



DATED

2020

SERVICES AGREEMENT

BETWEEN

SUTTON HOUSING PARTNERSHIP

and

[INSERT NAME OF SERVICE PROVIDER]

Relating To The provision of Fire Risk Assessment contract services

Tender Ref: D442354

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Terms and Conditions of Contract:

THIS AGREEMENT is dated

2020

PARTIES

- (1) **SUTTON HOUSING PARTNERSHIP** whose principal address is The Civic Offices, St Nicholas Way, Sutton, Surrey, SM1 1EA (**Authority**).
- (2) **[INSERT FULL COMPANY NAME]** [Incorporated and registered in England and Wales with company number **[insert company number]**] whose [registered office **OR** principal address] is at **[insert address]** (**Service Provider**)¹.

BACKGROUND²

- (A) The Authority placed a contract notice DN442354 on **08/11/2019** in the Official Journal of the European Union [seeking expressions of interest **OR** tenders from potential service providers for the provision of **the Standard and Complex Fire Risk Assessments**.
- (B) Following receipt of [expressions of interest, the Authority invited potential service providers (including the Service Provider) on **16/12/2019** to tender for the provision of the Services.
- (C) On the basis of the Service Provider's Tender, the Authority selected the Service Provider to deliver the Services and the Service Provider is willing to do so upon the terms and conditions of this agreement.

AGREED TERMS

1. Definitions And Interpretation

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

- 1 **Authority Assets:** any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Service Provider for use in providing the Services as identified in Schedule 10.

Authority's Premises: the accommodation listed in Schedule 10 [which will be provided by the Authority to the Supplier under **[a lease OR licence]** for use in delivering the Services **OR** being the place sourced by the Supplier where the services will be provided].

Authorised Representatives: the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Schedule 4.

- 2 **[Average Earnings Index:** the index of average earnings [for private-sector earnings] as published by the Office for National Statistics from time to time, or

failing such publication, that other index as the parties may agree most closely resembles such index].

- 3 **Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, 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.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

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 3.

- 4 **[Commercially Sensitive Information:** the information listed in Schedule 9 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss].³

Commencement Date: 25/02/2020

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

- (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the parties in the course of carrying out this agreement.

- 6 **Contract Year:** a period of twelve (12) months, commencing on the Service Commencement Date and/or each anniversary of the Service Commencement Date.

- 7 **Data Controller:** shall have the same meaning as set out in the Data Protection Legislation.⁴

- 8 **Data Processor:** shall have the same meaning as set out in the Data Protection Legislation.⁵

- 9 **Data Protection Legislation:** the Data Protection Act 2018, unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or

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updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.]⁶

- 10 **Data Subject:** shall have the same meaning as set out in the Data Protection Legislation.]⁷

Default: any failure by either party to comply with its obligations under this agreement.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form *[including [if relevant, please specify anything else which the Supplier might develop for the Authority whilst performing the contract. Otherwise please delete the wording in square brackets]]*⁸.

Dispute Resolution Procedure: the procedure set out in clause 25.

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

Exit Plan: the plan for the provision of the Transitional Assistance Services in the event of the expiry or termination of this agreement for any reason, which is to be developed by the parties pursuant to clause 19.]

Financial Reports: a statement showing receipts of money (for the Services) from all sources against expenditure at the date of the report and financial information including actuals and forecast to the end of the financial year.⁹

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 Service Provider's supply chain.

- 11 **General Change in Law:** a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

- 12 **GDPR:** The General Data Protection Regulation ((EU) 2016/679).¹⁰

Guidance: means any applicable health or social care guidance, guidelines, direction or determination, framework, standard or requirement to which the Service Provider has a duty to have regard (and whether specifically mentioned in this agreement or not), to the extent that the same are published and publicly available.

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

Initial Term: the period commencing on the Commencement Date and ending on the anniversary of the Commencement Date.

Insolvency Event: where:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (d) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (d) (inclusive);
- (f) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

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.

KPIs: the key performance indicators set out in Schedule 2.

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

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 25 and Schedule 4 to include a comparison of Achieved

KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

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

Payment Plan: the plan for invoicing and payment of the Charges as set out in Schedule 3

13 Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Prevent Guidance and Toolkit: The Prevent Duty Guidance for England and Wales, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf

as may be amended from time to time.

Prevent Lead: the officer of the Service Provider responsible for implementation and dissemination of the Government Prevent Strategy, identified as such to the Authority.

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 or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Regulatory or Supervisory Body: any statutory or other body having authority to issue guidance, standards or recommendations with which the Service Provider must comply or to which it must or should have regard.

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

Remediation Plan: the plan agreed in accordance with clause 23 (Remediation Plan Process) for the resolution of either any outstanding issues or the Service Provider's Default.

Remediation Plan Process: the process for resolving certain of the Service Provider's Defaults as set out in clause 23 (Remediation Plan Process).

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.

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

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

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

14 Service Provider's Tender: the tender submitted by the Service Provider and other associated documentation set out in Schedule 12.

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

Service Commencement Date: 25/02/2020

Specific Change in Law: a Change in Law which only affects or relates to the Authority and which would not affect the supply of services that are identical or similar to the Services to other Authorities [but excluding any Change in Law that would have been reasonably foreseeable at the Commencement Date by an experienced Service Provider performing services similar to the Services.

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-Contractor: the contractors or Service Providers that enter into a Sub-Contract with the Service Provider.

Target KPI: the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 2.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

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

Termination Notice: any notice to terminate this agreement which is given by the Authority to the Service Provider.

Transitional Assistance Service Charges: the charges payable by the Authority to the Supplier for the provision of the Transitional Assistance Services, which shall be calculated in accordance with Schedule 11.

Transitional Assistance Services: the services to be provided by the Supplier to the Authority pursuant to clause 19 in the event of the expiry or termination of this agreement for any reason to facilitate the transfer of the Services to the Authority or a Replacement Supplier.

Warning Notice: a warning notice issued by the Authority to the Provider in the circumstances described in clause 22.1 (Warning Notices and Increased Monitoring).

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).
- 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 (Specification) to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 12;
 - (d) Schedule 12 (Service Provider's Tender) to this agreement.

COMMENCEMENT AND DURATION

2. TERM

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

3. EXTENDING THE INITIAL TERM

The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to 24 four Months, 12 months plus 12 months (Extension Period). If the Authority wishes to extend this agreement, it shall give the Supplier at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period as the case may be.

- 3.1 If the Authority gives such notice, then the Term shall be extended by the period set out in the notice.
- 3.2 If the Authority does not wish to extend this agreement beyond the Initial Term, this agreement shall expire on the expiry of the Initial Term and the provisions of clause 39 (*Consequences of Termination*) shall apply.

4. DUE DILIGENCE AND SERVICE PROVIDER'S WARRANTY

- 4.1 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 4.1(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 4.1(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.
- 4.2 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.
- 4.3 The Service Provider:
 - (a) as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of this 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 or meet any Target KPIs.
- 4.4 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 4.3(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 Authority.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES AND KPIs

- 5.1 The Service Provider shall provide the Services with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 The Service Provider shall ensure that the Services are accessible to all service users, including those who may need additional communication support, for

example where information is required to be delivered in a different format to people with a sensory impairment, a learning disability or where English is not that person's first language. In all such instances, the Service Provider will liaise with the Authority to ensure that these needs are addressed, as per the Accessible Information Standard available at: <https://www.england.nhs.uk/ourwork/patients/accessibleinfo-2/>.

- 5.3 Where any part of the Services is stated in Schedule 1 or Schedule 2 to be subject to a specific KPI, the Supplier shall provide that part of the Services in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 5.4 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 2.
- 5.5 [The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 20 (*Reporting and Meetings*).

6. SERVICE STANDARDS

The Service Provider shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with Best Industry Practice;
- (b) in all respects in accordance with the underpinning values and best practice and other requirements set out in Schedule 1 (if any) and the Service Provider's Policies set out in Schedule 7 and all of the other provisions of this agreement including the schedules;
- (c) in accordance with all applicable Laws and Guidance;
- (d) in accordance with the applicable requirements, standards and/or recommendations issued from time to time by any relevant Regulatory or Supervisory Body.

7. COMPLIANCE AND CHANGE IN LAW

- 7.1 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.
- 7.2 Where there is any conflict or inconsistency between the provisions of this 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.
- 7.3 The Service Provider shall give such reasonable co-operation and information in relation to the Services to such of the Authority's other contractors or agents or regulators or partners as the Authority may reasonably require for the

purposes of enabling any such person to create and maintain any interfaces that the Authority may reasonably require.

- 7.4 The Service Provider shall (at no additional cost to the Authority) at all times carry out and provide the Services in compliance with all applicable Laws. The Service Provider shall maintain such records as are necessary pursuant to such applicable Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Authority (or its authorised representative).
- 7.5 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law.
- 7.6 Without prejudice to clause 7.4, the Service Provider shall monitor and shall keep the Authority informed in writing of any changes in the applicable Laws which may impact the Services and shall provide the Authority with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 7.7 The Service Provider shall consult with the Authority (and wherever possible agree with the Authority) on the manner, form and timing of changes it proposes to make to meet any changes in applicable Laws where they would impact the Services. The Service Provider shall not implement any change, without the Authority's prior written agreement, which would have an adverse effect on the Service Provider's ability to provide the Services in accordance with this agreement.
- 7.8 Any change which impacts any part of the Services shall be agreed and documented in accordance with the Change Control Procedure.
- 7.9 Without prejudice to the rest of this clause 7, the Service Provider shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 7.

8. QUALITY ASSURANCE AND COMPLAINTS

- 8.1 The Service Provider shall
- operate a self-regulatory system of quality assurance and quality measures relevant to this agreement which ensure that the Services are provided in accordance with the requirements of this agreement.
- 8.2 The Service Provider shall maintain a system for receiving and investigating complaints and keeping details of how many complaints are received and how they are dealt with. The Service Provider shall:

- (a) publicise the complaints procedure to service users and their representatives;
 - (b) ensure that complaints are speedily dealt with and that complainants receive a written statement of the Service Provider's response;
 - (c) ensure that complainants who are not satisfied with the Service Provider's response are informed of their right to refer their complaints to the Authority's Authorised Representative;
 - (d) ensure that complainants are made aware that they may make a complaint to any other relevant authority including any Regulatory or Supervisory Body and that they are given appropriate information and support to enable them to do so.
- 8.3 The Service Provider undertakes to co-operate with any investigation which the Authority or any Regulatory or Supervisory Body may carry out into a complaint referred to it.
- 8.4 Upon request, the Service Provider shall supply the Authority's Authorised Representative with a copy of its records relating to complaints made in relation to the Services and the Service Provider's response.

9. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 9.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 9.2 The Service Provider shall maintain a training plan and a record of training for all persons engaged in the delivery of its obligations under this agreement. The Service Provider shall make the training plan and training records available to the Authority upon request.
- 9.3 Where either party to this agreement identifies at any time that the Service Provider's Personnel require further training for the proper delivery of the Services, the parties shall work together to agree and implement a training programme to meet such training needs with the Service Provider bearing the costs of the agreed programme.
- 9.4 The Service Provider shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Authority's Authorised Representative:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;

- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 9.5 Any potential changes highlighted as a result of the Service Provider's reporting in accordance with clause 9.3 shall be addressed by the parties using the Change Control Procedure.

10. BUSINESS CONTINUITY

- 10.1 The Civil Contingencies Act 2004 requires the Authority to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Service Provider shall have in place prior to the Commencement Date, a robust business continuity plan that allows for the continued delivery of the Services following an emergency or disruptive occurrence. The business continuity plan shall set out the procedures and actions to be taken if a disruptive event occurs affecting the Services.
- 10.2 The Service Provider shall make copies of its business continuity plan available to the Authority upon request.
- 10.3 The Service Provider shall notify the Authority if an incident occurs which activates the business continuity plan, and details of how it managed any such incident and any subsequent amendments made to processes or systems.
- 10.4 The Service Provider shall as a matter of course test its business continuity plan on a regular basis or when there has been any change to the mode or method in which the Services are provided or when there has been a change to any business processes or on the occurrence of any event which may increase the likelihood of the need to implement the business continuity arrangements. The Authority reserves the right to appoint a representative to attend any business continuity plan test undertaken by the Service Provider.
- 10.5 The Service Provider, on request by the Authority, shall provide evidence by way of a written report summarising the results of any business continuity plan test and shall promptly implement any actions or remedial measures which the Authority may consider to be appropriate as a result of such tests.
- 10.6 The Service Provider shall undertake and be able to demonstrate to the Authority as required, a regular review process for its business continuity arrangements in relation to the provision of the Services.

11. EQUALITY AND DIVERSITY

- 11.1 The Service Provider shall at all times comply with the relevant requirements of equality legislation including the Equality Act 2010, and all relevant supporting codes of practice and any other relevant legal provisions pertaining to the equal opportunities of the Service Provider's Personnel, the service users, members

of the public and others who may be affected by its performance of the Services. The Authority has legal obligations under legislation and these apply to and will be observed by the Service Provider by virtue of it carrying out functions of a public nature.

- 11.2 The Service Provider shall not unlawfully discriminate against, and will advance equality of opportunity and foster good relations between, people with protected characteristics on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in recruitment and employment of employees or in carrying out works, procuring goods or delivering services or any function of a public nature.
- 11.3 The Service Provider shall have regard to the Authority's Equality and Diversity Statement (as amended from time to time) and notified to the Service Provider by the Authority.
- 11.4 The Service Provider shall nominate a person responsible for equality and diversity matters to liaise as required with the Authority. The Service Provider shall ensure that all the Service Provider's Personnel have an understanding of and comply with the requirements of the Authority's Equality and Diversity Statement and relevant equality legislation in performance of this agreement.
- 11.5 The Authority's Authorised Representative shall notify the Service Provider in the event of non-compliance with equality and diversity matters which come to the Authority's attention and where appropriate shall allow the Service Provider a reasonable period to rectify such failure. In the event of continued non-compliance with equality and diversity requirements the Authority's Authorised Representative shall be empowered to suspend the provision of the Services. The Service Provider shall not resume provision of the Services until the Authority's Authorised Representative is satisfied that the non-compliance has been rectified.
- 11.6 If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Service Provider or any of the Service Provider's Personnel, then the Service Provider shall take all necessary steps to prevent recurrence of such unlawful discrimination. In such a case, the Authority will require the Service Provider to provide full details and evidence of the steps taken to prevent such reoccurrence.
- 11.7 The Service Provider's equality policy shall be set out in any instructions circulated to those members of the Service Provider's Personnel concerned with recruitment, training, and promotion; other employment issues and conduct in service delivery in relevant documentation available to its staff and others; and in its recruitment advertisements and other relevant literature. The Service Provider may be required to provide to the Authority copies of such instructions, documents, advertisements and other literature.

- 11.8 The Service Provider shall pay its staff at least the minimum wage in line with relevant Law and comply with all relevant employment legislation including ensuring access to employee representation.
- 11.9 The Service Provider shall 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.

12. HEALTH AND SAFETY

- 12.1 The Service Provider shall at all times comply with the relevant requirements of the Health and Safety at Work etc. Act 1974, the Management of Health & Safety at Work Regulations 1999, and any other relevant legal provisions pertaining to the health and safety of its own staff, service users, members of the public and others who may be affected by or be engaged in its performance of the Services.
- 12.2 The Authority's Authorised Representative shall notify the Service Provider of any failure by the Service Provider to comply with health and safety matters, which comes to the Authority's attention and where appropriate shall allow the Service Provider a reasonable period to rectify such failure. In the event of further non-compliance by the Service Provider the Authority's Authorised Representative shall be empowered to suspend provision of the Services. The Service Provider shall not resume provision of the Services until the Authority's Authorised Representative is satisfied that the non-compliance has been rectified.
- 12.3 The Service Provider shall notify the Authority as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Service Provider shall instruct the Service Provider's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards. Without prejudice to the generality of the foregoing the Service Provider shall ensure that the Service Provider's Personnel are properly trained and instructed with regard to fire risks and fire precautions and to identify risk in service delivery.

13. ENVIRONMENTAL POLICY

- 13.1 The Service Provider shall at all times at its own cost comply with the relevant requirements of the Environmental Protection Act 1990 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to the protection of the environment, water protection and disposal of waste.
- 13.2 The Service Provider shall at all times at its own cost comply with the relevant requirements of the Climate Change Act 2008, and where appropriate have regard to the Energy Act 2008 and 2010 and or any statutory amendment or

re-enactment, Regulations, Statutory Instruments or Orders pertaining to tackling climate change and addressing the national energy issues.

- 13.3 The Authority's Authorised Representative shall notify the Service Provider in the event of non-compliance with environmental protection and climate change matters which come to the attention of the Authority, and where appropriate shall allow the Service Provider a reasonable period to rectify such non-compliance. In the event of continued non-compliance the Authority's Authorised Representative shall be empowered to suspend the provision of the Services. The Service Provider shall not resume provision of the Services until the Authority's Authorised Representative is satisfied that the non-compliance has been rectified.

14. PREMISES AND ASSETS

- 14.1 The Authority shall, subject to clause 7 (Compliance) and clause 17 (Other Personnel Used) [and the provisions of the [lease **OR** licence] set out in Schedule 10], provide the Service Provider (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Service Provider reasonably requires for the purposes only of providing the Services. The Service Provider's right of access will terminate upon termination of this agreement, subject to clause 14.2.
- 14.2 The Authority shall provide the Service Provider with such accommodation and facilities in the Authority's Premises as is specified in Schedule 10 or which is otherwise agreed by the parties from time to time.
- 14.3 Subject to the requirements of clause 40 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the Authority's Premises to remove any of the Service Provider's equipment. All such equipment shall be promptly removed by the Service Provider.
- 14.4 The Service Provider shall ensure that:
- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's security requirements from time to time regarding the security of the same;
 - (b) only those of the Service Provider Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
 - (c) any Authority Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative; and

- (d) any Authority Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.
- 14.5 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Service Provider as a debt.
- 14.6 The Service Provider shall notify the Authority immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.
- 14.7 The Service Provider shall indemnify the Authority against all and any damage to the Authority Premises and the Authority Assets caused by the same.

CHARGES AND PAYMENT

15. PAYMENT

- 15.1 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.
- 15.2 The Service Provider shall invoice the Authority for payment of the Charges in accordance with the Payment Plan.
- 15.3 The Authority shall pay the Charges which have become payable within **thirty days (30 day)** days of receipt of an undisputed invoice from the Service Provider.
- 15.4 Where either 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 24 (*Dispute Resolution*). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of twenty (20) days after resolution of the Dispute between the parties.
- 15.5 Subject to clause 15.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement at 2% above the base rate of the Bank of England from time to time in force. No interest shall be payable on any amount that is the subject matter of a bona fide dispute between the parties. The Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 15.6 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 Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.

- 15.7 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 six (6) years from the end of the Term.
- 15.8 Where the Service Provider enters into a Sub-Contract with a Service Provider 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-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 15.9 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 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.
- 15.10 The Charges shall be fixed for the first 3 years of this agreement. The Service Provider may, however, increase the Charges on an annual basis with effect from the 3rd anniversary of the Service Commencement Date in line with the percentage increase in the Average Earnings Index in the preceding 12-month period. The first such increase shall take effect at the beginning of the [third fourth or whatever]¹¹ Contract Year and shall be [based on] the latest available figure for the percentage increase in the Average Earnings Index at the beginning of the last month of the previous Contract Year
- 15.11 The Service Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement for failure to pay undisputed charges.

STAFF

16. KEY PERSONNEL

- 16.1 Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

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- 16.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person resigns from their employment with the Service Provider; or
 - (e) the Service Provider obtains the prior written consent of the Authority.
- 16.3 The Service Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within five (5) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 16.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than twenty (20) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Authority becoming aware of the role becoming vacant.
- 16.5 The Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 16.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 16, the cost of effecting such replacement shall be borne by the Service Provider.

17. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 17.1 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 are involved in providing the Services; and

- (d) all of the Service Provider's Personnel comply with all of the Authority's policies set out in Schedule 1 (if any) or as notified to the Service Provider from time to time.
- 17.2 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.
- 17.3 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests 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.
- 17.4 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 as the prevailing industry norm for similar services, locations and environments.

18. EXIT AND SERVICE TRANSFER AND TUPE

- 18.1 In the event of the termination or expiry of this agreement for any reason the Service Provider shall provide the Transitional Assistance Services to the Authority in accordance with the requirements of the Exit Plan and both parties shall comply with their respective obligations set out in Schedule 11. The Service Provider shall co-operate with the Authority and/or the Replacement Service Provider to the extent reasonably required to facilitate the smooth migration of the Services from the Service Provider to the Authority and/or the Replacement Service Provider.
- 18.2 The Authority shall pay the Transitional Services Charges in respect of the provision of the Transitional Assistance Services, except in circumstances where the Authority has terminated this agreement for breach.
- 18.3 The Service Provider shall, within six (6) months after the Commencement Date, produce an Exit Plan based on the principles set out in Schedule 11 for the orderly transition of the Services from the Service Provider to the Authority and/or any Replacement Service Provider in the event of any termination or expiry of this agreement. Within [insert number] Working Days after the submission of that Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Schedule 11. If the parties are unable to agree the contents of the Exit Plan within that [insert number] Working Day period, the principles set out in Schedule 11 shall apply and either party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure.

- 18.4 The Service Provider shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Service Provider shall submit the revised Exit Plan to the Authority for review. Within [insert number] Working Days after the submission of the revised Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in 11 was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within that [insert number] Working Day period, the previous version shall continue to apply and either party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure.
- 18.5 Until the agreement of the Exit Plan, the Service Provider shall provide the Transitional Assistance Services in accordance with the principles set out in Schedule 11 and the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith. The Service Provider shall ensure that it is able to implement the Exit Plan at any time.
- 18.6 In addition, within thirty (30) days after service of a Termination Notice by either party or [six (6) months] prior to the expiration of this agreement, the Service Provider shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Authority for review and approval. The parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles Schedule 11. Until the agreement of the updated Exit Plan, the Service Provider shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith.
- 18.7 The parties agree that the provisions of Schedule 5 shall apply to any Relevant Transfer of staff under this agreement.

19. WHISTLEBLOWING AND PREVENT AND ANTI-SLAVERY

Whistleblowing

- 19.1 The Service Provider will adopt and promote the Authority's Whistleblowing Policy notified to the Service Provider from time to time.
- 19.2 The Service Provider will inform the Service Provider's Personnel that anyone of them who may have a concern about wrongdoing at work (i.e. activities that harm or may harm the Service Provider's Personnel, service users, clients of the Authority, colleagues working for the Authority or the Authority itself), should report such concerns to the named persons within the Authority's Whistleblowing Policy. (Wrongdoing covers issues such as criminal offence, a failure to comply with a legal obligation, a miscarriage of justice endangering

the health or safety of an individual, damages to the environment or the deliberate concealment of information tending to show one of these matters).

- 19.3 The Service Provider will comply with the Public Interest Disclosure Act 1988 and shall have a policy in place to encourage workers to raise concerns about wrongdoing within the Service Provider's organisation and to protect them from victimisation or discrimination.

Prevent and Anti-slavery

- 19.4 The Service Provider shall include in its policies and procedures and comply with the principles contained in:
- (a) the Government Prevent Strategy; and
 - (b) the Prevent Guidance and Toolkit.
- 19.5 The Service Provider shall include in its policies and procedures a requirement for staff to complete appropriate training programmes in order to comply with the Government Prevent Strategy.
- 19.6 The Service Provider shall appoint and must maintain a Prevent Lead. The Service Provider must ensure that at all times the Prevent Lead is appropriately authorised and resourced to procure the full and effective performance of the Service Provider's obligations under clause 19.4 and clause 19.5.
- 19.7 The Service Provider shall notify the Authority's Authorised Representative in writing of any change to the identity of the Prevent Lead as soon as practicable, and in any event no later than ten (10) Working Days after the change.
- 19.8 In performing its obligations under the agreement, the Service Provider shall:
- comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - comply with the Authority's Anti-Slavery Policy notified to it from time to time;
 - not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - include in its contracts with its direct Sub-Contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this agreement.
- 19.9 The Service shall indemnify the Authority against any losses incurred by, or awarded against, the Authority as a result of any breach of the Authority's Anti-slavery Policy or the Modern Slavery Act 2015.
- 19.10 The Authority may terminate this agreement with immediate effect by giving written notice to the Service Provider if the Service Provider commits a breach of the Anti-Slavery Policy or the Modern Slavery Act 2015.

CONTRACT MANAGEMENT

20. REPORTING AND MEETINGS

- 20.1 The Service Provider shall provide the Management Reports in the form and at the intervals set out in Schedule 4.
- 20.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 4 and the Service Provider shall, at each meeting, present its previously circulated Management Reports and Financial Reports in the format set out in that Schedule or agreed by the parties.

21. MONITORING

- 21.1 The Authority may monitor the performance of the Services by the Service Provider.
- 21.2 The Service Provider shall co-operate, and shall procure that the Service Provider's Personnel co-operate, with the Authority in carrying out the monitoring referred to in clause 21.1 at no additional charge to the Authority.

22. WARNING NOTICES AND INCREASED MONITORING

- 22.1 Without prejudice to the Authority's other rights or remedies, including without limitation to its right to implement the Remediation Plan Process pursuant to clause 23 (Remediation Plan Process), if at any time the Service Provider has committed a Default then the Authority may serve a Warning Notice on the Service Provider, setting out the matters giving rise to such notice and containing a reminder to the Service Provider of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.
- 22.2 Without prejudice to the other rights or remedies of the Authority, if the Service Provider receives a Warning Notice, the Authority may reasonably increase its monitoring of the Service Provider until such time as the Service Provider has demonstrated, to the reasonable satisfaction of the Authority, that it will perform (and is capable of performing) its obligations under this agreement.
- 22.3 The Service Provider may not increase the Charges to take account of any additional monitoring and shall promptly reimburse the Authority for any additional direct costs reasonably and necessarily incurred by the Authority in respect of any such additional monitoring.

23. REMEDIATION PLAN PROCESS

- 23.1 If the Service Provider commits a Default of any material obligation/term as defined in clause 35.5 and the Default is capable of remedy, the Authority may not terminate this agreement without first operating the Remediation Plan

Process set out in this clause 23. If the Service Provider commits such a Default, the Authority shall give a Remediation Notice to the Service Provider which shall specify the Default in outline and the actions the Service Provider needs to take with respect to remedying the Default.

- 23.2 For the avoidance of doubt, the Authority shall be under no obligation to initiate the Remediation Plan Process if it issues a Termination Notice pursuant to clause 35.2.
- 23.3 Within ten (10) Working Days of receipt of a Remediation Notice, the Service Provider shall either:
- (a) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
 - (b) inform the Authority that it does not intend to submit a Remediation Plan, in which event the Authority shall be entitled to serve a Termination Notice.
- 23.4 The Authority shall either approve the draft Remediation Plan within ten (10) Working Days of its receipt pursuant to clause 23.3, or it shall inform the Service Provider why it cannot accept the draft Remediation Plan. In such circumstances, the Service Provider shall address all such concerns in a revised Remediation Plan, which it shall submit to the Authority within ten (10) Working Days of its receipt of the Authority's comments. If no such notice is given, the Service Provider's draft Remediation Plan shall be deemed to be agreed.
- 23.5 Once agreed, the Service Provider shall immediately start work on the actions set out in the Remediation Plan.
- 23.6 If, despite the measures taken under clause 23.4, a Remediation Plan cannot be agreed by the parties, then the Authority may elect to end the Remediation Plan Process and serve a Termination Notice.
- 23.7 If a Remediation Plan is agreed between the parties, but the Service Provider fails to implement or successfully complete the Remediation Plan by the required remedial plan completion date, the Authority may:
- (a) terminate this Agreement by serving a Termination Notice; or
 - (b) give the Service Provider a further opportunity to resume full implementation of the Remediation Plan; or
 - (c) escalate any issues arising out of the failure to implement the Remediation Plan under the Dispute Resolution Procedure set out at clause 24.
- 23.8 If, despite the measures taken under clause 23.7(b), the Service Provider fails to implement the Remediation Plan in accordance with its terms, the Authority

may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.

- 23.9 The Authority shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan within a period of two (2) months following the conclusion of such previous Remediation Plan. In such event, the Authority may serve a Termination Notice.

24. DISPUTE RESOLUTION

- 24.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within [ten (10)] Working Days of service of the Dispute Notice, the Dispute shall be referred to the Authority's [insert employee title] and the Service Provider's Sutton Housing Partnership who shall attempt in good faith to resolve it; and
- (c) if the Authority's [Sutton Housing Partnership and the Service Provider's [insert employee title provided in (b) above]] are for any reason unable to resolve the Dispute within [ten (10)] Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than ten (10) days after the date of the ADR notice.

- 24.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 48 (Governing Law) which clause shall apply at all times.

25. SUB-CONTRACTING AND ASSIGNMENT

- 25.1 Subject to clause 25.3, neither party shall 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 or delayed.

- 25.2 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-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 25.3 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

26. 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 any Service Provider's Personnel).

27. LIMITATION OF LIABILITY

- 27.1 Subject to clause 27.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 27.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 27.3 Subject to clause 27.4, the Service Provider's total aggregate liability:
- (a) is unlimited in respect of:

- (i) any breach of clause 30 (Data Protection), clause 32 (Confidentiality), Clause 34 (Intellectual Property) and clause 38 (Prevention of Bribery);and
 - (ii) the Service Provider's wilful default.
 - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed [£*insert percentage or multiple*]¹² of the aggregate Charges paid under or pursuant to this agreement.
- 27.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable Law.

28. INSURANCE

- 28.1 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) Employer's Liability Insurance Policy of not less than [*insert the relevant amount*]for each and every claim, act or occurrence or series of claims, acts or occurrences; and
 - (b) Public Liability Insurance Policy of not less than [*insert the relevant amount*] for each and every claim, act or occurrence or series of claims, acts or occurrences.
 - (c) Professional Indemnity Insurance Policy of not less than [*insert the relevant amount*] for each and every claim, act or occurrence or series of claims, acts or occurrences.

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

- 28.2 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

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demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 28.3 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.
- 28.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 28.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of this agreement.

INFORMATION

29. FREEDOM OF INFORMATION

- 29.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 29.2 The Service Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Service Provider. The Authority shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

30. DATA PROTECTION

- 30.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 30 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 30.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the data controller and the Service Provider is the data processor. Schedule 8 (Data Processing Instructions) sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 30.3 Without prejudice to the generality of clause 30.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this agreement.
- 30.4 Without prejudice to the generality of clause 30.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this agreement:
- (e) process that Personal Data only on the written instructions of the Authority (as set out in Schedule 8), unless the Service Provider is required by the laws of any member of the European Union or by the laws of the European Union (**Applicable Laws**) applicable to the Service Provider to otherwise process the Personal Data. Where the Service Provider is so required, it shall promptly notify the Authority before processing the Personal Data, unless prohibited by the Applicable Laws;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (g) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Service Provider has provided appropriate safeguards in relation to the transfer;

- (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Service Provider complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (h) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (i) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (j) notify the Authority immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (k) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (l) maintain complete and accurate records and information to demonstrate its compliance with this clause 30 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 33 (*Audit*);
- (m) indemnify the Authority against any loss or damage suffered by the Authority of its obligations under this clause 30.

30.5 Where the Service Provider intends to engage a Sub-Contractor pursuant to clause 25 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 30.

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

30.7 The provisions of this clause 30 shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

31. DATA SECURITY

31.1 The Service Provider shall comply with the Authority's security regulations notified to the Service Provider from time to time, including any made for the purpose of the Data Protection Legislation. In particular, but without prejudice to the generality of the foregoing, the Service Provider shall instruct the Service Provider's Personnel and all its visitors not to read any documents however produced or the information displayed on any screen, or listen to the contents of any tape or electronically produced recording relating to the Services unless necessary in connection with the provision of the Services.

31.2 The Service Provider will be required to abide by the current Data Security policies of the Authority (regarding control of access, update and back up data,) supplied to the Service Provider from time to time.

31.3 The Service Provider will not provide the Authority's data or information to another party or destroy or delete data unless otherwise instructed by the Authority's Authorised Representative in writing.

31.4 The Service Provider shall maintain an audit log and a clear procedure for access control for all employees accessing information which relates to Personal Information of the Authority's employees, rate-payers or service users. The log shall include the purpose, dates and time of accessing information and shall be made available to the Authority for inspection upon request.

31.5 Where any of the Service Provider's Personnel have been removed from the list of those having access to Personal Data, when their need to access the information no longer exists, the Service Provider shall record this in a log which it shall make available to the Authority upon request.

32. CONFIDENTIALITY

32.1 Subject to clause 32.2, 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.

32.2 Clause 32.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 29.2 shall apply to any disclosures required under the FOIA or the EIRs;

- (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 32.1;
- (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 24 (Dispute Resolution);
- (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.

32.3 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 the Authority's employees, rate-payers or service users, are delivered up to the Authority in a secure, agreed format or securely destroyed upon request by the Authority. The Service Provider shall provide the Authority with disposal logs (or certificates) within five (5) Working Days of the Authority instructing the Service Provider to destroy the data.

33. AUDIT

33.1 During the Term and for a period of six (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 Service Providers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 29 (Freedom of Information) and clause 30 (Data Protection) 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 Authority's accounts;
- (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.
- 33.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 33 more than once in any calendar year.
- 33.3 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.
- 33.4 Subject to the Authority's obligations of confidentiality, 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.
- 33.5 The Authority shall endeavour to (but is not obliged to) provide at least ten (10) days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 33.6 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 Authority's reasonable costs incurred in the course of the audit.
- 33.7 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 Service Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authority has overpaid any Charges, the Service Provider shall pay to the Authority the amount overpaid within twenty (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 twenty (20) days.

34. INTELLECTUAL PROPERTY

34.1 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.

34.2 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 Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

TERMINATION

35. TERMINATION FOR BREACH

35.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider if there is an Insolvency Event.

35.2 The Authority may terminate this agreement in whole or in part with immediate effect or (at its discretion) on the expiry of any period set out in the relevant Termination Notice served on the Service Provider if the Service Provider is in breach of any material obligation under this agreement provided that if such Default is capable of remedy, the Authority may only terminate this agreement under this clause 35.2 if:

- (a) the Service Provider has failed to submit a Remediation Plan pursuant to clause 23.3(a); or
- (b) the parties have failed to agree a Remediation Plan in accordance with the Remediation Plan Process; or
- (c) the Service Provider has failed to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process; or
- (d) clause 23.9 applies;
- (e) the Service Provider has received more than three (3) Warning Notices in any six (6) month period.

- 35.3 The Authority may terminate this agreement in accordance with the provisions of clause 37 (*Force Majeure*) and clause 38 (*Prevention of Bribery*).
- 35.4 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.
- 35.5 The parties acknowledge and agree that any breach of clauses 7 (*Compliance and Change in Law*) 11 (*Equality and Diversity*), 12 (*Health and Safety*), 28 (*Insurance*), 29 (*Freedom of Information*), 30 (*Data Protection*) 31 (*Data Security*) and 32 (*Confidentiality*) shall constitute a breach of a material obligation/term.

36. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, the Authority may terminate this agreement in whole or in part for convenience at any time by giving at least three (3) months' written notice to the Service Provider.

37. FORCE MAJEURE

- 37.1 Subject to the remaining provisions of this clause 37, 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.
- 37.2 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.
- 37.3 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.
- 37.4 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.
- 37.5 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.

- 37.6 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.
- 37.7 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 ten (10) Working Days.

38. PREVENTION OF BRIBERY

- 38.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider's Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 38.2 The Service Provider shall not during the Term:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 38.3 The Service Provider shall during the term of this agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause 38.3(a) and make such records available to the Authority on request.

- 38.4 The Service Provider shall immediately notify the Authority in writing if it becomes aware of any breach of clause 38.1 and/or clause 38.2, or has reason to believe that it has or any of the Service Provider's Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.
- 38.5 If the Service Provider makes a notification to the Authority pursuant to clause 38.4, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause 33 (Audit).
- 38.6 If the Service Provider is in Default under clause 38.1 and/or clause 38.2, the Authority may by notice:
- (a) require the Service Provider to remove from performance of this agreement any Service Provider's Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this agreement.
- 38.7 Any notice served by the Authority under clause 38.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

39. CONSEQUENCES OF TERMINATION

- 39.1 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 (if relevant) of the Services to the Authority or, at the Authority's request, a third party provider.
- 39.2 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 in the format agreed with the Authority at the start of the contract and the Service Provider's Authorised Representative shall certify full compliance with this clause.

- 39.3 The provisions of clause 26 (*Indemnities*), clause 28 (*Insurance*), clause 29 (*Freedom of Information*), clause 30 (*Data Protection*), clause 33 (*Audit*), and this clause 39 (*Consequences of Termination*) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

40. WAIVER

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

41. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

42. SEVERABILITY

42.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

42.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

43. PARTNERSHIP OR AGENCY

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

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

44. THIRD PARTY RIGHTS

Except as provided in Schedule 5 (TUPE), no one other than a party to this agreement, their successors and permitted assignees shall have any right to enforce any of its terms.

45. PUBLICITY AND TRANSPARENCY

46.1 The Service Provider shall not:

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

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

45.2 The Authority, in line with the Government's ongoing drive to open up the activities of the Public Sector to greater scrutiny, has prepared its transparency agenda and the Service Provider hereby agrees that, notwithstanding anything set out in this agreement, the Authority shall be entitled to publish this agreement in whole or in part (including from time to time any agreed changes to the agreement), in whatever form the Authority may decide. The Service Provider further agrees that the Authority may publish any payments made by the Authority to the Service Provider under this agreement.

46. NOTICES

46.1 Any notice given to a party under or in connection with this agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number, email or other electronic means.

46.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt.
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- (c) if sent by fax, email or other electronic means at 9.00 am on the next Working Day after transmission provided that in the case of email or other electronic means, a failure message or out of office message is not received.

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

47. ENTIRE AGREEMENT

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

47.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

48. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

49. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

EXECUTED as a deed
by affixing the common seal of
**The Mayor and Burgesses of
The London Borough of
Sutton**
In the presence of:

.....
Authorised Officer

EXECUTED as a deed
by [insert name of service provider]
acting by and under the signatures of:

.....
Authorised Signatory (1)
Name:

Position:

.....
Authorised Signatory (2)
Name:

Position:

Schedule 1

Terms and Conditions of Contract:

Specification

Schedule 2

Key Performance Indicators

[Tender Document\Part 6. KPI.xlsm](#)

Schedule 3

Charges and Payment

Part 1. Price

[DETAILS OF PRICE, FOR EXAMPLE THE FIXED PRICE OR DAILY RATE.]

Part 2. Payment

[THE PAYMENT SCHEDULE, WHICH SHOULD INCLUDE THE DATES ON WHICH
INSTALMENTS ARE TO BE INVOICED AND THE AMOUNT OF EACH INSTALMENT.]

Schedule 4

Contract Management

1. AUTHORISED REPRESENTATIVES

1.1 The Authority's initial Authorised Representative:

1.2 The Service Provider's initial Authorised Representative:

2. KEY PERSONNEL

The Authority

NAME	POSITION	ROLE

The Service Provider

NAME	POSITION	ROLE

3. MEETINGS

3.1 Type: Monitoring any other meetings mentioned elsewhere in this agreement.

3.2 Quorum:

3.3 Frequency:

3.4 Agenda:

4. REPORTS

4.1 Contents:

4.2 Frequency:

4.3 Circulation list:

Schedule 5

TUPE

1 Definitions

In this Schedule, the following definitions shall apply:

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

Former Supplier: a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

Notified Sub-contractor: a Sub-contractor identified in *Annex B* to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Replacement Services: any services which the same are as or substantially similar to the Services following the expiry or termination or partial termination of this agreement, whether those services are provided by the Authority internally and/or by any third party;

Terms and Conditions of Contract:

Replacement Sub-contractor: a sub-contractor of the Replacement Service Provider to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Replacement Service Provider: any third party service provider of Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider [or any Sub-contractor] to a Replacement Service Provider [or a Replacement Sub-contractor];

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Service Provider's Provisional Personnel List or Service Provider's Final Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

Service Provider's Final Personnel List: a list provided by the Service Provider of all Service Provider Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Service Provider's Provisional Personnel List: a list prepared and updated by the Service Provider of all Service Provider Personnel who are engaged in or wholly

Terms and Conditions of Contract:

or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider;

Transferring Former Supplier Employees: in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date [as contained in Annex B and accurate as at the date on which this agreement is signed by the parties]; and

Transferring Service Provider Employees: those employees of the Service Provider [and/or the Service Provider's Sub-contractors] to whom the Employment Regulations will apply on the Service Transfer Date.

2 Interpretation

Where a provision in this Schedule imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall [and shall procure that its Sub-contractor(s) shall] comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Service Provider [or Replacement Sub-contractor] (as the case may be).

3 Relevant Transfers

3.1 The Authority and the Service Provider agree that:

- (h) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (i) as a result of the operation of the Employment Regulations, the contracts of employment between the Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms dis-applied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Service Provider [and/or Notified Sub-contractor] and each such Transferring Former Supplier Employee.

3.2 The Authority shall use reasonable endeavours to require the Former Supplier to comply with all its obligations under the Employment Regulations and to perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Service Provider shall make, and the Authority shall procure that the

Former Supplier makes, any necessary apportionments in respect of any periodic payments.

4 Former Supplier Indemnities

4.1 Subject to paragraph 4.2, the Authority shall procure that the Former Supplier shall indemnify the Service Provider [and any Notified Sub-contractor] against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Service Provider [and/or any Notified Sub-contractor as appropriate], to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Service Provider [and/or any Notified Sub-contractor as appropriate] may be liable by virtue of

this agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Service Provider [or any Sub-contractor] to comply with regulation 13(4) of the Employment Regulations.

4.2 The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider [or any Sub-contractor (whether or not a Notified Sub-contractor)] whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Service Provider [and/or any Sub-contractor] to comply with its obligations under the Employment Regulations.

4.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from the Former Supplier to the Service Provider [and/or any Notified Sub-contractor] pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Service Provider shall, [or shall procure that the Notified Sub-contractor shall,] within [five (5)] Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party offers) employment to such person within [fifteen (15)] Working Days of the notification by the Service Provider [and/or the Notified Sub-contractor] or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

4.4 If an offer referred to in paragraph 4.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Service Provider shall, [or shall procure that the Notified Sub-contractor shall,] immediately release the person from his/her employment or alleged employment.

4.5 If by the end of the [fifteen (15)] Working Day period specified in paragraph 4.3(b):

- (c) no such offer of employment has been made;
- (d) such offer has been made but not accepted; or
- (e) the situation has not otherwise been resolved,

the Service Provider [and/or any Notified Sub-contractor] may within [five (5) Working Days] give notice to terminate the employment or alleged employment of such person.

4.6 Subject to the Service Provider [and/or any Notified Sub-contractor] acting in accordance with the provisions of paragraph 4.3 to paragraph 4.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Service Provider [and/or any Notified Sub-contractor (as appropriate)] against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 4.5 provided that the Service Provider takes, [or shall procure that the Notified Sub-contractor takes,] all reasonable steps to minimise any such Employee Liabilities.

4.7 The indemnity in paragraph 4.6:

- (f) shall not apply to:
 - (i) any case in relation to any alleged act or omission of the Service Provider [and/or any Sub-contractor,] any claim for: (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Service Provider [and/or Notified Sub-contractor] neglected to follow a fair dismissal procedure; and
- (g) shall apply only where the notification referred to in paragraph 4.3(a) is made by the Service Provider [and/or any Notified Sub-contractor (as appropriate)] to the Authority and, if applicable, the Former Supplier, within [six (6)] months of the Effective Date.

4.8 If any such person as is described in paragraph 4.3(a) is neither re-employed by the Former Supplier nor dismissed by the Service Provider [and/or any Notified Sub-contractor] within the time scales set out in paragraph 4.5, such person shall be treated as having transferred to the Service Provider [or Notified Sub-contractor] and the Service Provider shall, [or shall procure that the Notified Sub-contractor shall,] comply with such obligations as may be imposed upon it under the Law.

5 Service Provider Indemnities and Obligations

5.1 Subject to paragraph 5.2, the Service Provider shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Service Provider [or any Sub-contractor] whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Service Provider [or any Sub-contractor] on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Service Provider [or any Sub-contractor] is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Service Provider [or a Sub-contractor] to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Service Provider [or a Sub-contractor] prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Service Provider [or a Sub-contractor] (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Service Provider [or a Sub-contractor to,] or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or

other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Service Provider [or a Sub-contractor] to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Service Provider [or any Sub-contractor] in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

5.2 The indemnities in paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

5.3 The Service Provider shall comply, [and shall procure that each Sub-contractor shall comply,] with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, [and shall procure that each Sub-contractor shall perform and discharge,] all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Supplier.

5.4 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this paragraph 5, 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.

- 5.5 Despite paragraph 5.4, it is expressly agreed that the parties may by agreement rescind or vary any terms of this agreement 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.

6 Information

The Service Provider shall, [and shall procure that each Sub-contractor shall,] promptly provide to the Authority and/or at the Authority' direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Service Provider [and each Notified Sub-contractor] in writing such information as is necessary to enable the Service Provider [and each Notified Sub-contractor] to carry out their respective duties under regulation 13 of the Employment Regulations.

7 Procurement Obligations

Notwithstanding any other provisions of this Schedule, where in this Schedule the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

8 Employer Obligation Under Pensions Legislation

The Service Provider shall comply with the requirements of the Pensions Act 2008, sections 257 and 258 of the Pensions Act 2004, and the Transfer of Employment (Pension Protection) Regulations 2005.

2. Subsequent Transfers

The Service Provider shall:

- (c) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this agreement, to terminate the agreement or any part of the Services; or
 - (ii) after the date which is [two (2) years] prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Service Provider or the Authority, no category of earnings which were not previously pensionable are made

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pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld).

3. Pre-service Transfer Obligations

3.1 The Service Provider agrees that within [twenty (20)] Working Days of the earliest of:

- (c) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (d) receipt of the giving of notice of early termination or any partial termination of this agreement;
- (e) the date which is twelve (12) months before the end of the Term; and
- (f) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six-month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Service Provider's Provisional Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Personnel List and it shall provide an updated Service Provider's Provisional Personnel List at such intervals as are reasonably requested by the Authority.

3.2 At least twenty-eight (28) Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Authority or at the direction of the Authority to any Replacement Service Provider and/or any Replacement Sub-contractor:

- (c) the Service Provider's Final Personnel List, which shall identify which of the Service Provider Personnel are Transferring Service Provider Employees; and
- (d) the Staffing Information in relation to the Service Provider's Final Personnel List (insofar as such information has not previously been provided).

3.3 The Authority shall be permitted to use and disclose information provided by the Service Provider under paragraph 10.1 and paragraph 10.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-contractor.

3.4 The Service Provider warrants, for the benefit of the Authority, any Replacement Service Provider, and any Replacement Sub-contractor that all information provided pursuant to paragraph 10.1 and paragraph 10.2 shall be true and accurate in all material respects at the time of providing the information.

3.5 From the date of the earliest event referred to in paragraph 10.1(a), paragraph 10.1(b) and paragraph 10.1(c), the Service Provider agrees, that it shall not, and

agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider's Provisional Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (c) replace or re-deploy any Service Provider Personnel listed on the Service Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (d) make, promise, propose or permit any material changes to the terms and conditions of employment of the Service Provider Personnel (including any payments connected with the termination of employment);
- (e) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Service Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (f) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Personnel List;
- (g) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (h) terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, [and procure that each Sub-contractor shall] promptly notify, the Authority or, at the direction of the Authority, any Replacement Service Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Service Provider or relevant Sub-contractor or received from any persons listed on the Service Provider's Provisional Personnel List regardless of when such notice takes effect.

3.6 During the Term, the Service Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (c) the numbers of employees engaged in providing the Services;
- (d) the percentage of time spent by each employee engaged in providing the Services; and
- (e) a description of the nature of the work undertaken by each employee by location.

3.7 The Service Provider shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any

Replacement Service Provider [and/or any Replacement Sub-contractor] to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within [five (5)] Working Days following the Service Transfer Date, the Service Provider shall provide, [and shall procure that each Sub-contractor shall provide,] to the Authority or, at the direction of the Authority, to any Replacement Service Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Service Provider's Final Personnel List who is a Transferring Service Provider Employee:

- (c) the most recent month's copy pay slip data;
- (d) details of cumulative pay for tax and pension purposes;
- (e) details of cumulative tax paid;
- (f) tax code;
- (g) details of any voluntary deductions from pay; and
- (h) bank/building society account details for payroll purposes.

11 Employment Regulations Exit Provisions

11.1 The Authority and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Service Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Service Provider and the Transferring Supplier Employees (except in relation to any contract terms dis-applied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

11.2 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are

attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Service Provider and/or the Sub-contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-contractor.

- 11.3 Subject to paragraph 11.4, the Service Provider shall indemnify the Authority and/or the Replacement Service Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Service Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Service Provider or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Service Provider or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Service Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider to the Authority and/or Replacement Service Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - (e) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating

to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

- (f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Service Provider and/or any Replacement Sub-contractor may be liable by virtue of this agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Service Provider or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Service Provider to comply with regulation 13(4) of the Employment Regulations.

11.4 The indemnities in paragraph 11.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Service Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Service Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

11.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Service Provider or any Sub-contractor to the Replacement Service Provider and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Service Provider shall, or any Replacement Sub-contractor shall, within [five (5)] Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and
- (b) the Service Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within [fifteen (15)] Working Days of the notification by the Replacement Service Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

11.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Service Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

11.7 If after the [fifteen (15)] Working Day period specified in paragraph 11.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Service Provider and/or Replacement Sub-contractor, as appropriate that it may within [five (5)] Working Days give notice to terminate the employment or alleged employment of such person.

11.8 Subject to the Replacement Service Provider and/or Replacement Sub-contractor acting in accordance with the provisions of paragraph 11.5 to paragraph 11.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Service Provider shall indemnify the Replacement Service Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 11.7 provided that the Replacement Service Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

11.9 The indemnity in paragraph 11.8:

- (i) shall not apply to:
 - (iii) in any case in relation to any alleged act or omission of the Replacement Service Provider and/or Replacement Sub-contractor, any claim for: (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (iv) any claim that the termination of employment was unfair because the Replacement Service Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 11.5 (9) is made by the Replacement Service Provider and/or Replacement Sub-contractor to the Service Provider within [six (6)] months of the Service Transfer Date.

11.10 If any such person as is described in paragraph 11.5 is neither re-employed by the Service Provider or any Sub-contractor nor dismissed by the Replacement

Service Provider and/or Replacement Sub-contractor within the time scales set out in paragraph 11.6 to paragraph 11.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Service Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

- 11.11 The Service Provider shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Service Provider and/or any Sub-contractor; and
 - (b) the Replacement Service Provider and/or the Replacement Sub-contractor.
- 11.12 The Service Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Service Provider and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Service Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Service Provider and/or Replacement Sub-contractor, shall promptly provide to the Service Provider and each Sub-contractor in writing such information as is necessary to enable the Service Provider and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 11.13 Subject to paragraph 11.13, the Authority shall procure that the Replacement Service Provider indemnifies the Service Provider on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Service Provider and/or Replacement Sub-contractor;
 - (b) the breach or non-observance by the Replacement Service Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or

- (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Service Provider and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Service Provider and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Service Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Service Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Service Provider or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider or Sub-contractor, to the Replacement Service Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Service Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Service Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

11.14 The indemnities in paragraph 11.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Service Provider and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Annex A.

Transferring Former Service Provider Employees

Annex B.

List of Notified Sub-contractors

Schedule 6

Terms and Conditions of Contract:

Change Control Procedure

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 6.
- 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 6, 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;
 - (ii) accept the Change Control Note by arranging 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 7

Policies and Procedures

The Service Provider must ensure that in addition to the policies mentioned elsewhere in this agreement, it has a signed and dated copy of each of the following policies:

1. Data Protection Policy.
2. Disciplinary and Grievance Procedures.
3. Dealing with Violence and Aggression Policy.
4. Confidentiality Policy.
5. Quality Assurance Policy.
6. Equal opportunities Policy.
7. Health & Safety Policy.
8. Recruitment & Selection and other HR Policies.
9. Dealing with accidents / incidents and Emergencies.
10. Whistle Blowing.
11. Receipt of Gifts.
12. Management and identification of risks Policy.

Schedule 8

Data Processing Instructions

1. The Service Provider shall comply with any further written instructions with respect of processing received from the Authority. Any such further instructions shall be incorporated into this Schedule and will form part of the agreement.

2. Processing by the Service Provider

2.1 Scope

Processing data as part of the insert [summary of services] and related services delivered under this agreement as more particularly described in Schedule 1.

2.2 Nature

Collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting on, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying data.

2.3 Purpose of Processing

- Necessary to deliver the Services.
- Compliance with a legal obligation which the Data Controller is bound to comply with.
- Protection of the vital interests of the Data Subject or another natural person.
- Performance of a task carried out in the public interest or in the exercise of official authority vested in the Data Controller.

2.4 Duration of Processing

For the term of this agreement.

2.5 Types of Personal Data

- Name.
- Previous Name (if any).
- Commonly used name (if any).
- Address.

- Previous Address (if any).
- Forwarding Address (if any).
- Date of Birth.
- Signature.
- Nationality (*).
- [National Insurance Number.]
- Telephone Number.
- Email Address.
- Employment status.
- Gender.
- Ethnic Origin.

2.6 Categories of Data Subject

- Service Provider's Personnel (including volunteers, agents, and temporary workers).
- Customers/ clients/service users.
- Agents.
- Members of the public.
- Employees/agents and contractors of the Authority.
- Children.
- Vulnerable adults/Young people.

2.7 Data Retention

DN: Neither the controller nor the processor can hold data indefinitely. The controller will need a plan for return or destruction of the data once the processing is complete UNLESS there is a requirement under union or member state law to preserve that type of data. Describe how long the data will be retained for, how it will be returned or destroyed

Schedule 9

Commercially Sensitive Information

[Include details of any Service Provider information which the Service Provider has identified to the Authority (as part of the Tender Process) as commercially sensitive information]

Schedule 10

Premises And Assets

Part 1 Premises

Property Name	Address	Ownership

Part 2 Assets

Asset	Number

Schedule 11

Terms and Conditions of Contract:

Exit Plan and Service Transfer Arrangements

The definitions in this paragraph apply in Schedule 11.

Assets: all assets and rights required to provide any of the Services in accordance with this agreement including without limitation the Service Provider's Equipment but excluding the Authority's Assets.

Business Process Manual: the manual which is prepared by the Service Provider and which details the business procedures which it follows in the provision of the Services.

Exclusive Assets: those Assets which are used by the Service Provider or a Sub-Contractor exclusively in connection with the provision of the Services.

Fair Market Value: the fair market value of the relevant Asset(s) calculated in accordance with [INSERT CROSS-REFERENCE].

Net Book Value: the net book value of the relevant Asset(s) calculated in accordance with [the depreciation policy in [INSERT CROSS-REFERENCE].

Non-Exclusive Assets: those Assets used by the Service Provider or a Sub-Contractor in connection with the provision of the Services but which are also employed by the Service Provider or Sub-Contractor for other purposes.

Registers: the registers and database referred to in paragraph 5.2(a) and paragraph 5.2(b) of this Schedule 11.

Transitional Assistance Notice: has the meaning set out in paragraph 6.1 of this Schedule 11.

Transferable Assets: those of the Exclusive Assets which are capable of legal transfer to the Authority.

Transferable Contracts: the Sub-Contracts or other agreements which are necessary to enable the Authority or any Replacement Service Provider to perform the Services or the Replacement Services.

Transferring Assets: has the meaning set out in paragraph 7.1(a) of this Schedule 11.

Transferring Contracts: has the meaning set out in paragraph 7.1(c) of this Schedule 11.

3. PURPOSE OF SCHEDULE

3.1 The Service Provider is required to ensure the orderly transition of the Services from the Service Provider to the Authority or any Replacement Service Provider in the event of any termination (including partial termination) or expiry of this agreement. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.

3.2 For the avoidance of doubt the Service Provider is responsible for the overall management of the exit and Service transfer arrangements.

4. EXIT PLAN

Terms and Conditions of Contract:

The Exit Plan shall:

- (a) address each of the issues set out in this 11 to facilitate the transition of the Services from the Service Provider to the Replacement Service Provider and/or the Authority and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
- (b) detail how the Services will transfer to the Replacement Service Provider and/or the Authority including details of the processes, documentation, data transfer, [systems migration, security and the segregation of the Authority's technology components from any technology components run by the Service Provider or any of its Sub-Contractors (where applicable)];
- (c) specify the scope of the Transitional Assistance Services that may be required by the Authority, (subject to paragraph 9 of this Schedule 11) any charges that would be payable for the provision of Transitional Assistance Services and detail how such services would be provided (if required) during the termination period;
- (d) provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
- (e) set out the management structure to be put in place and employed during the termination period.

5. OBLIGATIONS DURING THE TERM

5.1 The Service Provider and the Authority shall each appoint an exit manager and provide written notification of such appointment to each other within [six (6) months] after the Commencement Date. The Service Provider's exit manager shall be responsible for ensuring that the Service Provider and its employees, agents and Sub-Contractors comply with this Schedule 11. The Service Provider shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider to comply with this Schedule 11. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 11 and each party's compliance with it.

5.2 During the Term, the Service Provider shall:

- (a) create and maintain a register of:
 - (i) all assets, detailing their ownership status as either Exclusive Assets (separately identifying Transferable Assets) or Non-Exclusive Assets and their [Net Book Value OR Fair Market Value]; and
 - (ii) all Sub-Contracts and other agreements (separately identifying Transferable Contracts) required to perform the Services;
- (b) create and maintain a database setting out the Service Provider's technical infrastructure through which the Services are delivered.

Such database shall be capable of allowing staff of the Replacement Service Provider and/or the Authority to acquire sufficient technical understanding of how the Service Provider provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and

- (c) at all times keep the Registers up to date and shall maintain copies of any agreements referred to in any Register.

5.3 The parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.

5.4 At the same time as the Service Provider submits a revised Exit Plan, it shall also submit to the Authority up-to-date Registers.

5.5 The Service Provider shall ensure all Exclusive Assets are clearly marked to identify that they are exclusively used for the provision of the Services under this agreement.

5.6 The Service Provider shall procure that any licences for third party software entered into with effect from or after the Commencement Date and all Sub-Contracts shall be assignable or capable of novation at the request of the Authority to the Authority and/or any Replacement Service Provider without restriction (including any need to obtain any consent or approval) or payment by the Authority. If the Service Provider cannot procure such rights then the Service Provider shall 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 an alternative provider of the goods or services to which the relevant agreement relates.

5.7 On reasonable notice, the Service Provider shall provide to the Authority and/or to its Replacement Service Provider (subject to the Replacement Service Provider entering into reasonable written confidentiality undertakings with the Service Provider), such material and information as the Authority shall require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Service Provider undertaking due diligence (including in relation to the Services, Assets, Authority's data, Registers and Transferring Employees).

6. TRANSITIONAL ASSISTANCE SERVICES

6.1 The Authority shall be entitled to require the provision of Transitional Assistance Services by sending the Service Provider a notice to that effect (**Transitional Assistance Notice**) at any time prior to termination or expiry. The Transitional Assistance Notice shall specify:

- (a) the date from which Transitional Assistance Services are required;
- (b) the nature and extent of the Transitional Assistance Services required; and
- (c) the period during which it is anticipated that Transitional Assistance Services will be required (**Transitional Period**) (which shall continue no

longer than [three (3) months] after the date that the Service Provider ceases to provide the Services or, in the event that a termination period is specified by the Authority, no longer than the end of the termination period.

- 6.2 The Authority shall have an option to extend the Transitional Period beyond the period specified in the Transitional Assistance Notice by written notice to the Service Provider provided that such extension shall not extend beyond [three (3) months] after the expiry of the period referred to in paragraph 6.1(c) of this Schedule 11.
- 6.3 The Authority shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than [twenty (20) days] notice upon the Service Provider to such effect.
- 6.4 The Transitional Assistance Services shall be provided in good faith and in accordance with Best Industry Practice.
- 6.5 The Service Provider shall continue to provide the Services (or the relevant part of them) during the Transitional Period in accordance with the Service Levels unless the parties agree otherwise pursuant to paragraph 6.6 of this Schedule 11.
- 6.6 Where the Service Provider demonstrates to the Authority's reasonable satisfaction that transfer of the Services during the Transitional Period will have a material adverse effect on the Service Provider's ability to meet a particular Service Level and such adverse effect is not due to a failure by the Service Provider to perform this agreement, the parties shall vary the relevant Service Level and/or the applicable Service Credits to take account of such adverse effect.
- 6.7 During the Transitional Period, the Service Provider shall, in addition to providing the Services and the Transitional Assistance Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Service Provider shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Service Provider in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan shall be provided on a time-and-materials basis in accordance with the applicable rates charged normally by the Service Provider and subject to agreement under the Change Control Procedure.
- 6.8 [The Authority and the Service Provider acknowledge that the transition of the Services to the Replacement Service Provider may be phased over a period of time so that certain identified Services are transferred to the Replacement Service Provider before others].
- 6.9 The Authority shall, at the Service Provider's reasonable request, require the Replacement Service Provider and any agent or personnel of the Replacement

Service Provider, to enter into an appropriate confidentiality undertaking with the Service Provider.

- 6.10 The Service Provider shall comply with all of its obligations contained in the Exit Plan.
- 6.11 From the date [six (6) months] before expiry or from the service by either party of any Termination Notice (whichever is the earlier) and during any termination period, the Service Provider shall not terminate or vary in any material respect any Transferable Contract without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 6.12 Upon termination or expiry (as the case may be) or upon expiration of the termination period or, provided that it does not have an adverse impact on the ability of the Service Provider to provide the Services or the Transitional Assistance Services at any time during the termination period (as the Authority shall require):
- (a) the Service Provider shall cease to use the Authority's data and, at the direction of the Authority either:
 - (i) provide the Authority or Replacement Service Provider with a complete and uncorrupted version of the Authority's data in electronic form (or such other format as reasonably required by the Authority); or
 - (ii) destroy (including removal from any hard disk) or return (at the Authority's option) all copies of the Authority's data [not required to be retained by the Service Provider for statutory compliance purposes] and confirm in writing that such destruction has taken place;
 - (b) the Service Provider shall return to the Authority such of the following as are in the Service Provider's possession or control:
 - (i) all Authority's Assets;
 - (ii) all materials created by the Service Provider under this agreement, the IPRs in which are owned by the Authority;
 - (iii) any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
 - (c) the Service Provider shall vacate the Premises; and
 - (d) each party shall return to the other party all Confidential Information of the other party and shall certify that it does not retain the other party's Confidential Information.
- 6.13 The Transitional Assistance Services to be provided by the Service Provider shall include (without limitation) such of the following services as the Authority may specify:
- (a) providing to the Authority an up-to-date Business Process Manual;

- (b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority or Replacement Service Provider after the end of the termination period;
- (c) providing details of work volumes and staffing requirements over the preceding twelve (12) months;
- (d) analysing and providing information about capacity and performance requirements, processor requirements and known planned requirements for capacity growth and efficiency savings;
- (e) transferring all training material and providing appropriate training to those Authority and/or Replacement Service Provider staff responsible for internal training in connection with the provision of the Services;
- (f) providing for transfer to the Authority and/or the Replacement Service Provider of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (g) answering all reasonable questions from the Authority and/or the Replacement Service Provider regarding the Services.

7. TRANSFER OF ASSETS AND CONTRACTS

7.1 Not less than **six (6) months** prior to expiry or, in the case of termination, as soon as practicable (but in any event not later than **one (1) Month** following delivery of the up-to-date Registers) or in the event of a termination period, not later than one Month prior to the date of expiration of the Termination Period, the Authority shall notify the Service Provider:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to it and/or any Replacement Service Provider (**Transferring Assets**);
- (b) which, if any, of the Exclusive Assets which are not Transferable Assets and which of the Non-Exclusive Assets the Authority and/or the Replacement Service Provider requires the continued use of; and
- (c) which Transferable Contracts the Authority requires to be transferred to it and/or to the Replacement Service Provider or any other licences of the Service Provider's Software or third party software required by the Authority and/or the Replacement Service Provider (**Transferring Contracts**),

in order for the Authority or the Replacement Service Provider to provide the Replacement Services from the end of the termination period. At the request of the Authority the Service Provider shall provide such assistance as may be necessary to help the Authority and/or the Replacement Service Provider to identify which Assets and which Transferable Contracts are required for the

continued provision of the Services and the provision of the Replacement Services.

- 7.2 The Service Provider shall sell the Transferring Assets to the Authority or the Replacement Service Provider (as determined by the Authority) with effect from the end of the termination period and the sale shall take place at such place as the Authority shall specify. The Authority or the Replacement Service Provider shall acquire the Transferring Assets at [Net Book Value OR Fair Market Value] in accordance with [INSERT]. Risk in such Transferring Assets shall pass to the Authority or the Replacement Service Provider (as appropriate) at the end of the termination period and title to such Transferring Assets shall pass to the Authority or the Replacement Service Provider (as appropriate) on payment for the same.
- 7.3 Where the Service Provider is notified in accordance with paragraph 7.1(b) that the Authority and/or the Replacement Service Provider requires continued use of any of the Exclusive or Non-Exclusive Assets, the Service Provider shall:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Service Provider to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Service Provider shall bear the reasonable proven costs of procuring the same.
- 7.4 The Service Provider shall at the Authority's request and with the co-operation of the Authority procure the novation or assignment to the Authority and/or Replacement Service Provider of the Transferring Contracts.
- 7.5 The Authority shall:
- (a) accept assignments from the Service Provider or join with the Service Provider in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or re-assigned to the Authority or the Replacement Service Provider, the Authority shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Service Provider does the same.
- 7.6 The Service Provider shall indemnify the Authority (or the Replacement Service Provider, as applicable) against each loss, liability and cost arising out of any claims made by a party to a Transferring Contract which is assigned or novated to the Authority (or Replacement Service Provider) pursuant to paragraph 7.4 of this Schedule 11 in relation to any matters arising prior to the date of such assignment or novation.
- 7.7 The Authority shall notify the Service Provider of any obligation under any Transferring Contract which has been or will be novated or assigned under this

paragraph which it is unable to carry out or perform without the assistance of the Service Provider. The Service Provider shall provide all reasonable assistance to the Authority to enable it to comply with that obligation.

8. PAYMENT ON TERMINATION OR EXPIRY

8.1 Subject to paragraph 8.2 of this Schedule 11, the Authority shall, or shall procure that the Replacement Service Provider shall, pay to the Service Provider the price determined in accordance with paragraph 7 of this Schedule 11:

- (a) for the Transferring Assets; and/or
- (b) for the continued use of the Exclusive Assets and Non-Exclusive Assets as referred to in paragraph 7.1(b) of this Schedule 11.

8.2 Any Charges to be paid by the Authority in respect of the Service Provider performing its obligations in this Schedule 11 (if any) shall be determined in by agreement of the parties subject to the Change Control Procedure. The continued provision of the Services shall be paid for in accordance with the Charges relating thereto.

9. APPORTIONMENTS

9.1 There shall be apportioned between the Authority and the Service Provider or the Replacement Service Provider and the Service Provider all outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts.

9.2 This apportionment shall be carried out as follows:

- (a) the payments shall be annualised and divided by 365 to reach a daily rate;
- (b) the Authority shall be responsible for or shall procure that its nominee or the Replacement Service Provider shall be responsible for or entitled to (as the case may be) an amount equal to the number of complete days during the period of the invoice after the transfer multiplied by that daily rate; and
- (c) the Service Provider shall be responsible for or entitled to (as the case may be) the rest of the invoice.

9.3 Each party shall pay and the Authority shall procure that its nominee or the Replacement Service Provider shall pay any monies due under this paragraph 9 as soon as practicable.

Schedule 12

Service Provider's Tender¹³

¹³ Successful bidder's proposal to be included after award of contract

Terms and Conditions of Contract: