 3 Detailed Proposal and Year 6 Change Proposal which result in an adjustment to the Periodic Service Payment;

Relevant HR Policies and Procedures means the policies set out in Schedule 22 (Authority's Policies);

Relevant Party has the meaning given to in clause 22.1 (Relief Events);

Relevant Transfer means a relevant transfer for the purposes of TUPE;

Relevant Transfer Date means a date on which the provision of the Services changes (save for the Service Transfer Date);

Relief Event means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, central government or local authority (excluding the Authority) or other like body to carry out work or provide services;
- (c) any failure or shortage of power, fuel or transport;
- (d) any blockade or embargo which does not constitute a Force Majeure Event;
- (e) any:
 - i official or unofficial strike;
 - ii lockout;
 - iii go-slow; or
 - iv other dispute,

generally affecting the provision of the same or similar services as the Services,

affecting the Service Provider or the Authority unless any of the events listed in paragraphs (a) to (e) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Relevant Party claiming relief under clause 22 (Relief Events), or its employees, sub-contractors or agents;

Remainder Termination Notice has the meaning given to it in clause 46.2.1 (Termination of Remaining Services);

Remaining Scheme Deficit Amount has the meaning given to it in clause 15.3.6 (Funding);

Remaining Services has the meaning given to it in clause 46.2.1 (Termination of Remaining Services);

Remedy Notice has the meaning given to it in clause 41.4 (Remedy Notice);

Reported Baseline shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Reprioritisation Change means a change implemented in accordance with the provisions of clause 13.1 (Reprioritisation Change) in respect of which both the financial and operational impacts of such change can be accommodated within the parameters of the Service volumes identified within the Financial Model and/or the Tolerance Parameters via a reprioritisation of resource, outputs, deliverables, Service Performance Levels, KPIs or other similar changes;

Reprioritisation Change Proposal has the meaning given to it in clause 13.1.2 (Reprioritisation Change);

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environmental Information Regulations;

Required Action has the meaning given to it in clause 21.3 (Action by Authority);

Required Insurances means the insurances specified in clause 50 (Insurance) and Schedule 34 (Insurance);

Required Standard has the meaning given to it in clause 47.4.3(a) (Results of Survey);

Restricted Group has the meaning given to it in the definition of Information Barrier contained in this clause 1.1 (Definitions and Interpretation);

Restricted Share Transfer means any transfer of shares in the Service Provider or HoldCo to any person engaged, or with substantial interests in, gambling, gaming, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco, or the manufacture or sale of arms and weapons;

Retained Services means the functions of the Authority which are not the Services, being the functions which the Authority shall continue to carry out or procure a third party to carry out on its behalf during the Contract Period;

Retention Fund Account has the meaning given to it in clause 47.4.5 (Retention Fund);

Revenue Expenditure means any expenditure which falls to be treated as revenue expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

Rolling Inventory means the contents of Schedule 10 (Authority Assets) as may be updated from time to time and as a minimum every twelve (12) months to create a rolling and up to date inventory of all Assets and Authority Assets used by the Service Provider in the operation of the Partnership and Services;

Schedule means a schedule to this Agreement;

Scheme Deficit Amount has the meaning given to it in clause 15.3.6 (c) (ii) (Funding);

Sector Centric Policies means the Authority Policies and/or the Service Provider Policies marked as remedy category 1 in Schedule 22 (Authority Policies);

Service Credit(s) shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Service Delivery Plan(s) means the Service Delivery Plans contained in Schedule 2 (The Service Delivery Plan) describing the method of performing each of the Services to the standards laid down in the Output Specifications and any modifications or additions thereto as may be agreed in accordance with the Change Protocol and clause 14 (Change in Law) from time to time;

Service Performance Levels means the level to which the Service Provider is required to provide the Services as set out in paragraphs 6 (Service Requirements) and 7 (Performance Indicators) of each of the Output Specifications set out in Schedule 1 (The Output Specification);

Service Period means the period specified in clause 2.2 (Commencement and Duration);

Service Provider Assets means the:

- (a) Service Provider Lease Assets;
- (b) Service Provider Shared Assets;
- (c) Service Provider Exclusive Assets;
- (d) Service Provider Traded Services Assets; and
- (e) Initial Transferring Assets.

Service Provider Background IPRs means any and all IPRs that are owned by or licensed to the Service Provider and which are or have been developed independently of this Agreement (whether prior to the Agreement Date or otherwise);

Service Provider Change has the meaning given to it in the Change Protocol;

Service Provider Claim Subject has the meaning given to it in clause 31.10.1;

Service Provider Default means one of the following events:

- (a) a breach by the Service Provider of any of its obligations under this Agreement which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) an Insolvency Event occurs;
- (d) a breach by the Service Provider of its obligations under clause 53 (Assignment and Sub-Contracting) occurs;
- (e) a breach by the Service Provider of any of its obligations under clause 57 (Change of Control) occurs;
- (f) the Service Provider Abandons the Agreement at any time;
- (g) a failure to achieve the Service Transfer Date by three (3) months following the Agreement Date;
- (h) in any one (1) month period the Averaged Monthly Periodic Service Charges Reduction is equal to or in excess of ten per cent (10%) of the averaged monthly Periodic Service Charges in that period;
- (i) in any three (3) month period the Averaged Monthly Periodic Service Charges Reduction is equal to or in excess of eight per cent (8%) of the averaged monthly Periodic Service Charges in that period;
- (j) in any twelve (12) month period the Averaged Monthly Periodic Service Charges Reduction is equal to or in excess of five (5%) of the averaged monthly Periodic Service Charges in that period;
- (k) [REDACTED];
- (l) a breach by the Service Provider of its obligations to take out and maintain any of the Required Insurances;
- (m) a failure by the Service Provider to replace a Key Sub-Contractor in accordance with the provisions of clause 41.5.3;
- (n) a failure by the Service Provider to achieve any of the Financial Guarantees savings in accordance with the Schedule 4 (Payment and Performance Mechanism) in any two (2) Contract Year rolling period;
- (o) a breach by the Service Provider of the caps on liability set out in clauses 30.10.1(a) or (b) (Limitation on Liability – Service Provider);
- (p) a material breach of any of the Corporate Centric Policies (and pursuant to clause 55 (Law, Policies and Related Matters) their replacements or equivalents);
- (q) a breach of, or failure to deliver, any one of the Certain Commitments where those matters set out in the column titled "Related Assumptions/dependencies" in Schedule 35 (Service Provider

Commitments) have been satisfied, but specifically excluding any of the following:

- i the outcomes listed in the column titled "Benefit to the Authority" in Schedule 35 (Service Provider Commitments);
- ii the outcomes listed in the column titled "Benefit to the Provider" in Schedule 35 (Service Provider Commitments);
- (r) the occurrence of any of those matters set out in paragraph 6.1 of Schedule 42 (Financial Distress);
- (s) failure to comply with the requirements of clause 1.13 (Interface);

Service Provider Default Termination Payment means the amount calculated in accordance with paragraph 1 of Part 2 of Schedule 27 (Compensation on Termination);

Service Provider Exclusive Assets means the assets owned by the Service Provider which are used solely and exclusively in the provision of the Services;

Service Provider Lease Assets means assets leased by the Service Provider from a third party which are used in the provision of the Services;

Service Provider Notice of Change means a notice containing the information set out in paragraph 6.1 of Schedule 14 (Change Protocol);

Service Provider Policies means the policies of the Service Provider which are of at least an equivalent standard to the corresponding Authority Policies in Schedule 22 (Authority Policies) and which comply with the provisions of Clause 55.4 (Law, Policies and Related Matters),

Service Provider Related Parties means any of the following:

- (a) an officer, servant, employee or agent of the Service Provider, or any Affiliate of the Service Provider and any officer, servant, employee or agent of such a person acting in that capacity;
- (b) any contractor or sub-contractor of the Service Provider of any tier engaged in the direct or indirect supply or provision of the Services and any of their directors, officers, servants, employees or agents acting in that capacity,

but excluding the Authority or Authority Related Parties;

Service Provider Scheme means the retirement benefits scheme or schemes established or to be established under clause 15.3.8 (Service Provider Scheme);

Service Provider Shared Assets means those assets which are used by the Service Provider in the provision of the Services and Third Party Services;

Service Provider Software means the software which is owned by the Service Provider or any Affiliates of the Service Provider and which is used by the Service Provider and/or the Authority (or by a third party on their behalf) for the purpose of providing or receiving

(as the case may be) the Services, as set out in Part 1 of Schedule 11 (as updated from time to time);

Service Provider Traded Services Assets means those assets which are used by the Service Provider in the provision of the Services and Traded Services;

Service Provider Termination Notice has the meaning given to it in clause 44.1 (Termination on Authority Default);

Service Provider Warranted Data means the information relating to the Service Provider and its Affiliates contained in Schedule 7 (Warranted Data);

Service Provider's Group means the Service Provider, its ultimate holding company and all subsidiaries of the holding company, the definition of "holding company" and "subsidiary" being those set out in section 1159 of the Companies Act 2006;

Service Provider's Premises means the premises owned by or leased or licensed to the Service Provider and used by the Service Provider in the provision of the Services excluding the Authority's Premises;

Service Provider's Share means the Service Provider's share of the Service Provider's costs of any Qualifying Change in Law as set out in Clause 14.6 (Service Provider's Share);

Service Transfer Date means the transfer to the Service Provider of responsibility for provision of (or for the procurement of provision by sub-contractors of) the Services in accordance with the Agreement, to take place on 1 September 2013 or on such date as may be agreed between the parties in writing;

Service Users means any user of the Services;

Services means:

- (a) the whole of the services or any of them to be provided by the Service Provider pursuant to this Agreement;
- (b) any implemented Special Projects;
- (c) the Deferred Services from the Deferred Services Commencement Date; and
- (d) the Managing Agent Services from the Managing Agent Commencement Date,

Shareholder means each person from time to time holding share capital in the Service Provider or its holding company, the definition of "holding company" being those set out in section 1159 of the Companies Act 2006;

Single Data List means the single data list for central government Departments (2011 - 12) published by the Department for Communities and Local Government on 14 April 2011, containing a comprehensive list of all data required of local government by central government, and any subsequent lists of central government's data requirements from

local government, as may be issued by the Department of Communities and Local Government or any other competent authority from time to time;

Software means the Specially Written Software, the Service Provider Software and the Third Party Software detailed at Part 1 and Part 2 and Part 4 of Schedule 11 (as updated from time to time);

Source Material means the source code, object code, linkage data, software listings, full technical data, information and documentation relating to the Software which is necessary for maintaining, modifying and correcting the Software and providing a secondary level of support for the Software but excluding Documentation and the Software;

Specially Written Software means all software created wholly or partially by the Service Provider (or by a third party on behalf of the Service Provider) in accordance with the terms of this Agreement or otherwise for the purposes of this Agreement as set out in Part 4 of Schedule 11 (as updated from time to time);

Special Projects means any special projects listed in Part 2 of Schedule 15 (as updated from time to time) in relation to which the Authority may seek a business case from the Service Provider in accordance with the Special Projects Approval Procedure under Schedule 15 (Special Projects Approval Procedure);

Special Projects Approval Procedure means the procedure set out in Schedule 15 (Special Projects Approval Procedure);

Staff means all persons employed by the Service Provider to perform its obligations under this Agreement together with the Service Provider's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Agreement;

State Aid means a benefit:

- (a) conferred by a member state of the European Union (or through that member state's resources);
- (b) favouring a particular undertaking;

Standard Licence Terms means the licence terms set out in Part 7 of Schedule 11;

State Second Pension Scheme means the S2P additional state pension;

Statutory Complaints Procedure means the Authority's Adult Social Care and Health Statutory Complaints and Representations Procedure as listed in Schedule 22 (Authority's Policies) and reviewed, developed and updated by the Authority from time to time;

Step-in Notice has the meaning given to it in clause 21.2 (Notice to the Service Provider);

Step-Out Date has the meaning given to it in clause 21.6.1(b) (Step-Out);

Step-Out Notice has the meaning given to it in clause 21.6.1 (Step-Out);

Step-Out Plan has the meaning given to it in clause 21.6.2 (Step-Out);

Strategic Partnership Board means the strategic partnership board established and maintained by the parties throughout the Contract Period in accordance with Schedule 12 (Partnering Governance);

Sub-Contractor means sub-contractors (of any tier) of the Service Provider;

Sub-Contracts means the contracts entered into between the Service Provider and the Sub-Contractors;

Subsequent Contribution Rate means the percentage of Pensionable Pay of Eligible Employees who transfer to the Service Provider and/or any Sub-Contractor on the occasion of a Relevant Transfer as calculated in each Valuation subsequent to the Contribution Rate as notified by the Authority.

Substitute Licence means any licence granting rights to use of premises issued by the Authority to the Service Provider in accordance with clause 8.11 of this Agreement.

Sum at Risk shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Supplier has the meaning given to it in clause 26.11.2 (VAT on Payments);

SWIFT means until the same is replaced, the application used by the Authority's Adult Social Care and Children's departments (which includes the adults data warehouse) provided pursuant to a contract between the Authority and Northgate Public Sector;

Technical and Organisational Security Measures shall mean measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing;

Termination Date means any date of early termination of this Agreement in accordance with its terms;

Termination Notice has the meaning given to it in clause 42.1.1 (Termination on Service Provider Default Incapable of Remedy);

Third Party Background IPRs means any and all IPRs that are owned by or licensed to a third party which are or have been developed independently of this Agreement (whether prior to the Agreement Date or otherwise);

Third Party Contract(s) means any contracts or arrangements listed in Schedule 24 (Third Party Contracts) and any other contracts which the parties agree in writing through the Change Protocol shall be treated as Third Party Contracts;

Third Party Contractor(s) means the third party contractors who are parties to the Third Party Contracts;

Third Party Cooperation Agreement means an agreement adhering to the heads of terms set out in Schedule 28 (Third Party Cooperation Agreement);

Third Party Services means any services provided by the Authority or the Service Provider to a third party and may include Local Authority Services (but shall exclude Traded Services);

Third Party Software means any software which is owned by a third party and that is licensed to either the Authority or the Service Provider, or that is otherwise used by the Authority or the Service Provider (or by a third party on their behalf) for the purpose of providing or receiving the Services (as the case may be) as set out in Part 2 of Schedule 11 (as updated from time to time);

Third Party Use Fee shall have the meaning given to it in clause 5.3.13(a)iv);

Tolerance Parameters has the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Trade Union and Employee Relations Framework means the Trade Union and Employee Relations Framework listed as part of the employee handbook listed in Schedule 22 (Authority's Policies);

Traded Services means the Services provided by the Service Provider to a third party including but not limited to a PCT, GP Consortia, school or third sector body for which the said third party pays a charge to the Authority which is managed through the processes set out in paragraph 12 (Income and Recharges) of Schedule 4 (Payment and Performance Mechanism) on the basis agreed between the Service Provider and the third party and subject to approval by the Authority;

Transferring Contracts shall have the meaning given to it in clause 7.3.2(a) (Contracts Upon Expiry/Termination);

Transferring Employees means the employees of the Authority who will transfer from the employment of Authority to the employment of the Service Provider or its sub-contractors as a result of the application of TUPE in relation to the Agreement as specified in Schedule 19 (Workforce Information);

Transformation Plan means all details relating to the transformation of the Services contained in the Output Specifications and the Service Delivery Plans;

Transition Period means the period between the Agreement Date and Service Transfer Date and in any event a period not less than ten (10) Business Days prior to the Service Transfer Date;

Transition Plan means the transition plan which forms part of the Service Delivery Plan(s);

Transition Services means the transition services described in the Transition Plan to be performed by the Service Provider during the Transition Period;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time;

VAT means any value added taxes;

Valuation means each statutory valuation of the Pension Fund by the actuary to the Pension Fund and as appropriate shall include a valuation obtained in accordance with Regulation 38(2) of the Administration Regulations;

Volume Baselines has the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

Workaround Solution means a solution employed by the Service Provider to overcome any matter preventing the Services from being provided in accordance with the terms of the Agreement, such solution:

- (a) being provided in accordance with Good Industry Practice;
- (b) not resulting in the parties being in breach of their obligations pursuant to this Agreement;
- (c) to be appropriate in all relevant aspects in order to overcome the matter preventing Service provision; and
- (d) not resulting in a diminution in the Services,

Write Down Policy means the Service Provider's policy as set out in Appendix 1 (Financial Model) of Schedule 4 (Payment and Performance Mechanism) for the depreciation of each component of the Service Provider Exclusive Assets and Service Provider Traded Services Assets purchase price as identified in a Business Case or subsequent Change. The Service Provider shall secure the Authority's written consent to any change in such policy during the Contract Period;

Year 3 Detailed Proposal has the meaning given to it in clause 10.3 (Year 3 Review);

Year 3 Options Proposal has the meaning given to it in clause 10.3 (Year 3 Review);

Year 3 Outcome Review has the meaning given to it in clause 10.3 (Year 3 Review);

Year 3 Implementation Plan has the meaning given to it in clause 10.3 (Year 3 Review);

Year 6 Change means a change sought by the Authority to the Services or sums payable to the Service Provider as a result of the Year 6 Review; and

Year 6 Change Proposal has the meaning given to it in clause 10.3.5;

Year 6 Implementation Plan has the meaning given to it in clause 10.3.7;

Year 6 Review has the meaning given to it in clause 10.3.1;

Year 6 Options Proposal has the meaning given to it in clause 10.3.3;

1999 Act means the Local Government Act 1999.

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 unless otherwise expressly stated in this Agreement operate to exclude or limit the Service Provider’s obligations or liabilities under this Agreement (or the Authority’s rights under this Agreement).
- 1.4 **Precedence of Documentation**
- In the event of any inconsistency between the provisions of clauses 1 to 78 inclusive of this Agreement and the Schedules, or between any of the Schedules or part of the Schedules, the conflict shall be resolved according to the following descending order of priority:
- 1.4.1 clauses 1 to 78 inclusive;
 - 1.4.2 Schedule 1 (Output Specification(s)) (unless any of the other Schedules expressly states that a particular requirement set out in Schedule 1 shall not apply);
 - 1.4.3 Schedule 4 (Payment and Performance Mechanism);
 - 1.4.4 Schedule 35 (Service Provider Commitments);
 - 1.4.5 Schedule 8 (Authority's Obligations);

1.4.6 the other Schedules of this Agreement;

1.4.7 any ancillary documents entered into to give efficacy to this Agreement, including but not limited to the property documents.

1.5 Consent

All consents under this Agreement shall be in writing and shall not be unreasonably withheld or delayed by the consenting party.

1.6 Sufficiency of Information

Unless specified otherwise in this Agreement, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for purpose of any Disclosed Data or other information relating to the Services or any other part of this Agreement.

1.7 Responsibility for Related Parties

Subject to the provisions of this Agreement, the Service Provider shall be responsible as against the Authority for the acts and omissions of the Service Provider Related Parties as if they were the acts and omissions of the Service Provider and the Authority shall be responsible as against the Service Provider for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Service Provider shall, as between itself and the Authority, be responsible for the selection of and pricing by all Service Provider Related Parties.

1.8 Approval

Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same, shall unless otherwise expressly stated in this Agreement, relieve the Service Provider of any of its obligations under this Agreement and/or the Project Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.9 Succession

References to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authority) shall include their successors and assignees.

1.10 Sole Responsibility

Except as expressly stated to the contrary in this Agreement, the Service Provider shall have sole responsibility for the performance of the Services, and for the compliance with its other obligations under this Agreement. The Service Provider shall have sole responsibility for the management and supervision of Staff and sole liability for the acts or omissions of Staff.

1.11 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 13 (Changes to the Agreement), 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 Charges), 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.

1.12 Deferred and Managing Agent Services

The parties agree that:

- 1.12.1 the Deferred Services shall only be provided by the Service Provider from the Deferred Services Commencement Date; and
- 1.12.2 the Managing Agent Services shall only be provided by the Service Provider from the Managing Agent Commencement Date.

1.13 Interface

- 1.13.1 The Service Provider shall cooperate promptly and in good faith with the Authority and the DRS Contractor to finalise and agree the Interface Documentation.
- 1.13.2 The Service Provider agrees that it shall enter into the Interface Documentation:
 - (a) on or before the date which is ten (10) Business Days from the Interface Documentation being agreed between the parties; or if later
 - (b) such date notified by the Authority to the Service Provider.
- 1.13.3 The Service Provider shall:
 - (a) procure that the Guarantor provides a valid and enforceable Guarantee in relation to this Agreement as amended by the Interface Documentation on or before the date on which the Interface Documentation is entered into; or
 - (b) where the Authority confirms in writing that a further Guarantee is not required pursuant to clause 1.13.3(a), procure that the Guarantor confirms in writing the validity of the Guarantee insofar as is required as a consequence of the amendment of this Agreement by the Interface Documentation,
- 1.13.4 The parties confirm that:
 - (a) the Periodic Service Payment anticipates that the Authority will enter into the DRS Contract no later than two (2) months after the Service

Transfer Date and accordingly all costs for the provision of the Services (including all elements of the Output Specifications relating to the DRS Contract) as set out in the Financial Model are formulated on this basis;

- (b) should the Authority not enter into the DRS Contract within two (2) months of the Service Transfer Date, the parties shall agree in good faith any changes to the Periodic Service Payment in accordance with the Change Protocol; and
- (c) there shall be no increase to the Periodic Service Payment upon the execution of the Interface Documentation:
 - i unless that part of the Interface Documentation that updates Schedule 1 (Output Specification) and relates to the provision of the Services to the DRS Contractor is agreed to by the parties in writing as resulting in an increase to the Periodic Service Payment;
 - ii but the parties may agree further efficiencies and reductions in the Periodic Service Payment where appropriate in accordance with the Change Protocol.

2 Commencement and Duration

- 2.1 This Agreement and the rights and obligations of the parties to this Agreement shall take effect on the Agreement Date.
- 2.2 The Service Period will commence on the Service Transfer Date and (subject to clauses 2.3 and 2.4) terminate or expire on the earlier of:
 - 2.2.1 the Expiry Date; and
 - 2.2.2 the Termination Date,whereupon the Contract Period shall also terminate.
- 2.3 At its sole discretion the Authority shall be entitled to serve a written notice upon the Service Provider at least twelve (12) months prior to the Expiry Date to extend the Service Period by a further period or periods which shall not exceed five (5) years in aggregate.
- 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 within twenty (20) Business Days of receipt of the Authority's notice 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 or periods of up to 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 extensions including any consequential variations to the Agreement, the Periodic Service Payment and the Project Documents, 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. The parties shall record any such amendments in accordance with the provisions of clause 13.2 (Amendments).

2.5 Conditions Precedent

2.5.1 This Agreement is conditional on the satisfaction of the following Conditions Precedent:

- (a) the Guarantee validly executed by the Guarantor in accordance with clause 51.1.1 by the Agreement Date;
- (b) the provision by the Service Provider to the Authority of executed forms of any relevant Key Sub-Contract Guarantee by the Key Sub-Contract Guarantor in accordance with clause 51.1.3 by the Service Transfer Date;
- (c) the provision by the Service Provider to the Authority of executed forms of any relevant Collateral Warranties by the Key Sub-Contractors in accordance with clause 51.1.2 by the Service Transfer Date;
- (d) the Service Provider executing the Admission Agreement in accordance with clause 15.3.1 by the Service Transfer Date;
- (e) the provision by the Service Provider to the Authority of those Project Documents as listed in Schedule 26 (Project Documents) by the Service Transfer Date.

2.5.2 If the Conditions Precedent have not been satisfied (unless waived by the Authority in writing) by the date specified in clause 2.5.1, this Agreement shall terminate on such date and be without further effect.

2.6 Delivery of Initial and Changed Project Documents

2.6.1 The Service Provider has provided to the Authority copies of the Project Documents.

2.6.2 Without prejudice to the provisions of clause 2.7 (Changes to Project Documents), if at any time an amendment is made to any Project Document, or the Service Provider enters into a new Project Document (or any agreement which affects the interpretation or application of any Project 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.

2.7 Changes to Project Documents

The Service Provider shall perform its obligations under, and observe all of the provisions of, the Project Documents including the full enforcement of any contractual or non-contractual rights and remedies against any counterparty to a Project Document and shall not:

2.7.1 terminate or agree to the termination of all or part of any Project Document;

- 2.7.2 make or agree to any variation of any Project Document;
- 2.7.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), under any Project Document; or
- 2.7.4 enter into (or permit the entry into by any Service Provider Related Parties of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority for review and there has been no reasonable 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 clauses 2.7.1 and 2.7.4, that the Service Provider has complied with the provisions of clause 53 (Assignment and Sub-Contracting).

3 Partnership Targets

3.1 Purpose of this Agreement

- 3.1.1 The principal purpose of this Agreement is to establish a long term partnering relationship between the Authority and the Service Provider to provide or procure the provision of the Services to the Authority.
- 3.1.2 The aim of this clause 3 is to identify the high level principles which underpin the delivery of the Service Provider's obligations under this Agreement and to set out key factors for a successful relationship between the parties. Whilst it is recognised that these principles are difficult to measure in isolation, the successful implementation of this Agreement will depend on the Service Provider's ability to effectively co-ordinate and utilise its expertise, manpower and resources in order to deliver an integrated and flexible approach to the provision of the Services under this Agreement.

3.2 Principles

The principles referred to in clause 3.1.2 are to:

- 3.2.1 develop a close working relationship between the Service Provider and the Authority at all levels;
- 3.2.2 focus on achieving the best value for money operational performance within agreed timescales;
- 3.2.3 set in place business and cultural processes to enable the Authority and the Service Provider to establish and agree challenging time and performance objectives and for the Service Provider to meet or better them;
- 3.2.4 recognise the other party's needs, constraints, limitations, capabilities, roles and responsibilities to achieve mutually beneficial outcomes;
- 3.2.5 identify, by regular monitoring, weaknesses and strengths in the relationship between and amongst the Authority and the Service Provider (and where

relevant appropriate third parties) and to work together to overcome the weaknesses and to build on the strengths;

- 3.2.6 commit to the early recognition and resolution of differences, conflicts and disputes between the Authority, other relevant public and private sector bodies and the Service Provider in a "no surprises" environment;
- 3.2.7 appoint within the Service Provider, co-ordinators at senior level who will encourage, support, defend and promote the long term strategic partnering relationship between the Service Provider and the Authority and its principles of operation;
- 3.2.8 develop openness and trust in a transparent information and data sharing environment; and
- 3.2.9 in accordance with Equalities Legislation work positively to promote equal opportunities by combating discrimination on the grounds of race, ethnicity, religion, nationality, gender, disability or sexuality and promoting good relations between all sections of the community in "everything we do" including:
 - (a) delivering high quality Services for end users; and
 - (b) where necessary working with the local community and partners in the public, private or voluntary sectors.

3.3 Mutual objectives of the Service Provider and the Authority

This Agreement aims to ensure that the following essential components are embraced and adhered to by the Service Provider and the Authority:

- 3.3.1 the Service Provider and the Authority each agree and commit themselves:
 - (a) to the establishment of a long term relationship for the delivery of the Services;
 - (b) to achieving the partnership targets set out in clause 3.2 (Partnership Targets);
 - (c) to the mutual objectives set out in this Agreement; and
 - (d) to make known their individual long-term goals to each other;
- 3.3.2 the mutual objectives referred to are kept under review through meetings, effective communications and the governance arrangements set up in accordance with this Agreement;
- 3.3.3 in its dealings with parties to any Sub-Contract(s), the Service Provider will seek to act in a manner consistent with the principles in clause 3.2 and will seek to ensure that each of such parties is aware of and is able to contribute to the mutual objectives of the Service Provider and the Authority agreed between them from time to time in accordance with this clause 3.3; and

- 3.3.4 without prejudice to the provisions of clause 39 (Information and Confidentiality) and clause 40 (Freedom of Information), all discussions between the parties are treated with mutual confidentiality.

