

DATED

SERVICE AGREEMENT

between

SOUTH HAMS DISTRICT COUNCIL

WEST DEVON BOROUGH COUNCIL

and

[]

CONTENTS

CLAUSE

1.	Definitions and interpretation	1
2.	Term.....	5
3.	Consents, warranty of the Service Provider and due diligence	5
4.	Supply of services.....	7
5.	Service standards	7
6.	Health and safety	8
7.	Payment	8
8.	personnel used to provide the services	10
9.	Safeguarding children and vulnerable adults	10
10.	TUPE	11
11.	Reporting and meetings.....	11
12.	Monitoring	11
13.	Change control.....	12
14.	Dispute resolution	12
15.	Sub-contracting and assignment.....	13
16.	Indemnities	14
17.	Insurance	14
18.	Freedom of information.....	15
19.	Data protection.....	16
20.	Confidentiality.....	17
21.	Audit.....	17
22.	Intellectual Property.....	19
23.	Termination for breach	19
24.	Force majeure	20
25.	Prevention of bribery	21
26.	Consequences of termination	22
27.	Non-solicitation.....	23
28.	Waiver	23
29.	Cumulation of remedies	23
30.	Severability	23
31.	Partnership or agency.....	24
32.	Third party rights	24
33.	Publicity	24
34.	Notices.....	24
35.	Entire agreement	24
36.	Counterparts.....	24
37.	Governing law	25

SCHEDULE

SCHEDULE 1	SPECIFICATION.....	26
SCHEDULE 2	SERVICE PROVIDER'S QUOTATION.....	27

SCHEDULE 3	CHARGES AND PAYMENT.....	28
SCHEDULE 4	CHANGE CONTROL.....	29
1.	General principles.....	29
2.	Procedure	29
SCHEDULE 5	TUPE	31
1.	Definitions	31
2.	Employment exit provisions	32
SCHEDULE 6	COMMERCIALLY SENSITIVE INFORMATION	35

This agreement is dated

PARTIES

- (1) SOUTH HAMS DISTRICT COUNCIL of Follaton House, Plymouth Road, Totnes, Devon TQ9 5NE and WEST DEVON BOROUGH COUNCIL of Kilworthy Park, Tavistock, Devon PL19 0BZ (**Authority**).
- (2) [] incorporated and registered in England and Wales with company number [] whose registered office is at [] (**Service Provider**).

BACKGROUND

The Authority has, through a competitive process, selected the Service Provider to provide money advice services to them and the Service Provider is willing and able to provide these services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause 1 apply in this agreement.

Associated Company: any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Authority's Premises: the premises which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this agreement.

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

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

Catastrophic Failure: is:

- (a) any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority has or may cause significant harm to the reputation of the Authority.

Change: any change to this agreement including to any of the Services.

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

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 4.

Charges: the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 2.

Commencement Date: []

Commercially Sensitive Information: the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.

Contract Year: a period of 12 months, commencing on the Commencement Date.

Data Processor: has the meaning set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (**DPA**), the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default Notice: is a notice served by the Authority under clause 4.2.

Dispute Resolution Procedure: the procedure set out in clause 14.

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

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any

industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the supply chain of the Service Provider.

Information: has the meaning given under section 84 of FOIA.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

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

Personal Data: has the meaning set out in the Data Protection Act 1998.

Prohibited Act: the following constitute Prohibited Acts:

- (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) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Authority in accordance with clause 23.1(a).

Replacement Service Provider: any third party supplier of Replacement Services appointed by the Authority from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Service Provider Party: the agents and contractors of the Service Provider, including each Sub-Contractor.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractor who are engaged in the provision of the Services from time to time.

Service Provider's Quotation: the quotation submitted by the Service Provider and other associated documentation set out in Schedule 2.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in Schedule 1 (Specification).

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractors: the contractors or service providers engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Service to the Authority.

Term: the period of 12 months commencing on the Commencement Date and ending on [].

Termination Date: the date of expiry or termination of this agreement.

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.

- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 2;
 - (d) Schedule 2 to this agreement;

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Commencement Date and shall continue for the Term unless extended for a further period or periods by the mutual agreement of the parties prior to the Termination Date or terminated earlier in accordance with the terms of this agreement.

3. CONSENTS, WARRANTY OF THE SERVICE PROVIDER AND DUE DILIGENCE

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

- 3.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 The Service Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - (b) it has received all information requested by it from the Authority pursuant to clause 3.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 3.3(b);
 - (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - (e) it has entered into this agreement in reliance on its own due diligence.
- 3.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Service Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.5 The Service Provider:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Quotation remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
 - (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services.
- 3.6 The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service

Provider in accordance with clause 3.5(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 3.7 Nothing in this clause 3 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

THE SERVICES

4. SUPPLY OF SERVICES

- 4.1 The Service Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 4.2 In the event that the Service Provider does not comply with the provisions of clause 4.1 in any way, the Authority may serve the Service Provider with a notice in writing setting out the details of the default of the Service Provider (a Default Notice).

5. SERVICE STANDARDS

- 5.1 The Service Provider shall provide the Services, or procure that they are provided:
- (a) with reasonable skill and care and in accordance with the best practice prevailing in the money advice industry from time to time;
 - (b) in all respects in accordance with the Authority's Specification set out in Schedule 1; and
 - (c) in accordance with all applicable laws.
- 5.2 Without limiting the general obligation set out in clause 5.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and

- (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

6. HEALTH AND SAFETY

- 6.1 The Service Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the agreement. The Authority shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Service Provider in the performance of the agreement.
- 6.2 While on the Authority's Premises, the Service Provider shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 6.3 The Service Provider shall notify the Authority immediately in the event of any incident occurring in the performance of the agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 6.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the agreement.
- 6.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

CHARGES AND PAYMENT

7. PAYMENT

- 7.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Service Provider.
- 7.2 The Service Provider shall invoice the Authority for payment quarterly in advance.
- 7.3 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 14. Provided that the sum has been disputed in good faith, interest due on any sums in

dispute shall not accrue until the earlier of 14 day(s) after resolution of the dispute between the parties.

- 7.4 Subject to clause 7.3, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 23.3 for failure to pay undisputed charges.
- 7.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the failure of the Service Provider to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.
- 7.6 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 6 year(s) from the end of the Contract Year to which the records relate.
- 7.7 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contract within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 7.8 The Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement, including the admission agreement, or any other agreement pursuant to which the Service Provider or any associated company of the Service Provider provides goods or services to the Authority.
- 7.9 The Service Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Service Provider.

STAFF

8. PERSONNEL USED TO PROVIDE THE SERVICES

- 8.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Service Provider's Personnel comply with all of the policies of the Authority including those that apply to persons who are allowed access to the applicable Authority's Premises.
- 8.2 The Authority may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 8.3 The Service Provider shall replace any of the Service Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 8.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 8.5 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

9. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 9.1 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006

9.2 The Service Provider shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
- (b) monitor the level and validity of the checks under this clause 9.2 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

9.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

9.4 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 9 have been met.

9.5 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users.

10. TUPE

The parties agree that the provisions of Schedule 5 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

11. REPORTING AND MEETINGS

11.1 The Service Provider shall provide the management reports in the form and at the intervals reasonably required by the Authority.

12. MONITORING

12.1 The Authority may monitor the performance of the Services by the Service Provider.

- 12.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 12.1 at no additional charge to the Authority.

13. CHANGE CONTROL

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

14. DISPUTE RESOLUTION

- 14.1 Either party may call an extraordinary meeting of the parties by service of not less than five days written notice and each party agrees to procure that a suitable authorised representative shall attend all extraordinary meetings called in accordance with this clause.
- 14.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the dispute fails to be resolved by the senior officers in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution.
- 14.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 14.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 14.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the parties, shall remain binding on the parties.

14.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

14.7 While the Dispute Resolution Procedure referred to in this clause 14 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

15. SUB-CONTRACTING AND ASSIGNMENT

15.1 Subject to clause 15.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld].

15.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contractor on receipt of a request for such by the Authority.

15.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

LIABILITY

16. INDEMNITIES

The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its representatives (excluding the Service Provider).

17. INSURANCE

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

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims
- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover

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

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

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

- 17.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 17.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

18. FREEDOM OF INFORMATION

- 18.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at expense of the Service Provider) to enable the Authority to comply with these information disclosure requirements.
- 18.2 The Service Provider shall and shall procure that its Sub-Contractor shall:
- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - (c) 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.
- 18.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 18.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 18.5 The Service Provider acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Service Provider; or

- (b) following consultation with the Service Provider and having taken its views into account, provided always that where clause 18.5(b) applies the Authority shall, in accordance with any recommendations of the code of practice issued under section 45 of the FOIA, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the attention of the Service Provider after any such disclosure.
- 18.6 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 18.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining confidential information are of indicative value only and that the Authority may nevertheless be obliged to disclose confidential information in accordance with clause 18.5.

19. DATA PROTECTION

- 19.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.
- 19.2 Notwithstanding the general obligation in clause 19.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
 - (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
 - (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 19.2; and
 - (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the obligations of the Authority under the DPA.
- 19.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

20. CONFIDENTIALITY

20.1 Subject to clause 20.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

20.2 Clause 20.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 18.1 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 20.1;
- (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 14;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

20.3 On or before the Termination Date, the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of employees of the Authority, rate-payers or service users, are delivered up to the Authority or securely destroyed.

21. AUDIT

21.1 During the Term and for a period of 6 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services at the level of detail agreed in Schedule 2 (Payment);

- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
 - (c) to review the compliance of the Service Provider with the DPA, the FOIA, in accordance with clause 19 (Data Protection) and clause 18 (Freedom of Information) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the accounts of the Authority;
 - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 21.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 21 more than [twice] in any calendar year.
- 21.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 21.4 Subject to obligations of confidentiality of the Authority, the Service Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Service Provider's Personnel.
- 21.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 21.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations

under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authority for all the reasonable costs of the Authority incurred in the course of the audit.

21.7 If an audit identifies that:

- (a) the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the failure of the Service Provider relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the costs of the Service Provider, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Authority has overpaid any Charges, the Service Provider shall pay to the Authority the amount overpaid within [20 days]. The Authority may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Service Provider in relation to invoicing within [20 days].

22. INTELLECTUAL PROPERTY

22.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services, shall vest in the Authority on creation.

22.2 The Service Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property by the availability of the Services, except to the extent that they have been caused by or contributed to by the acts or omissions of the Authority.

TERMINATION

23. TERMINATION FOR BREACH

23.1 The Authority may terminate this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 23.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;
 - (b) if a Catastrophic Failure has occurred;
 - (c) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the property or equipment of the Service Provider;
 - (d) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom; and
 - (e) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Authority reasonably objects.
- 23.2 The Authority may terminate this agreement in accordance with the provisions of clause 23 and clause 24.
- 23.3 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

24. FORCE MAJEURE

- 24.1 Subject to the remaining provisions of this clause 24, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 24.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
 - (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 24.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 24.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 24.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 24.6 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 before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 24.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 7 Working Days.

25. PREVENTION OF BRIBERY

- 25.1 The Service Provider:
 - (a) shall not, and shall procure that any Service Provider Party and all Service Provider's Personnel 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.
- 25.2 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent any Service Provider Party

or Service Provider's Personnel from committing a Prohibited Act and shall enforce it where appropriate.

- 25.3 If any breach of clause 24.1 is suspected or known, the Service Provider must notify the Authority immediately.
- 25.4 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 24.1, the Service Provider must respond promptly to the enquiries of the Authority, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for 6 year(s) following the expiry or termination of this agreement.
- 25.5 The Authority may terminate this agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider's Personnel (in all cases whether or not acting with the knowledge of the Service Provider) breaches clause 24.1
- 25.6 Any notice of termination under clause 24.6 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.
- 25.7 Despite clause 14, any dispute relating to:
- (a) the interpretation of clause 24; or
 - (b) the amount or value of any gift, consideration or commission, shall be determined by the Authority and its decision shall be final and conclusive.
- 25.8 Any termination under clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

26. CONSEQUENCES OF TERMINATION

- 26.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the Service Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the request of the Authority, a Replacement Service Provider.
- 26.2 On termination of this agreement the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the

authorised representative of the Service Provider shall certify full compliance with this clause.

- 26.3 The provisions of clause 16 (Indemnities), clause 17 (Insurance), clause 18 (Freedom of Information), clause 19 (Data Protection), clause 21 (Audit), clause 23 (Termination for Breach) and this clause 26 (Consequences of Termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

27. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

28. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Service Provider in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

29. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

30. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

31. PARTNERSHIP OR AGENCY

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

32. THIRD PARTY RIGHTS

No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

33. PUBLICITY

The Service Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the name or brand of the Authority in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

34. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

35. ENTIRE AGREEMENT

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

36. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

37. GOVERNING LAW

- 37.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 37.2 The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of this agreement.

Schedule 1 Specification

Schedule 2 Service Provider's Quotation

Schedule 3 Charges and payment

1. CHARGES BASED ON A FIXED PRICE

FIXED ANNUAL SUM OF [£] TO BE PAID IN EQUAL QUARTERLY INSTALMENTS.

Schedule 4 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Service Provider sees a need to change this agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 4.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 4, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1 Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including
 - (i) the timetable for the provision of the Change
 - (ii) the personnel to be provided
 - (iii) the Charges
 - (iv) the documentation to be provided
 - (v) the training to be provided
 - (vi) working arrangements
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider, the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information; or
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this agreement.

Schedule 5 TUPE

1. DEFINITIONS

The definitions and rules of interpretation in this clause apply in this agreement:

Employee Liability Information: The information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the Authority; and
- (e) information about any collective agreement that will have effect after the Service Transfer Date in relation to the employee under regulation 5(a) of TUPE.

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

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Service Provider by virtue of the application of TUPE.

Replacement Services: any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

Service Provider's Final Staff List: the list of all personnel of the Service Provider and Sub-Contractor engaged in, or wholly or mainly assigned to, the provision of the Service or any part of the Service at the Service Transfer Date.

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all personnel of the Service Provider and Sub-Contractor engaged in, or wholly or mainly assigned to, the provision of the Service or any part of the Service at the date of the preparation of the list.

Service Transfer Date: the date on which the Service (or any part of the Service), transfer from the Service Provider to the Authority or any Replacement Service Provider.

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Service.

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

2. EMPLOYMENT EXIT PROVISIONS

- 2.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Service Transfer**). If a Service Transfer is a Relevant Transfer then the Authority or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees.
- 2.2 The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Service Provider shall notify the Authority of any material changes to this information as and when they occur.

- 2.3 At least 14 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the personnel of the Service Provider and the Sub-Contractor named are Relevant Employees.
- 2.4 The Authority shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 2.5 The Service Provider warrants that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
- 2.6 The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 2.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the [six months] prior to termination of this agreement shall not (so far as reasonably practicable) take place without the prior written consent of the Authority, unless such changes are required by law. The Service Provider shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.
- 2.8 In the three months prior to termination of this agreement, the Service Provider shall and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the prior written consent of the Authority.
- 2.9 The Service Provider shall indemnify and keep indemnified in full the Authority and at the request of the Authority each and every Replacement Service Provider against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or

- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Service Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

- 2.10 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Service Transfer will be fulfilled.
- 2.11 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 2.2 to paragraph 2.10, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.12 Despite paragraph 2.11, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 6 Commercially sensitive information

Signed on behalf of SOUTH HAMS
DISTRICT COUNCIL by

Authorised Signatory

Signed on behalf of WEST DEVON
BOROUGH COUNCIL by

Authorised Signatory

Signed on behalf of [
] by

Director