3.4 Problem Resolution

The Service Provider and the Authority agree to adopt a systematic approach to problem resolution which recognises the principles and mutual objectives contained in clause 3.2 and clause 3.3 respectively and which:

- 3.4.1 seeks solutions without apportioning blame;
- 3.4.2 is based on mutually beneficial outcomes;
- 3.4.3 treats the Service Provider and the Authority as equal parties in the dispute resolution process;
- 3.4.4 contains a mutual acceptance that adversarial attitudes waste time and money; and
- 3.4.5 relies on more and better discussion with less paperwork and more constructive correspondence.

3.5 Non-binding effect of this clause 3

The parties recognise and agree that:

- 3.5.1 the provisions in this clause 3 (Partnership Targets) are aspirational and are not intended to give rise to legally binding rights and obligations between the parties;
- 3.5.2 nothing in this clause 3 (Partnership Targets) shall affect the interpretation or effect of any other provision of this Agreement, including any provision which makes reference to (or incorporates by reference) any part of clause 3 (Partnership Targets).

Part 2 – Service Provision

4 The Services

4.1 Transition

During the Transition Period:

- 4.1.1 the Service Provider shall provide the Transition Services to the Authority; and
- 4.1.2 each party shall perform and comply with their respective obligations as set out in the Transition Plan.

4.2 Service Provision and Service Delivery Plans

- 4.2.1 Subject to the provisions of this Agreement, the Service Provider shall provide to the Authority the Services to the Contract Standard and on the terms of this

Agreement (with effect from the Agreement Date in respect of the Transition Services and from the Service Transfer Date in respect of the Services), where provision of the Services to the Contract Standard shall require the Service Provider throughout the Contract Period to:

- (a) 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) (as the same are updated from time to time in accordance with clause 4.2.5);
- (b) ensure that during the Service Period the Services meet and satisfy the Service Performance Levels, Performance Indicators and KPIs set out in the Agreement;
- (c) ensure that during the Service Period the Services are delivered in accordance with the Continuous Improvement Plan and fulfil the Commitments;
- (d) at all times ensure that the Services comply with and meet all the requirements on the Service Provider of this Agreement and all Legislation and applicable Authority Policies (as reviewed, developed, updated and/or created by the Authority), and where relevant (in accordance with the provisions of clause 55.4 (Law, Policies and Related Matters) the Service Provider Policies;
- (e) perform the Services with skill and care and in accordance with Good Industry Practice;
- (f) warn the Authority where known to the Service Provider or should have been known to the Service Provider had it exercised due skill, care and expertise in accordance with Good Industry Practice, if any matter specified by the Authority or required by the Authority or the Contract Manager is such as to prejudice the quality or purpose of the Services;
- (g) perform its obligations under, and observe and enforce all of the provisions of, the Key Sub-Contracts to which it is a party;
- (h) 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;
- (i) 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 as may reasonably be requested by the Authority;
- (j) perform the Services (and procure that any Service Provider Related Party performs the Services) in compliance with Equalities Legislation;

- (k) ensure the Services are performed by appropriately qualified and trained personnel in accordance with clause 16.1 (Staffing); and
 - (l) comply with any reasonable requirements made by the Authority in relation to the delivery of apprenticeships and apprenticeship placements, and facilitate any reasonable requests from the Authority for the provision of apprenticeship placements in the delivery of the Services.
- 4.2.2 Subject to the provisions of this Agreement, if at any time during the Contract Period the Service Provider becomes aware that it has failed to provide the Services in accordance with the requirements of clause 4.2.1, the Service Provider shall arrange all additional resources necessary to perform the Services, and shall remedy and where practicable promptly re-perform the Services at no additional cost to the Authority.
- 4.2.3 Without prejudice to the provisions of the Payment Mechanism, where the Service Provider has failed to perform any part of the Services in accordance with the Service Performance Levels or in accordance with clause 4.2.1; and
- (a) has either not mobilised additional resources or remedied and/or re-performed the Services; or
 - (b) where the Service Provider has taken action in accordance with clause 4.2.2 and in the Authority's reasonable opinion such action has been or would be insufficient to rectify the default,
- the Authority may notify the Service Provider and require it to remedy the default so as to comply with the requirements of clause 4.2.1, or within the relevant period for the applicable Service Performance Level such notification shall be without prejudice to the Authority's other rights or remedies pursuant to the Agreement.
- 4.2.4 The provisions of this clause 4.2 (Service Provision and Service Delivery Plans) shall not prejudice the Authority's ability to undertake any other steps that may be envisaged under this Agreement.
- 4.2.5 If the Service Provider wishes to alter the manner in which it provides the Services from that set out in the Service Delivery Plans and such alteration:
- (a) relates to operational and/or procedural matters which will not result in a diminution in, or have a detrimental impact upon, the Services and/or the obligations of the Service Provider and/or the Retained Services; and
 - (b) shall only be permitted where there is:
 - i no alteration in the location of the Staff engaged in the provision of the Services and/or the Services themselves; or

- ii evidence that the Service Provider has taken steps to observe the requirements of clause 17 (Compliance with Anti-Discrimination Legislation),

the Service Provider shall notify the Partnership Operations Board of such alteration prior to the next meeting of the Partnership Operations Board including details of the proposed alteration and appropriate evidence of compliance with the requirements of this clause 4.2.5 as part of such notification. Subject to agreement by the Partnership Operations Board of the alteration in accordance with Schedule 12 (Partnering Governance), the Service Provider shall be permitted to implement such alteration without reference to the Change Protocol and shall provide the Authority with an updated Service Delivery Plan within ten (10) Business Days of implementation of the agreed alteration.

4.3 Service Investments and Savings

- 4.3.1 The Service Provider guarantees that during the Contract Period it will achieve the minimum savings and income generation in the provision of the Services as set out in the table below. The Service Provider shall demonstrate to the satisfaction of the Authority that such savings have been achieved.

LBB Charges and Savings													
Contract Year	Baseline cost of NSCSO services (2013/14)	Additional council tax income	Reducing no. of single person discount CTax claimants	Savings in retained council procurement spend	Savings on core service price	Interim Agreement Adjustment	Change to Managed budgets	Total core service savings	% saving on core service price	Annual savings totals	Annual Capital fee to council	Managed budgets	Total fee
Year 1 of the Contract Period	3,400,000										3,400,000		3,400,000
Year 1 of the Contract Period	38,757,596		190,800	624,031	5,281,048	(98,167)		5,182,881	13%	5,997,712	24,877,788	8,632,760	33,510,548
Year 2 of the Contract Period	38,757,596	80,685	381,600	5,916,047	5,748,636	£152,446		5,901,082	15%	12,279,413	24,376,200	8,632,760	33,008,960
Year 3 of the Contract Period	38,757,596	376,530	508,800	2,633,546	7,800,065	£414,795	(2,029,085)	6,185,774	16%	9,704,651	26,451,017	4,506,515	30,957,531
Year 4 of the Contract Period	38,757,596	484,110	508,800	3,393,225	7,545,748	(1,494,539)		6,051,210	16%	10,437,344	27,516,967	3,694,881	31,211,848
Year 5 of the Contract Period	38,757,596	484,110	508,800	4,233,875	7,610,090	(1,588,398)		6,021,692	16%	11,248,477	27,452,625	3,694,881	31,147,506
Year 6 of the Contract Period	38,757,596	484,110	508,800	4,763,109	7,111,552	(1,109,612)		6,001,940	15%	11,757,959	27,951,164	3,694,881	31,646,044
Year 7 of the Contract Period	38,757,596	484,110	508,800	5,317,156	8,783,638	(1,479,718)	(219,420)	7,084,500	18%	13,394,567	26,498,498	3,475,461	29,973,958
Year 8 of the Contract Period	38,757,596	484,110	508,800	6,186,295	10,508,224	(1,450,433)	(329,130)	8,728,661	23%	15,907,865	25,871,012	2,378,361	28,249,372
Year 9 of the Contract Period	38,757,596	484,110	508,800	6,693,772	10,666,912	(1,602,445)		9,064,467	23%	16,751,150	25,712,323	2,378,361	28,090,684
Year 10 of the Contract Period	38,757,596	484,110	508,800	7,213,491	10,891,726	(1,480,984)		9,410,741	24%	17,617,143	25,487,510	2,378,361	27,865,870
Contract totals	390,975,960	3,845,986	4,642,800	46,974,547	81,947,638	(9,737,054)	(2,577,635)	69,632,948	18%	125,096,281	265,595,104	43,467,218	309,062,322

- 4.3.2 Failure by the Service Provider to demonstrate to the satisfaction of the Authority that it has achieved any of the savings or investment targets listed in the table in clause 4.3.1 (in accordance with the provisions of Schedule 4 (Payment and Performance Mechanism) shall (without prejudice to any other steps that may be available to the Authority) entitle the Authority to levy deductions in accordance with the provisions of the Output Specifications and the Payment Mechanism and/or terminate the Agreement in accordance with its terms.

4.4 Services conducted by the Authority

The Service Provider shall not undertake any Retained Services.

4.5 Co-operation (with the Authority and Related Provider)

4.5.1 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 (including all Related Providers) 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 4.5 **good faith** shall include:

- (a) acting reasonably when exercising discretion 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) using reasonable endeavours to alert 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.

4.5.2 In addition to the obligations placed upon the Service Provider pursuant to Schedule 40 (Managing Agent) from the Managing Agent Commencement Date, the Service Provider shall co-operate in good faith with the Authority, bidders for Related Procurements and Related Contractors in relation to any Related Procurement or Related Contract 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/or Related Contracts which is within the control of the Service Provider or a Service Provider Related Party;
- (b) upon reasonable written notice and reasonable request 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); and
- (c) inform the Authority if any services relating to a Related Procurement or Related Contract may hinder, delay or adversely affect the performance of the Services by the Service Provider under this Agreement or if there are any Services under this Agreement which may hinder, delay or adversely affect the provision of services relating to the Related

Procurement or Related Contract and take reasonable steps to mitigate any such delay, hindrance or adverse effect.

- 4.5.3 Where the Authority has entered into a contract prior to the Agreement Date which would have constituted a Related Contract (the **Existing Related Contract**) for the purposes of this Agreement, the parties agree that the provisions of clauses 4.5.2 (a) and (b) shall apply to such Existing Related Contract.
- 4.5.4 Upon the request of the Authority the Service Provider shall use all reasonable endeavours to enter into a Third Party Co-operation Agreement with a Related Contractor or a counterparty to an Existing Related Contract.
- 4.5.5 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, local schools, Barnet Primary Care Trust 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 (subject to the provisions of clause 39 (Information and Confidentiality)) relevant information in its possession and attending appropriate meetings reasonably requested by the Authority.
- 4.5.6 The Service Provider shall indemnify the Authority for:
- (a) any Direct Losses suffered or incurred as a result of failure by the Service Provider to comply with clause 4.5.2 and 4.5.5, and
 - (b) any Direct Losses and Indirect Losses suffered or incurred as a result of failure by the Service Provider to comply with clause 4.5.4;

4.6 **Liaison [Authority Policy Clause]**

- 4.6.1 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/or Good Industry Practice 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.

4.6.2 The Service Provider shall:

- (a) respond to queries from Members relating to the Services within ten (10) Business Days of receipt of such query and subject to clause 39 (Information and Confidentiality), provide to Members information reasonably requested by Members. If information requested by Members or any proposed response consists of Confidential Information, 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;
- (b) copy all information sent to Members to the Authority;
- (c) maintain a log of all information sent to Members, which the Authority may access upon reasonable notice.

4.7 **Inquiries, Investigations and Inspections**

4.7.1 The Service Provider shall (and shall procure all Sub-Contractors shall) at all times during the Service Period comply with the Authority's Corporate Complaints Policy 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 Authority's auditors (whether internal or external);
- (d) the Local Government Ombudsman;
- (e) an investigation by the Authority into an accident or incident or complaint about health and safety failures;
- (f) an investigation by the Authority into Fraud, or alleged Fraud, by Service Users, Staff and/or the Service Provider in connection with the Services;
- (g) any investigation or enquiry by the Information Commissioner;
- (h) any other public body responsible for the scrutiny of the provision of services by local authorities; and/or
- (i) any investigation undertaken by or on behalf of the Authority as part of the Authority's normal practice or procedures.

4.7.2 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 in respect of the Services (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 Service Provider's Premises, vehicles, plant, equipment (including IT hardware and Software) or other Assets and/or Authority Assets used by the Service Provider in the performance of this Agreement during the Contract Period and only to the extent possible thereafter;
- (c) providing access to the Service Provider's staff and the 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) who continue to be employed or engaged by the Service Provider or Sub-Contractor;
- (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 or had been complied with;
- (f) at all times and on twenty four (24) hours' notice (or without notice where this is necessary to comply with the Authority's statutory obligations and/or standing orders) 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 Related Parties.

4.7.3 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 or any Service Provider Related Party.

4.7.4 The Service Provider shall ensure that the terms of any Key Sub-Contract include identical provisions to those contained in clauses 4.5 to 4.13 and shall indemnify the Authority against any Direct and Indirect Losses, damages or claims it suffers in consequence of a failure to ensure the inclusion of such identical items.

- 4.8 Without prejudice to the specific requirements noted in clauses 4.5 to 4.13, 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 4.8 "fully co-operate" shall include the matters set out in clauses 4.7.2(a) to 4.7.2(f) inclusive.
- 4.9 Subject to clause 4.10, the Service Provider shall investigate complaints in relation to the Services in accordance with the Authority's Corporate Complaints Policy.
- 4.10 The Service Provider shall assist and co-operate with appointed service professionals in investigating any statutory complaint and any such statutory complaint shall be investigated in accordance with the Statutory Complaints Procedure.
- 4.11 Without prejudice to any other remedies under this Agreement, in the event of any complaint in relation to the Services which arises as a result of a breach by the Service Provider of this Agreement and requires a stage 3 review of the Authority's Corporate Complaints Policy or Statutory Complaints Procedure as relevant and is upheld, the Service Provider shall indemnify the Authority in respect of all Direct Losses whatsoever incurred by the Authority in respect of such stage 3 review.
- 4.12 If an investigation by the Local Government Ombudsman or review of a complaint under the Authority's Corporate Complaints Policy 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 at its own cost where the investigation or complaint arose due to an act or omission of the Service Provider or due to an insufficiency in the Service Delivery Plan, as a Service Provider Change.
- 4.13 The Service Provider shall provide monthly, quarterly and annual reports to the Authority regarding complaints received in relation to the Services or as otherwise reasonably requested by the Authority.
- 4.14 **Sustainability [Authority Policy Clause]**
- 4.14.1 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.
- 4.14.2 The Service Provider shall have, and deliver the Services in accordance with, a written environmental management strategy which shall:
- (a) be at least equivalent to the Authority's corresponding policy in scope and effectiveness;
 - (b) set targets for carbon emissions, water usage, increased recycling rates and procuring sustainability and sustainable transport usage; and
 - (c) list any actions to be taken by the Service Provider in order to ensure the efficient and sustainable operation of any Assets and Authority Assets and to undertake viable improvement works when undertaking any alterations, works or services.

4.14.3 The Service Provider shall ensure that Staff are aware of, and comply with, the Service Provider's environmental management strategy.

4.14.4 The Service Provider shall:

- (a) 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
- (b) 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.

4.15 **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).

4.16 **Advice**

4.16.1 The Service Provider shall provide the following advice to the Authority as part of the Services:

- (a) transfer of knowledge regarding the Services to enable the Authority to develop a reasonable understanding of the systems and processes which support the Services;
- (b) such advice as is necessary or incidental to the Service Provider's performance of its obligations under this Agreement including without prejudice to the generality, those advice requirements specifically referred to in this Agreement together with those set out in Schedule 1 (The Output Specification) and Schedule 2 (The Service Delivery Plan); and
- (c) further advice which shall be agreed by way of a Change or Special Project.

4.16.2 In relation to all advice provided by the Service Provider the Service Provider shall:

- (a) ensure that it is in a position to deploy in the provision of the advice to the Authority, such appropriate Staff (in terms of the mixture of skills, expertise and level of seniority) as is reasonably necessary in order to meet the reasonable requirements for such advice from time to time specified by the Authority;
- (b) provide the advice in a manner which is objective, consistent and pertinent to the particular circumstances prevailing when it is given and driven by the appropriate professional standards for such advice;

- (c) ensure that the advice is readily comprehensible, with any conclusions clearly identified and that the advice is backed up by adequate supporting and technical information.

4.17 Authority's Ability to seek Independent Advice

- 4.17.1 The Service Provider acknowledges that at any time during this Agreement the Authority shall be entitled to take advice from a third party in relation to any matter in connection with this Agreement. Without prejudice to this, prior to the implementation of any Change or Special Project the Authority shall be given an opportunity to take independent advice from a third party as to the solution being proposed by the Service Provider.
- 4.17.2 The Service Provider shall co-operate with the Authority in relation to such advice and shall, upon reasonable prior notice by the Authority, provide all necessary information concerning the relevant matter to the Authority.
- 4.17.3 The Authority may provide the advice secured pursuant to this clause 4.17 to the Service Provider and the Service Provider shall take due cognisance of such advice and implement any reasonable changes if necessary in accordance with Schedule 14 (Change Protocol).
- 4.17.4 Nothing in this clause 4.17 (Authority's Ability to seek independent Advice) shall require the Authority to take any independent advice in relation to proposed changes to the Services. Notwithstanding the provisions of this clause 4.17 (Authority's Ability to seek Independent Advice), the Service Provider shall have sole responsibility (as set out in clause 1.10 (Sole Responsibility)) for the performance of the Services in accordance with this Agreement and for compliance with its other obligations under this Agreement.
- 4.17.5 Should the Authority exercise its rights under this clause 4.17 (Authority's Ability to seek Independent Advice) the Authority agrees that it shall not disclose any Commercially Sensitive Information to any third party unless such third party enters into a confidentiality undertaking as set out in Schedule 37 (Form of Confidentiality Undertaking).

4.18 Intelligent Service Provider

- 4.18.1 The Service Provider shall adopt an Intelligent Service Provider role as set out below:
 - (a) the Service Provider shall ensure that it has, and that the core members of its delivery team have, relevant knowledge and experience and understand the context of the environment in which the Authority operates having regard to the Authority Policies, the Authority's corporate plan, the medium term financial strategy, the sustainable community strategy (and any equivalent successor strategy) and the detailed operational information necessary to provide the Services;
 - (b) the Service Provider shall provide constructive challenge and support to the Authority which is aligned with the obligations set out in clause 4.18.1(a) in relation to both the Services and the Retained Services;

- (c) the Services should be managed in a way which is consistent with overall strategic and operational decisions which are being taken by the Authority save that any Changes shall be addressed in accordance with Clause 13 (Changes to the Agreement) and Schedule 14 (Change Protocol);
 - (d) the Service Provider shall be innovative in proposing ideas or providing advice;
 - (e) the Service Provider shall be proactive in identifying issues which require consideration by the Authority and propose practical options for the resolution or development of such issues whether in respect of the local government agenda or otherwise;
 - (f) the Service Provider shall be proactive in identifying problems and proposing solutions to problems and in identifying areas for improvement in relation to the Services and the Retained Services and to raise these through the governance process;
 - (g) the Service Provider shall provide the Authority with access to a network of contacts to enable the Authority to benefit from knowledge sharing and ideas; and
 - (h) compliance with clause 55.11 (Law, Policies and Related Matters),
- (together the "**Intelligent Service Provider**").

5 **Assets and Equipment**

5.1 With the exception of the Critical Initial Transferring Assets (and in such case only to the extent permitted in Clause 5.2.4 and 5.2.5) 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 6 (Maintenance).

5.2 **Initial Transferring Assets and Critical Initial Transferring Assets**

- 5.2.1 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.

- 5.2.2 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.
- 5.2.3 Subject to clause 5.2.4, 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.
- 5.2.4 If within a period of six (6) months following the Service Transfer Date an Asset Inadequacy in one or more of the Critical Initial Transferring Assets materially and adversely impacts upon the ability of the Service Provider to provide the Services in accordance with this Agreement, the Service Provider shall be granted relief such that any failure or poor performance in relation to the Services shall not constitute a breach by the Service Provider of the provisions of this Agreement pursuant to and on the basis set out in this clause 5.2.4 and clause 5.2.5 and the Service Provider shall use all reasonable endeavours to:
- (a) mitigate the impact of any such Asset Inadequacy in the relevant Critical Initial Transferring Asset(s) upon the provision of the Services; and
 - (b) promptly notify the Authority of such Asset Inadequacy in the relevant Critical Initial Transferring Asset(s), including full details of the nature of any relief sought by the Service Provider from its obligations pursuant to this Agreement save that such relief shall not permit service provision to fall below the Baseline Level and any action it has or intends to take pursuant to clauses 5.2.4 (c) and 5.2.4 (d) below; and
 - (c) attempt to promptly rectify the Asset Inadequacy in the relevant Critical Initial Transferring Asset(s) or find a replacement for the same, subject to such action not requiring the Service Provider to incur material expenditure; or
 - (d) implement (at its own cost) a Workaround Solution to such Asset Inadequacy in the relevant Critical Initial Transferring Asset(s), subject to such action not requiring the Service Provider to incur material expenditure.
- 5.2.5 Upon notification by the Service Provider to the Authority in accordance with clause 5.2.4(b) above:
- (a) the parties shall (as soon as reasonably practicable) meet to agree what further steps (if any) are necessary to permanently resolve the Asset Inadequacy in the relevant Critical Initial Transferring Asset(s);
 - (b) the Service Provider shall within five (5) Business Days of notification provide appropriate evidence to the Authority (to the reasonable satisfaction of the Authority) that the relief sought in accordance with clause 5.2.4 (b) above could not reasonably be expected to be mitigated

or recovered by the Service Provider acting in accordance with Good Industry Practice;

- (c) the parties (acting reasonably) shall agree the extent of the relief sought (save that such relief shall not permit service provision to fall below the Baseline Level) and the duration, which shall in any case be no greater than fifteen (15) Business Days commencing upon the date the meeting convened in accordance with clause 5.2.5(a) occurs.

5.2.6 The Service Provider warrants that (save in respect of the Critical Initial Transferring Assets) it has made all necessary inspections of the Initial Transferring Assets to satisfy itself of their condition and suitability for the performance of the Services.

5.2.7 On expiry of termination 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.

5.3 **Assets**

5.3.1 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.

5.3.1A Prior to the Agreement Date the Service Provider shall:

- (a) provide the Authority with a list of Project Assets (as defined in the Interim Agreement); and
- (b) ensure that any Project Assets that are yet to be purchased at the point of issuing the list pursuant to clause 5.3.1A are duly incorporated into such list and an updated list is provided to the Authority within five (5) Business Days of completion of the purchase of any further Project Assets;

5.3.1B The parties acknowledge that any Project Assets shall be treated as Authority Assets for the purposes of this Agreement.

5.3.2 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.

- 5.3.3 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.
- 5.3.4 Insurance risk in the Authority Assets (as are in the Service Provider's care and control) and the Service Provider's 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.
- 5.3.5 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 and subject to clause 5.3.10 a description of the Assets shall then be added to the relevant part of the Rolling Inventory.
- 5.3.6 On expiry or termination of this Agreement the Service Provider shall cease using such Authority Assets as are then in the Service Providers' 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.
- 5.3.7 The Service Provider shall write down to Service Provider Exclusive Assets and the Service Provider Traded Services Assets in accordance with the Write Down Policy.
- 5.3.8 The Service Provider shall demonstrate its compliance with clauses 5.3.10 and 5.3.7 by allowing the Authority access to its records from time to time in accordance with clauses 28 (Service Provider's Records and Audit) and 29 (Open Book Accounting).
- 5.3.9 In relation to Service Provider Exclusive Assets and the Service Provider Traded Services 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 Service Provider Exclusive Assets and the Service Provider Traded Assets and the period over which each Service Provider Asset is to be written down in accordance with the Write Down Policy.

5.3.10 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 Lease Asset, Authority Shared Asset, Controlled Authority Asset, Authority Traded Services Asset, Service Provider Lease Asset, Service Provider Shared Asset, Service Provider Exclusive Asset or Service Provider Traded Services Asset;
- (c) when the Asset or Authority Asset is to be replaced or is due for replacement;
- (d) 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 licensed (as the case may be);
- (i) original costs for the Asset;
- (j) depreciation details for the current year for Service Provider Exclusive Assets and Service Provider Traded Services Assets only; and
- (k) the period over which the Service Provider Exclusive Asset and Service Provider Traded Services Assets are to be written off in accordance with the Write Down Policy.

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

5.3.12 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.

5.3.13 **Third Party Use**

- (a) the Service Provider shall notify the Authority of its intention to use any of the Assets or Authority Assets for the provision of Third Party Services or Traded Services and the Authority shall consent to the same providing:
 - i such use will not prejudice the delivery of the Services;
 - ii that subject to the parties agreeing otherwise, the Service Provider shall be responsible for, and shall release and indemnify the Authority, Authority Related Parties and their employees, agents and contractors on demand from all IPR Liability arising from such use;
 - iii such use does not give rise to any unlawful State Aid;
 - iv in relation to Third Party Services and/or Traded Services which utilise Authority Assets, the parties agree the sum which the Service Provider shall pay to the Authority for such use (the **Third Party Use Fee**); and
 - v the categorisation of the Authority Assets does not alter as part of such proposal;
- (b) the parties acknowledge that the main criteria for setting the amount of any Third Party Use Fee is to ensure that the use of Public Resources does not give rise to unlawful State Aid.
- (c) prior to the Service Provider using any of the Authority Assets for Third Party Services and/or Traded Services the Service Provider and the Authority shall agree the Third Party Use Fee and in agreeing the amount they shall be guided by the requirement to set the fee so that it does not give rise to unlawful State Aid.
- (d) in the event that the parties are unable to agree the Third Party Use Fee within twenty (20) Business Days of the Service Provider notifying the Authority under clause 5.3.13(a) then either party may refer the same for determination under clause 49 (Dispute Resolution).
- (e) in the event that the use of the Authority Assets to provide Third Party Services and/or Traded Services is found to give rise to unlawful State Aid the Service Provider shall promptly take all such action as is necessary to remedy this position.

5.3.14 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.

- 5.3.15 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.
- 5.3.16 Subject to clause 5.2.7 and 5.3.6, in the event of termination or expiry of this Agreement the Authority shall have the option exercisable within one (1) month of the Termination Date or Expiry Date to:
- (a) purchase from the Service Provider at their Net Book Value any or all of the Service Provider Exclusive Asset(s), unless:
 - i the cost of any such Service Provider Exclusive Asset(s) has been fully paid for through the Periodic Service Payment or otherwise fully amortised at the time of expiry or termination of this Agreement in accordance with the Write Down Policy; or
 - ii any such Service Provider Exclusive Asset(s) were transferred and delivered to the Service Provider as Initial Transferring Assets in accordance with clause 5.2,

and in which case the Service Provider Exclusive Asset(s) shall be transferred to the Authority at nil cost; and
 - iii the cost of any such Service Provider 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 Service Provider Shared Assets and Service Provider Lease Assets (or a part thereof as nominated by the Authority);
 - (c) purchase (either itself or on behalf of a third party) any or all of the Service Provider Traded Service Assets at their Net Book Value unless:
 - i the cost of any such Service Provider Traded Service Asset(s) has been fully paid through the Periodic Service Payment or otherwise fully amortised at the time of expiry or termination of this Agreement in accordance with the Write Down Policy; or
 - ii any such Service Provider Traded Services Asset(s) were transferred and delivered to the Service Provider as Initial Transferring Assets in accordance with clause 5.2;
 - iii in which case the Service Provider Traded Services Asset(s) shall be transferred to the Authority at nil cost; and
 - iv the cost of any such Service Provider Traded Services Assets 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;

- 5.3.17 If the Authority exercises its option to purchase the Service Provider Exclusive Assets and/or Service Provided Traded Services Assets (or any part of them), the Service Provider shall yield up the Service Provider Exclusive Assets and/or Service Provided Traded Services 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 Service Provider Exclusive Assets and/or Service Provided Traded Services Assets to the Authority.

6 Maintenance

- 6.1 Subject to the Service Provider complying with the Service Provider's obligations to maintain and refresh the Assets and Authority Asset's in accordance with Schedule 29 (Asset Maintenance and Refresh), 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:
- 6.1.1 save as otherwise provided in clause 5.2.4 and 5.2.5, the Services are performed to the Contract Standard and the Service Performance Level from the Service Transfer Date until the earlier of the Expiry Date or the Termination Date;
- 6.1.2 with the exception of any Software which shall be dealt with in accordance with clause 32 (Ownership of Intellectual Property Rights), it owns the Intellectual Property Rights or obtains licences from the owner of those rights (to the extent they exist) in the Assets (save in respect of the Initial Transferring 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
- 6.1.3 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 accordance with the provisions of clause 5.3 (Assets)) in a condition complying with the requirements of this clause 6 (Maintenance) and the Output Specifications.
- 6.2 If the Authority reasonably believes that the Service Provider is in breach of its obligations under clause 6.1 (Maintenance) and/or Schedule 29 (Asset Maintenance and Refresh) then it may carry out (or procure) a survey of the Assets and Authority Assets 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 6.1 and/or Schedule 29 (Asset Maintenance and Refresh), unless such breach or potential breach relates to the Critical Initial Transferring Assets within the first six (6) months of the Service Period whereby the parties agree to adhere to clauses 5.2.4 and 5.2.5 (Initial Transferring Assets and Critical Initial Transferring Assets) prior to the Authority exercising its rights pursuant to this clause 6.2.
- 6.3 The Authority shall notify the Service Provider in writing a minimum of five (5) 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 three (3) 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.

6.4 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 6.5 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.

6.5 If the survey shows that the Service Provider has not complied or is not complying with its obligations under clause 6.1 and/or Schedule 29 (Asset Maintenance and Refresh) the Authority shall:

6.5.1 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 6.1 and/or Schedule 29 (Asset Maintenance and Refresh);

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

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

6.6 If the Service Provider has been notified under clause 6.5.1 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 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.

6.7 Any Disputes arising out of this clause 6 (Maintenance) shall be resolved in accordance with the Dispute Resolution Procedure.

7 Third Party Contract Management

7.1 Third Party Contracts

7.1.1 Assisted by the Service Provider, the Authority shall use reasonable endeavours 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. All third party costs relating to obtaining such consents shall be met by the Authority.

- 7.1.2 If any novation referred to in clause 7.1.1 does not occur for any reason (until it occurs and subject to any requisite consents of third parties) the Authority will hold the benefit of the same as trustee for the Service Provider and to the extent not prohibited by the relevant Third Party Contract 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.
- 7.1.3 Where the Authority has breached or failed to perform its obligations pursuant to any Third Party Contracts prior to the date on which Third Party Contract has been either novated to the Service Provider in accordance with clause 7.1.1 or the Service Provider being appointed to manage such Third Party Contract in accordance with clause 7.1.1, the Authority shall indemnify the Service Provider for any Direct Losses that arise under the circumstances.
- 7.1.4 In managing a Third Party Contract (to the extent that the Service Provider is able to do so pursuant to clauses 7.1.1 and 7.1.3 inclusive), the Service Provider shall be responsible for the performance of the Authority's obligations under each Third Party Contract and shall use reasonable endeavours to ensure that the Third Party Contractors are complying with the terms of their contracts. The Service Provider shall be responsible for paying the Third Party Contractor in accordance with the terms of the relevant Third Party Contract.
- 7.1.5 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. 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 the obligations under this clause 7.1.5 on or after the Service Transfer Date.
- 7.1.6 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 (such approval not to be unreasonably withheld or delayed).
- 7.1.7 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.
- 7.1.8 Upon the occurrence of a Critical Third Party Contract Failure Event which has a material and adverse impact upon the Service Provider's ability to perform the Services, the Service Provider shall not be liable for its failure to provide the Services and the parties shall invoke the Change Protocol to make all necessary adjustments to the provision of the Services or the Periodic Service

Payment to take into account any alternative arrangements which are agreed to be implemented by the parties.

7.2 Apportionment of Charges and Reconciliation

- 7.2.1 The Authority and the Service Provider will apportion liability for charges and costs under the Third Party Contracts such that the Authority is responsible for all charges and costs which arise prior to the Service Transfer Date and the Service Provider shall be responsible for all charges and costs arising after the Service Transfer Date.
- 7.2.2 The parties agree that there shall be an adjustment of the Periodic Service Payment, in accordance with clause 7.2.6 below, to take into account any adjustments required as a result of information acquired following the Service Transfer Date in relation to the payments due and payable under any Third Party Contracts to be novated or assigned to the Service Provider in accordance with clause 7.1 (Third Party Contracts), and once such adjustment has been calculated in accordance with clause 7.2.6 below, it shall be deemed to take effect as from the Service Transfer Date.
- 7.2.3 The parties acknowledge that:
- i The Service Provider has used the baseline cost data for the Third Party Contracts as set out in Schedule 24 (Third Party Contracts) to contribute to the calculation of the Periodic Service Payment (the **Baseline Transferring Agreement Cost Data**),
 - ii The Baseline Transferring Agreement Cost Data represents an estimate of the payments due and payable pursuant to those Third Party Contracts and is to be used as the basis for adjusting the Periodic Service Payment.
- 7.2.4 On the date falling fourteen (14) months following the Service Transfer Date, the Service Provider shall notify the Authority of any discrepancy between the payments listed in the column "O" titled "Third Party Payment" in the excel document set out in Schedule 24 (Third Party Contracts) and the actual amounts payable under the relevant Third Party Contract.
- 7.2.5 Within twenty (20) Business Days of the Service Provider's notification pursuant to clause 7.2.4, the Service Provider and the Authority shall, acting reasonably and in good faith, verify and agree the actual payments due pursuant to the Third Party Contract (the **Actual Transferring Agreement Cost Data**), following which the parties shall review, and adjust if necessary (whether upwards or downwards) the Periodic Service Payment based upon the following principles:
- (a) the Service Provider and the Authority shall calculate and agree, for each Third Party Contract, the difference between the Baseline Transferring Agreement Cost Data and the Actual Transferring Agreement Cost Data (being the **Contract Difference**);

- (b) the Service Provider shall provide to the Authority any evidence reasonably requested by the Authority to confirm the Contract Difference has arisen solely due to an inaccuracy in the Baseline Transferring Agreement Cost Data rather than any changes to, or poor management of, the relevant Third Party Contract by the Service Provider;
- (c) the Service Provider shall in respect of each Third Party Contract for each Contract Year use the Contract Difference to calculate adjustments to the Periodic Service Payment adopting the same financial principles (including applying the same Central Overheads rate as set out in tab ABS cell D13 and applied on tab BC cells I21 to R21 (inclusive) of the Financial Model and Profit Element rate as set out in tab ABS cell D20 and applied in cells I22 to R22 of the Financial Model) as were adopted when calculating the Baseline Transferring Agreement Cost Data;
- (d) the Service Provider shall provide the Authority with any further supporting information which the Authority may reasonably request and where the parties fail to reach agreement the matter shall be referred to the Dispute Resolution Procedure.

7.3 Contracts upon Expiry/Termination

7.3.1 The Service Provider shall:

- (a) ensure that any contracts entered into by the Service Provider or its Sub-Contractors in relation to the provision of the Services (save for any Third Party Contracts transferred at the Agreement Date (but excluding any replacements of the same)) are capable of being assigned/novated to the Authority or Future Service Provider upon request of the Authority without restriction and at no cost to the Authority or Future Service Provider (unless otherwise agreed by the Authority in writing in advance of such contract being entered into);
- (b) maintain a current register of all contracts used to deliver the Services during the Contract Period, with such register being submitted to the Authority on an annual basis as part of the Annual Service Plan;
- (c) ensure the register of contracts established pursuant to clause 7.3.1(b) as a minimum contains the information contained within Schedule 24 (Third Party Contracts).

7.3.2 Six (6) months (or such other period agreed to by the parties acting reasonably) prior to the Termination Date or Expiry Date (as applicable) the parties shall agree:

- (a) which of the contracts used in the provision of the Services shall transfer (either by novation or other mechanism) to the Authority or Future Service Provider (the **Transferring Contracts**);

- (b) the costs and a reconciliation of any payments made in advance or arrears in respect of the Transferring Contracts on the basis that the Service Provider shall be responsible for all costs and charges which arise prior to the Termination Date and/or Expiry Date (as applicable) and the Authority shall be responsible for all costs and charges which arise after the Termination Date and/or Expiry Date (as applicable).
- (c) the process and timetable for transfer and handover of management responsibilities in respect of the Transferring Contracts together with the provision of relevant documentation and information in respect of issues such as performance and payments to date.

7.4 The Service Provider shall indemnify the Authority in respect of all Direct Losses suffered or incurred as a result of non-performance or defective performance by it of its obligations under any Transferring Contract which occurs prior to the date on which such Transferring Contract has been novated to the Authority or the benefit of such Transferring Contract has transferred to the Authority.

7.5 The Authority shall indemnify the Service Provider in respect of all Direct Losses suffered or incurred as a result of non-performance or defective performance by it of its obligations under any Transferring Contract on or following the date on which such Transferring Contract has been novated to the Authority or the benefit of such Transferring Contract has transferred to the Authority.

8 Use of Authority's Premises [*Authority Policy Clause*]

8.1 Licence to Occupy in respect of NLBP2 and NLBP

The Authority and the Service Provider will execute and complete the NLBP Licence on the date hereof.

8.2 Early termination of NLBP Licence or Substitute Licence

If this Agreement is terminated for any reason prior to the Expiry Date (or where the Agreement is extended in accordance with clause 2.3, where the Agreement is terminated prior to the end of the extended term), the NLBP Licence or any Substitute Licence shall automatically cease and determine with effect from the date of termination.

8.3 Access Permission

8.3.1 From and including the Service Transfer Date the Authority shall permit the Service Provider to use the Authority's Premises for the provision of the Services as licensee only and on the terms set out in this clause 8 (Use of Authority's Premises).

8.3.2 The Service Provider shall in addition permit the Service Provider (as licensee only and on the terms set out in this clause 8.3) to use such other areas of the Authority's Premises as are necessary for the amenity and comfort of its Staff including toilets, meeting rooms, kitchens and canteens. Upon the earlier of the Expiry Date or the Termination Date (or where the Agreement is extended in accordance with clause 2.3, where the Agreement expires or is terminated prior

to the end of the extended term), this permission shall determine without prejudice to any rights or remedies that may have accrued.

8.3.3 In the event of a breach by the Service Provider of its obligations in this clause 8, the Authority is entitled to determine the permission granted pursuant to clause 8.3.1 and 8.3.2 on ten (10) Business Days' notice if such breach is not remedied by the expiry of such notice. For the avoidance of doubt, the Authority's rights of termination relate only to the Authority's Premises where the Service Provider has failed to remedy the alleged breach.

8.3.4 Subject to the provisions of clause 49 Dispute Resolution, in the event of a breach by the Service Provider of its obligations in the NLBP Licence or any Substitute Licence, the Authority is entitled to determine the NLBP Licence or the Substitute Licence (as the case may be) on ten (10) Business Days' notice if such breach is not remedied by the expiry of such notice.

8.4 Access to Premises in General

8.4.1 The Service Provider shall observe and perform the obligations and regulations set out in this clause 8.4 as well as any rules and regulations made by the Authority in the interests of good estate management in respect of any Authority's Premises (for the avoidance of doubt in addition to the obligations and regulations set out in the NLBP Licence or any Substitute Licence)

8.4.2 The Service Provider shall keep the Authority's Premises properly secured as appropriate.

8.4.3 The Service Provider shall maintain and shall use all reasonable endeavours to ensure that its Staff, Service Provider Related Parties and all visitors maintain the security of the Authority's Premises whether in use or not.

8.4.4 The Service Provider shall comply with the Authority's reasonable security requirements at the Authority's Premises, including:

- (a) providing identity details;
- (b) submitting to security checks on request;
- (c) complying with the Authority's requirements relating to security passes and any other forms of Authority ID as required.

8.4.5 The Service Provider shall use all reasonable endeavours to ensure that access to the Authority's Premises is restricted to its Staff engaged upon or in connection with the provision of the Services or Traded Services.

8.4.6 The Service Provider shall issue to all of its Staff who shall at any time have access to the Authority's Premises security passes in such form as the Authority may from time to time determine and issue to the Service Provider and shall use its reasonable endeavours to ensure that such Staff carry such passes at all times.

- 8.4.7 The Service Provider shall be responsible for the safekeeping of any keys passes and other means of access provided to the Service Provider by the Authority and shall only permit such keys passes and other means of access to be given to those of the Service Provider's Staff whose names and addresses have been supplied to the Authority and then only to the extent required for the purposes of providing the Services. In addition, the Service Provider shall ensure that the Authority is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access and shall reimburse to the Authority any cost of replacement and/or any reasonable security measures implemented as a result of such loss.
- 8.4.8 The Authority (acting reasonably) reserves the right to refuse admission to or require removal of any person from the Authority's Premises.
- 8.4.9 The Service Provider shall be responsible for theft, loss or damage to:
- (a) its own property, plant, equipment, data or personal possessions brought onto the Authority's Premises; and
 - (b) Authority property, Assets, Authority Assets, plant, equipment, or data used or within the reasonable care and control of the Service Provider where such damage is caused due to the Service Provider breaching the provisions of clause 8.4.

8.5 No compensation

The Service Provider shall not be entitled to any compensation in respect of any variation of the terms of the permission granted by clause 8.3.1 and 8.3.2, the NLBP Licence or any Substitute Licence or on automatic determination in accordance with the provisions of this Agreement.

8.6 Use of Premises

The Service Provider and its personnel shall use the Authority's Premises only in connection with the provision of the Services.

8.7 Deemed Knowledge of the Service Provider in Respect of the Authority's Premises

The Service Provider shall be deemed to have inspected the Authority's Premises and to have satisfied itself as to the condition and suitability of the Authority's Premises for the provision of the Services.

8.8 Authority warranty

- 8.8.1 The Authority warrants that it has obtained the consent of its superior landlord to the grant of the NLBP Licence and the rights of use for the other premises within the Authority Premises prior to the date hereof. The Authority also warrants that it will obtain the consent of any superior landlord required in connection with the grant of a Substitute Licence.

8.8.2 The Authority warrants that it has notified its insurers of the grant of the NLBP Licence and warrants that it will notify its insurers of any proposed grant of a Substitute Licence.

8.9 Notification by Service Provider of Any Change to Premises

The Service Provider shall obtain the Authority's written consent before implementing any change to the Authority's Premises, and shall notify the Authority in writing once such change has been undertaken.

8.10 Notification by Authority of Any Change to Premises

The Authority shall notify the Service Provider of any significant change to the Authority's Premises provided that any such changes shall be carried out at the expense of the Authority and shall not impede the Service Provider's ability to provide the Services in accordance with this Agreement.

8.11 This clause 8.11 shall apply if during the Service Period either the NLBP Licence or any Substitute Licence is ended in the circumstances set out in paragraphs 5.1.2 or 5.1.4 of the NLBP Licence (or such comparable circumstances as are incorporated into the Substitute Licence). Unless otherwise agreed between the parties, the Authority shall on the termination of the NLBP Licence or any Substitute Licence (as the case may be) make available to the Service Provider suitable alternative accommodation from which the Services can be delivered and the Authority shall procure the grant of a Substitute Licence to the Service Provider (which the Service Provider shall not unreasonably refuse) on substantially the same terms as the NLBP Licence.

8.12 Notwithstanding any other provision in this Agreement, the exercise by the Authority of the right to terminate the NLBP Licence (or any Substitute Licence) pursuant to paragraphs 5.1.2 or 5.1.4 of the NLBP Licence (or any replacement of them in any Substitute Licence) shall constitute an Authority Cause provided that the impact of the termination of the NLBP Licence (or any Substitute Licence) on the Services is dealt with in accordance with the Change Protocol.

8.13 The Authority shall indemnify the Service Provider for any costs reasonably incurred by the Service Provider as a consequence of relocating and occupying any alternative premises as a consequence of the termination of the NLBP Licence or any Substitute Licence in accordance with paragraphs 5.1.2 or 5.1.4 of the NLBP Licence (or any replacement thereof) provided that the costs and consequences of the termination are dealt with in accordance with the Change Protocol.

Part 3 – Flexibility

9 Partnering Governance Arrangements

The parties agree to observe and comply with the governance arrangements set out in Schedule 12 (Partnering Governance) of this Agreement.

10 Continuous Improvement, Budget Control and Year 3 and Year 6 Review

10.1 Continuous Improvement

- 10.1.1 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**) and such report shall include:
- (a) a review of whether each Service Performance Level and Key Performance Indicator have been met;
 - (b) a review of whether the obligations contained in the Continuous Improvement Plan and Schedule 35 (Service Provider Commitments) have been implemented and consider whether an update to the same is required;
 - (c) an update on the Service Performance Levels and Key Performance Indicators that have been achieved;
 - (d) benchmarking data showing the cost and attainment of Services in comparison to any available industry standard comparisons;
 - (e) an update as to any amendments required or proposed to the Exit Plan;
 - (f) that information as set out in paragraph 3 of Schedule 13 (Monitoring Procedure),
- 10.1.2 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.
- 10.1.3 The Service Provider shall upon a written request from the Authority use all reasonable endeavours to provide such written evidence or other supporting information as the Authority may reasonably require to enable the Authority to compare the performance of the Service Provider under this Agreement against the Service Provider's performance of its obligations under similar contracts with other local government, central government or similar national or international bodies.
- 10.1.4 If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient or economic having regard to the Annual Service Report and/or the Best Value Duty, then the Authority may serve a written notice upon the Service Provider (an **Efficiency Notice**) 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.
- 10.1.5 The Service Provider shall, within twenty (20) Business Days of the date of receipt of the Efficiency 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 Efficiency Notice together with details as to any adjustments to the Periodic Service Payment, any one-off charge that shall be made as a result of such proposals and whether any proposed decrease in the

aggregate costs of the Service Provider have already been provided for by the Service Provider in the Financial Model.

- 10.1.6 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 Efficiency 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.
- 10.1.7 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. The parties agree that nothing in this clause 10.1(Continuous Improvement) shall result in a reduction of the Periodic Service Payment without the same having been agreed in accordance with clause 10.1.5 and 10.1.6.
- 10.1.8 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 Efficiency Notice.
- 10.1.9 If the Authority either withdraws the Efficiency 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 Dispute Resolution Procedure then the Annual Service Plan shall be deemed to have been withdrawn.
- 10.1.10 To the extent that the implementation of the proposals contained in the Annual Service Plan will result in a decrease in the aggregate costs of the Service Provider (taking into account any one off expenses) and provided such decrease in the aggregate costs is not already provided for by the Service Provider in tab BC cells I24 to R24 (inclusive) of the Financial Model (as verified to the reasonable satisfaction of the Authority), the Periodic Service Payment shall be adjusted downwards in accordance with clause 27 (Financial Adjustments) on a sharing arrangement agreed between the parties in advance in writing subject to the Authority receiving no less than fifty per cent (50%) of such saving benefit.
- 10.1.11 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 27 (Financial Adjustments) and the Service Provider shall apply the same financial principles with regard to the Profit Element and Central Overheads as set out in the Financial Model.
- 10.1.12 The Service Provider shall take all reasonable steps to mitigate any costs arising as a consequence of an Efficiency Notice served pursuant to this clause 10.1.

10.2 Budget control

- 10.2.1 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 it is seeking and identify the affected Services.
- 10.2.2 The Service Provider shall provide the Authority within twenty (20) Business Days of receipt of a notice from the Authority pursuant to clause 10.2.1 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 and Change in Revenue for each option, including sufficient detail of how the Service Provider shall endeavour to deal with such matter as a Reprioritisation Change (the **Options Proposal**).
- 10.2.3 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; and
 - (b) adjustments to the Service Performance Levels or other commitments and obligations of the Service Provider in this Agreement; and/or
 - (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.
- 10.2.4 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.
- 10.2.5 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, Change in Revenue, any amendments to the Volume Baselines and Periodic Service Payment;
 - (b) any amendments required to this Agreement (including without limitation the Output Specifications),
- (the **Budget Change Proposal**).

- 10.2.6 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.
- 10.2.7 If the parties cannot agree on the contents of the Budget Change Proposal then the dispute will be determined in accordance with the Dispute Resolution Procedure provided that such determination shall not require the Authority to increase the sum payable to the Service Provider or result in a decrease in the Periodic Service Payment without the parties having agreed in writing a corresponding alteration to the Services, Service Performance Levels or such other obligations or commitments set out in this Agreement.
- 10.2.8 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.
- 10.2.9 Nothing in clause 10.2 (Budget Control) shall prevent the Authority from invoking the Change Protocol to address the Budget Change at any point during the Service Period or after issue of the notification by the Authority pursuant to clause 10.2.1 (Budget Control).

10.3 **Year 3 Review**

- 10.3.1 Within forty (40) Business Days of the 3rd anniversary of the Service Transfer Date, the Authority shall conduct a full review of the Services and the performance of the Service Provider in fulfilling its obligations under this Agreement in order to identify any improvements or savings the Authority may wish to implement in respect of the Services (**Year 3 Outcome Review**).
- 10.3.2 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.
- 10.3.3 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 3 Options Proposal**).
- 10.3.4 The Year 3 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 3 Outcome Review; 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 and whether such option is feasible in the context of the Public Contracts Regulations 2006 (as updated);

10.3.5 No later than thirty (30) Business Days after the Authority receives the Year 3 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 3 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 3 Detailed Proposal**).

10.3.6 As soon as practicable after the Authority receives the Year 3 Detailed Proposal:

- (a) the Service Provider shall provide the Authority with all additional information it requires in order to verify the Year 3 Detailed Proposal,
- (b) the Authority shall advise the Service Provider whether it proposes that the Year 3 Detailed Proposal be addressed pursuant to the Change Protocol;
- (c) 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 3 Detailed Proposal.

10.3.7 After a Year 3 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 3 Implementation Plan**).

10.3.8 Within twenty (20) Business Days of the 4th 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 3 Implementation Plan insofar as they were set for the preceding year and confirmation of whether ongoing targets have been met at each meeting of the Strategic Partnership Board or will be.

10.4 **Year 6 Review**

- 10.4.1 Within forty (40) Business Days of the 6th anniversary of the Service Transfer Date, 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 (**Year 6 Review**) and the Service Provider shall cooperate with such review and clauses 10.4.2 - 10.4.8 shall apply.
- 10.4.2 If the Authority requires a Year 6 Change it will notify the Service Provider in writing, setting out the improvements to the Services or alteration to Periodic Service Payment sought.
- 10.4.3 The Service Provider shall provide the Authority within fifteen (15) Business Days of receipt of a notice from the Authority an outline proposal setting out the Authority's options in order to achieve the alterations to the sums payable to the Service Provider and the estimated costs for each option (the **Year 6 Options Proposal**).
- 10.4.4 The Year 6 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 in accordance with the proposed Year 6 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 and whether such option is feasible in the context of the Public Contracts Regulations 2006 (as updated);
- 10.4.5 No later than thirty (30) Business Days after the Authority receives the Year 6 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 6 Change 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 6 Change Proposal**).
- 10.4.6 As soon as practicable after the Authority receives the Year 6 Change Proposal:

- (a) the Service Provider shall provide the Authority with all additional information it requires in order to verify the Year 6 Detailed Proposal,
 - (b) whether the Authority elects to exercise any of its further rights under the Agreement; and/or
 - (c) the parties shall discuss and agree the issues set out in Year 6 Detailed Proposal.
- 10.4.7 After a Year 6 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 (**Year 6 Implementation Plan**).
- 10.4.8 Within twelve (12) months of the execution of the Year 6 Implementation Plan, the Service Provider shall provide a report to the Authority about whether it will meet the targets in the Year 6 Implementation Plan. The Authority may take account of such report when deciding whether to extend the Service Period under clause 2.4 (Commencement and Duration).
- 10.4.9 Nothing in this clause 10.4 shall fetter the Authority's decision (in its sole discretion) as to whether to seek an extension of the Service Period under clause 2 of this Agreement.

11 **Driving Efficiency**

11.1 **Authority's Best Value Duty**

- 11.1.1 The Service Provider acknowledges that:
- (a) the Authority is subject to the Best Value Duty;
 - (b) the provisions of this clause 11 (Driving Efficiency) are intended to assist the Authority in discharging its Best Value Duty in relation to the Services; and
 - (c) the provisions of this clause 11.1.1 shall apply in respect of the obligations of the Service Provider and the Authority concerning the Best Value Duty and the 1999 Act generally.
- 11.1.2 The Service Provider shall, throughout the Service Period, seek to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 11.1.3 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 reasonable 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;
 - (c) cooperating in audits and other Best Value Duty 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.

11.1.4 The Service Provider shall use all reasonable endeavours to assist the Authority with any replacement or new assessment relating to best value (whether emanating from central government or as part of good practice entered into by a local authority and including but not limited to peer to peer or external assessments or audits).

11.2 **Customer Feedback and Insight**

The Service Provider will comply with the obligations set out in Schedule 41 (Customer Feedback and Insight).

11.3 **Performance Standard Benchmarking**

11.3.1 Without prejudice to the benchmarking exercise carried out pursuant to clause 10.1.1, the Authority may at its absolute discretion (but no more than on three (3) occasions during the Initial Term require the Service Provider to instigate a Performance Standard Benchmarking Exercise in relation to the Services and thereafter the following provisions of this clause 11.3 (Performance Standard Benchmarking) shall apply.

- 11.3.2 The parties agree that any Performance Standard Benchmarking Exercise shall be carried out in good faith and each party shall act reasonably in relation to any such Performance Standard Benchmarking Exercise.
- 11.3.3 The Performance Standard Benchmarking Exercise shall be carried out by the Service Provider at its own cost.
- 11.3.4 The purpose of the Performance Standard Benchmarking Exercise shall be to undertake an objective comparison of the cost and attainment of the relevant Service Performance Level applicable to the Services against the cost and attainment of a similar service performance level identified in comparable benchmark data obtainable from other London and South East England local authorities (the identity of whom shall be agreed in advance with the Authority) and equivalent information produced by bodies including CIPFA (the Chartered Institute of Public Finance and Accountancy) and the London Benchmarking Group.
- 11.3.5 If in the Authority's reasonable opinion, the results of the Performance Standard Benchmarking Exercise disclose that the Service Performance Levels may be improved or the cost to the Authority of the Services may be reduced then the Authority may serve a Reprioritisation Change Proposal or Authority Notice of Change (as the case may be) on the Service Provider, stating the nature of the change to the Service Performance Levels which the Authority desires, and the provisions of clause 13 (Changes to the Agreement) or Schedule 14 (Change Protocol) shall apply.

12 **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.

13 **Changes to the Agreement**

13.1 **Reprioritisation Change**

- 13.1.1 The Service Provider shall use all reasonable endeavours to resolve any required adjustment or variation to the Services by way of a Reprioritisation Change and to the extent that the relevant change is so accommodated or resolved the procedure set out in this clause 13.1 shall apply.
- 13.1.2 Either party may propose a Reprioritisation Change (**Reprioritisation Change Proposal**) and where:
 - (a) the Reprioritisation Change Proposal has been proposed by the Service Provider the Authority may:
 - i at its sole discretion reject the Reprioritisation Change Proposal; or
 - ii request the Service Provider prepare an impact assessment in accordance with clause 13.1.3;

- (b) the Reprioritisation Change Proposal has been proposed by the Authority, the Service Provider shall prepare an impact assessment in accordance with clause 13.1.3;

13.1.3 Within ten (10) Business Days of receiving a Reprioritisation Change Proposal from the Authority or pursuant to a request from the Authority in accordance with clause 13.1.2(a)ii, the Service Provider shall complete an impact assessment on the effect the proposed Reprioritisation Change will have on the Services including details relating to the:

- (a) timetable for implementing the Reprioritisation Change;
- (b) transition proposals;
- (c) asset requirements;
- (d) changes to the Services and Service Performance Levels;
- (e) changes to working methods and processes;
- (f) changes proposed to the Agreement; and
- (g) any other information the Authority may reasonably require.

subject to any proposals pursuant to this clause 13.1.3 not resulting in a diminution in the Services or the ability of the Service Provider to satisfy the Service Performance Levels and/or its obligations pursuant to the Agreement, unless and to the extent the same has been agreed to by the parties in writing in advance.

13.1.4 The Authority shall have complete discretion to accept, reject or propose any amendments to an impact assessment prepared in accordance with clause 13.1.3 above.

13.1.5 Upon written confirmation from the Authority the Service Provider shall implement a Reprioritisation Change in accordance with the terms of the impact assessment prepared pursuant to clause 13.1.3 as either accepted or amended by the parties and the Periodic Service Payment shall where relevant be adjusted downwards (but never upwards) pursuant to this clause 13.1 (Reprioritisation Change).

13.1.6 The Service Provider shall continue to comply with all its obligations under this Agreement during the implementation of any Reprioritisation Change and thereafter.

13.1.7 The parties confirm that the Service Provider shall only implement a Reprioritisation Change which results in a reduction or has a cost neutral impact on the Service Provider's cost base for providing the Services and subject always to any reduction in the Periodic Service Payment being to the sole benefit of the Authority.

13.2 Change in Service

Subject to clause 13.1 (Reprioritisation Change) and any other express provision of this Agreement, any Change in the Services or in this Agreement including the Schedules shall be dealt with in accordance with the Change Protocol.

13.3 Variations

This Agreement may not be varied except by an agreement in writing signed by the duly authorised representatives of the parties.

14 Change In Law

14.1 Qualifying Change in Law

14.1.1 Where a Qualifying Change in Law occurs or is shortly to occur, the Service Provider shall use all reasonable endeavours to address the consequences of such Qualifying Change in Law as a Reprioritisation Change, and the parties shall comply with the requirements of clause 13.1 (Reprioritisation Change).

14.1.2 Subject to first complying with clause 14.1.1, the parties shall be entitled to write to the other expressing an opinion on the likely effects of the Qualifying Change in Law where the parties have established that a Reprioritisation Change would be insufficient to address the consequences of the Qualifying Change in Law.

14.1.3 If the Service Provider provides such notice to the Authority pursuant to clause 14.1.2, the Authority shall within five (5) Business Days notify the Service Provider as to whether or not such changes constitutes (in whole or in part) a Special Project.

14.1.4 If the Authority notifies the Service Provider pursuant to clauses 14.1.2 or 14.1.3 that the Qualifying Change in Law:

- (a) constitutes a Special Project, the Qualifying Change in Law shall be addressed in accordance with Schedule 15 (Special Projects Approval Procedure); or
- (b) does not constitute a Special Project, upon receiving such notice from the Authority the Service Provider shall within fifteen (15) Business Days provide a detailed response as to the consequences of the Qualifying Change in Law setting out all the information required as part of a Service Provider Notice of Change pursuant to Schedule 14 (Change Protocol) including in addition the Qualifying Change Implementation Costs (if any).

14.1.5 Responsibility for the costs of implementation (and any resulting variation of the Periodic Service Payment) shall be dealt with in accordance with clauses 14.2 to 14.5 below.

14.2 Parties to Discuss

As soon as practicable after receipt of the detailed response from the Service Provider pursuant to clause 14.1.4(b) above, the parties shall discuss and agree the issues referred

to in such detailed response and any ways in which the Service Provider can mitigate the effect of the Qualifying Change in Law, including:

- 14.2.1 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;
- 14.2.2 demonstrating how any expenditure (including without limitation any Capital Expenditure) to be incurred or avoided is being measured in a cost effective manner;
- 14.2.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses providing services similar to the Services or the Service Provider (or its Affiliates) other business activities;
- 14.2.4 demonstrating any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain Assets and Authority 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 14.1 above; and
- 14.2.5 providing all evidence reasonably requested by the Authority to verify and agree the Qualifying Change Implementation Costs.

14.3 Funding for Qualifying Changes in Law

- 14.3.1 If the Service Provider is required to incur additional expenditure due to a Qualifying Change in Law, following agreement or determination of the level of such expenditure in accordance with clauses 14.1 (Qualifying Change in Law_ and 14.2 (Parties to Discuss) and Schedule 16 (Dispute Resolution Procedure) as applicable the Authority shall compensate the Service Provider for the expenditure (excluding the Service Provider's Share of such additional expenditure) under clause 14.5 (Adjustment to the Periodic Service Payment). The Service Provider shall use its reasonable endeavours to obtain funding for such expenditure on reasonable terms.
- 14.3.2 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.

14.4 Funding for General Changes in Law

All expenditure incurred by the Service Provider (including its Sub-Contractors and Third Party 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.

14.5 Adjustment to the Periodic Service Payment

14.5.1 Where a Qualifying Change in Law results in a reduction in the costs of providing the Service, such reduction shall be to the sole benefit of the Authority provided that the Authority reimburses to the Service Provider the Qualifying Change Implementation Costs agreed pursuant to clause 14.2.5 above.

14.5.2 Subject to 14.6 below, any compensation payable under this clause 14 shall be calculated in accordance with clause 19 (Financial Adjustments) and shall, at the Authority's absolute discretion be made by means of an adjustment to the Periodic Service Payment or by way of an immediate lump sum payment.

14.6 **Service Provider's Share**

Where a Qualifying Change in Law results in an increase in the Periodic Service Payment or the requirement for the Authority to make a lump sum payment (the **Qualifying Change in Law Increase**), the Service Provider shall be responsible for the Qualifying Change in Law Increase up to a maximum of [REDACTED] in relation to each Qualifying Change in Law, subject to an aggregate cap during the Initial Term of [REDACTED].

Part 4 – Staffing

15 **TUPE and Pensions [Authority Policy Clause]**

15.1 **Application of TUPE**

15.1.1 With effect from the Service Transfer Date the Transferring Employees shall transfer to the Service Provider or its Sub-Contractor pursuant to and in accordance with TUPE and such transfer shall have effect as a Relevant Transfer.

15.1.2 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.

15.1.3 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 EC Business Transfers Directive in respect of the Transferring Employees.

15.2 **Emoluments and Outgoings**

15.2.1 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 Service Transfer Date.

15.2.2 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 Service Transfer Date.

- 15.2.3 Subject to the remaining provisions of this Clause 15.2.3 the Service Provider agrees that it will not vary the terms and conditions of employment of any Transferring Employee for the first twelve (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 twelve (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 following the Service Transfer Date as agreed by the Transferring Employees or as are reasonably necessary to effectively manage the organisational structure of its workforce, and, for reasons of relocation and restructure as set out in the Service Provider's Transformation Plan. The parties agree that the Transferring Employees' terms and conditions are deemed to include those Relevant HR Policies and Procedures described as terms and conditions of employment in Schedule 22 (Relevant HR Policies and Procedures).
- 15.2.4 During the first twelve (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.

15.3 Pensions

15.3.1 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 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.

15.3.2 Service Provider Admission Agreement

The Authority shall before the occasion of a Relevant Transfer execute the Admission Agreement referred to in clause 15.3.1 (Service Provider to Become an Admission Body).

15.3.3 Indemnity for a Breach of the Service Provider Admission Agreement

Without prejudice to the generality of this clause 15.3.3, the Service Provider hereby indemnifies and shall procure that any Sub-Contractor shall indemnify the Authority 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).

15.3.4 Indemnity or Bond

Without prejudice to the generality of the requirements of this clause 15.3, 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.

15.3.5 Right of Set-Off

The Authority shall have a right to set off against any payments due to the Service Provider and/or any Sub-Contractor 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 and the Authority shall credit the Pension Fund as soon as possible with a sum equivalent to the set off in satisfaction of payments due from the Service Provider and/or any Sub-Contractor.

15.3.6 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 15.3.6(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. The Authority shall procure that the Contribution Rate is calculated on the basis that the liabilities of 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 Fund's 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.

- (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 15.3 and the Administration Regulations.
- (c) the Authority agrees with the Service Provider (and/or any relevant Sub-Contractor) that:
 - i Subject to the provisions of clause 15.3.6(e), where from the Valuation following the calculation of the Contribution Rate under clause 15.3.6(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 15.3.5 and revisions made to the Periodic Service Payment

subject to the provisions of clause 15.3.6(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 (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 Partner 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 (and/or any relevant Sub-Contractor) default under this clause 15.3, 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 15.3.6(d) and clause 15.3.6(f).

- (d) the Authority shall not be required to make a payment in accordance with clause 15.3.6(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 **Pension Notice Disputed Amount**) and the Authority shall not be required to pay the Pension Notice Disputed Amount until such liability is established by agreement between the Parties 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 a 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 resulting 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 15.3.6(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 three (3) 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 15.3.6(c)(ii). Subject to clause 15.3.6(d), within fifteen (15) 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 Pension Notice Disputed Amount. For the avoidance of doubt once any Pension Notice Disputed Amount has been determined by an independent actuary under clause 15.3.6(d) within fifteen (15) Business Days from determination, 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 15.3.6(d).

- (g) Where from the Valuation following the calculation of the Contribution Rate under clause 15.3.6(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 15.3.6(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.

15.3.7 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 15.3.1 (Service Provider to Become an Admission Body) to 15.3.6 (Funding) inclusive; or
- (b) if for any reason after the Relevant Transfer the Service Provider 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 15.3.1 (Service Provider to Become an Admission Body) to 15.3.6 (Funding) inclusive shall not apply (without prejudice to any rights of the Authority under those clauses) and the provisions of clause 15.3.8 (Service Provider Scheme) shall apply.

15.3.8 Service Provider Scheme

Where this clause 15.3.8 (Service Provider Scheme) applies pursuant to clause 15.3.7 (Service Provider Ceases to be an Admission Body), the following shall apply:

- (a) the Service Provider shall and shall procure that any relevant Sub-Contractor 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 15.3.8 (Service Provider Scheme). Such pension scheme or schemes must be:
 - i established within three (3) 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 20 (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 4 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 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 three (3) 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 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 15.3.8 (Service Provider Scheme) as if it were the Service Provider Scheme; and
 - iv 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 20 (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 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 15.3.8.

15.3.9 Undertaking from the Service Provider

- (a) the Service Provider 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 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 15.3.8 (Service Provider Scheme), clause 15.3.9 (Undertaking from the Service Provider) or Schedule 20 (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 of such reasonable 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 15.3.1 (Service Provider to Become an Admission Body) to 15.3.6 (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 cease to be engaged in the provision 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 which for the avoidance of doubt will not include the Service Provider Scheme as defined in Clause 1 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.

15.3.10 Discretionary Benefits

- (a) Where the Service Provider is an Admission Body, the Service Provider 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 15.3.10(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 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 where the Service Provider or any relevant Sub-Contractor is an Admission Body or to mirror those benefits where the Service Provider or any relevant Sub-Contractor is not an Admission Body.
- (c) Under clause 15.3.10(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 broadly comparable or equivalent in cash terms.

15.3.11 **Claims from Eligible Employees or Trade Unions**

- (a) the Service Provider hereby indemnifies and shall procure that any Sub-Contractor hereby indemnifies the Authority 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 to the Service Provider or any Sub-Contractor until the date of termination or expiry of this Agreement; or
 - ii arise out of the failure of the Service Provider or any Sub-Contractor to comply with the provisions of this clause 15.3 (Pensions) relating to the period following the Relevant Transfer to the Service Provider or Sub-Contractor (as applicable and before the date of termination or expiry of this Agreement,

and the Authority and the Service Provider or any Sub-Contractor agree that clause 75 (Third Party Rights) of this Agreement shall not apply to this clause 15.3.11.

15.3.12 **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 15.3.8 (Service Provider Scheme) shall be borne by the Service Provider.

15.3.13 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 15.3 (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.

15.3.14 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 15.3.14(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.

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

- (a) the Authority and the Service Provider 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 15.3 (Pensions) against the Service Provider 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 15.3 (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.

15.3.16 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 15.3.4 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 15.3 (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 15.3.16(c) and 15.3.16(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 15.3.16(c) and 15.3.16(d).
- (c) subject to clause 15.3.6(c) 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 15.3 (Pensions) with the corresponding aggregate amounts set out in the Pension Cost Modelling.

- (d) where, under clause 15.3.16(c), the actual aggregate cost of complying with the requirements of this clause 15.3 (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 a pension arrangement where that arrangement is not the Pension Fund (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 in the Pension Cost Modelling.

15.4 Provision of information

- 15.4.1 The Service Provider acknowledges that the Authority has provided information about the Transferring Employees in the categories set out in Schedule 19 (Workforce Information). The Authority warrants that this information is accurate and complete as at the date of this Agreement and that the Transferring Employees were employed by the Authority immediately prior to the Service Transfer Date. The Authority shall update Schedule 19 (Workforce Information) not less than fourteen (14) days prior to the Service Transfer Date. The Authority shall have no liability to the Service Provider for a breach of this warranty in relation to any claim advanced by the Service Provider after six (6) months from the Service Transfer Date.
- 15.4.2 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.
- 15.4.3 The Service Provider shall for the duration of this Agreement 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 15.4.1 above.
- 15.4.4 The Service Provider agrees in respect of the Transferring Employees to comply with Equalities Legislation.
- 15.4.5 The Service Provider will put in place arrangements to provide support to employees experiencing difficulties in their personal or business life.

15.5 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 or its Sub-Contractor intends to take in relation to any Transferring Employee and shall indemnify the Authority against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this clause 15.5.

15.6 Trade Unions

- 15.6.1 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 recognised trade unions at the Service Provider's 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 32 (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 32 (Formula for Calculating Contribution to Trade Union Fund).
- 15.6.2 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.
- 15.6.3 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.

15.7 Indemnities

- 15.7.1 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 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.
- 15.7.2 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 arising out of the employment 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 up to the date of termination or expiry of the Contract Period (whichever is the earlier).

15.7.3 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.

15.7.4 The Authority shall indemnify the Service Provider in full from and against all Direct Losses which the Service Provider or Service Provider Related Party incurs arising from:

(a) any act or omission of the Authority in relation to the Transferring Employees or an employee or former employee of the Authority affected by this Agreement; or

(b) any representations made by the Authority or any Authority Related Party in relation to employment by the Service Provider and/or any Service Provider Related Party.

15.7.5 For claims which the Service Provider is indemnified for pursuant to clause 15.7.1 and 15.7.2, the Service Provider shall notify the Authority as soon as reasonably practicable of any claim or demand by a Transferring Employee 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 request from the Authority to assume responsibility for the conduct of such claim and will provide the Authority with all assistance and co-operation requested by the Authority in relation thereto.

15.7.6 The Authority shall indemnify and keep indemnified the Service Provider from and against all remuneration (salary, pension and benefits) costs incurred by the Service Provider arising from a Relevant Transfer to the Service Provider of any employees providing legal services who are not identified as the Transferring Employees during the period in which the parties have agreed that the Authority will provide or procure the delivery of such legal services or the period of three (3) months from the Service Transfer Date if later.

15.8 TUPE Compliance on Termination

15.8.1 To the extent permitted by the Data Protection Legislation during the twelve (12) months prior to the expiry of the Contract Period or after the Authority has given notice to terminate this Agreement and within twenty one (21) 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 33 (Workforce Information).

15.8.2 The Service Provider shall notify the Authority as soon as reasonably practicable of any variation in the information provided under clause 15.8.1 above and shall provide the Authority with the revised and accurate information.

15.8.3 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.

15.9 Obligations on Termination

15.9.1 The Service Provider shall discharge all obligations and liabilities in respect of the Relevant Employees transferring from the Service Provider or any Sub-Contractor up to and including the Relevant Transfer Date.

15.9.2 The Service Provider shall indemnify and keep indemnified the Authority against any loss caused to the Authority or any Future Service Provider by any inaccuracy or incompleteness in such information as is provided under 15.8.1 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.

15.9.3 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; 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.

15.9.4 The Authority shall indemnify and keep indemnified the Service Provider 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 Authority in respect of all or any of the Transferring Employees) arising from or connected with any failure by the Authority or Future Service Provider to comply with its obligations under Regulation 13 (4) of TUPE whether any such claim is brought before or after the date of the Relevant Transfer; and
- (b) any step or measure envisaged by the Authority or any Future Service Provider in relation to employees affected by this Agreement

15.9.5 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.

15.10 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 30 (TUPE Transfer Commitments), as applicable to each party.

16 Staffing

16.1 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, skilled 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:

- 16.1.1 the task or tasks to be performed;
- 16.1.2 all relevant Authority guidelines;
- 16.1.3 all relevant provisions of this Agreement;
- 16.1.4 all statutory requirements relevant to the Services; and
- 16.1.5 the need to maintain the highest standards of courtesy and consideration.

provided that for the purposes of Clause 4.2.1(k) and this Clause 16.1 where such personnel are Transferring Employees such personnel shall be deemed to be competent, qualified, experienced and properly trained six (6) months from the Relevant Transfer Date (the **Compliant Date**). The Service Provider shall not be excused from any liability or obligation pursuant to this Agreement with the exception of clause 4.2.1(k) between the Relevant Transfer Date and the Compliant Date.

16.2 The Service Provider agrees that:

- 16.2.1 where any staffing or skill levels have been agreed as part of the Output Specification, those levels will be maintained throughout the Contract Period;
- 16.2.2 where any named Staff have been agreed to be provided as part of the Output Specification, those Staff will be assigned to work on this Agreement;
- 16.2.3 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
- 16.2.4 it will replace as soon as reasonably practicable any Staff who are assigned to this Agreement 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.

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

16.4 **Criminal Bureau checks on staff**

- 16.4.1 The Service Provider shall procure that in respect of those Transferring Employees identified in Schedule 19 as Named Employees (subject to the Authority providing access to such Transferring Employees) and any staff employed in relation to a role for which such checks would be required in accordance with relevant safeguarding legislation and guidance (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 Criminal Records Bureau and the Independent Safeguarding Authority 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.

- 16.4.2 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 Criminal Records Bureau check, 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.
- 16.4.3 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.

16.5 **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-Contractors who is involved in the provision of the Services.

16.6 **Conduct of Staff**

- 16.6.1 Whilst engaged in the provision of Services whether at any Service User's premises or otherwise the Service Provider shall and shall procure that any Sub-Contractor shall comply with the Authority Policies and where relevant (in accordance with the provisions of clause 55.4 (Law, Policies and Relevant Matters)) the Service Provider Policies relating to the appropriate conduct of Staff and site security arrangements.
- 16.6.2 The Service Provider shall take all reasonable measures by the display of notices or other appropriate means to ensure that all other persons employed on any work in connection with the Agreement and all Service Provider Related Parties have notice that the Authority Policies and where relevant (in accordance with the provisions of clause 55.4 (Law, Policies and Relevant Matters)) the Service Provider Policies apply to them in relation to the provision of the Services. The Service Provider shall ensure that a similar obligation to this clause is included in any contracts that are entered into with the Sub-Contractors for the provision of the Services.
- 16.6.3 The Authority may:
- (a) instruct the Service Provider that disciplinary action is taken against any employee of the Service Provider or any Sub-Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Authority shall provide in writing reasonable grounds for such action to be taken and to co-operate with any disciplinary proceedings and shall be advised in writing of the outcome including

any changes to working practices or policies which may be made to prevent a recurrence of such event); or

- (b) where the Authority has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).

16.6.4 Without prejudice to the provisions of clause 16.6 (Conduct of Staff) the Service Provider shall ensure that every Named Employee shall carry out their duties and conduct themselves:

- (a) in an orderly and courteous manner; and
- (b) in such a way so as to cause no unreasonable or unnecessary disruption to the work of any of the Authority's employees or the employees or any other service provider.

16.6.5 Where any disciplinary proceedings are commenced by the Service Provider against any employee of the Service Provider the Authority shall not in any circumstances be liable to the Service Provider for any such action and the Service Provider shall fully and promptly indemnify the Authority in respect of any claims brought by any such employee against the Authority arising therefrom.

16.6.6 .

16.7 Admission to the Authority's Premises

The Service Provider shall at least twenty (20) Business Days before the date on which the Service Provider first provides any of the Services provide the Authority with a written list of the names of all employees or other persons who it expects may require admission to each Authority's Premises in connection with the provision of the Services, specifying the capacities in which those employees or other persons are concerned with the Services and giving such other particulars as the Authority may require. The Service Provider shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Business Days before their inclusion. The decision of the Authority on whether any person is to be refused admission to the Authority's Premises shall be final and conclusive and the Authority shall not be obliged to give reasons for its decision. For the avoidance of doubt, the provisions of this clause 16.7 shall not apply to those individuals who shall be required by the Service Provider or any Sub-Contractor to attend on Authority's Premises to provide emergency reactive services. In the case of such individuals, the Service Provider shall or shall procure that any Sub-Contractor shall ensure that such individuals are accompanied at all times while on each Authority's Premises by a member of the Service Provider or Sub-Contractor's Staff who has been properly notified to the Authority in accordance with the terms of this clause 16.7.

16.8 Refusal of Admission

16.8.1 The Authority reserves the right to refuse to admit to the Authority's Premises any person, employed or engaged by the Service Provider or a Sub-Contractor

(and may require the Service Provider to refuse to admit to any Site any person, employed or engaged by the Service Provider or a Sub-Contractor) whose admission would, in the opinion of the Authority:

- (a) present a risk to themselves or an Authority Related Party or property;
or
- (b) in the Authority's absolute discretion would be a threat to security or policy operations whether of the Authority or more generally.

16.8.2 The Authority shall not be obliged to provide any reasons for refusing to admit any person pursuant to this clause.

16.9 Decision to Refuse Admission

The decision of the Authority as to whether any person is to be refused admission to the Authority's Premises pursuant to clause 16.8 (Refusal of Admission) shall be final and conclusive. If the Authority declines to give reasons and/or where reasons are given are found to be unreasonable for exercising its rights under clauses 16.6 (Conduct of Staff), 16.7 (Admission to the Authority's Premises), 16.8 (Refusal of Admission) and 16.10 (Removal from Authority's Premises), the Authority shall indemnify the Service Provider and keep the Service Provider indemnified against all Direct Losses suffered or incurred by the Service Provider, provided that the Service Provider or the relevant Sub-Contractors has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

16.10 Removal from Authority's Premises

16.10.1 The Service Provider shall comply with and/or procure compliance with any notice issued by the Authority from time to time requiring the removal from any of the Authority's Premises of any person employed thereon who in the opinion of the Authority acting reasonably is not acceptable on the grounds of risk to themselves or an Authority Related Party or property and that such persons shall not be employed again upon the Project or Services without the written consent of the Authority.

16.10.2 The Service Provider shall immediately procure the removal from any of the Authority's Premises of any person employed thereon where the Contract Manager requires such removal in the case of an emergency.

16.11 Relief from Service Credits

Where the Authority exercises its rights under clause 16 and it can be shown that:

- 16.11.1 the Service Provider or any Sub-Contractor has acted in accordance with the relevant provisions of this clause 16.11; or
- 16.11.2 the Authority did not act reasonably in instructing the Service Provider not to employ and/or in requesting any removal and/or in refusing admission,

then the Authority shall give the Service Provider such relief from the application of Service Credits to the Periodic Service Payment that the Authority may otherwise be

entitled to make for a reasonable period to allow the Service Provider or any Sub-Contractor to make alternative arrangements to replace the person whose employment has been refused or whose removal has been requested. For the avoidance of doubt, any relief from such Service Credits given under this clause 16.11 shall only be in respect of those Services in which such person is or would have been engaged.

16.12 **Personnel Policies and Procedures**

The Service Provider shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Service Provider shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Authority.

16.13 **Sub-contractors**

In the event that any of the Services are provided by a Sub-Contractor, 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 clauses 15, 16 and 17 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 New 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.**

16.14 **Elections**

During any political elections occurring locally or nationally and in accordance with the Authority's instructions, the Service Provider shall make available Staff in order to man polling stations at the Authority's Premises or other nominated sites.

17 **Compliance with Anti-discrimination Legislation [Authority Policy Clause]**

17.1 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:

17.1.1 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

17.1.2 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.

- 17.2 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:
- 17.2.1 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;
 - 17.2.2 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,
 - 17.2.3 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.
- 17.3 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.
- 17.4 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.
- 17.5 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:
- 17.5.1 provide any information reasonably requested by the Authority, as soon as reasonably practicable;
 - 17.5.2 attend any meetings as reasonably required and permit any of the Staff to attend;
 - 17.5.3 promptly allow the Authority and/or any person conducting an investigation access to any documents or data deemed by the Authority to be relevant;

- 17.5.4 allow itself or any of its Staff to appear as witnesses in any ensuing proceedings; and
- 17.5.5 cooperate fully and promptly in every way reasonably 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.
- 17.6 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.
- 17.7 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.
- 17.8 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.
- 17.9 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:
 - 17.9.1 assessing the Service Provider's compliance with this clause 17 (Compliance with Anti-discrimination legislation); and/or
 - 17.9.2 assisting the Authority to comply with its Public Sector Equality Duty.
- 17.10 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.
- 17.11 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.
- 17.12 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 17 (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.

18 **Representatives and Key Personnel**

18.1 **Contract Manager**

- 18.1.1 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 exercise the functions and powers of the Authority in relation to the Partnership and Services which are identified in this Agreement as functions or powers to be carried out by the Contract Manager. The Contract Manager shall also exercise such other functions and powers of the Authority under this Agreement as may be notified to the Service Provider from time to time.
- 18.1.2 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.
- 18.1.3 The Authority may by notice to the Service Provider change the Contract Manager. 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.
- 18.1.4 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. 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.
- 18.1.5 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.
- 18.1.6 Save where notified in writing by the Authority before such act or instruction, the Service Provider and the Partnership Director 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 Director shall not be required to determine whether authority has in fact been given.
- 18.1.7 Save where notified in writing by the Authority before such act or instruction, the Service Provider and the Partnership Director shall not be entitled to treat any act or instruction by the Contract Manager or any other officer, employee or other person engaged by the Authority which is not authorised by this Agreement as being authorised by the Authority and shall be required to determine by notice to the Authority whether an express authority has in fact been given.

18.2 Partnership Director

- 18.2.1 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 Director 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.
- 18.2.2 The Service Provider shall appoint as the first Partnership Director the person named in Schedule 21 (Key Personnel). The Partnership Director 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 and the Contract Manager, the Authority and the Contract Manager shall be entitled to treat any act of the Partnership Director 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.
- 18.2.3 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 Director 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 Director or as deputy for the Partnership Director.
- 18.2.4 The Service Provider may by notice to the Authority change the Partnership Director. 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 Partnership and Services. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

18.3 Key Personnel

- 18.3.1 Where it is provided that any particular role, activity or service shall be fulfilled or performed by Key Personnel as set out in Schedule 21 (Key Personnel), the Service Provider shall take all reasonable steps consistent with the established employment practices of the Service Provider and afforded to other like employees of the Service Provider engaged on similar activities to ensure that such Key Personnel remain employed in the fulfilling or performing of that role.
- 18.3.2 In the event that changes in Key Personnel become reasonably necessary, the Service Provider shall give the Authority reasonable notice of such changes and without undue delay replace such Key Personnel with people of sufficient experience and expertise to discharge their relevant functions and who are acceptable to the Authority. Such acceptance shall be subject to any interviews and information the Authority sees fit to conduct or request, but shall not be unreasonably withheld or delayed.

- 18.3.3 Where a replacement person is to be provided pursuant to Clause 18.3.2, the Service Provider shall ensure that the replacement person is fully briefed in respect of his obligations under this Agreement having regard to the particular work to be carried out by that replacement person.

Part 5 – Contract Management and Monitoring

19 Service Provider Warranties

19.1 Service Provider Warranties

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

- 19.1.1 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;
- 19.1.2 as at the Agreement Date it is of sound financial standing and none of the conditions set out in paragraphs 3.1, 4.1 or 5.1 of Schedule 42 (Financial Distress) are met;
- 19.1.3 it has and will maintain sufficient working capital and other necessary resources to provide the Services in accordance with this Agreement for the entire Contract Period;
- 19.1.4 it has the power to enter into and to exercise its rights and perform its obligations under this Agreement, the Project Documents and the other contractual documents envisaged by this Agreement to be entered into by the Service Provider (**Other Contract Documents**);
- 19.1.5 all necessary action to authorise the execution of and the performance of its obligations under this Agreement and the Project Documents has been taken or in the case of any Project Documents or Other Contract Documents executed after the date of this Agreement, will be taken before such execution;
- 19.1.6 the obligations expressed to be assumed by the Service Provider under this Agreement and the Project Documents are (or in the case of Project Documents and any Other Contract Documents executed after the Agreement Date will be) legal, valid, binding and enforceable to the extent permitted by Legislation;
- 19.1.7 the execution, delivery and performance by it of this Agreement, the Project 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 as at the Agreement Date;
 - (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;
- 19.1.8 as at the Agreement Date, the Service Provider Warranted Data is true and accurate in all respects;
- 19.1.9 as at the Agreement Date 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;
- 19.1.10 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;
- 19.1.11 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;
- 19.1.12 as at the Agreement Date, no Service Provider Default has occurred which is continuing;
- 19.1.13 this Agreement, each of the Key Sub-Contracts, Project Documents and Other Contract Documents (excluding any Third Party Contracts) 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;
- 19.1.14 the copies of the Key Sub-Contracts, Project 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 and any Other Contract Documents which would materially affect the interpretation or application of any of the Key Sub-Contracts, Project Documents and any Other Contract Documents;
- 19.1.15 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
- 19.1.16 as at the Agreement Date, there are no actual or potential Conflicts of Interest or Adviser Conflicts of Interest,

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

19.2 **Service Provider Undertakings**

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

- 19.2.1 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 Partnership and/or Services, the Service Provider's ability to perform its obligations under this Agreement; such notice shall be given as soon as the Service Provider becomes aware that the proceedings may be threatened or pending and immediately after they are commenced;
- 19.2.2 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; and
- 19.2.3 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 53 (Assignment and Sub-Contracting).

19.3 **Status of Warranties**

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.

20 **Exclusion From Warranty**

20.1 **Authority Warranty**

The Authority warrants that it has full power, capacity and authority to enter into and perform this Agreement and that all necessary actions have been taken to enter into this Agreement properly and lawfully including the obtaining of any necessary internal approvals which may be required.

20.2 **No Warranty by Authority**

The Authority does not give any warranty or undertaking as to:

- 20.2.1 the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data (save as expressly provided in clause 15.4.1 (Provision of Information)); or
- 20.2.2 the condition, fitness for purpose or suitability for use in the provision of the Services of the Initial Transferring Assets or the Authority Assets.

20.3 **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 (save as expressly provided in clauses 15.4.1 (Provision of Information) and 7.3 (Apportionment of Charges and Reconciliation) as a result of:

- 20.3.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data;
- 20.3.2 any failure to make available to the Service Provider any materials, documents, drawings, plans or other information relating to the Partnership and/or Services; or
- 20.3.3 the unsatisfactory quality or condition, unsuitability or non fitness for purpose of any of the Initial Transferring Assets (but excluding the Critical Initial Transferring Assets) or the Authority Assets, whether for the provision of the Services or for any other purpose.

20.4 Fraudulent Statements

Nothing in this clause 20 (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 Agreement Date.

20.5 Service Provider's Due Diligence

The Service Provider shall be deemed to have:

- 20.5.1 satisfied itself as to the assets to which it will acquire rights (but excluding the Critical Initial Transferring Assets) and the nature and extent of the risks assumed by it under this Agreement; and
- 20.5.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed; and
- 20.5.3 taken due cognisance of the Disclosed Data.

20.6 No Relief

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:

- 20.6.1 any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient (save as expressly provided in clauses 15.4.1 (Provision of Information) and 7.3 (Apportionment of Charges and Reconciliation) and shall make its own enquiries as to the accuracy and adequacy of that information; or
- 20.6.2 any of the Initial Transferring Assets (but excluding the Critical Initial Transferring Assets) and the Authority Assets, are not of satisfactory quality or fit for their purpose.

20.7 **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 Partnership and Services as is held (or ought reasonably to be held) by any Service Provider Related Parties.

21 **Authority Step-In**

21.1 **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:-

- 21.1.1 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 five hundred thousand pounds (£500,000); or
 - (b) results in fifty (50) per cent of the Service Performance Levels 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;
- 21.1.2 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);
- 21.1.3 because a serious risk exists to the health or safety of persons or property or to the environment;
- 21.1.4 because 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 relating to health and safety;
- 21.1.5 to discharge a statutory duty;
- 21.1.6 as may be required by the outcome of a statutory inspection;
- 21.1.7 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 (save for any Fraud committed by Transferring Employees prior to the Service Transfer Date);
- 21.1.8 because an actual Conflict of Interest or Adviser Conflict of Interest has arisen, or 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;

- 21.1.9 due to failure of the Service Provider to comply with the requirements of clause 41.4 (Remedy Notice);
- 21.1.10 due to a failure by the Service Provider to comply with a material provision of any of the Corporate Centric Policies; or
- 21.1.11 because of a failure by the Service Provider to deliver or comply with a material element of a Certain Commitment,

the Authority shall be entitled to take action in accordance with 21.2 (Notice to the Service Provider) to 21.5 (Step-In on Service Provider Breach) below either through itself or through (or with the assistance of) third party contractors.

21.2 **Notice to the Service Provider**

If clause 21.1 (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:-

- 21.2.1 the action it wishes to take and in particular the Services it wishes to control;
- 21.2.2 the reason for such action;
- 21.2.3 the date it wishes to commence such action;
- 21.2.4 the time period which it believes will be necessary for such action; and
- 21.2.5 to the extent practicable the effect on the Service Provider and its obligation to provide the Services during the period such action is taken.

21.3 **Action by Authority**

21.3.1 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 where possible or using all reasonable endeavours to obtain licences or permissions for systems and data required to deliver the Services (which will be at the Authority's cost where step-in occurs in accordance with clause 21.4(Step-In without Service Provider Breach) and where prior written consent has been secured from the Authority for such costs or the Service Provider's cost where step-in occurs in accordance with clause 21.5 (Step-In on Service Provider Breach);
- (b) providing access to Staff and those employees of any Sub-Contractor and using all reasonable endeavours to ensure that such individuals 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.

21.3.2 Required Action may include any measures to address any aspect of the performance of the Services (including only a particular part or aspect 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 or Authority Assets.

21.3.3 The Authority shall use reasonable endeavours to mitigate the Service Provider's costs arising as a direct result of the Required Action.

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

Where the Step-in Notice indicates that any such action by the Authority is being undertaken where the Service Provider has not breached its obligations pursuant to 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 that part of the Services subject to the Required Action:

21.4.1 the Service Provider shall be relieved from its obligations to provide such part of the Services subject to the Required Action; and

21.4.2 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.

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

21.5.1 Where the Step-in Notice indicates that any such action by the Authority is being undertaken due to a breach by the Service Provider of its obligations pursuant to this Agreement which includes (but is not limited to) action pursuant to clauses 21.1.1, 21.1.4, 21.1.7, 21.1.8, 21.1.9, 21.1.10 or 21.1.11 then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing that part of the Services subject to the Required Action:

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

(b) in respect of the period in which the Authority is taking the 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.

- 21.5.2 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 undertaking as set out in Schedule 37 (Form of Confidentiality Undertaking) prior to commencement of any services by such service provider or organisation.

21.6 **Step-Out**

- 21.6.1 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 21.6.2,

provided that the Authority may at any time serve a notice under clauses 41 (Persistent Breach and Service Provider Default Capable of Remedy) or 42 (Termination on Service Provider Default Incapable of Remedy) if there is a Service Provider Default.

- 21.6.2 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.
- 21.6.3 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.
- 21.6.4 The Authority shall either approve the resubmitted draft Step-Out Plan or request the parties meet to agree in good faith a Step-Out Plan. If the parties fail to reach agreement as to the context or scope of the draft Step-Out Plan the matter shall be referred to the Dispute Resolution Procedure.
- 21.6.5 After the Step-Out Plan has been agreed or otherwise determined, the Service Provider shall resume the provision of that part of the Services affected by the Required Action.

22 Relief Events

22.1 Without prejudice to clause 24 (Emergencies) and clause 61 (Business Continuity) if and to the extent that a Relief Event:

22.1.1 is the direct cause of a delay in the Service Transfer Date; and/or

22.1.2 adversely affects the ability of either party to perform any of its obligations under this Agreement,

then that party (referred to in this clause 22 as the **Relevant Party**) is entitled to apply for relief from any rights of the other party (referred to in this clause 22 as the **Other Party**) arising under clause 41 (Persistent Breach and Service Provider Default Capable of Remedy), clause 44 (Termination on Authority Default) the Payment Mechanism (but only to the extent permitted pursuant to clause 22.10 below) and its obligations under this Agreement.

22.2 To obtain relief, the Relevant Party must:

22.2.1 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;

22.2.2 within fourteen (14) Business Days of receipt by the Other Party of the notice referred to in clause 22.2.1, give full details of the relief claimed; and

22.2.3 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 61.

22.3 In the event that the Relevant Party has complied with its obligations under clause 22.2, then:

- 22.3.1 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
 - 22.3.2 subject to the Authority's rights under clause 22.7, the Other Party shall not be entitled to exercise its rights to terminate the Agreement under clause 41 (Persistent Breach and Service Provider Default Capable of Remedy), clause 42.1.2 (Termination on Service Provider Default incapable of Remedy) or clause 44 (Termination on Authority Default) (as appropriate); and/or
 - 22.3.3 subject to clause 22.10 below, the Other Party shall give such other relief as is reasonable for the particular Relief Event.
- 22.4 In the event that information required by clause 22.2 above is provided after the dates referred to in that clause, then the Relevant Party shall not be entitled to any relief during the period for which the information is delayed.
- 22.5 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.
- 22.6 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 22, the matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 22.7 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, either party may serve a notice terminating the Agreement. This Agreement shall terminate on expiry of the period in this notice. If this Agreement is terminated under this clause 22.7:
- 22.7.1 compensation shall be payable by the Authority in accordance with Part 3 of Schedule 27 (Compensation following Expiry or following Force Majeure Termination or Relief Event Termination); and
 - 22.7.2 the Authority may require the Service Provider to transfer its title, interest and rights in and to any Service Provider Exclusive Assets and Service Provider Traded Assets to the Authority and undertake such further activities in accordance with clause 5 (Assets and Equipment) and clause 47 (Consequences of Termination or Expiry) and clause 48 (Exit Arrangements) shall apply.
- 22.8 Notwithstanding, and without prejudice to, the other provisions of this clause 22, 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.

- 22.9 The Relevant Party shall notify the Other Party immediately of the cessation of the Relief Event.
- 22.10 Nothing in clause 22 shall affect any entitlement of the Authority to apply Service Credits or any deductions made as a result of the operation of the Payment Mechanism during the period in which the Relief Event is subsisting for that part of the Services or those obligations of the Service Provider which are unaffected by the occurrence of the Relief Event.
- 22.11 If a Relief Event leads to the Service Provider claiming relief under this clause 22, 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.
- 23 Force Majeure**
- 23.1 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. For the avoidance of doubt, 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 23.5 or 23.7 below).
- 23.2 Nothing in clause 23.1 above shall affect any entitlement to apply Service Credits or any deductions made as a result of Schedule 4 (Payment and Performance Mechanism) in the period during which the Force Majeure Event is subsisting for that part of the Services or those obligations of the Service Provider which are unaffected by the occurrence of the Force Majeure Event.
- 23.3 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.
- 23.4 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.
- 23.5 If no such terms are agreed on or before the date falling twenty (20) 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 forty (40) Business Days, then, subject to clause 23.7 below, either party may terminate this Agreement by giving ten (10) Business Days written notice to the other party.
- 23.6 If this Agreement is terminated under clause 23.5 above or clause 23.7 below:

- 23.6.1 compensation shall be payable by the Authority in accordance with Part 3 of Schedule 27 (Compensation following Expiry or following Force Majeure Termination or Relief Event Termination); and
 - 23.6.2 the Authority may require the Service Provider to transfer its title, interest and rights in and to any Service Provider Exclusive Assets and Service Provider Traded Assets to the Authority and undertake such further activities in accordance with clause 5 (Assets and Equipment and clause 47 (Consequences of Termination or Expiry) and clause 48 (Exit Arrangements) shall apply.
- 23.7 If the Service Provider gives notice to the Authority under clause 23.5 above 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 five (5) 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:
- 23.7.1 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 23.5 as if the Services were being fully provided; and
 - 23.7.2 this Agreement will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Service Provider that it wishes this Agreement to terminate.
- 23.8 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, and the Service Provider shall immediately implement the Business Continuity Plan in accordance with clause 61 (Business Continuity) upon the occurrence of a Force Majeure Event.
- 23.9 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.
- 24 **Emergencies [Authority Policy Clause]**
- 24.1 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 and the Major Emergency Plan, the Service Provider shall:
- 24.1.1 ensure that plans and procedures are in place to enable the continued operation of the Services during any form of Emergency or other disruption on the basis set out in such plans and procedures;
 - 24.1.2 co-operate with other London boroughs in relation to mutual aid arrangements (including other relevant public sector bodies and their successors) during any form of Emergency or other disruption;

- 24.1.3 where necessary during any form of Emergency or other disruption, assist with the National Emergency Mortuary Association including equipping a nominated site or sites and providing the Emergency Response Team, subject to the parties agreeing the consequential impact upon the Services (pursuant to the procedure set out in Clause 22 (Relief Events) where such assistance is required pursuant to this clause 24.1.3);
 - 24.1.4 ensure that the Emergency Response Team are able to attend and assist with Emergencies and major civil or other disruptions before during and outside working hours;
 - 24.1.5 ensure that it is able to provide emergency data recovery and data backup services; and
 - 24.1.6 ensure that it 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.
- 24.2 The Service Provider shall undertake a test of their continued operation plans and procedures annually, or more frequently as required by the Authority; and
- 24.2.1 the Service Provider shall inform the Authority when such tests or exercises are scheduled (providing at least one (1) months notice) and, if requested to do so, provide the outcomes of these tests or exercises to the Authority in writing;
 - 24.2.2 the Authority reserves the right to audit the Service Provider's continued plans and procedures, but at its discretion may accept 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
 - 24.2.3 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.
- 24.3 If an Emergency arises at any time during the Contract Period, 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.
- 24.4 As soon as reasonably practicable following each occasion on which an Emergency arises in accordance with clause 24.3 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 clause 49 (Dispute Resolution).

25 Performance Monitoring

25.1 Service Provider Monitoring

The Service Provider shall monitor its performance in the delivery of the Services in accordance with the monitoring and measurement procedures set out in the Payment Mechanism and the Monitoring Procedure set out in Schedule 13 (Monitoring Procedure).

25.2 Authority Monitoring

25.2.1 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.

25.2.2 The Service Provider shall use its reasonable endeavours to assist the Authority in any performance monitoring exercise under clause 25.2.1. 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.

25.2.3 Without prejudice to the Authority's rights under clauses 41 (Persistent Breach and Service Provider Default Capable of Remedy) and 42 (Termination on Service Provider Default) and to any other express rights under this Agreement, where the Service Provider has been found to be fraudulent or have submitted erroneous reports (including (but not limited to) Performance Reviews) or the Authority reasonably believes such reports and/or Performance Reviews to be misleading the Authority may within three (3) months of the Authority becoming aware of the relevant event, 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 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:
 - i all reasonable investigative or preparatory work undertaken by the Authority or Authority Related Parties to establish the need for additional monitoring where such investigation or preparatory work establishes the need for increased monitoring; and
 - ii the increased level of monitoring.

25.3 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:

- 25.3.1 monitor or inspect any performance of the Services;
- 25.3.2 check compliance by the Service Provider with its obligations;
- 25.3.3 confirm or indicate approval of or non-objection to proposals made by the Service Provider; or
- 25.3.4 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.

25.4 Quality Management Systems

- 25.4.1 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 25.4.2 and 25.4.3 below.
- 25.4.2 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 (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.
- 25.4.3 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.

- 25.4.4 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.
- 25.4.5 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 25.4 (Quality Management Systems).

Part 6 – Payment and Financial Transparency

26 Payment

- 26.1 The Service Provider shall submit invoices and Performance Reviews to the Authority in accordance with the procedure set out in paragraph 16 (Payment Terms / Procedure) of Schedule 4 (Payment and Performance Mechanism).
- 26.2 On receipt of a properly submitted invoice and Performance Review the Authority shall review the same and within ten (10) Business Days of receipt of the invoice and Performance Review shall confirm to the Service Provider:
- 26.2.1 whether it agrees with the content of such invoice and Performance Review, in which case the invoice shall be deemed approved; and/or
 - 26.2.2 identify any areas of the invoice or Performance Review for further discussion between the parties and the relevant provisions of the Agreement shall apply,
- provided that if the Authority has not provided such confirmation within the ten (10) Business Day period, the invoice shall be deemed to be approved.

26.3 The Authority's review (pursuant to clause 26.2 above shall only be undertaken where the Authority is provided with a properly submitted invoice and Performance Review incorporating payment details and accompanied by the supporting information required pursuant to paragraph 16 of Schedule 4 (Payment and Performance Mechanism) and Schedule 13 (Performance Monitoring) (as the case may be). If in relation to any invoice there is a delay in the Service Provider providing supporting information, the related invoice submitted by the Service Provider shall also be deemed not to have been validly submitted until such time as the outstanding supporting information has been provided.

26.4 Subject always to clauses 26.2, 26.5, 26.11 and 26.13 the Authority shall pay to the Service Provider an amount equal to the amount set out in each invoice properly submitted by the Service Provider in accordance with paragraph 16 of Schedule 4 (Payment and Performance Mechanism) within fifteen (15) Business Days of receipt of the relevant invoice subject always to the following:

26.4.1 all invoices shall be accompanied by a purchase order number issued by the Authority;

26.4.2 all sums to be paid shall be the same as the approved invoice;

26.4.3 any invoices submitted on any day other than a Business Day shall be deemed to have been submitted on the next Business Day thereafter; and

26.4.4 the Authority shall not be required to pay the element of any invoice to the extent that such element, and/or any related supporting information (including the Performance Review), is disputed by the Authority or the conditions in paragraph 16 of Schedule 4 (Payment and Performance Mechanism) or this clause 26.4 are not complied with, in which case the provisions of clause 26.5 (Disputed Amounts) apply in relation to the invoice and the clause 25 (Performance Monitoring) or clause 49 (Dispute Resolution) apply in relation to the Performance Review.

26.5 **Disputed Amounts**

26.5.1 If the Authority disputes the invoices submitted by the Service Provider including the invoices submitted, the provisions of this clause 26.5 shall apply:

26.5.2 In accordance with clause 26.2.2 the Authority shall notify the Service Provider in writing within ten (10) Business Days of receipt by the Authority of the relevant invoice 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.

26.5.3 The Authority may only withhold payment of any Disputed Amount pending agreement or determination of the Service Provider's entitlement in relation to the Disputed Amount.

26.6 **Response to Authority Notice**

26.6.1 Within five (5) Business Days following receipt by the Service Provider of any notice served by the Authority pursuant to clause 26.5, 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:

- (a) in relation to any Disputed Amounts the Authority shall be entitled:
 - i to retain on a permanent basis any Disputed Amounts withheld; and
 - ii 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; and/or
- (b) in relation to the Financial Guarantees or Gainshare the Authority shall be entitled to reclaim from the Service Provider the amount of underpayment of any Gainshare or the Financial Guarantees 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 under-payment was made until that amount has been paid in full and whether before or after judgment.

26.7 Dispute

If the Service Provider responds (pursuant to clause 26.6 (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 26.5 (Disputed Amounts), the matter or matters in question shall be resolved in accordance with the Dispute Resolution Procedure.

26.8 Determination of Dispute

If the determination of any Dispute conducted pursuant to clause 26.7 (Dispute) shows that:

- 26.8.1 the Authority has withheld any amount which the Service Provider was entitled to be paid; or
- 26.8.2 the Service Provider has claimed under any invoice submitted any amount which it was not entitled to be paid; or
- 26.8.3 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 overpayment 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.

26.9 All payments made to the Service Provider by the Authority pursuant to this Agreement shall be made electronically through the Banking Automated Clearing System (BACS).

26.10 The Authority shall not be liable (including liability to pay interest) for any late payment of the Service Provider's invoices to the extent that such late payment is caused by any act or omission of the Service Provider.

26.11 **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 against any amount due to the Service Provider under this Agreement.

26.12 **Set Off and Disputed Amounts**

If the payment, application (or not) of the Service Credits or deduction of any amount referred to in clause 26.11 (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.

26.13 **VAT on Payments**

26.13.1 All amounts due under this Agreement are exclusive of VAT.

26.13.2 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.

26.13.3 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.

26.13.4 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.

26.14 **Indexation**

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

26.14.2 In the event of a Dispute regarding the adjustments to be made in accordance with clause 26.14 (Indexation), or as to the proper adjustment to be made pursuant to clause 26.14, such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

27 Financial Adjustments

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

- 27.1.1 make any adjustments to the amount claimed in accordance with the Payment Mechanism;
- 27.1.2 take account of any adjustment agreed or determined in accordance with clause 10.2.5 (Budget Control);
- 27.1.3 take account of any adjustment agreed or determined in accordance with clause 10.3 (Year 6 Review);
- 27.1.4 make adjustments to the amount claimed in accordance with clause 24 (Emergencies);
- 27.1.5 make adjustments to the amount claimed for any Change as may arise from the application of the Change Protocol;
- 27.1.6 make any arithmetical or mathematical corrections to any errors in the amount claimed that it considers necessary;
- 27.1.7 set-off any amounts due under clause 26.1 (Rights of Set-Off); and
- 27.1.8 deduct or withhold any other amounts which may be properly deducted or withheld under this Agreement, including the Payment Mechanism.

27.2 Updating the Financial Model

- 27.2.1 Whenever a Relevant Event occurs, the financial consequence shall be determined in accordance with the terms of the Agreement applicable to that Relevant Event.
- 27.2.2 Where for the purposes of this clause 27 (Financial Adjustments) the Financial Model is to be adjusted by reference to a Relevant Event, this shall be carried out by the Service Provider, and agreed by the Authority in writing. The adjustments to the Financial Model shall reflect the impact of any prior Relevant Event on the version of the Financial Model 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.
- 27.2.3 Subject to the relevant terms of the Agreement applicable to the Relevant Event in question, in assessing the adjustments to be made to the Financial Model, the Service Provider shall be entitled to take into account 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.

27.3 Replacement of Financial Model

Any Financial Model produced following adjustments in accordance with this clause 27 (Financial Adjustments) shall become the Financial Model for the purposes of this Agreement until its further amendment in accordance with this Agreement.

27.4 Amendments to Logic and/or Formulae

Where it is necessary to amend the logic or formulae incorporated in the Financial Model to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles so that Financial Model is fit for purpose.

27.5 Errors in the Financial Model

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

27.5.2 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.

27.6 Copies of the Revised Financial Model

Following any change to the Financial Model under the provisions of this clause 27 (Financial Adjustments), the Service Provider shall promptly deliver a copy of the revised Financial Model 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.

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

28.1 Records of Expenditure and Income

The Service Provider shall:

28.1.1 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;

28.1.2 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;

28.1.3 when requested by the Authority, provide a written summary of any of the costs or income figures referred to in clause 28.1.1 and 28.1.2, 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; and

28.1.4 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.

28.2 **Books of Account**

Compliance with clause 28.1 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:

- 28.2.1 Central Overheads;
- 28.2.2 payments made to Sub-Contractors;
- 28.2.3 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));
- 28.2.4 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 12 (Special Projects) and clause 14 (Change in Law) and the Change Protocol,

and the Service Provider shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items in clauses 28.2.1 to 28.2.4 available for inspection by the Authority (and any expert) upon reasonable notice, and (without prejudice to the requirements contained in clause 29 (Open Book Accounting)) shall present a written report of these to the Authority as and when requested.

28.3 **Maintenance of Records**

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

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

and the Service Provider shall have the items referred to in clauses 28.3.1 and 28.3.3 above available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

28.4 **Reports and Accounts**

The Service Provider shall:

- 28.4.1 provide to the Authority copies of its annual report and accounts (prepared in accordance with UK GAAP (or as otherwise updated from time to time)) within twenty (20) Business Days of publication;

- 28.4.2 promptly upon the occurrence of a material breach under any Key Sub-Contract notify the Authority of such material breach; and
- 28.4.3 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
- 28.4.4 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.

28.5 **Internal Control Environment [Authority Policy Clause]**

- 28.5.1 The Service Provider shall comply with relevant governance standards (to be nominated by the Authority and to be agreed to by the Service Provider (acting reasonably)) and the Service Provider shall provide written confirmation to the Authority of such compliance within five (5) Business Days of a request by the Authority.
- 28.5.2 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 (**Internal Control**). 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 relating to the relevant quarter to the Authority within fifteen (15) Business Days of the agreed Quarterly Date;
 - (e) within five (5) Business Days of production of any limited or no assurance internal audit report submit such limited or no assurance internal audit reports relating to the Service Provider's Annual Internal Audit Plan to the Authority; and
 - (f) undertaking yearly internal audits of all IPR used in the performance of the Services so as to ensure that the provisions of Part 7 (IPR and Data) are being complied with.
- 28.5.3 Where the Authority has any concerns with regard to the sufficiency, accuracy or otherwise of the audit reports submitted pursuant to this clause 28.5 (Internal Control Environment), the Authority shall be entitled to raise such concerns with

the Service Provider who shall use all reasonable endeavours to resolve or rectify the issue including the submission of further audit reports.

28.5.4 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 after first taking the steps set out in 28.5.3 above; 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 4.5 (Co-operation). The Service Provider shall reimburse the Authority in relation to the costs of undertaking the audit programme.

28.6 Auditor

28.6.1 The Authority or its appointed Auditor may, upon no less than two (2) Business Days notice where the Authority has concerns in respect of the Services, and ten (10) Business Days notice in all other circumstances, conduct audits of the Services 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 36 (Data Protection) and 40 (Freedom of Information) and any other Legislation applicable to the Services;
- (d) to review the Service Provider's compliance with its obligations under clauses 4 (the Services) and 25 (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 and/or maintained in accordance with the provisions of clauses 28.2 and 28.3;
- (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 (including information maintained in accordance with the provisions of clauses 28.2 and 28.3);
- (j) to inspect any Authority 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 (in accordance with the provisions of clause 55.4 (Laws, Policies and Related Matters)) the Service Provider Policies and any British or equivalent European standards;
- (l) to review the Service Provider's compliance with its obligations under clause 37.10 (Malicious Software); and
- (m) any other audit that may be required by any Relevant Authority.

28.6.2 Subject to the Authority's obligations of confidentiality, the Service Provider shall upon request provide the Authority (and/or its agents or representatives) within two (2) Business Days (unless agreed otherwise by the parties acting reasonably) 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 and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) reasonable access to the Service Provider's systems; and
- (d) reasonable access to Staff.

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

28.6.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 28 (Service Provider's Records and Audit), unless the audit identifies a material error or discrepancy in the provision of information provided by the Service Provider under this clause 28 (Service Provider's Records and Audit) in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

28.6.5 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 Days 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 the Periodic Service Payment, the Service Provider shall pay to the Authority the amount overpaid (including interest at the Prescribed Rate) within twenty (20) Business Days. The Authority may deduct the relevant amount from Periodic Service Payment if the Service Provider fails to make this payment; and
- (c) the Authority has underpaid the Periodic Service Payment, the Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authority in accordance with the provisions of clause 26 (Payment).

28.6.6 The Service Provider shall permit records referred to in this clause 28 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 for the purposes of carrying out any audit permitted by this clause 28.6 (Auditor).

28.7 **Retention**

The records referred to in this clause 28 shall be retained in accordance with the relevant Authority Policy and in any case for a period of at least six (6) years after the Service Provider's obligations under this Agreement have come to an end.

28.8 **Information on Termination or Expiry**

28.8.1 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.

28.8.2 Where a request is made pursuant to clause 28.8.1 for the Service Provider's cost information, in the event that the Authority is reprocurring the Services and the Service Provider is party to such procurement exercise, the Service Provider shall be entitled to make representations to the Authority as to whether such information should be disclosed to any third parties which the Authority shall pay due regard to.

28.9 **Confidentiality of Information**

28.9.1 All information referred to in this clause 28 is subject to the obligations set out in clause 39 (Information and Confidentiality) and clause 40 (Freedom of Information).

- 28.9.2 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 or any auditor appointed by the Authority pursuant to Legislation or in accordance with best practice prevailing from time to time in the public sector) 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 necessary.

29 Open Book Accounting [Authority Policy Clause]

- 29.1 Without prejudice to the provisions of clause 28.2 (Books of Account) and Schedule 14 (Change Protocol) the Authority shall be entitled to request once in each Contract Year that the Service Provider 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 promptly provided to the Authority following receipt by the Service Provider.
- 29.2 The Certificate of Expenditure and Income shall include a representation of the Financial Model 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:
- 29.2.1 actual Capital Expenditure, including capital replacement costs;
 - 29.2.2 actual operating expenditure relating to the provision of the Services and Third Party Services with an analysis showing the costs of Staff, consumables, sub-contracted and bought in services;
 - 29.2.3 all interest expenses and other third party financing costs incurred in relation to the Services and Third Party Services;
 - 29.2.4 details of the overhead recoveries that have been made in relation to the Services and Third Party Services;
 - 29.2.5 the profit which the Service Provider or 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 29.2.4 above or any part of sub-contracted or bought in services from Key Sub-Contractors or Affiliates;
 - 29.2.6 income from charges to the Authority and any Third Party in relation to provision of these services;

- 29.2.7 such other records as the Authority may reasonably require in order to monitor and verify the Service Provider's performance and the payments made pursuant to Schedule 4 (Payment and Performance Mechanism); and
- 29.2.8 such other items as the Authority may reasonably require in order to conduct cost audits for verification of cost expenditure or estimate expenditure for the purposes of the Agreement;
- 29.3 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 who shall enter into a confidentiality undertaking as set out in Schedule 37 (Form of Confidentiality Undertaking) in order to verify the Certificate of Expenditure and Income.
- 29.4 The auditor appointed pursuant to clause 29.3 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.
- 29.5 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 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.
- 29.6 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.

30 **Indemnities and Liability**

- 30.1 Notwithstanding the provisions of clauses 30.2 to 30.10 (Limitation of Liability – Service Provider), neither party excludes or limits its liability (if any) to the other party for:

30.1.1 death or personal injury resulting from its negligence; nor

30.1.2 deceit or fraudulent misrepresentation.

30.2 **General Indemnity**

Each party shall, subject to clause 30.5 be responsible for, and shall release and indemnify the other party from and against, all liability for:

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

- 30.2.2 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);
- 30.2.3 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
- 30.2.4 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).

30.3 **Service Provider's Indemnity**

Subject to clause 30.4, 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:

30.3.1 Direct Losses and Indirect 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; and/or

30.3.2 Direct Losses arising from the Service Provider's failure to provide any part of the Services which results in a Related Provider being able to exercise any claim for costs, damages or relief from its obligations pursuant to its relevant contract.

30.4 **Party Not Responsible**

A party shall not be responsible nor be obliged to indemnify the other party in respect of any indemnity given by a party under this Agreement where any liability is caused:

- 30.4.1 by the negligence or wilful default of that other party or a Service Provider Related Party or Authority Related Party (as appropriate);
- 30.4.2 by the breach by such other party of its obligations under this Agreement; or
- 30.4.3 as a direct result by acting on a written instruction issued by the 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.

30.5 **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.

30.6 **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.

30.7 **Notification of Claims**

Where either party (the **Indemnified Party**) wishes to make a claim under any indemnity under this Agreement 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.

30.8 **Conduct of Claims**

The Indemnifying Party may at its sole option and 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. The Indemnified Party shall use all reasonable endeavours not to make any prejudicial statement relating to the relevant claim.

30.9 **Costs of Claims**

30.9.1 The Indemnifying Party shall, if it wishes to have conduct of any claim, and requires assistance from the Indemnified Party, reimburse the Indemnified Party for its reasonable costs of providing such assistance.

30.9.2 The Service Provider's liability to the Authority pursuant to this clause 30 shall be, for the avoidance of doubt, 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.

30.10 **Limitation on liability – Service Provider**

30.10.1 The maximum aggregate liability of the Service Provider under or in relation to this Agreement shall not exceed:

- (a) [REDACTED] of the aggregate of the Periodic Service Charges paid or payable by the Authority for the Services during the Contract Year in which the loss, liability or damage arises (as determined at the date on which the loss, liability or damage arose) (the **Annual Liability Cap**); or
- (b) in aggregate the amount represented by [REDACTED] of the annual average of the total of the Periodic Service Charges paid or payable by the Authority for the Contract Period (as contained in tab BC cells I24 to R24 (inclusive) of the Financial Model) (the **Aggregate Liability Cap**),

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

- i payments by the Service Provider to the extent corresponding payments are received by the Service Provider pursuant to the Required Insurances (or would be recoverable under the Required Insurances other than as a result of the failure by the Service Provider to comply with the provisions of clause 50 (Insurance) or an act or omission of the Service Provider or a Service Provider Related Party which breaches the terms of the Required Insurances);
 - ii liability in the event of any fraud, wilful default, fraudulent misrepresentation, Abandonment or corruption on the part of the Service Provider or Service Provider Related Party;
 - iii liability in respect of death or personal injury;
 - iv any liability for Service Credits up to a maximum level of the Sum at Risk under Schedule 4 (Payment and Performance Mechanism);
 - v liability in respect of any indemnity given by the Service Provider under clause 15 (TUPE and Pensions);
 - vi liability in respect of interest payable in accordance with the terms of this Agreement;
 - vii any claim made pursuant to clause 31.1 (IPR Indemnity);
 - viii any Authority monies which the Service Provider is collecting, has management of or in any other way directs on the Authority's behalf (which for the avoidance of doubt shall include but not be limited to council tax, sundry debtors and treasury management); or
 - ix any other liability which cannot be limited or excluded by law;
- 30.10.2 If the parties agree an increase or decrease in the Annual Service Charge, the parties shall promptly seek to agree an increase or decrease in the Annual Liability Cap and the Aggregate Liability Cap proportionate to the increase or decrease (as appropriate) in the level of risk of the parties and in default of agreement shall refer the matter for determination under clause 49 (Dispute Resolution). There shall be an automatic adjustment to the Annual Liability Cap and the Aggregate Liability Cap upon agreement or determination of any such proportionate increase.
- 30.10.3 Within twenty (20) Business Days of the end of each Contract Year, the Service Provider shall notify the Authority if its actual income in the previous Contract Year is greater than the projected amounts of income for that Contract Year in the Financial Model at the date of this Agreement. If it is greater, the parties shall promptly seek to agree a proportionate increase in the Annual Liability Cap for the current Contract Year and the Aggregate Liability Cap for the remaining Contract Period, in default of agreement the parties shall refer the matter for determination under clause 49 (Dispute Resolution). There shall be an automatic adjustment to the Annual Liability Cap and the Aggregate Liability Cap upon agreement or determination of any such proportionate increase.

30.11 Limitation on Liability – Authority

30.11.1 Without prejudice to the Authority's obligation to pay the Service Provider the Periodic Service Payment pursuant to clause 26 (Payment) of this Agreement, and subject to the provisions of clause 30.11.3, the maximum aggregate liability of the Authority under or in relation to this Agreement shall not exceed:

- (a) four million pounds (£4,000,000) for each Contract Year; or
- (b) ten million pounds (£10,000,000) in aggregate over the Contract Period,

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 in place with regard to the obligations of the Authority pursuant to this Agreement (or would be recoverable under an insurance policy in place with regard to the obligations of the Authority pursuant to this Agreement other than as a result of an act or omission of the Authority or an Authority Related Party);
- 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;
- iv liability in respect of any indemnity given by the Authority under clause 15 (TUPE and Pension) and any claim made pursuant to clause 31.2 (IPR Indemnity);
- v liability in respect of interest payable in accordance with the terms of this Agreement; or
- vi any payments made to the Service Provider by the Authority pursuant to Schedule 27 (Compensation on Termination).
- vii any liability of the Authority to the Service Provider arising under clause 8.13 as a result of the Authority's exercise of the break clauses under paragraphs 5.1.12 or 5.1.14 of the NLBP Licence (or in any Substitute Licence) granted in accordance with Schedule 9 (NLBP Licence).

30.11.2 The Authority shall be permitted to apply any Service Credits in accordance with Schedule 4 (Payment and Performance Mechanism), and any such Service Credits shall not be deducted from the Service Provider's aggregate cap on liability pursuant to clause 30.10.1 (Limitation on Liability – **Service Provider**).

30.11.3 The Authority shall be permitted to increase the limits of liability listed in clause 30.11.1 by written notice to the Service Provider.

30.12 Authority Cause

- 30.12.1 Subject to clauses 30.12.2 and 30.12.3, 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:
- (a) such failure by the Service Provider to perform, and any poor performance of, an affected part of the Services shall not constitute a breach by the Service Provider of the provisions of this Agreement;
 - (b) such failure shall be disregarded when measuring the performance of any affected part of the Services in accordance with the Payment Mechanism, which shall be operated as though the relevant part of the Services has been performed free of such failure;
 - (c) any such failure shall be deemed not to have occurred so that the Service Provider shall be entitled to payment under the Agreement as if there had been no such failure of the Services; and
 - (d) the occurrence of the Authority Cause must be notified to the Authority by the Service Provider as soon as reasonably practicable and in any case within five (5) Business Days of the date on which the Service Provider became aware (or ought reasonably to have become aware) of the occurrence of the Authority Cause;
- 30.12.2 Where the Service Provider wishes to claim relief on the basis of clause 30.12.1, it shall within ten (10) Business Days of providing notification pursuant to clause 30.12.1(d) provide the Authority with full details of the relief claimed and any proposed Workaround Solution. In the notification issued pursuant to this clause 30.12.2 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, but without incurring material expenditure;
 - (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.
- 30.12.3 Upon receipt of the notification pursuant to clause 30.12.2, the parties shall meet promptly to agree the implementation at the Authority's cost of:
- (a) a Workaround Solution;
 - (b) the terms of the co-operation required to implement such Workaround Solution; and

(c) the duration of any relief sought pursuant to clause 30.12.1,

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 30.12.3 failing which the matter shall be referred to the Dispute Resolution Procedure.

30.12.4 The Service Provider shall not be entitled to any payment which would not otherwise have been due under this Agreement but for the provisions referred to in this clause 30.12 (Authority Cause) to the extent that the Service Provider is or should be able to recover under any policy of insurance required to be maintained under the provisions referred in clause 50 (Insurance) (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act of omission of the Service Provider, Service Provider Related Parties or any person on the Service Provider's behalf, including non-disclosure or under insurance) or any other policy of insurance which the Service Provider maintained.

Part 7 – Intellectual Property Rights and Data

31 IPR Indemnity

31.1 Subject to clause 31.3, the Service Provider shall, at all times during and after the Contract Period, indemnify and keep indemnified the Authority against all IPR Claims and IPR Liability arising from the provision of the Services by the Service Provider or the Authority's use and enjoyment of the Services (including without limitation the Authority's use and enjoyment of the Software) except to the extent that an IPR Claim is caused by:

31.1.1 any use by or on behalf of the Authority of the Software in combination with any item not supplied or approved by the Service Provider;

31.1.2 any use by or on behalf of the Authority of the Software in a manner that is:

(a) not reasonably to be inferred from the Output Specifications or the requirements of the relevant materials to be provided pursuant to the terms of this Agreement; or

(b) inconsistent with the licence terms and conditions in relation to such use and enjoyment;

31.1.3 any modification or update carried out by or on behalf of the Authority to any Software or other item supplied by the Service Provider under this Agreement, if such modification or update is not authorised by the Service Provider.

31.2 During the Transition Period, the Authority shall provide reasonable assistance to facilitate the Service Provider obtaining a licence on reasonable commercial terms to use such Third Party Software as the Service Provider may require for the purpose of providing the Services to the Authority or otherwise complying with the terms of this Agreement.

31.3 Clause 31.1 shall not apply in relation to any IPR Claim arising from:

- 31.3.1 the Authority's use and enjoyment of the Third Party Software until whichever is the earlier of:
 - (a) the Service Transfer Date; or
 - (b) the date on which the Service Provider obtains a licence to use the Third Party Software that is the subject of the IPR Claim;
- 31.3.2 the Authority's use and enjoyment of the Software prior to the Agreement Date.
- 31.4 Subject to clause 31.5, the Authority shall, at all times during and after the Contract Period, indemnify and keep indemnified the Service Provider against all IPR Claims and IPR Liability arising from the Service Provider's use of the Authority Background IPR, the Authority Software and/or the Third Party Software except to the extent that an IPR Claim is caused by:
 - 31.4.1 any use by or on behalf of the Service Provider of the Authority Software and/or the Third Party Software in combination with any item not supplied or approved by the Authority;
 - 31.4.2 any use by or on behalf of the Service Provider of the Authority Software and/or the Third Party Software in a manner that is:
 - (a) not reasonably to be inferred from the Output Specifications or the requirements of the relevant materials to be provided pursuant to the terms of this Agreement; or
 - (b) inconsistent with any licence terms and conditions in relation to such use; or
 - 31.4.3 any modification or update carried out by or on behalf of the Service Provider to the Authority Software and/or the Third Party Software, if such modification or update is not authorised by the Authority.
- 31.5 Clause 31.4 shall not apply in relation to any IPR Claim arising from the Service Provider's use of the Third Party Software after whichever is the earlier of:
 - 31.5.1 the Service Transfer Date;
 - 31.5.2 the date on which the Service Provider obtains a licence to use the Third Party Software that is the subject of the IPR Claim; or
 - 31.5.3 the date of notification from the Authority that the Service Provider should cease using the Third Party Software that is the subject of the IPR claim.
- 31.6 Either party shall promptly notify the other when it becomes aware of any IPR Claim being brought or any IPR Liability arising.
- 31.7 Any IPR Claim brought shall be managed by the Service Provider (where the indemnity set out in Clause 31.1 applies) or by the Authority (where the indemnity set out in Clause 31.4 applies) at its own expense. Where clause 31.1 applies, the Service Provider shall take such action as may be necessary to minimise the impact of any IPR Claim on the Authority and on the delivery of the Services pending the outcome of the IPR Claim.

Where clause 31.4 applies, the Authority shall take such action as may be necessary to minimise the impact of any IPR Claim on the Service Provider.

- 31.8 The Authority shall, at the request of the Service Provider, assist the Service Provider in the management of any IPR Claim arisen pursuant to the indemnity at Clause 31.1 and where the Authority does so assist the Service Provider shall indemnify and reimburse the Authority for any costs and expenses incurred in doing so. The Service Provider shall, at the request of the Authority, assist the Service Provider in the management of any IPR Claim arisen pursuant to the indemnity at Clause 31.4 and where the Service Provider does so assist the Authority shall indemnify and reimburse the Service Provider for any costs and expenses incurred in doing so.
- 31.9 The Authority shall not make any admissions which could be prejudicial to the defence or settlement of the IPR Claim (or which could increase the IPR Liability) in respect of the indemnity set out in Clause 31.1 without obtaining the prior written permission of the Service Provider, such permission not to be unreasonably withheld or delayed. The Service Provider shall not make any admissions which could be prejudicial to the defence or settlement of the IPR Claim (or could increase the IPR Liability) in respect of the indemnity set out in Clause 31.4 without obtaining the prior written permission of the Authority, such permission not to be unreasonably withheld or delayed.
- 31.10 If an IPR Claim is made in respect of the indemnity at Clause 31.1, or the Service Provider anticipates that an IPR Claim might be made in respect of the indemnity at Clause 31.1, the Service Provider may, at its own expense and sole option, either:
- 31.10.1 procure for the Authority the right to continue using the Software, item or material, or the part of the Software, item or material, which is the subject of the IPR Claim (the **Service Provider Claim Subject**); or
- 31.10.2 replace or modify, or procure the replacement or modification of, such Service Provider Claim Subject, item or material, provided that:
- (a) the performance and functionality of the replaced or modified Service Provider Claim Subject is at least equivalent to the performance and functionality of the original Service Provider Claim Subject;
 - (b) the replaced or modified Service Provider Claim Subject 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 Service Provider Claim Subject.
- 31.11 If an IPR Claim is made in respect of the indemnity at Clause 31.4, or the Authority anticipates that an IPR Claim might be made in respect of the indemnity at Clause 31.4, the Authority may, at its own expense and sole option, either:
- 31.11.1 procure for the Service Provider the right to continue using the part of the Authority Background IPR, Authority Software and/or Third Party Software, item or material which is subject to the IPR Claim (the **Authority Claim Subject**); or

31.11.2 replace or modify, or procure the replacement or modification of, such Authority Claim Subject, provided that:

- (a) the performance and functionality of the replaced or modified Authority Claim Subject is at least equivalent to the performance and functionality of the original Authority Claim Subject;
- (b) the replaced or modified Authority Claim Subject does not have an adverse effect on any other Services;
- (c) there is no additional cost to the Service Provider; and
- (d) the terms of this Agreement shall apply to the replaced or modified Authority Claim Subject.

31.12 If the Service Provider elects to modify or replace a Service Provider Claim Subject pursuant to clause 31.10.2 or to procure a licence in accordance with clause 31.10.1, but this has not avoided or resolved the IPR Claim, then, without prejudice to the indemnity set out in clause 31.1 the Service Provider shall be liable for all reasonable and unavoidable costs of the substitute Service Provider Claim Subject and/or services including the additional costs in implementing and maintaining the substitute Service Provider Claim Subject.

31.13 If the Authority elects to modify or replace an Authority Claim Subject pursuant to clause 31.11.2 or to procure a licence in accordance with clause 31.11.1, but this has not avoided or resolved the IPR Claim, then, without prejudice to the indemnity set out in clause 31.4, the Authority shall be liable for all reasonable and unavoidable costs of the substitute Authority Claim Subject and/or services including the additional costs in implementing and maintaining the substitute Authority Claim Subjects.

32 **Ownership of Intellectual Property Rights**

32.1 For the avoidance of doubt, except as expressly set out in this Agreement:

32.1.1 the Authority shall not acquire any right, title or interest in or to:

- (a) the IPRs subsisting in:
 - i the Service Provider Software; or
 - ii the Third Party Software,
- (b) the Service Provider Background IPRs.

32.1.2 the Service Provider shall not acquire any right, title or interest in or to any Intellectual Property Rights of the Authority and/or its licensors, including but not limited to:

- (a) the IPRs subsisting in;
 - i the Authority Software;
 - ii the Specially Written Software;

- iii the Authority Data;
 - iv the Documentation and the Database; and
 - v the Authority's know-how and trade secrets (including processes and procedures);
- (b) the Authority Background IPRs; and
 - (c) the Project Specific IPRs.

32.2 Where either party acquires, by operation of law, title to IPRs of the other referred to in clause 32.1 and this acquisition is inconsistent with the allocation of title set out in clause 32.1, such IPRs shall be assigned by it to the other party on the request of the other party, whenever that request is made.

33 **Grant of licences**

33.1 The Service Provider hereby grants to the Authority, or shall procure the direct grant to the Authority of, a licence to use the Service Provider Software and the Third Party Software set out in Part 1 and Part 2 of Schedule 11 (Software) respectively on terms no less favourable than the Standard Licence Terms. If the Service Provider cannot obtain for the Authority a licence from the owner or licensor of the Third Party Software on terms no less favourable than 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 Third Party Software.

33.2 Following expiry or termination of the Agreement (other than in the event of breach by the Service Provider pursuant to clauses 41 (Persistent Breach and Service Provider Default Capable of Remedy), 42 (Termination on Service Provider Default Incapable of Remedy) and 45 (Termination on Corrupt Gifts and Fraud)) the Service Provider shall grant to the Authority and, if requested by the Authority, to the Future Service Provider, a licence to use the Service Provider Software and the Service Provider Background IPR to the extent necessary to receive or provide services similar to the Services upon terms no less favourable than the Standard Licence Terms, subject to the Future Service Provider entering into reasonable confidentiality undertakings with the Service Provider no more onerous than that set out in Schedule 37 (Form of Confidentiality Undertaking).

33.3 Following expiry or termination of the Agreement in the event of breach by the Service Provider pursuant to clauses 41 (Persistent Breach and Service Provider Default Capable of Remedy), 42 (Termination on Service Provider Default Incapable of Remedy) and 45 (Termination on Corrupt Gifts and Fraud), the Service Provider shall grant the Authority or Future Service Provider a licence to use the Service Provider Software on terms no less favourable than the Enhanced Licence Terms, subject to the Future Service Provider entering into reasonable confidentiality undertakings with the Service Provider no more onerous than that set out in Schedule 37 (Form of Confidentiality Undertaking).

33.4 The Authority hereby grants to the Service Provider a licence on the Standard Licence Terms to use, during the Contract Period:

- 33.4.1 the Authority Software and the Specially Written Software;

- 33.4.2 the Authority Data;
- 33.4.3 the Documentation and the Database; and
- 33.4.4 the Authority's know-how and trade secrets (including processes and procedures).
- 33.5 The Service Provider shall not have any right to use the Authority's names, logos or trade marks on any of its products or services without the Authority's prior written consent.
- 33.6 In using any of the items referred to in clause 33.4, the Service Provider shall comply with all reasonable guidelines issued by the Authority and shall in its use of such items not do anything or refrain from doing anything which would bring the Authority into disrepute or be materially adverse to the interests of the Authority.
- 33.7 In the event of the termination or expiry of this agreement, the licences referred to in clause 33.1 and clause 33.4, and any licence granted in respect of those IPRs set out at clause 33.5, shall terminate automatically and the Service Provider shall deliver to the Authority all material licensed to the Service Provider pursuant to clause 33.1, clause 33.4 or clause 33.5 in its possession or control.
- 33.8 The Service Provider shall, at the request of the Authority and in any event on termination or expiry of this Agreement, deliver to the Authority the Specially Written Software and its related Source Material in source code and object code forms and shall provide updates of the Source Material including on each new release of the Specially Written Software on media that is reasonably acceptable to the Authority.
- 33.9 Following termination or expiry of this Agreement for whatever reason the Service Provider shall provide such reasonable assistance as the Authority may require in order to facilitate the Authority or the Future Service Provider obtaining a licence on reasonable commercial terms to use such Third Party Software as the Authority and/or the Future Service Provider may require.
- 34 **Project Specific IPRs**
- 34.1 Subject to clause 34.2, the Service Provider acknowledges that all Project Specific IPRs and materials embodying them shall automatically belong to the Authority to the fullest extent permitted by law. To the extent that they do not vest in the Authority automatically, the Service Provider shall hold them on trust for the Authority and undertake to execute all documents and do all acts both during the Contract Period and after the Termination Date as may, in the Authority's opinion, be necessary to vest the Project Specific IPRs in the Authority.
- 34.2 In the case of the Service Provider Background IPRs and the Third Party Background IPRs that are embedded in or which form an integral part of the Project Specific IPRs, including the Database, the Service Provider hereby grants to the Authority and shall procure that any relevant owner of Third Party Background IPRs shall grant to the Authority a licence to use such IPRs on terms no less favourable than the Standard Licence Terms.
- 34.3 The Service Provider agrees and undertakes to the Authority:

- 34.3.1 to give the Authority full written details of all works embodying Project Specific IPRs made wholly or partially by the Service Provider at any time during the term of the Agreement promptly on their creation;
 - 34.3.2 at the request of the Authority, and in any event upon termination of the Agreement, to give to the Authority all documents and materials in any form whatever (and all copies or abstracts of them) which record or relate to any of the Project Specific IPRs and their creation, or which may be requisite to enable the Authority to exploit the Project Specific IPRs to its best advantage, which are in the Service Provider's possession, custody or power;
 - 34.3.3 to keep confidential the Project Specific IPRs unless the Authority has provided its prior written consent to their disclosure by the Service Provider; and
 - 34.3.4 not to register or attempt to register any Project Specific IPRs unless requested to do so in writing by the Authority.
- 34.4 The Service Provider hereby irrevocably waives (and shall procure that any third party which produces or contributes to the Project Specific IPRs irrevocably waives) all of its present and future moral rights as may arise under the Copyright Designs and Patents Act 1988 and all similar rights in other jurisdictions relating to any copyright which forms part of the Project Specific IPRs, and the Service Provider agrees not to support, maintain or permit any claim for infringement of moral rights in such copyright works.
- 34.5 The Service Provider agrees and undertakes to the Authority:
- 34.5.1 to execute all documents and do all acts both during and after the term of the Agreement as may, in the opinion of the Authority, be necessary to register the Project Specific IPRs in the name of the Authority and to protect and maintain the Project Specific IPRs; and
 - 34.5.2 to give all necessary assistance to the Authority to enable it to enforce the Project Specific IPRs against third parties, to defend claims for infringement of third party Intellectual Property Rights and to apply for registration of the Project Specific IPRs where appropriate throughout the world and for the full term of those rights.
- 34.6 All rights and obligations under this clause shall continue in force after the Expiry Date or Termination Date in respect of the Project Specific IPRs.

35 **Escrow**

- 35.1 The Service Provider shall, not less than ten (10) Business Days from the creation of the Software or any part thereof (other than Third Party Software in relation to which the Service Provider shall use all reasonable endeavours to adhere to the obligations set out in this clause 35.1), and in any event on every anniversary of this Agreement, deposit in escrow with the Escrow Agent for the benefit of the Authority an up-to-date copy of the Source Material and such other information and/or materials as may be required to enable a reasonably skilled programmer or analyst to maintain, enhance, support and otherwise procure for the Authority the full benefit of the Software (the **Deposited Material**), on the terms and conditions of the Escrow Agent, a copy of which is appended at Part 8 of

Schedule 11 and which shall be executed by the parties and the Escrow Agent within such ten (10) Business Day period.

- 35.2 The Service Provider warrants that the Deposited Material is sufficient to allow a reasonably skilled programmer or analyst to maintain, enhance, support and otherwise procure for the Authority the full benefit of the Software without the help of any other person or reference.
- 35.3 The Service Provider undertakes, through the Contract Period, to keep the Deposited Material fully up-to-date, and to provide and maintain a detailed schedule of the same at Part 5 of Schedule 11 to this Agreement.
- 35.4 The Service Provider shall pay the initial storage fees under the escrow agreement and the Authority shall pay the release fees.
- 35.5 Notwithstanding the terms set out in the agreement between the Service Provider and the Escrow Agent, the Authority shall obtain the release of the Deposited Material from escrow upon a termination of this Agreement for breach by the Service Provider in accordance with clauses 41 (Persistent Breach and Service Provider Default Capable of Remedy), 42 (Termination on Service Provider Default Incapable of Remedy) and 45 (Termination on Corrupt Gifts and Fraud), the Service Provider grants to the Authority a licence to use such Deposited Material in the terms set out at Part 6 of Schedule 11.

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

36.1 **General**

- 36.1.1 Without prejudice to the specific requirements noted in this clause 36, 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.
- 36.1.2 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 the Contract Manager (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.
- 36.1.3 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 (4) 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 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 the timescales required by the Authority); and
 - iv providing the Authority with any reasonable information 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.

36.1.4 All Staff and temporary employees 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.

36.1.5 Without prejudice to the Service Provider's general obligations to provide data and information to the Authority on request, the Authority shall be entitled to request, and the Service Provider shall within a reasonable time provide to the Authority (subject to the DPA), employment and relevant personal information in relation to the Service Provider's Staff or temporary employees or any Sub-Contractor's employees (temporary or otherwise) or Service Users for the purposes of anti-fraud measures such as data matching. The Service Provider shall ensure that it takes any measures necessary pursuant to the DPA and any other relevant Legislation to facilitate such disclosure lawfully and fairly.

36.2 **No Disclosure**

36.2.1 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 36.2.1(a) (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 36.2.1 (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 36.2.1(b) (No Disclosure) immediately upon becoming aware of such a requirement.

36.2.2 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 36.2 (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.

36.3 **Data Protection Sub-contracting**

36.3.1 The Service Provider shall not sub-contract any of its rights or obligations under this clause 36 (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).

36.3.2 Where the Service Provider sub-contracts its obligations in relation to this clause 36 (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.

36.3.3 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.

36.4 **Indemnity**

The Service Provider shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the Authority in respect of any breach of this clause 36 (Data Protection) by the Service Provider and/or any act or omission of any Sub-Contractor.

37 **Authority Data**

37.1 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.

37.2 The Service Provider shall take all necessary 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).

37.3 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 37.2, 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: -

37.3.1 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 38 (Back-Up Copies); or

37.3.2 the Authority may itself restore or procure restoration of such Authority Data using the back-up copy referred to in clause 38 (Back-Up Copies) where the Service Provider has failed to do so pursuant to clause 37.3.1 above, and shall be repaid by the Service Provider any reasonable expenses so incurred.

37.4 The Service Provider shall:

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

37.4.2 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;

- 37.4.3 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
- 37.4.4 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]

- 37.5 The Service Provider shall comply, and shall procure the compliance of the Staff, with the Authority's Information Security Policy and Acceptable Use Policy.
- 37.6 The Authority shall notify the Service Provider of any changes or proposed changes to the Authority's Information Security Policy and Acceptable Use Policy.
- 37.7 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 and Payment Mechanism.
- 37.8 Until and/or unless a change to the Periodic Service Payment is agreed by the Authority pursuant to clause 37.7 the Service Provider shall continue to perform the Services in accordance with its existing obligations.
- 37.9 The Service Provider shall comply with and shall establish and maintain quality management systems which comply with ISO27001 in relation to information security and data in accordance with clause 25.4 (Quality Management Systems).
- 37.10 **Malicious Software**
 - 37.10.1 The Service Provider shall use all 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 all reasonable endeavours to eliminate such virus and mitigate its effect.
 - 37.10.2 The Service Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus software 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.
 - 37.10.3 Notwithstanding clause 37.10.1 and 37.10.2, 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.

- 37.10.4 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 37.10.1 shall be borne by the parties as follows:
- (a) by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software, the Specially Written Software, or the Authority Data (whilst the Authority Data was under the control of the Service Provider); and
 - (b) by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Software and Authority Data were under the control of the Authority).
- 37.10.5 In addition to the Service Provider's obligations under clause 36 (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.
- 37.10.6 The Service Provider and the Authority shall agree the depth and breadth of penetration testing of the Service Provider Software, the Third Party Software, the Specially Written Software and the Authority Data and the Service Provider shall on an annual basis undertake such penetration testing of the Service Provider Software, the Third Party Software, the Specially Written Software and the Authority Data on the basis agreed providing a written update to the Authority of the outcome of such testing within ten (10) Business Days of completion.

38 **Back-Up Copies**

- 38.1 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**).
- 38.2 Without prejudice to the obligations set out in clause 38.1, 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 his 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.
- 38.3 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 Policies.

39 Information and Confidentiality

39.1 The parties agree that the provisions of this Agreement shall, subject to clause 39.2, not be treated as Confidential Information and may be disclosed without restriction.

39.2 Clause 39.1 shall not apply to provisions of this Agreement designated as Commercially Sensitive Information and listed in Parts 1 and 2 of Schedule 23 (Commercially Sensitive Information) to this Agreement which shall, subject to clause 39.4, be kept confidential for the periods specified in those Parts 1 and 2 of Schedule 23 (Commercially Sensitive Information).

39.3 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 and agents from making any disclosure to any person of any such Confidential Information.

39.4 Clauses 39.2 and 39.3, shall not apply to:

39.4.1 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;

39.4.2 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 39;

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

39.4.4 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;

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

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

(a) assist bidders (their advisers and lenders and subcontractors), should the Authority decide to re-tender this Agreement; or

- (b) any proposed Future Service 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);
- 39.4.7 any registration or recording of the Consents and property registration required;
- 39.4.8 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;
- 39.4.9 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;
- 39.4.10 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, properly appointed external auditor or insurer on placing or renewing any insurance policies;
 - (d) (without prejudice to the generality of clause 39.4.4) compliance with the FOIA and/or the Environmental Information Regulations; or
 - (e) any Members;
- 39.4.11 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
- 39.4.12 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 (subject to the written agreement of the Service Provider (not to be unreasonably withheld or delayed)) other relevant benchmark clubs.
- 39.5 Where disclosure is permitted under clause 39.4, other than under clauses 39.4.2, 39.4.4, 39.4.5, 39.4.7 and 39.4.10 the party providing the information shall use reasonable endeavours to procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- 39.6 For the purposes of:
 - 39.6.1 the examination and certification of the Authority's accounts;

- 39.6.2 the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts); and
- 39.6.3 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 or any auditor appointed by the Authority pursuant to Legislation or in accordance with best practice prevailing from time to time in the public sector) 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.

- 39.7 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.
- 39.8 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.
- 39.9 The parties acknowledge that the Audit Commission (or other relevant body or any auditor appointed by the Authority pursuant to Legislation or in accordance with best practice prevailing from time to time in the public sector) has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.

39.10 Information Sharing

39.10.1 Where the Service Provider is required to share Confidential Information in relation to the Services with a third party, the Service Provider shall ensure such third party enters into an Information Sharing Agreement, the form of which is set out in Schedule 17 (Information Sharing Agreement).

39.10.2 The Service Provider shall:

- (a) keep a register of all Information Sharing Agreements entered into during the Contract Period, and provide such register to the Authority within two (2) Business Days of request;
- (b) review all Information Sharing Agreements on at least an annual basis to ensure that they remain necessary in the context of their original purpose;
- (c) comply with the requirements of the Information Sharing Agreement; and
- (d) provide to the Authority a copy of any Information Sharing Agreement entered into by the Service Provider within five (5) Business Days of request.

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

- 40.1 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 40 (Freedom of Information).
- 40.2 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:
- 40.2.1 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 text arguments; and
- 40.2.2 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.
- 40.3 The Authority shall consult as soon as practicable with the Service Provider but 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.
- 40.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 40.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 39) 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 Partnership or the Services:
- 40.5.1 in certain circumstances without consulting with the Service Provider; or
- 40.5.2 following consultation with the Service Provider and having taken its views into account.
- 40.6 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 shall permit the Authority to inspect and obtain without charge such Information as requested from time to time.

- 40.7 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.
- 40.8 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 40.3.
- 40.9 In the event of a request from the Authority pursuant to clause 40.2 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 five (5) 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.
- 40.10 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 Part 1 of Schedule 23 (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 changes to the Agreement, to the general public.
- 40.11 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:
- 40.11.1 the Service Provider's full name;
 - 40.11.2 the Service Provider's registered number (as a company or charity);
 - 40.11.3 the Agreement identification number;
 - 40.11.4 the date of payment;
 - 40.11.5 the net amount paid to the Service Provider;
 - 40.11.6 the transaction number; and

40.11.7 a description of the nature of the transaction.

Part 8 – Termination and Compensation

41 Persistent Breach and Service Provider Default Capable of Remedy

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

41.2 Persistent Breach

41.2.1 If a particular breach during the Contract Period has continued for more than ten (10) days, or occurred more than three (3) times in any three (3) month period, or occurred more than twenty (20) times during the Contract Period, or in relation to any other periodic default has occurred more than three (3) times during the Contract 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.

41.2.2 If, following service of a formal warning notice the breach specified has continued 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 formal warning notice served within the six (6) 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, or (in the case of a breach that has occurred more than twenty (20) times during the Contract Period) occurs five (5) or more times during the remainder of the Contract Period or in relation to any other periodic default, such periodic default occurs more than three (3) times during the remainder of the Contract Period, this Agreement may be terminated.

41.3 Service Provider Default

41.3.1 Subject to clauses 41 (Persistent Breach and Service Provider Default Capable of Remedy) and 42 (Termination on Service Provider Default Incapable of Remedy) the Authority shall be entitled to terminate this Agreement by notice in writing to the Service Provider if a Service Provider Default has occurred.

- 41.3.2 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 Termination Notice on the Service Provider.

41.4 **Remedy Notice**

- 41.4.1 If a Service Provider Default falling within limbs (a), (d), (e), (l), (n) (o), (p), (q) or (s) 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 and subsequently implements the same within forty (40) Business Days of receipt of the Remedy Notice (or such longer period agreed to by the Authority in writing); 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 41.3 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.

- 41.4.2 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 or breach having been rectified occurs again at any time within a three (3) month period of receipt of the Remedy Notice,

then the Authority shall be entitled to:

- A take Required Action in accordance with clause 21 (Authority Step-In) including applying deductions to the Periodic Service Payment of its costs of operation in taking the Required Action in accordance with clause 21.5.1(b); and/or
- B serve a Final Warning Notice in accordance with clause 41.4.3.

41.4.3 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 41.2; 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.

41.4.4 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.

41.4.5 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.

41.4.6 The Service Provider shall co-operate with the Authority in respect of any Authority action pursuant to this clause 41 including providing information and giving access to the Service Provider's personnel or Staff and access to the premises from which the Services are being performed.

41.4.7 Any Disputes arising as out of this clause 41 shall be referred to the Dispute Resolution Procedure.

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

41.5.1 If a Service Provider Default falling within limb (c) of that definition has arisen due to an Insolvency Event affecting a Key Sub-Contractor, 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 53 (Assignment and Sub-Contract) of this Agreement.

41.5.2 If the Service Provider replaces the Key Sub-Contractor by providing the relevant part of the Services itself or through the appointment of a replacement Key Sub-Contractor in accordance with clause 53 (Assignment and Sub-Contract) of this Agreement within ninety (90) Business Days after the date the Service Provider receives the Key Sub-Contractor Insolvency Remedy Notice, the Key Sub-Contractor Insolvency Remedy Notice will be deemed to be revoked and this Agreement will continue.

41.5.3 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 53 (Assignment and Sub-Contract) of this Agreement, the Authority may then terminate the relevant part of this Agreement 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.

41.6 The provisions of Part 2 of Schedule 27 (Compensation on Termination) shall apply in respect of payments to or from the Service Provider in relation to termination under this clause 41 (Persistent Breach and Service Provider Default Capable of Remedy).

42 **Termination on Service Provider Default Incapable of Remedy**

42.1 If a Service Provider Default has occurred falling within:

42.1.1 limbs (b), (c) (provided that where such Insolvency Event relates to a Key Sub-Contractor the provisions of clause 41.5 have been fulfilled), (f), (g), (h), (i), (j), (k), (m) or (r) of the definition of Service Provider Default; or

42.1.2 limbs (a), (d), (e), (l), (n), (o), (p), (q) or (s) 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 **Termination Notice**) and such 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 Termination Notice.

42.2 This Agreement will terminate on the date falling forty (40) Business Days after the date the Service Provider receives a Termination Notice.

42.3 The provisions of Part 2 of Schedule 27 (Compensation on Termination) shall apply in respect of payments to or from the Service Provider in relation to termination under this clause 42.

43 **Termination by Break Point Options**

43.1 **Termination on the Authority's Break Option**

43.1.1 The Authority may terminate this Agreement at any time before the Expiry Date by complying with its obligations under clauses 43.1.2 to 43.1.5 below.

43.1.2 If the Authority wishes to terminate this Agreement under this clause 43.1, 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 43.1 (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 six (6) months after the date of receipt of the notice; and
- (c) whether the Authority has chosen to exercise its option under clause 43.1.3 below.

43.1.3 On termination, the Authority shall have the option to require the Service Provider to transfer its right, title and interest in and to the Service Provider Exclusive Assets and Service Provider Traded Services Assets to the Authority or as directed by the Authority and undertake such activities as set out in clause 5 (Assets and Equipment).

43.1.4 This Agreement or any part of it will terminate on the date specified in the notice referred to in clause 43.1.2.

43.1.5 The provisions of Part 1 of Schedule 27 (Compensation on Termination) shall apply in respect of payments due to the Service Provider in relation to termination under this clause 43.1 (Termination under the Authority's Break Option).

44 **Termination on Authority Default**

44.1 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.

44.2 The Service Provider Termination Notice must specify the type of Authority Default which has occurred entitling the Service Provider to terminate.

44.3 This Agreement will terminate on the day falling twenty (20) Business Days after the date the Authority receives the Service Provider Termination Notice, unless the Authority rectifies the Authority Default within ten (10) Business Days of receipt of the Service Provider Termination Notice or such other period agreed by the parties.

44.4 The provisions of Part 1 of Schedule 27 (Compensation on Termination) shall apply in respect of payments due to the Service Provider in relation to termination under this clause 44 (Termination for Authority Default).

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

45.1 **Prevention of Fraud and Bribery**

45.1.1 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.

45.1.2 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.

45.1.3 If the Service Provider or its Staff commits Fraud (save for Fraud committed by Transferring Employees prior to the Service Transfer Date) in relation to this or any other contract with the Authority, the Authority may:

- (a) terminate this Agreement and recover from the Service Provider the amount of any loss 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; or
- (b) recover in full from the Service Provider any other loss sustained by the Authority in consequence of any breach of this clause.

45.1.4 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 and the Authority having consented to the same in writing.

45.1.5 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 twenty (20) Business Days of the Agreement Date, and annually thereafter, certify to the Authority in writing (such certification to be

signed by the Service Provider's Representative) compliance with clause 45 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.

- 45.1.6 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.
- 45.1.7 If any breach of clause 45.1.4 is suspected or known, the Service Provider must notify the Authority immediately.
- 45.1.8 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 45.1.4 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 six (6) years following the expiry or termination of this Agreement.
- 45.1.9 The Authority may terminate this Agreement by written notice with immediate effect if the Service Provider or Service Provider Related Party or any of its agents or shareholders breaches clause 45.1.4.
- 45.1.10 Any notice of termination under clause 45.1.9 must specify:
 - (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate.
- 45.1.11 Any dispute shall be determined in accordance with the procedure for the resolution of Disputes set out in clause 49 (Dispute Resolution).
- 45.1.12 The provisions of Part 2 of Schedule 27 (Compensation on Termination) shall apply in respect of payments to or from the Service Provider in relation to termination under this clause 45 (Termination on Corrupt Gifts and Fraud).

46 Partial Termination

46.1 Termination of Part

- 46.1.1 Where the Authority serves a termination notice under this Agreement (including under clauses 22 (Relief Events), 23 (Force Majeure), 41 (Persistent Breach and Service Provider Default Capable of Remedy), 42 (Termination on Service Provider Default Capable of Remedy), 43.1 (Termination by Break Point Options) or 45 (Termination on Corrupt Gifts and Fraud) and 54.3 (Replacement of a Sub-Contractor)) 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 and with immediate effect 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 for such Partial Termination Services as set out in Schedule 27 (Compensation on Termination) as relates to the Authority's reason for the partial termination stated in the Partial Termination Notice; and
- (c) unless the Service Provider elects to terminate the remainder of the Agreement in accordance with clause 46.2 (Termination of Remaining Services) below, the provisions of clauses 47 (Consequences of Termination and Expiry) and 48 (Exit Arrangements) shall apply mutatis mutandis to such Partial Termination Services and with effect from such termination the Periodic Service Payment shall be apportioned by the component amount of the Periodic Service Payment relating to the Partial Termination Services.

46.1.2 In agreeing the apportionment of the Periodic Service Payment for the remainder of the Services not subject to the Partial Termination Notice in accordance with clause 46.1.1(c), the Service Provider shall demonstrate to the reasonable satisfaction of the Authority:

- (a) elements of the Periodic Service Payment which comprise fixed costs which will not automatically reduce on a pro rata basis;
- (b) the apportionment of the Periodic Service Payment for the remainder of the Services has been calculated on the same basis and on the same accounting principles applied when deriving the Financial Model;
- (c) that in carrying out such apportionment pursuant to clause 46.1.2 (b), the Service Provider's Profit Element shall not increase or be reduced by such apportionment; and
- (d) in carrying out the said apportionment, the Service Provider shall seek to proactively reduce the cost impact of recalibration of the Periodic Service Payment to the Authority due to the Partial Termination Notice.

46.2 Termination of Remaining Services

46.2.1 Without prejudice to any other termination rights the Service Provider may have under this Agreement or at law, 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 Partial Termination Services 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 relevant Service Performance Levels and Key Performance Indicators or it would otherwise be uneconomic; or
- (b) the aggregate value of the Partial Termination Notice (as applicable) is equivalent to eighty per cent (80)% or more of the value of the Periodic Service Payment payable by the Authority (less any Service Credits) to the Service Provider in the previous Contract Year or, in the case of a Partial Termination Notice served in the first Contract Year, the value of the aggregate of the Periodic Service Payments paid or payable in the first Contract Year;

46.2.2 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 the appropriate termination payment set out in Schedule 27 (Compensation on Termination) as relates to the Authority's reason for partial termination pursuant to clause 46.1.1 (Termination of Part) and as stated in the Partial Termination Notice.

47 Consequences of Termination and Expiry

47.1 The provisions of Schedule 27 (Compensation on Termination) shall apply in respect of sums payable to or due from the Service Provider upon termination of this Agreement.

47.2 Accrued Rights

47.2.1 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 76 (Continuing Obligations).

47.2.2 Subject to clause 28.7 (Retention), 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.

47.3 Transfers upon Expiry or Termination

47.3.1 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 all documents (or complete and maintain 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.

47.3.2 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 but no more than on one (1) occasion in any Contract Year; 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 but not limited to information (subject to the DPA) referred to in Schedule 33 (TUPE Information for Retendering) in relation to 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 Authority Assets) and the Service Provider warrants that at the point when given and, to the best of its knowledge and belief, such information is accurate in all material respects.

47.3.3 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 or novate to the Authority or any person nominated by the Authority the benefit of all and any of the Transferring Contracts in accordance with clause 7.3 (Contracts upon Expiry/Termination); 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 licence for the Intellectual Property Rights in the Assets 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 32 (Ownership of Intellectual Property Rights),

and the Service Provider hereby irrevocably and unconditionally appoints the Authority as the Service Provider's lawful attorney (and to the complete exclusion of any rights that the Service Provider may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this clause 47.3.3 (Assignment of Rights, etc) as the attorney may think fit.

47.3.4 **Transfer of Assets**

On termination or expiry of this Agreement, the provisions of clause 5.3.16 (Assets and Equipment) shall apply in relation to the transfer or otherwise of the Assets and/or Authority Assets.

47.3.5 **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 a reasonable period thereafter (which shall in any case be no more than eighteen (18) months following the Termination Date and subject to payment in accordance with clause 47.3.6 below) 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 the Future Service Provider of such services the same or similar to the Services, and for the purposes of this clause 47.3.5 the meaning of the term "**co-operate**" shall include:

- (a) liaising with the Authority and/or the Future Service Provider, and providing all necessary assistance and advice concerning the Services and their transfer to the Authority or to such Future Service Provider;
- (b) allowing any Future Service Provider access (at reasonable times and on reasonable notice) to the Service Provider's Premises but not so as to interfere with or impede the provision of the Services and subject to the Future Service Provider:
 - i complying with any relevant Service Provider policies relating to the Service Provider's Premises including health and safety and security policies provided to the Future Service Provider in advance by the Service Provider; and
 - ii entering into a confidentiality undertaking substantially in the form as set out in Schedule 37 (Form of Confidentiality Undertaking);
- (c) providing to the Authority and/or to the Future Service Provider (subject to the Future Service Provider entering into a confidentiality undertaking

substantially in the form as set out in Schedule 37 (Form of Confidentiality Undertaking) all and any information concerning the Service Provider's Premises and the Services which is reasonably required for the efficient transfer of responsibility for performance of the Partnership and Services.

- 47.3.6 Where the Service Provider co-operates with the Authority or Future Service Provider with regard to the transfer of the Services for a period of up to eighteen (18) months after the Termination Date in accordance with clause 47.3.5 (Duty to Co-operate), the Service Provider shall be entitled to receive payment on a time and materials basis by reference to the rates set out in appendix (9) (Day Rates) of Schedule 4 (Payment and Performance Mechanism).

47.3.7 Retendering the Service on Expiry

On or before a date falling no later than twelve (12) 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.

- 47.3.8 If the Authority wishes to retender the provision of the Services then:

- (a) the Service Provider shall undertake all necessary acts (including entering into any contracts) to ensure that the Future Service Provider (or contractors) obtains all of the Service Provider's rights, title and interest in and to the Service Provider Exclusive Assets and Service Provider Traded Service Assets (or such part of the Service Provider Exclusive Assets and Service Provider Traded Service Assets as may be required by the Authority (or a Future Service Provider)) with effect on and from the Expiry Date or Termination Date; and
- (b) subject to paragraph 1 of Part 2 of Schedule 27 (Compensation on Termination), the Authority will bear all costs of any retendering of the Contract on expiry.

- 47.3.9 If the Authority does not wish to retender the Services then the Authority will indicate which Service Provider Exclusive Assets and Service Provider Traded Service Assets (or part of the Assets) shall transfer to the Authority on the Expiry Date or Termination Date in accordance with clause 5 (Assets and Equipment) and the Service Provider shall promptly undertake all necessary actions by the Expiry Date or Termination Date (as the case may be) including any further actions required pursuant to clause 5 (Assets and Equipment).

47.3.10 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 Future Service Provider 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.

47.4 Surveys on Expiry or Termination

47.4.1 Final Survey

- (a) twelve (12) months prior to the Expiry Date or during any period leading up to the Termination 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 and Authority Assets to assess whether they have been and are being maintained by the Service Provider in accordance with its obligations under clause 6.1 (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.

47.4.2 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.

47.4.3 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 6.1 (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 and Authority Assets to the standard it would have been in if the Service Provider had complied or was complying with its obligations under clause 6.1 (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.

47.4.4 Maintenance Work

The Service Provider shall carry out such rectification and/or maintenance work notified pursuant to clause 47.4.3(a) (the **Outstanding Work**) in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Works shall be at its own expense.

47.4.5 **Retention Fund**

If the Service Provider has been notified under clause 47.4.3 (Results of Survey) that rectification and/or maintenance work is required, twelve (12) months prior to the Expiry Date or in the period prior to the Termination 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 47.4.1 (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 47.4.6 (Costs)).

47.4.6 **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.

47.4.7 **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 47.4.3(b) (Results of Survey), 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.

47.4.8 **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.

48 **Exit Arrangements**

48.1 The Authority and the Service Provider shall comply with the exit arrangements set out in Schedule 18 (Exit Arrangements) and any current Exit Plan. Notwithstanding any other provision of this Agreement the Authority shall have the rights set out in clause 48.2:

48.1.1 if an Insolvency Event occurs, the Authority's rights under clause 48.2 shall be exercisable by the Authority at any time before the winding up of the Service Provider, the Guarantor, Holdco 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;

48.1.2 in the event of termination of this Agreement for any reason; and/or

48.1.3 upon the expiry of this Agreement.

48.2 The Service Provider shall not, without the Authority's written consent, encumber any Assets or Authority Assets in any way which would require the consent of a third party to the exercise by the Authority of its rights under Schedule 18 (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 48.2 "**encumber**" does not include any leasing agreement but 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 or Authority Assets.

48.3 Unless the Authority otherwise requires, during the time between service of a Termination Notice until the Termination Date in whole or in part and such termination taking effect, the Service Provider shall take all 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:

48.3.1 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 possible;

48.3.2 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;

48.3.3 subject to clause 15.8.3, 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

- 48.3.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in clauses 48.3.1 to 48.3.3 (inclusive).
- 48.4 If the Service Provider does not fulfil its obligations in accordance with clause 48.3, the Authority shall not pay any sums in excess of those which the Authority would have paid had such action been taken.
- 48.5 In the event of the Agreement terminating pursuant its terms the Service Provider shall comply with its exit obligations as set out in Schedule 18 (Exit) provided that in complying with this clause 48.5, such compliance by the Service Provider would not result in a contravention of any applicable Law, regulation or Legislation whereby the parties will agree in good faith alternative timescales for the achievement of the Service Provider's exit obligations the subject of such potential contravention.

Part 9 – General Provisions

49 Dispute Resolution

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

50 Insurance [*Authority Policy Clause*]

50.1 Requirement to Maintain

50.1.1 Without prejudice to its liability to indemnify the Authority under clause 30 (Indemnities and Liability) the Service Provider shall take out and maintain in force or procure the taking out and maintenance of the Required Insurances and any other insurances as may be required by law in accordance with the provisions of the Agreement. The insurances shall be effective in each case no later than the date on which the relevant risk commences.

50.1.2 The Required Insurances referred to in clause 50.1.1 shall amount to

- (a) fifty million pounds (£50,000,000) in respect of Public Liability cover in respect of any one occurrence maintained on a claims occurring basis;
- (b) ten million pounds (£10,000,000) in respect of Employer's Liability cover in respect of any one occurrence maintained on a claims occurring basis;
- (c) ten million pounds (£10,000,000) in respect of Professional Indemnity cover in respect of any one occurrence and in annual aggregate;
- (d) ten million pounds (£10,000,000) in respect of fidelity cover in respect of any one occurrence on a claims occurring basis.

50.1.3 The Authority may review the minimum indemnity limits specified for the Required Insurances in clause 50.1.2 on an annual basis. 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.

50.2 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.

50.3 Nature of the Insurance

With the exception of any insurances required by law, the Required Insurances shall:

- 50.3.1 for Public Liability and Employers Liability, contain a clause waiving the insurer's subrogation rights against the Authority, its employees and agents;
- 50.3.2 contain an indemnity to principals provision;
- 50.3.3 provide for thirty (30) Business Days' prior written notice of their cancellation, non-renewal or amendment to be given to the Authority;
- 50.3.4 for Professional Indemnity cover such insurance shall be maintained until six (6) years after the Expiry Date or Termination Date whichever is the earlier.

50.4 The Service Provider shall:

- 50.4.1 give the Authority thirty (30) Business Days' prior written notice of the cancellation, non-renewal or amendment of the Required Insurances which could reasonably be anticipated to have a material adverse effect upon the Authority; and
- 50.4.2 procure that all relevant Sub-Contractors put in place appropriate insurance policies to the value set out in clause 50.1.2 above and monitor (on no less than an annual basis) that such policies remain in place and are valid.

50.5 Evidence of Policies

- 50.5.1 The Service Provider shall provide, on request, to the Authority:
 - (a) documents evidencing all insurance policies relating to the above and any amendments, extensions or variations to all such policies); and
 - (b) evidence that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect.

50.6 Renewal Certificates

Evidence that the Required Insurances are in place shall be forwarded to the Authority as soon as possible but in any event at least five (5) Business Days before the renewal date.

50.7 Breach

If the Service Provider is in breach of clause 50.1 (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.

50.8 Notification of Claims

50.8.1 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.

50.8.2 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 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.

50.9 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.

50.10 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.

51 Deed of Guarantee and Collateral Warranties

51.1 The Service Provider shall procure the execution on or before the Agreement Date and as a condition of this Agreement:

- 51.1.1 a Guarantee by the Guarantor in favour of the Authority substantially in the form annexed at Schedule 6 (Guarantee) to secure the due performance by the Service Provider of its obligations to the Authority;
 - 51.1.2 the Collateral Warranties by the Key Sub-Contractors in favour of the Authority substantially in the form annexed at Schedule 5 (Collateral Warranty) (save where such requirement has been waived in writing by the Authority acting reasonably in the granting of such waiver); and
 - 51.1.3 a guarantee by such person as is in the opinion of the Authority (acting reasonably) of sufficient financial standing to guarantee the Key Sub-Contractor's obligations (the **Key Sub-Contract Guarantor**) in favour of the Service Provider substantially in the form annexed at Schedule 6 (Guarantee) or such other form approved by the Authority to secure due performance by each Key Sub-Contractor of its obligations under a Key Sub-Contract (the **Key Sub-Contract Guarantee**) (save where such requirement has been waived in writing by the Authority);
- 51.2 As at the Agreement Date the Guarantor shall be Capita Plc.
- 51.3 Unless and until otherwise agreed by the parties the forms of Guarantee set out in Schedule 6 (Guarantee) shall be the relevant specified form for the purposes of this Agreement.
- 51.4 Save where such requirement has been waived in writing by the Authority (acting reasonably in the granting of such waiver), the Service Provider shall not engage any new Key Sub-Contractor in connection with the Partnership 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 and Key Sub-Contract Guarantee duly executed as a deed.
- 51.5 **Financial Distress**
- The Service Provider and the Authority agree to comply with their respective obligations and may exercise their respective rights pursuant to Schedule 42 (Financial Distress).
- 52 **Health, Safety and Welfare [Authority Policy Clause]**
- 52.1 The Service Provider shall:
- 52.1.1 take all reasonably practicable steps to 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;
 - 52.1.2 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;
 - 52.1.3 carry out all necessary statutory tests and inspections as required in any way whatsoever to provide the Services, maintain records of such tests and inspections and shall provide the Contract Manager with details on request;

- 52.1.4 employ, or have arrangements for access to, competent health and safety advice and shall notify the Contract Manager of these arrangements. The Service Provider shall also nominate a representative to liaise with the Contract Manager on all health and safety matters;
- 52.1.5 have a written health and safety policy which must be at least equivalent to the Authority's equivalent policy in scope and effectiveness and the Service Provider shall ensure that employees are aware of and comply with this health and safety policy;
- 52.1.6 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;
- 52.1.7 have in place procedures and arrangements for emergencies and notify the Contract Manager of these on request;
- 52.1.8 be responsible for managing and reporting on Sub-contractors, and any changes to those sub-contracts;
- 52.1.9 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;
- 52.1.10 ensure that all equipment is installed, used and maintained to meet statutory requirements, appropriate British, European or International standards and manufacturers' recommendations;
- 52.1.11 ensure that any equipment supplied or loaned to them by the Authority is properly maintained and that users of this equipment are competent in its use;
- 52.1.12 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;
- 52.1.13 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;
- 52.1.14 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;

- 52.1.15 in all instances, the Service Provider shall 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;
- 52.1.16 provide the Contract Manager with an annual report to include the Service Provider's health and safety performance during the preceding twelve (12) months (as contained in the Service Provider's annual accounts) and where there are any recommendations made or performance targets set by the Service Provider's health and safety committee for the subsequent twelve (12) month period, information relating to the same. Such report may also include any further information as agreed between the Service Provider and the Contract Manager; and
- 52.1.17 provide to the Contract Manager upon request such other health and safety performance reports or additional health and safety performance indicators as may be required depending on the nature and level of risk (in the reasonable opinion of the Contract Manager) and/or the Service Provider's previous health and safety performance which is pertinent and relevant to the Service Provider's ability to deliver the Services.

52.2 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.

52.3 The Authority may step-in and suspend the provision of the Services by the Service 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 its health and safety policies and where relevant (in accordance with the provisions of clause 55.4 (Laws, Policies and Related Matters)) the Service Provider Policies in accordance with the provisions of clause 21 (Authority Step-In).

52.4 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.

53 **Assignment and Sub-Contracting**

53.1 **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:

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

- 53.1.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement; or
- 53.1.3 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.

53.2 **Restriction on the Service Provider**

Subject to clause 53.3 (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.

53.3 **Exception**

- 53.3.1 The Service Provider may engage an Approved Sub-Contractor to provide that part of the Services identified in Schedule 36 (Approved Sub-Contractor);
- 53.3.2 Nothing in this Agreement shall prohibit the Service Provider from providing or procuring the provision of the Services from a Third Party Contractor;
- 53.3.3 Nothing in this Agreement shall prohibit the Service Provider from providing or procuring the provision of the Services from a Sub-Contractor:
 - (a) 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
 - (b) 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.
- 53.3.4 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.
- 53.3.5 The Authority shall be entitled to refuse to give consent pursuant to clause 53.3 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 in the opinion of the Authority (acting reasonably) 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 pass down 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 (Monitoring Procedure);
- (e) the proposed new or replacement Key Sub-Contract contains terms materially less advantageous to the Authority than any existing Key Sub-Contract (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; or
- (g) the proposed new or replacement Key Sub-Contractor:
 - i is not subject to provisions equivalent to those set out in Schedule 4 (Payment and Performance Mechanism);
 - ii will not enter into a Collateral Warranty; or
 - iii will not provide a Key Sub-Contractor Guarantee.

54 Sub-contractors

54.1 Service Provider's Obligations

- 54.1.1 The Service Provider shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.
- 54.1.2 The Service Provider shall carry out regular monitoring of the performance of its Sub-Contractors under the relevant Sub-Contract to ensure consistency with the Service Provider's obligations under this Agreement.
- 54.1.3 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.

54.2 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.

54.3 Replacement of a Key Sub-Contractor

54.3.1 The Authority may at its sole discretion require the Service Provider to replace any Key Sub-Contractor where:

- (a) an Insolvency Event occurs in relation to a Key Sub-Contractor;
- (b) the Authority reasonably believes that the performance by the Key Sub-Contractor or the relevant Services is or is likely to cause a Service Provider Default;
- (c) it has a detrimental impact on the Services; or
- (d) the Authority reasonably believes that the Key Sub-Contractor is performing the Services in a way that infringes Legislation or is inconsistent with Good Industry Practice.

54.3.2 If, pursuant to clause 54.3.1 the Authority notifies the Service Provider of the requirement to replace the Key Sub-Contractor, then the Service Provider shall put forward an acceptable proposal for ongoing provision of the affected Services (whether by a replacement of the Key Sub-Contractor or the provision of the affected Services by the Service Provider itself) within ten (10) Business Days after the date the Service Provider receives the written notice from the Authority and shall, if such proposal is acceptable to the Authority, implement such proposal in accordance with its terms (and at no additional cost to the Authority). If the proposal is not acceptable to the Authority, the Authority shall have the right to terminate the Agreement or the relevant part thereof forthwith upon written notice to the Service Provider.

54.3.3 The Service Provider shall indemnify the Authority fully and effectively against all Direct Losses of the Authority associated with or arising from the replacement of the Key Sub-Contractor under this clause 54.3 (Replacement of Key Sub-Contractor).

55 Laws, Policies and Related Matters

55.1 The Service Provider shall comply with all applicable Laws, regulations, Authority Policies and practices in the provision of Services under this Agreement including those relating to health and safety, equal opportunities, the environment, data security and processing policies and the Authority's diversity policy.

55.2 The Service Provider shall have written work rules and policies and enforce the same in order to ensure compliance with the obligations set out in this Agreement, which work

rules and policies must be consistent and aligned with the Authority Policies. If requested by the Authority from time to time, the Service Provider will submit such rules and policies for review by the Authority.

55.3

55.3.1 Nothing in this Agreement will fetter or otherwise influence or affect the ability and discretion of the Authority to amend or vary the Authority Policies from time to time or to create new Authority Policies from time to time, which may affect the provision of the Services;

55.3.2 Where the Authority exercises its right to vary any Authority Policies pursuant to 55.3.1 and where the Service Provider Policies do not apply pursuant to clause 55.4 below or where such variation requires the Service Provider to alter a corresponding Service Provider policy as clause 55.4 does apply, any such variation shall be addressed as a Reprioritisation Change or where the parties agree, in accordance with Schedule 14 (Change Protocol).

55.4 Notwithstanding the provisions of this clause 55 (Law, Policies and Related Matters), the Service Provider shall, in relation to the Authority Policies contained in Schedule 22 (Authority Policies), be entitled to follow the practices and procedures outlined in the corresponding Service Provider Policies, provided that:

- (a) the Service Provider demonstrates to the Authority (and obtains the Authority's written approval) that such Service Provider Policies are of an equivalent or more stringent standard than the corresponding Authority Policies prior to their use;
- (b) the Service Provider notifies the Authority of any material amendments made to the Service Provider Policies from time to time;
- (c) the Service Provider 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 (as updated from time to time); and
- (d) where the Service Provider breaches the relevant Service Provider Policy once it has been approved in accordance with clause 55.4(a), the Authority shall be entitled to take such remedial action pursuant to the Agreement based upon the categorisation of the original Authority Policy to which the corresponding Service Provider Policy relates.

55.5 In acting on behalf of the Authority the Service Provider shall act at all times within the statutory powers of the Authority as a local authority and in accordance with the statutory duties of the Authority in that capacity and will not, through any act or omission of the Service Provider, cause the Authority to act outside of its statutory powers or otherwise than in compliance with its statutory duties as aforesaid nor cause the Authority to commit any act or omission which amounts to maladministration.

55.6 The Service Provider will, without prejudice to the foregoing provisions of this clause 55 (Laws, Policies and Related Matters), provide such co-operation and assistance to the Authority (including the provision of information and documentation) as the Authority may

reasonably require from time to time in order to enable the Authority to satisfy its obligations and duties (both statutory and non-statutory) to any UK governmental or non-governmental department, agency or other body to the extent that, as a result of the transfer to the Service Provider of the responsibility for the provision of the Services (pursuant to this Agreement), the Authority requires such co-operation and assistance in order to satisfy its obligations and duties as aforesaid.

- 55.7 Without prejudice to the obligations set out in clause 45.1 (Prevention of Fraud and Bribery), the Service Provider shall notify the Authority immediately if the Service Provider, its associated companies, any Service Provider Related Party or any of the Staff of any of them become aware at any time of any fraudulent or dishonest activities within the Authority or that the Authority staff, agents or sub-contractors have committed, or are in the process of committing, any act or omission which could be fraudulent, dishonest, ultra vires, constitute an abuse of process, maladministration, negligence or otherwise be contrary to the general principles of good governance.
- 55.8 The Service Provider shall comply with the Public Interest Disclosure Act 1998 as though such Act applies to the Service Provider and shall establish and where necessary update from time to time, a whistle blowing procedure for its Staff encouraging Staff to report to the Service Provider any incidents of malpractice within the Service Provider or the Authority.
- 55.9 As a minimum the whistle blowing procedure shall include the following matters:
- 55.9.1 in this context “malpractice” shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration;
 - 55.9.2 the procedures which should be followed when a person reports an incident of malpractice (the **Discloser**), including details of the person within the Service Provider to whom malpractice is reported (the **Assessor**), the procedure to be followed by the Assessor and protections for the Discloser; and
 - 55.9.3 a right for the Discloser to disclose to the Authority malpractice which is related to the Services, in addition to or instead of the Service Provider.
- 55.10 The Service Provider shall notify the Authority in writing as soon as reasonably practical and in any case no longer than two (2) Business Days if any Staff invoke the whistle blowing procedure and shall provide details of the alleged malpractice. Without prejudice to any other rights and remedies which the Authority may have under this Agreement, the Service Provider shall comply with the Authority’s reasonable requirements in dealing with the alleged malpractice, where such malpractice affects (or is likely to affect) the Authority.
- 55.11 The Service Provider recognises that the Authority is under a duty to act in a manner which is compatible with the convention rights as defined by section 1(1) of the Human Rights Act 1998 (the **Convention Rights**). This duty includes a positive obligation on the Authority to ensure that contractors providing services on the Authority’s behalf act in a way which is compatible with the Convention Rights. The Service Provider therefore agrees to provide the Services and comply with its other obligations under this Agreement in a manner which is compatible with the Convention Rights, having regard to the

Authority's own policies and procedures in relation to compliance with the Convention Rights from time to time.

55.12 The Service Provider shall, both in providing the Services and in all other of its business and commercial activities, seek not to injure or otherwise damage the reputation of Authority (or any institution of the Authority), its members and Officers or other employees of the Authority or any Related Provider.

55.13 Nothing done under or in compliance with this Agreement shall affect the rights or powers of the Authority when exercising a statutory role under or by virtue of any Law or shall relieve the Service Provider from the necessity to obtain such approvals or consents as may from time to time be requisite from the Authority when exercising a statutory role.

56 **Public Relations and Publicity [Authority Policy Clause]**

56.1 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.

56.2 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.

56.3 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 agreed by the parties, the Service Provider shall carry out actions in relation to the Services to support the Authority's communications strategy.

57 **Change of Control**

57.1 No Change of Ownership may occur during the Lock-In Period which would have materially adverse impact on the provision of the Services.

57.2 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.

57.3 The Service Provider represents and warrants and represents to the Authority that at the Agreement Date the legal and beneficial ownership of the Service Provider and HoldCo is as set out in Schedule 6 (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 HoldCo.

57.4 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 and/or HoldCo.

57.5 Any Change of Ownership arising as a consequence of:

57.5.1 the grant or enforcement of security in favour of any lenders over or in relation to any of the shares of the Service Provider or HoldCo 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

57.5.2 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

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

shall be disregarded for the purpose of clauses 57.1, 57.2, 57.3 and 57.4 above.

Where clause 57.5.3 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 57 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.

57.6 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 or receipt of the Authority's request for details of any Change of Ownership.

57.7 The Service Provider's obligations under clauses 57.2 and 57.3 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 enquiry.

58 **Conflicts of Interest**

58.1 **Conflicts of Interest**

58.1.1 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.

58.2 **Conflict of Interest Prevention Arrangements**

58.2.1 Without prejudice to clause 58.1.1, the Service Provider shall:

- (a) put in place and maintain in place internal arrangements (recorded in writing) (acting reasonably) to avoid a Conflict of Interest arising, such arrangements to meet, as a minimum, Good Industry Practice, the requirements of Schedule 31 (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 and Sub-Contractors to ensure:
 - i this Service and the Service Provider's, Affiliates' 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, Affiliate's or Sub-Contractor's business,

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

- 58.2.2 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).
- 58.2.3 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 amendments to such Conflict of Interest Arrangements as requested by the Authority.

58.3 **Conflict of Interest Notification**

- 58.3.1 Upon becoming aware of any potential Conflict of Interest, the Service Provider shall immediately notify the Authority in writing of the same, giving full particulars of its nature and the circumstances (**Conflict Circumstances**) in which it may exist or arises and shall furnish such further information as the Authority may reasonably require. The Authority shall notify the Service Provider if the Authority reasonably believes there is a potential Conflict of Interest.
- 58.3.2 Following notification of the Conflict Circumstances under clause 58.3.1 the Authority confirms a potential conflict of interest has arisen, the Authority shall either:
 - (a) seek to agree with the Service Provider a plan to avoid an actual Conflict of Interest arising in relation to the Conflict Circumstances (an Avoidance Plan). The Service Provider shall implement the Avoidance Plan and notify the Authority once the Avoidance Plan has been implemented;
 - (b) following the implementation of the Avoidance Plan, if the Authority believes there is still a potential Conflict of Interest in relation to the Conflict Circumstances, the Authority may seek to agree a further Avoidance Plan with the Service Provider or may notify the Service Provider what actions it should take to seek to avoid a Conflict of Interest;
 - (c) if the Authority and Service Provider are unable to agree an Avoidance Plan or the Service Provider does not implement the Avoidance Plan, the Service Provider shall refrain from any action or inaction which will result in an actual Conflict of Interest arising and shall comply with any instruction from the Authority relating to the potential Conflict of Interest;

or

 - (a) notify the Service Provider that it does not consider the Conflict Circumstances are likely to give rise to an actual Conflict of Interest. (the Authority may include conditions in this notification or actions the

Service Provider should take to reduce the likelihood of the Conflict Circumstances giving rise to a potential Conflict of Interest).

- (b) the Service Provider shall provide on a weekly basis a report to the Authority regarding the Conflict Circumstances and whether it has completed any conditions or actions notified by the Authority. If following the receipt on such report, the Authority believes there is a potential Conflict of Interest, the Authority may repeat the steps in this clause 58.3.2.

58.3.3 Upon becoming aware of any actual Conflict of Interest or a breach of the Conflict of Interest Arrangements, the Service Provider shall immediately notify the Authority in writing of the same, giving full particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.

58.3.4 The Service Provider shall indemnify the Authority against all Direct Losses and Indirect Losses arising in relation to any potential or actual Conflict of Interest, Adviser Conflict of Interest or breach of the Conflict of Interest Arrangements.

58.4 Professional Advisers

58.4.1 The Service Provider shall include provisions in all contracts with professional advisers engaged to advise in relation to the Services requiring the professional adviser to:

- (a) prioritise the interests of the Authority above the interests of the Service Provider where there is an actual or potential conflict of interest between the Authority and Service Provider (**Adviser Conflict of Interest**);
- (b) immediately notify the Authority and the Service Provider if there is an Adviser Conflict of Interest.

58.4.2 If the Service Provider's professional advisers notify the Authority under clause 58.4.1 or the Authority reasonably believes there is an Adviser Conflict of Interest, the Authority may appoint its own professional advisers in relation to the matter where there is an Adviser Conflict of Interest and notify the Service Provider of the same.

58.4.3 If the Authority notifies the Service Provider that the Authority has appointed its own professional advisers under clause 58.4.2, 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);
 - ii delete from its records any copies of such information; and

- iii cooperate 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 under clause 58.4.2.

59 **Gratuities and Tips**

- 59.1 Subject to the provisions of clause 45 (Corrupt gifts and Fraud), neither the Service Provider or any Service Provider Related Party may in the course of the provision of the Services accept any gifts, gratuities or hospitality in excess of twenty pounds (£20) without the prior written approval of the Contract Manager.
- 59.2 The Service Provider or any Service Provider Related Party must disclose to the Contract Manager any series of gifts gratuities or hospitality in any twelve months from the same person or organisation of less than twenty pounds (£20) each in value, but which are together worth more than twenty pounds (£20).

60 **Local Government Ombudsman**

- 60.1 In the event of an enquiry or investigation being made by the Local Government Ombudsman, the Service Provider shall be required to comply fully with the requirements of the enquiry or investigation and the Service Provider shall free of charge, (and shall procure that any Service Provider Related Party shall):
 - 60.1.1 provide any information reasonably requested by the Authority, as soon as reasonably practicable;
 - 60.1.2 attend any meetings as required and permit any of the Staff to attend;
 - 60.1.3 promptly allow the Authority and/or any person conducting an investigation access to any documents or data deemed by the Authority or the Local Government Ombudsman to be relevant;
 - 60.1.4 allow itself or any of its Staff to appear as witnesses in any ensuing proceedings; and
 - 60.1.5 cooperate fully and promptly in every way reasonably required by the person or body conducting such investigation during the course of that investigation.
 - 60.2 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 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.
- ## 61 **Business Continuity**
- 61.1 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.

- 61.2 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 (6) months before the expiry of this Agreement). Subject to clause 61.3, the Authority may require the Service Provider to conduct additional reviews and tests of the Business Continuity Plan and Exit Plan where the Authority considers it necessary, (acting reasonably) 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.
- 61.3 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.
- 61.4 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 and Service Provider (acting reasonably) consider to be necessary as a result of those review/tests.
- 61.5 During the Contract 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:
- 61.5.1 information relating to its workforce, its pay and terms and conditions of employment (as may be required and specified by the Authority);
 - 61.5.2 such other data and information as is necessary for business continuity purposes.
- 61.6 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 during the Service Period and within six (6) months before the expiry of this Agreement.
- 61.7 Any Disputes arising out of this clause 61 (Business Continuity) 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 61 including the implementation of the Business Continuity Plan and Exit Plan.

62 **Entire Agreement**

62.1 **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.

62.2 Acknowledgements

Each of the parties acknowledges that:

- 62.2.1 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 (Information and Confidentiality)) 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
- 62.2.2 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.

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 61.1 (Business Continuity) 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 Euro Compliance

- 64.1 The Service Provider shall ensure that the Services are Euro Compliant save that the Authority shall be responsible for the costs of making the Authority Software and Third Party Software, which the Authority licensed prior to the Service Transfer Date and which the Service Provider users pursuant to this Agreement, Euro Compliant.

64.2 Continuity of Contracts

Without prejudice to Article 3 of Regulation (EC) No. 103/97 of 15 June 1997 of the Authority of Ministers of the European Union, the introduction of the euro in England and Wales shall not, of itself:

- 64.2.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Agreement or any Project Document or Other Contract Document; or
- 64.2.2 give any party to this Agreement or any Project Document or Other Contract Document the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Agreement or any Project Document or Other Contract Document.

64.3 Sterling References

If, following the introduction of the euro, Sterling is substituted by the euro as the currency of England and Wales, then all references in this Agreement and any Project Document or Other Contract Document to Sterling or £ shall be construed as references to euro or € (as the case may be), at the agreed Sterling-euro conversion rate on the date of that substitution. **Provided that** the provisions of this clause 64.3 (Sterling References) shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the parties otherwise agree.

64.4 **Consequential Changes**

Without prejudice to clauses 64.2 (Continuity of Contracts) and 64.3 (Sterling References) the parties shall negotiate in good faith in order to agree any amendments to this Agreement which the parties agree to be reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Agreement reflects then current market practices and conventions relating to the introduction of the euro).

65 **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.

66 **Service of Notices**

66.1 Any notice required to be given to the Authority under this Agreement shall be in writing and may be served:

66.1.1 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

66.1.2 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 above, 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 correspondence address by prior written notice to the Service Provider.

66.2 Any notice required to be given to the Service Provider under this Agreement shall be in writing and may be served:

66.2.1 by delivering the notice by hand to the Partnership Director 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

66.2.2 by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Partnership Director 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.

67 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.

68 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

69 No Agency

69.1 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.

70 Power to Bind

Save as expressly provided otherwise in this Agreement, 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.

71 Exercise of Statutory Authority

Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority's 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.

72 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.

73 Mitigation

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 (including under any indemnity) 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.

74 **Further Assurance**

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

75 **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 clauses 15.3.11 (Claims from Eligible Employees or Trade Unions) and 15.3.15 (Compliance with Best Value Authorities Staff Transfers (Pensions) Direction 2007) which shall be enforceable by the Transferring Employees.

76 **Continuing Obligations**

76.1 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:

76.1.1 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

76.1.2 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 and Schedules listed in the table below (including any clauses or Schedules which may impact on the obligations contained in these clauses or Schedules) 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 of termination:

Clause/Schedule reference	Description
1	Definitions and interpretation
4.5	Co-operation
4.7	Inquiries, Investigations Inspections
5.3.16	Assets and Equipment
5.3.17	Assets and Equipment
6.1	Maintenance
15	TUPE and Pensions
16	Staffing
23	Force Majeure
29	Open Book Accounting
28	Service Provider's Records and Audit
30	Indemnities and Liability

Clause/Schedule reference	Description
Part 7	Intellectual Property Rights and Data
41	Persistent Breach and Service Provider Default Capable of Remedy
42	Termination on Service Provider Default Incapable of Remedy
43	Termination by Break Point Options
44	Termination on Authority Default
45	Termination on Corrupt Gifts and Fraud
47	Consequences of Termination and Expiry
48	Exit Arrangements
49	Dispute Resolution
50	Insurance
58	Conflicts of Interest
Part 9	General Provisions
Schedule 4	Payment and Performance Mechanism
Schedule 11	Software
Schedule 16	Dispute Resolution Procedure
Schedule 18	Exit Arrangements
Schedule 23	Commercially Sensitive Information
Schedule 27	Compensation on Termination

77 Indirect Losses

Save where stated to the contrary, the indemnities under this Agreement shall not apply and (without prejudice to the Authority's rights under the Payment Mechanism) there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either party is for Indirect Losses. The Authority agrees that, notwithstanding the foregoing, any losses of the Service Provider arising under the Sub-Contracts as originally executed (or as amended in accordance with the terms of this Agreement) which are not of themselves Indirect Losses, shall not be excluded from such a claim solely by reason of this clause.

78 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.

79 **Transitional Provisions**

The provisions contained in Schedule 43 (Termination Provisions) shall have effect from the Agreement Date.

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 London Borough of Barnet)
was affixed to this Deed in the presence of:)

.....
Authorised Officer

Name:

Executed as a deed by)
Capita Business Services Limited)
acting by a director,)

Name of Signatory:

Occupation:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation: