

Offices Services Project

Terms and Conditions of Agreement

TABLE OF CONTENTS

1.	Interpretations	5
2.	Term	7
3.	Provision of the Services	7
4.	Non-Conforming Services	8
5.	Service Levels	9
6.	Guarantee	9
7.	Transition	9
8.	Conditions Affecting Provision of Services	10
9.	Charges	10
10.	Authority's Property	11
11.	Assets	12
12.	Warranty	12
13.	Key Personnel	13
14.	Transfer of Employees	14
15.	Reputation and Public Service Considerations	14
16.	Provision of Premises	15
17.	Right of Access to Authority's Premises	16
18.	Relocation	17
19.	Authority Responsibilities and Assumptions	17
20.	Re-Tendering	18
21.	Due Diligence	18
22.	Services Improvement	19
23.	Disclosure of Information	19
24.	Time	20
25.	Benchmarking	20
26.	Most Favoured Customer	22
27.	Benefit Sharing	22
28.	Intellectual Property Rights	23
29.	Loss of Data	29
30.	Access by the Authority to Data	30
31.	Limitation on Use and Application of the Authority's Data	30
32.	Security	31
33.	Confidentiality	32
34.	Freedom of Information	33
35.	Visits and Publicity	35
36.	Right of Audit	35
37.	Open Book Accounts	37
38.	Official Secrets Acts	37
39.	General Indemnity	37
40.	Limits of Liability	38
41.	Insurance	39
42.	Corrupt Gifts and Payments	39
43.	Recovery of Sums Due	40
44.	Health and Safety	40
45.	Legislative and Policy Change	41
46.	Contracts (Right Of Third Parties) Act 1999	41
47.	Data Protection	41
48.	Dispute Resolution Procedure	43
49.	Compliance with Legislation	43
50.	Transfer and Sub-Contracting	43
51.	Service of Notices and Communications	45
52.	Severability	45
53.	Waiver	45

Office Services Agreement

54.	Amendments to the Agreement	45
55.	Remedies Cumulative	46
56.	Force Majeure	46
57.	Disruption	47
58.	Step In.....	47
59.	Termination	49
60.	Consequences of Termination	53
61.	Supply Chain Rights.....	53
62.	Entire Agreement	54
63.	Relationship of the Parties	54
64.	Law And Jurisdiction	55

Schedules

1. Definitions
2. The Requirement
3. The Services
4. Transition and Transformation
5. Subcontractors
6. Charging
7. Invoicing
8. Contract Management
9. Change Control Procedure
10. Premises
11. Key Personnel
12. Provisions Relating to Staff
13. Authority's Responsibilities
14. Parent Company Guarantee
15. Dispute Resolution
16. Retender Provisions
17. Security, Audit and Business Continuity
18. Standards and Policies
19. Transition and Exit Management
20. Service Levels and Service Credits
21. Exempt Information

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BETWEEN :

Haden Building Management Limited whose registered office is at 10th Floor, Marlow House, 109 Station Road, Sidcup, DA15 7BH and whose registered number is 00598379 (“the Contractor”).

- a. on 1 July 2005 the Authority issued a High Level Business Requirement (HLBR) to potential suppliers (including the Contractor) in respect of the provision of the Services for the Authority;
- b. the Contractor submitted a proposal in response to the HLBR;
- c. the Authority invited potential suppliers (including the Contractor) to engage in negotiations in connection with their respective proposals and the Authority's needs for the provision of the Services and accordingly such negotiations took place;
- d. on 21 April 2006 the Authority invited potential suppliers (including the Contractor) to submit best and final offers in respect of the Services;
- e. the Contractor submitted a best and final offer to provide the Services on 18 May 2006;
- f. the Contractor was afforded access to the Authority's Premises as required, in order to carry out due diligence exercises sufficient to prepare its proposal; and
- g. on the basis of the Contractor's proposal as further amplified by the above referenced discussions and on the basis of the Contractor's best and final offer, the Authority has selected the Contractor to provide the Services and the Contractor undertakes to supply the same on the terms set out below.

1. INTERPRETATIONS

- 1.1 In this Agreement the definitions set out in Schedule 1 shall apply.
- 1.2 As used in this Agreement:
 - 1.2.1 the masculine includes the feminine and the neuter and vice versa;
 - 1.2.2 the singular includes the plural and vice versa; and

Office Services Agreement

- 1.2.3 use of the words “includes” or “including” or “in particular” or any similar wording shall be construed without limitation and any general words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent enactment thereof.
- 1.4 A reference to a person shall include any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body or persons or association and a reference to that person’s successors.
- 1.5 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this contract.
- 1.6 References to Clauses, Parts, Schedules and Annexes are, unless otherwise provided references to Clauses, Parts and Schedules to this Agreement and Annexes to the Schedules. References to Paragraphs are, unless otherwise provided, references to paragraphs of the Schedules to this Agreement.
- 1.7 Any reference to this Agreement includes the Schedules and Annexes to this Agreement which form an integral part of this Agreement.
- 1.8 Except as provided in Clause 61.1, in the event and to the extent only of any conflict or inconsistency between:
 - 1.8.1 the provisions of the Clauses and Schedule 1 and the provisions of the Schedules (other than Schedule 1), the provisions of the Clauses and Schedule 1 shall prevail;
 - 1.8.2 the provisions of the Schedules (other than Schedule 1), the provisions of Schedule 2 shall prevail over those of all other Schedules (other than Schedule 1);
 - 1.8.3 the provisions of this Agreement and the provisions of any document referred to or referenced herein, the provisions of this Agreement shall prevail; and
 - 1.8.4 the provisions of this Agreement and the provisions of any document agreed by the parties or submitted by the Contractor and approved by the Authority subsequent to the date hereof, the provisions of this Agreement shall prevail unless amended in accordance with Clause 54.
- 1.9 The party receiving the benefit of an indemnity under this Agreement shall use its reasonable endeavours to mitigate its loss covered by the indemnity.
- 1.10 The Contractor acknowledges that the Services delivered to the Authority may be, in part, provided to Other Government Departments. In this respect the term “Authority” shall be construed to include such Other Government Departments where appropriate for the receipt of the Services in this Agreement. These Other Government Departments shall be entitled to receive the benefit of the Services, but shall not be entitled to enforce any rights in respect of the Services. This Agreement shall only be enforceable by the Authority.

2. TERM

- 2.1 The Agreement shall take effect on the Effective Date and shall expire seven (7) years after the Cutover Date (the "Initial Term"), unless it is extended in accordance with Clause 2.2 and/or 2.3, or terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated.
- 2.2 In the event of the expiry of the Initial Term, the Contractor hereby irrevocably grants to the Authority an option, at the Authority's sole discretion, to extend the term of this Agreement for an additional term of three (3) years (the "Extended Term"); such option being exercisable in writing not less than twelve (12) months prior to such extension. The charges applicable to the Extended Term shall be as set out in Schedule 6.
- 2.3 In the event of the expiry of either the Initial Term or Extended Term of this Agreement, the Contractor hereby irrevocably grants to the Authority an option to extend the term of this Agreement for a further period of up to twelve (12) months such option being exercisable in writing not less than three (3) months prior to such extension. The charges applicable to this extension of up to twelve (12) months shall be calculated in accordance with Clause 2.4.
- 2.4 The Charges applicable to the extended term set out in Clause 2.3 shall be those applicable during the year preceding the date when the extended term commences (as varied in accordance with Paragraphs 12.6 to 12.11 of Schedule 6) unless otherwise agreed by the parties. The Authority shall also pay any reasonable additional costs of the Contractor which are incurred as a direct result of the extended term, save to the extent such costs are recoverable by the Contractor from a Replacement Contractor in accordance with the provisions of the Exit Transition Agreement and provided the Contractor shall use all reasonable endeavours to mitigate such additional costs.

3. PROVISION OF THE SERVICES

- 3.1 The Contractor shall, subject to the provision of Clause 45, ensure that the Services are provided:
- 3.1.1 in accordance with good industry practice from time to time and (without limiting the generality of this Clause) in accordance with its own internal procedures;
 - 3.1.2 in accordance with all applicable legislation from time to time in force; and
 - 3.1.3 in accordance with the standards and policies set out in Schedule 18.
- 3.2 The Contractor shall further ensure that the Services are provided in accordance with all other reasonable guidance and guidelines issued to the Contractor by the Authority from time to time and agreed by the parties in accordance with the Change Control Procedure.
- 3.3 The Contractor shall be responsible for meeting the requirements specified in Schedule 2 by providing the Services more particularly described in Schedules 3 and 4 and in accordance with all other applicable provisions of this Agreement.
- 3.4 The Authority shall have the option, exercisable on written notice to the Contractor (on such period as is defined in Schedule 3) of obtaining all or any of the Optional Services specified in Schedule 3.
- 3.5 The Contractor shall commence delivery of such Optional Services on expiry of such notice. Such Optional Services shall be performed in accordance with all applicable provisions of this Agreement.

Office Services Agreement

3.6 The Contractor undertakes to perform at any time during the term of this Agreement such Additional Services as may be agreed by it and the Authority pursuant to the Change Control Procedure. Such Additional Services shall be performed in accordance with all applicable provisions of this Agreement save as otherwise agreed pursuant to the Change Control Procedure.

3.7 Local Office Reports

3.7.1 The Contractor shall, during the Transition Period, develop a Local Office Report (LOR) for each of the Authority's Premises in co-operation with the Authority in accordance with the Detailed Transition Plan. The LORs shall be designed to specify the Core Services (and their method of delivery) for that specific Authority Premises in a manner consistent with, but at a lower level of detail than, the Services specified in Schedule 3.

3.7.2 The LORs developed pursuant to Clause 3.7.1 shall be subject to approval by the Authority, such approval not to be unreasonably withheld or delayed.

3.7.3 Once approved by the Authority, the Contractor shall, from the Cutover Date, deliver the Services to each of the Authority's Premises as specified in the LORs.

3.7.4 The parties may agree local changes to a LOR up to a specified financial limit for each Year. The parties shall, during the Transition Period, agree the financial limit for each of the Authority's Premises and shall agree the process for agreeing changes which fall below the financial limit. The appropriate LOR will be amended to take account of any agreed permanent changes.

3.7.5 For the avoidance of doubt, any changes which exceed the relevant financial limit and any changes which affect the provision of the Services on a national basis shall only be implemented with the agreement of both parties in accordance with the Change Control Procedure.

3.7.6 For the avoidance of doubt, and without limitation to the generality of Clause 1.8.3, the Authority's co-operation in developing and approval of the LORs pursuant to Clauses 3.7.1 and 3.7.2 shall not relieve the Contractor of the overriding obligation to meet the requirements specified in Schedule 2 and all other applicable provisions of this Agreement unless otherwise agreed in writing by the Authority.

3.8 The Contractor shall provide all additional cooperation and assistance as is reasonably required by the Authority and the Authority's other suppliers to ensure the effective integration of the Services and services from the Authority's other suppliers.

4. NON-CONFORMING SERVICES

4.1 In the event that, as a result of its Default, the Contractor fails to perform the Services, or any part of them, in accordance with this Agreement, and such failure is not caused by the Authority, or by its employees, other contractors or authorised agents, then the Authority may notify the Contractor in writing that, in addition to any other remedies that may be available to it either under this Agreement or otherwise, at its sole discretion it may:

4.1.1 require the Contractor, at the Contractor's own expense, promptly to remedy any Default or re-perform any non-conforming aspect of the Services; or

4.1.2 withhold from payment to the Contractor or recover as a sum of money due from the Contractor any portion of the Charges that are allocable to the Default or non-

Office Services Agreement

conforming aspect of the Services other than where Service Credits are applicable to the failure in which case the recovery of such Service Credits shall be the sole financial remedy of the Authority in respect of such failure; or

4.1.3 if the Contractor fails to remedy the Default or re-perform any non-conforming aspect of the Services pursuant to Clause 4.1.1 within thirty (30) days after notice thereof is given to the Contractor, the Authority may either remedy any Default or re-perform any non-conforming aspect of the Services itself or have them remedied by a third party on its behalf, and in either case the Contractor shall pay the reasonable costs so incurred by the Authority.

4.2 In the event that the Services hereunder are not provided in accordance with all applicable provisions hereof as a result of a Default of the Contractor and such Default is not caused by the Authority, or by its employees, other contractors or authorised agents, the Contractor shall, at the request of the Authority and without prejudice to the Authority's other rights and remedies, arrange all such additional resources as are reasonably necessary to correct such failure as early as practicable thereafter and at no additional charge to the Authority.

5. SERVICE LEVELS

5.1 Following the Cutover Date, and subject to the provisions of Schedule 20, the Contractor shall provide the Services (including any Optional Services called off by the Authority or any Additional Services agreed by the parties) in accordance with the Service Levels applicable thereto.

5.2 If due to a Default of the Contractor, other than where such Default has been caused by the Authority, or by its employees, other contractors or authorised agents, the Services fail to meet the Service Levels contained in Schedule 20, the Contractor shall incur Service Credits calculated in accordance with the provision of Schedule 20.

5.3 The parties acknowledge that the Service Credits referred to in this Clause 5 and specified in Schedule 20 are a genuine pre-estimate of the loss likely to be suffered by the Authority and that the figures therein are reasonable.

5.4 Without prejudice to any other non-financial rights or remedies of the Authority, the Service Credits recoverable by the Authority in accordance with this Clause 5 shall be the Authority's sole financial remedy in respect of any Default to which Service Levels apply.

6. GUARANTEE

6.1 The Contractor shall procure that the Guarantor shall within twenty (20) days after the Effective Date enter into and maintain a guarantee in the form set out in Schedule 14. Breach of this Clause shall constitute a Default not capable of remedy and shall entitle the Authority to terminate this Agreement in accordance with Clause 59.6.

7. TRANSITION

7.1 The Contractor and the Authority shall perform their respective obligations during the Transition Period in accordance with the provisions of Schedule 4 and the Transition Agreements.

7.2 The Authority shall transfer responsibility to the Contractor for the provision of the Services on the Cutover Date if either the Contractor:

7.2.1 has complied fully with the Transition Review Process outlined in the Transition Agreements; or

Office Services Agreement

7.2.2 has otherwise demonstrated to the satisfaction of the Authority (whose determination in such matter shall be final) its capacity to deliver the Services in accordance with all applicable provisions of this Agreement.

7.3 Prior to the Cutover Date If due to a Default of the Contractor, other than where such Default has been caused by the Authority, or by its employees, other contractors or authorised agents, the Transition Review Process has not been recorded as successful in respect of any aspect of the Services in accordance with any of the Transition Agreements by the end of the Transition Period, the Authority shall have the right without prejudice to its other rights and remedies:

7.3.1 to cutover the provision of the Services in accordance with Clause 7.2.2; or

7.3.2 to terminate pursuant to Clause 59.12 any Services in respect of which the Transition Review Process have been recorded as unsuccessful; or

7.3.3 to terminate this Agreement pursuant to Clause 59.6.

8. CONDITIONS AFFECTING PROVISION OF SERVICES

8.1 Subject to Clause 19, The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services and the supply of and conditions affecting labour necessary for the performance of the Services.

9. CHARGES

9.1 The Charges for the Services shall be calculated in accordance with the provisions of Schedule 6. For the avoidance of doubt, it is agreed that there shall be no additional charges for the services provided by the Contractor pursuant to the provisions of the Exit Transition Agreement as set out in Schedule 19; all charges for such Services shall be deemed to be included within the Charges.

9.2 The Authority shall pay the Milestone Charges for each Key Milestone successfully achieved by the Contractor during the Transition Period. All Milestone Charges paid by the Authority are recoverable by the Authority if the Transition Review Process is not recorded as successful and the Authority terminates this Agreement in accordance with the provisions of Clause 7.3.3.

9.3 The Charges for the Optional Services shall be as set out for each Optional Service in Schedule 6.

9.4 The Charges for any Additional Services shall be agreed in accordance with the Change Control Procedure. In agreeing the Charges, the parties shall comply with the principles set out in Paragraph 7.1 of Schedule 6 and the Charges shall be calculated in accordance with the charging mechanism as set out in Schedule 6 or as otherwise agreed by the parties.

9.5 In consideration of the provision of the Services in accordance with the terms of this Agreement the Authority shall pay the Charges in accordance with the invoicing and payment procedure specified in Schedule 7.

9.6 Interest shall be payable on any late payments under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

9.7 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.

Office Services Agreement

- 9.8 The Contractor shall indemnify the Authority on a continuing basis 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 Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement provided that the Authority has paid to the Contractor VAT at the applicable rate on such payments. Any amounts due under this clause shall be paid in cleared funds by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 9.9 The Authority shall promptly notify the Contractor if any claim or demand is made or action brought against the Authority to which Clause 9.8 may apply. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Authority hereby agrees to grant to the Contractor exclusive control of any such litigation and such negotiations.
- 9.10 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which Clause 9.8 may apply.
- 9.11 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action to which Clause 9.8 may apply.
10. **AUTHORITY'S PROPERTY**
- 10.1 All Authority's Property shall remain the property of the Authority and shall be used in the performance of the Services and for no other purpose without the prior written agreement of the Authority.
- 10.2 On receipt of Authority's Property the Contractor shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective; within fourteen (14) days of receipt of any item of Authority's Property, or such other period as may be approved, the Contractor shall notify the Authority in writing of any defects discovered; within fourteen (14) days after receiving such notification, the Authority shall inform the Contractor of the action to be taken.
- 10.3 The Authority shall be responsible for the repair or replacement of Authority's Property unless the need for repair or replacement is caused by the Default of the Contractor.
- 10.4 The Contractor shall be responsible for his own costs resulting from any failure of Authority's Property, unless he can demonstrate that the Authority had caused undue delay in its replacement or repair.
- 10.5 The Contractor shall use all items of Authority's Property in accordance with the manufacturer's recommendations and the Authority's instructions.
- 10.6 The Contractor shall be liable for any loss of or damage to any Authority's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Default of the Authority.
- 10.7 The Contractor shall not in any circumstances have a lien on any Authority's Property and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with any Authority's Property.

11. ASSETS

- 11.1 The Contractor shall be responsible for providing all the Assets (other than the Assets provided by the Authority) necessary for the delivery of the Services.
- 11.2 The Contractor shall maintain all of the Assets in a good and serviceable condition.
- 11.3 All Assets shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Assets unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Default of the Authority.
- 11.4 The Contractor shall provide for the haulage or carriage of Assets to the Premises and its off-loading and removal when no longer required.
- 11.5 The Contractor shall be responsible for maintaining the Asset Register in line with any changes to the Assets used.
- 11.6 The Contractor shall provide the Authority with an updated copy of the Asset Register:
 - 11.6.1 on each anniversary of the Cutover Date; and/or
 - 11.6.2 within fifteen (15) Working Days after any request to do so by the Authority; and/or
 - 11.6.3 within fifteen (15) Working Days after any notice to terminate this Agreement or twelve (12) Months prior to expiry of this Agreement.

12. WARRANTY

- 12.1 The Contractor warrants and represents to the Authority that:
 - 12.1.1 the obligations of the Contractor under this Agreement shall be performed by appropriately qualified, skilled and trained personnel with reasonable skill care and diligence;
 - 12.1.2 the accuracy of any documents originated, made or developed by the Contractor in connection with the provision of the Services during the course of the Agreement, will be provided to such standards as would reasonably be expected from a skilled and experienced provider of services similar to the Services provided to the Authority; and
 - 12.1.3 any software deployed by the Contractor under this Agreement shall perform in accordance with the specification of such software agreed between the parties prior to its implementation.
 - 12.1.4 it has full capacity and authority and all necessary licences, permits and consents (including but not limited to, where its circumstances and procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement;
 - 12.1.5 this Agreement is executed by a duly authorised representative of the Contractor; and
 - 12.1.6 the execution and delivery of this Agreement, and the performance by the Contractor of its obligations under it, will not:

- 12.1.6.1 result in a breach of any provision of the Memorandum or Articles of Association or Partnership Deed, if applicable, of the Contractor; or
- 12.1.6.2 result in a breach of or constitute a default under any instrument or agreement to which the Contractor is a party to or by which the Contractor is bound; or
- 12.1.6.3 result in a breach of any order, judgement or decrees of any court or Governmental agency to which the Contractor is a party or by which the Contractor is bound.

12.1.7 The Authority warrants and represents that:

- 12.1.7.1 it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement; and
- 12.1.7.2 this Agreement is executed by a duly authorised representative of the Authority.

13. KEY PERSONNEL

- 13.1 The parties have agreed to the appointment of the Key Personnel listed in Schedule 11. The Contractor shall obtain the prior written consent of the Authority before removing or replacing any Key Personnel, and, where reasonably practicable, at least three (3) months written notice must be provided by the Contractor of its intention to replace Key Personnel.
- 13.2 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Contractor. The Authority may interview the candidates for Key Personnel positions before they are appointed.
- 13.3 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days (or such other period as may be agreed by the parties) and that any replacement (which may include a temporary replacement) shall be at least as qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 13.4 The Contractor shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Authority otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory and contractual obligations, the Contractor shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 13.5 Where the Authority identifies any other member of Staff as someone it considers should be Key Personnel, the parties may agree, via the Change Control Procedure, to include such individual on the list of Key Personnel. The Authority may in writing also require the Contractor to remove any Key Personnel that the Authority reasonably considers to be unsatisfactory.
- 13.6 For the avoidance of doubt the Authority shall not be liable for the cost of removing or replacing any Key Personnel.

14. TRANSFER OF EMPLOYEES

Application of the Transfer Regulations

- 14.1 The parties will comply with their respective obligations under Schedule 4 and the Transition Agreements regarding the transfer of employees of the Authority and Incumbent Suppliers at the Cutover Date. In the event of any other transfer of employees of the Authority to the Contractor or its Subcontractors at any time prior to or after the Cutover Date, the parties shall comply with the provisions of Schedule 4 in relation to such transfer except that references in Schedule 4 to the "Cutover Date" shall be amended to the "Transfer Date".

Charges Change Request

- 14.2 The Contractor shall, subject to Clause 14.3, be entitled to request a change to the Charges in accordance with the Change Control Procedure (a "Charges Change Request") in respect of costs expenses or claims arising from any change to the number of Transferring Employees, or the terms and conditions of employment of such Transferring Employees (including changes to the salary of any such Transferring Employees), transferring to the Contractor or its Subcontractors on the Cutover Date as against the number of Potential Transferring Employees identified in the Authority Staff Listing dated March 2006 and the Incumbent Contractor Listing dated 4th May 2006, and included in the Contractor's BAFO submission or the terms and conditions of employment of such Potential Transferring Employees prior to the Cutover Date, and in respect of costs, expenses and claims of, arising from or in connection with any employees that transfer to the Contractor or its Subcontractors on a Transfer Date.
- 14.3 A Charges Change Request may be requested where:
- 14.3.1 the Charges Change Request is made within six (6) months of the Cutover Date or the relevant Transfer Date;
 - 14.3.2 the Contractor making the Charges Change Request adduces reasonable evidence in support of such Charges Change Request;
 - 14.3.3 the Charges Change Request is made with respect to any costs, expenses or claims arising out of or in connection with or as a result of any claim or demand by any employees of the Authority or Incumbent Suppliers claiming that they should have been transferred to the Contractor or a Subcontractor, whether in contract or in tort or under statute (including the Treaty of Rome and any Directives made under the authority of the Treaty of Rome) for any remedy including, without limitation, pursuant to the Employment Rights Act 1996; and
 - 14.3.4 the total cost of the changes for each Charges Change Request exceeds five thousand pounds (£5,000).
- 14.4 The Contractor shall comply with the provisions of Schedule 12 in relation to all of its Staff.

15. REPUTATION AND PUBLIC SERVICE CONSIDERATIONS

- 15.1 In providing and receiving the Services both parties shall pay the utmost regard to the standing and reputation of the other (and that of the Secretary of State for Work and Pensions) and shall not do anything, or fail to do anything which may reasonably be considered to be within its power, which may bring the standing or reputation of the other party into disrepute or attract adverse publicity to the other party, or which may harm the confidence of the public in the other party. Nothing in this Clause 15.1 shall prevent or

Office Services Agreement

restrict either party's rights to issue legal proceedings in respect of any breach by the other of the terms of this Agreement.

15.2 The Contractor shall at all times provide the Service with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

15.3 In performing its obligations under the terms of this Agreement, the Contractor shall pay utmost regards to the principles of fair and open competition in the awarding of contracts to Sub-Contractors, where appropriate.

16. PROVISION OF PREMISES

16.1 Unless otherwise agreed by the Authority, the Authority's Premises shall be made available to the Contractor under the terms and conditions of the Licence to Occupy as set out in Appendix 3 of Schedule 10.

16.2 The Contractor shall ensure that the Staff carry out their duties and behave while on the Authority's Premises in such a way as to cause no unreasonable or unnecessary disruption to the routines and procedures of the Authority, its employees, visitors or other contractors.

16.3 The Contractor shall ensure that the Staff comply with all reasonable rules and regulations from time to time issued by the Authority relating to the use and/or security of the Authority's Premises (including the use of photo passes or other passes).

16.4 The Contractor shall take the steps reasonably required by the Authority to prevent unauthorised Staff or other employees of the Contractor (or its Subcontractors) entering on to the Authority's Premises. If the Authority gives the Contractor reason why any Staff member or other Contractor employee (or employee of its Subcontractors) should not be admitted to its premises, and it is agreed between the parties that exclusion is reasonable in the circumstances, then the Contractor shall take all reasonable steps to prevent that person being admitted.

16.5 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services without the prior written consent of the Authority.

16.6 Subject to the provisions of Clause 16.7, should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior written consent of the Authority and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake modification work without undue delay. Ownership of such modifications shall rest with the Authority.

16.7 The Authority shall maintain the Authority Premises made available to the Contractor pursuant to the Licence to Occupy in accordance with all applicable statutory health and safety and disability access standards.

16.8 The Contractor shall not deliver any Assets to the Authority's Premises outside normal working hours without the prior written consent of the Authority.

16.9 The Contractor shall maintain all Assets and their place of storage within the Authority's Premises in a safe, serviceable and clean condition.

16.10 On the completion or earlier termination of the Agreement, the Contractor shall clear away from the Authority's Premises all waste arising from the performance of the Services and shall leave the Authority's Premises in a clean and tidy condition.

Office Services Agreement

- 16.11 The Contractor shall, when working on the Authority's Premises, perform the Services in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 16.12 Where the Contractor provides its own accommodation for purposes of performing the Services, the Contractor shall inform the Authority of the address of such accommodation and all other relevant details thereof as may be reasonably requested by the Authority and shall ensure that such accommodation shall be fit for the purpose of providing the Services in accordance with all applicable provisions hereof.
- 17. RIGHT OF ACCESS TO AUTHORITY'S PREMISES**
- 17.1 Subject to the provisions of Clause 16 above, where the Services are to be performed on the Authority's Premises, the Authority shall grant to the Contractor reasonable access to such Premises.
- 17.2 The Authority reserves the right under this Agreement to refuse to admit to any Authority Premises any person employed or engaged by the Contractor, or by a Subcontractor, whose admission would be, in the opinion of the Authority, undesirable.
- 17.3 Subject to the provisions of the Data Protection Act, when so directed in writing by the Authority, the Contractor shall within seven (7) days provide:-
- 17.3.1 a list showing the name and address of every member of Staff whom the Contractor wishes to be regularly admitted to the Authority's Premises to provide Services and, where required by the Authority, every other employee (or employee of its Subcontractor) who is directly involved in the provision of the Services, the capacity in which each person is so involved and any other relevant particulars reasonably required by the Authority;
 - 17.3.2 satisfactory evidence as to the identity of each person whom the Contractor wishes to be regularly admitted to the Authority's Premises; and
 - 17.3.3 any other relevant information about each such person, with any supporting evidence, reasonably required by the Authority, including full details of birthplace of any such person who is not a citizen of the United Kingdom by birth.
- 17.3A The Authority acknowledges and accepts that the Contractor shall not be required to comply with the provisions of Clause 17.3 in respect Royal Mail Group plc, its Staff and employees.
- 17.4 Where Staff are required to have a pass for admission to the Authority's Premises, the Authority's Representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.
- 17.5 Staff who cannot produce a proper pass when required to do so by any appropriate Personnel or agent of the Authority, or who contravene any condition on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those Premises if already there.
- 17.6 The Contractor shall promptly return any pass if at any time the Authority so requires or if the person for whom it was issued ceases to be involved in the performance of the Agreement. The Contractor shall promptly return all passes on completion or earlier termination of the Agreement.

Office Services Agreement

- 17.7 The Contractor shall also use reasonable endeavours to ensure that any Contractor employees (or employees of its Sub-contractors) who require ad-hoc access to any of the Authority Premises shall comply with the relevant Authority regulations relating to visitors.
- 17.8 The Contractor shall use reasonable endeavours to obtain any necessary consents from its staff for the provision of information pursuant to this Clause 17.

18. RELOCATION

- 18.1 If any of the Licensed Areas in any of the Authority's Premises cease to be available for any reason (other than as a result of a closure of such Authority's Premises the closure of which is specified in Schedule 10) or the Authority is unable or unwilling to continue to make any of the Licensed Areas available then:
- 18.1.1 the Authority shall provide as much notice to the Contractor as reasonably possible of the non-availability; and
- 18.1.2 the Authority shall use its reasonable endeavours to provide alternative accommodation suitable for the delivery of those of the Services previously provided from the relevant Licensed Area by the Contractor Staff at least equivalent to the accommodation provided prior to such relocation and in such circumstances the Contractor shall, subject to Clause 18.5 relocate to such alternative accommodation.
- 18.2 Where the Authority is unable to provide alternative accommodation in accordance with the requirements of this Clause 18, the Contractor shall be required to find its own accommodation.
- 18.3 The cost of any relocation pursuant to Clauses 18.1 or 18.2 above (including but not limited to relocation costs, redundancy costs) and the impact of any such relocation (if any) on the Charges and Service Levels shall be agreed by the parties pursuant to the Change Control Procedure.

19. AUTHORITY RESPONSIBILITIES AND ASSUMPTIONS

- 19.1 The Authority shall perform the Authority's Responsibilities as set out in Schedule 13.
- 19.2 The Contractor shall only be entitled to rely on an assumption if it is specified in Annex D of Schedule 6. Subject to Clause 19.4, where an assumption set out in Annex D of Schedule 6 is inaccurate, or the Authority has failed to perform any of the Authority's Responsibilities set out in Schedule 13, the Contractor shall be relieved of its obligations under this Agreement to the extent such failure is caused by the inaccurate assumption or the Authority's failure to perform any of its Responsibilities.
- 19.3 If an assumption upon which the Contractor is entitled to rely pursuant to Clause 19.2 is inaccurate or the Authority has failed to perform any of its Responsibilities:
- 19.3.1 the Contractor shall use all reasonable endeavours to mitigate the impact of the incorrect assumption or the Authority's failure to perform any of its Responsibilities, and any costs or expenses of mitigation will be agreed in accordance with the Change Control Procedure; and
- 19.3.2 the parties shall agree any consequential changes to the Services or Charges in accordance with the Change Control Procedure.
- 19.4 In the event of changes to volumes the parties will apply the volume bands and associated

Office Services Agreement

mechanism set out in Part 11 of Schedule 6.

20. RE-TENDERING

- 20.1 Within twenty one (21) days (or such other period as may be agreed between the parties) of being so requested by the Authority's Representative, the Contractor shall comply with the provisions of Schedule 16.
- 20.2 The Authority shall take all necessary precautions to ensure that the information provided under Schedule 16 is given only to service providers who have qualified to tender for the future provision of the Services. The Authority shall require that such service providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 20.3 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information, which the Contractor is required to provide pursuant to Schedule 16.
- 20.4 Within fourteen (14) days (or such other period as may be agreed between the parties) of being so requested by the Authority's Representative, the Contractor shall transfer to the Authority, or any Person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised exclusively in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

21. DUE DILIGENCE

- 21.1 Subject to Clause 19, the Contractor acknowledges that it:
- 21.1.1 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; and
 - 21.1.2 has raised all relevant due diligence questions with the Authority before the Effective Date; and
 - 21.1.3 has entered into this Agreement in reliance on its own due diligence alone.
- 21.2 The Contractor acknowledges that it has inspected a number of the Sites and has advised the Authority of any aspect of those Sites it has inspected that are not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Sites, together with a timetable for and the costs of those actions, have been specified in the relevant parts of the Transition Agreements. The Authority acknowledges that the Contractor has been unable to inspect all of the Sites prior to the Effective Date and shall continue to inspect the Sites during the Transition Period. The Authority has made available funds (as set out in the Risk Pool in Schedule 6) which can be used, up to the maximum specified in Schedule 6, to rectify any aspects of the Sites that the Contractor advises during the Transition Period are unsuitable for the provision of the Services.
- 21.3 Subject to Clause 21.2, the Contractor hereby represents that it has been given the opportunity to satisfy itself as to all matters concerning the suitability of any Assets or software provided by the Authority pursuant to this Agreement for the provision of the Services in accordance with this Agreement and that it has so satisfied itself of such

suitability.

21.4 The Authority shall:

21.4.1 give all reasonable assistance to the Contractor in allowing (without any unreasonable conditions or restrictions) access to each Site, and to its tenants, visitors and occupants to enable the Contractor to carry out and complete its surveys, inspections, tests and studies as aforesaid; and

21.4.2 on the Contractor's written request respond with full and complete replies to the Contractor's reasonable and relevant enquiries concerning any Site within seven (7) days of the written request.

21.5 The Contractor undertakes to use all reasonable endeavours to avoid causing any physical damage to any Site when carrying out its surveys, inspections, tests, and studies and undertakes promptly to make good at its own cost any physical damage caused by the Contractor to any Site.

21.6 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure.

22. **SERVICES IMPROVEMENT**

22.1 The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 22. As part of this obligation the Contractor shall identify and report to the Authority's Representative quarterly in the first year of the Agreement and once every six (6) months for the remainder of the Term on:

22.1.1 the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Contractor and the Authority which the parties may wish to adopt; and/or

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

22.1.3 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/or

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

22.2 The Contractor shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Authority reasonably requests. The implementation of any such service improvement shall be subject to the Change Control Procedure.

23. **DISCLOSURE OF INFORMATION**

23.1 The Contractor agrees to promptly make full disclosure to the Authority of any and all information that may come into the Contractor's possession or otherwise come to the Contractor's attention throughout the Term which may, in the Contractor's reasonable opinion, be beneficial to and/or assist the Authority in delivering the Services save that this

Office Services Agreement

Clause 23.1 shall not oblige the Contractor to disclose information which is confidential to the Contractor or any third party. For the avoidance of doubt, the Contractor's Intellectual Property Rights shall not constitute information for the purposes of this Clause 23.1.

- 23.2 The Authority agrees that it will disclose to the Contractor such information which may come into its possession or otherwise come to its attention throughout the Term which may, in the Authority's reasonable opinion, be beneficial to and/or assist the Contractor in delivering the Services including such information that it would have used in relation to the Services if the Authority had been performing the Services save that this Clause 23.2 shall not oblige the Authority to disclose information which is confidential to the Authority or any third party (except to the extent that such information is useful and/or necessary to enable the Contractor to perform its obligations in accordance with this Agreement) or would otherwise result in a breach by the Authority of its statutory obligations.
- 23.3 Where a party is obliged to disclose information under Clause 23, it shall ensure that such information is reasonably full and accurate taking into account all the circumstances including (but not limited to) the nature of the information and the purpose for which it is required to be disclosed.

24. TIME

- 24.1 If the performance of this Agreement by the Contractor be delayed by reason of Default of the Authority the Contractor shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as a result of the delay, provided always that notwithstanding the Authority's Default the Contractor shall use all reasonable endeavours to continue to perform its obligations under this Agreement and it notifies the Authority in writing of the Default as soon as it becomes aware of such Default.
- 24.2 If the performance of this Agreement by either party be delayed by reason of any Force Majeure event (as defined in Clause 56), both parties shall be entitled to a reasonable extension of time subject to there being no entitlement to any additional costs incurred as a result of the delay and provided that the party so delayed notifies the other party in writing without undue delay.
- 24.3 Where there has been undue delay by the Contractor in the performance of the Services under this Agreement (other than where this has been caused by the Default of the Authority or its employees, other contractors or authorised agents) the Authority may notify the Contractor in writing that time is of the essence with respect to any Services which are subject to undue delay and if any such Services shall not have been performed by the Contractor by any reasonable date stated in the notice (such date having regard for all the surrounding circumstances and to be not less than thirty (30) days from the date of receipt of the notice), the Authority may terminate this Agreement in accordance with Clause 59.6.

25. BENCHMARKING

- 25.1 Subject to Clause 25.2, the Authority reserves the right at any stage during the Term of this Agreement to benchmark the Charges for all or part of the Services against equivalent services available from an equivalent service provider in the United Kingdom, or where the Services or any part thereof are provided from any country outside the United Kingdom to benchmark the Charges for such Services against equivalent services available from an equivalent service provider in the country from which such Services are being provided.
- 25.2 The Authority shall not carry out any such benchmarking of the Services:
- 25.2.1 until the earlier of two (2) years from the Cutover Date or one (1) year from the

Office Services Agreement

date such part of the Services is transformed in accordance with the provisions of Schedule 4; and

25.2.2 the Authority shall thereafter benchmark the Services no more than once in any twelve (12) month period.

25.3 In the event that the Authority proposes to exercise this right, the following provisions of this Clause shall apply:

25.3.1 the Authority shall inform the Contractor in writing of its intent to benchmark the Charges and which aspects of the Services are to be benchmarked at least thirty (30) days prior to the carrying out of such benchmark;

25.3.2 the Authority shall produce evidence to support its proposal to benchmark the Services concerned; and

25.3.3 the benchmark shall be designed to determine the competitiveness of the Charges in terms of their overall value for money for the relevant Services, and for those purposes such Charges shall be deemed to be less competitive than those available in the market place if they are less favourable than the Charges payable for substantially similar services on substantially similar terms and conditions having regard to all relevant factors, including but not limited to, the terms and conditions of employment provided to Staff resulting from the obligations hereunder.

25.4 The cost of carrying out the benchmark shall be borne by the Authority and the Authority shall reimburse the Contractor for its reasonable costs in connection with the benchmarking exercise.

25.5 If it is determined in the reasonable opinion of the Authority pursuant to the benchmarking exercise that the Charges for the relevant Services are less competitive than the Charges available in the market place, the parties shall negotiate in good faith to agree a revision of the Charges to match or improve upon the Charges available in the market place. In default of agreement on such revision, the question shall be referred to expert determination under the Dispute Resolution Procedure. In order to give effect to this Clause, the parties shall furnish all information reasonably necessary to enable the parties to agree or, in default of agreement, to enable an expert to determine a fair and reasonable revision of the Charges pursuant to this Clause.

25.6 The Contractor shall have the opportunity to match or improve upon the Charges which are determined by the expert to be available in the market place.

25.7 If the parties fail to agree a revision to the Charges for the relevant Services, and if the Contractor fails to match or improve upon the Charges determined by the expert as being available in the market place for equivalent services within three (3) Months of the expert determination procedure being completed, the Authority shall have the right:

25.7.1 to procure the relevant Services from third parties on terms equivalent to or better than those determined by the benchmarking exercise; and

25.7.2 either terminate this Agreement without further liability to the Contractor (subject to the payment of any Termination Charge in accordance with the provisions of Schedule 6) pursuant to Clause 59.6 where all of the Services have been benchmarked, or terminate those parts of the Services which are the subject of the benchmarking exercise pursuant to Clause 59.12.

26. MOST FAVOURED CUSTOMER

- 26.1 From the date of this Agreement, if the Contractor enters into a substantially similar services agreement on substantially similar terms and conditions for the provision of services substantially similar to the Services provided under this Agreement with any other customer in the United Kingdom, whether a private or public body, at prices, payment terms, and/or other terms or conditions which, taken in the aggregate, are more favourable to the customer ("More Favourable Terms") than those provided by the Contractor to the Authority, the parties shall negotiate in good faith to agree a fair and reasonable abatement of the Charges or amendments to other terms and conditions to reflect the More Favourable Terms.
- 26.2 In negotiating to agree a fair and reasonable abatement of the Charges or amendments to other terms and conditions to reflect the More Favourable Terms, the parties shall take account of an adjustment (to the extent it can be reasonably quantified) to reflect any material differences in the services or the terms and conditions thereto and the Contractor's costs in providing the services including (without limitation) the extent to which the services provided differ in size, complexity or term.
- 26.3 If the parties fail to agree an abatement of the Charges or amendments to other terms and conditions pursuant to Clause 26.1 the question between them shall be subject to expert determination pursuant to Schedule 15. In reaching a determination, the expert shall be instructed to consider (amongst other relevant factors) the factors set out in Clause 26.2.

27. BENEFIT SHARING

- 27.1 The Contractor agrees that where the Contractor sells to a third party any of the Assets acquired from the Authority or any of the Previous Contractors for a sum which is greater than the amount paid by the Contractor to the Authority for that Asset the Contractor shall pay to the Authority within thirty (30) days of such sale a sum equivalent to fifty percent (50%) of the difference between the amount paid by the Contractor for the Asset under this Agreement and the amount paid to the Contractor by the third party for that Asset.
- 27.2 In order to give effect to this Clause 27, the Contractor shall be under a duty to notify the Authority of any re-sale of the Assets as soon as such re-sale occurs and, subject to Clause 27.1, the Contractor shall furnish all information reasonably required by the Authority in respect of such re-sale.
- 27.3 The Contractor shall, subject to the prior written consent of the Authority, be entitled to:
- 27.3.1 exploit or use those Assets specified as sole use in the Asset Register in the provision of services to any other customer or third party or exploit or use them for its own purposes and/or;
 - 27.3.2 exploit or use any Authority Software in such a manner as the Authority (in its absolute discretion) sees fit.
- 27.4 The parties shall negotiate to agree a fair and reasonable abatement of the Charges to reflect the value received by the Contractor from such exploitation or use where the Contractor exploits or uses the Assets. The Authority shall determine the form and manner but not the amount of such abatement to the Charges.
- 27.5 To the extent that any royalties have not been agreed between the parties as of the date hereof, the parties shall negotiate to agree a royalty to reflect the value received by the Contractor from such exploitation or use where the Contractor exploits or uses the Authority Software pursuant to Clause 27.3.2.

- 27.6 If the parties are unable to agree to a fair and reasonable abatement of the Charges or a fair and reasonable royalty rate pursuant to Clause 27.4 and Clause 27.5, the question between them shall be subject to expert determination pursuant to Schedule 15, Dispute Resolution. In reaching a determination, the expert shall be instructed to consider (among other relevant factors) the degree of usage of the other customer of the Assets and/or the Authority Software and the similarity between the services provided to the other customer and the Services provided to the Authority hereunder.
- 27.7 In order to give effect to this Clause 27, the Contractor shall be under a duty to notify the Authority of all proposed exploitation to which Clause 27.3 applies and shall furnish all information reasonably necessary to enable the parties to agree or, in default of agreement, to enable an expert to determine a fair and reasonable abatement of the Charges pursuant to this Clause.
- 27.8 The Authority shall be entitled to audit the Contractor's Records (as defined in and in accordance with Clause 36) in respect of all exploitation to which this Clause 27 applies.
- 27.9 The Authority shall not unreasonably withhold consent to any exploitation of those Assets specified as sole use in the Asset Register or of any Authority Software by the Contractor at any time.

28. INTELLECTUAL PROPERTY RIGHTS

28.1 Authority Software

- 28.1.1 Ownership of all Intellectual Property Rights in the Authority Software shall remain with the Authority and the Contractor shall not acquire title to the Intellectual Property Rights in the Authority Software.
- 28.1.2 Any modifications to any Authority Software shall be considered to be Specially Written Software.
- 28.1.3 The Authority hereby grants to the Contractor and the Contractor hereby accepts a non-exclusive, royalty-free, non-transferable licence for the duration of this Agreement solely for the performance of this Agreement:
- 28.1.3.1 to Use, copy and modify the Authority Software (including any modifications or enhancements thereof) identified in Schedule 13 as being subject to this Clause 28.1.3.1; and
- 28.1.3.2 to Use the Authority Software (including any modifications or enhancements thereof) identified in Schedule 13 as being subject to this Clause 28.1.3.2 .
- 28.1.4 The licences granted hereunder to the Contractor shall inure to the benefit of its Subcontractors solely for the purposes of providing the Services.
- 28.1.5 The Authority shall have exclusive ownership of and hereby reserves all Intellectual Property Rights which may subsist in its own technology, information, data, know how, ideas, designs, software, inventions, documentation and all other tangible and intangible items of the Authority which exist as at the date of this Agreement or are otherwise outside the scope of this Agreement.
- 28.1.6 The Contractor shall not be entitled to use or exploit the Authority Software for the benefit of third parties unless the Authority consents to such use or exploitation in accordance with the provisions of Clause 27.

28.2 Authority Third Party Software

- 28.2.1 The Contractor shall not acquire title to the Intellectual Property Rights in the Authority Third Party Software which is supplied hereunder.
- 28.2.2 The Authority shall, in respect of the Authority Third Party Software, grant to the Contractor or procure that the licensor of the Authority Third Party Software grants to the Contractor, the benefit of the right to Use such Authority Third Party Software under the relevant licence agreement between the Authority and such licensor listed in Schedule 13.
- 28.2.3 The licences granted to the Contractor hereunder shall inure to the benefit of its Subcontractors solely for the purposes of providing the Services.
- 28.2.4 The Contractor shall be responsible for the cost and expense of procuring the use of the Authority Third Party Software for the purposes of providing the Services.
- 28.2.5 Where, in respect of Authority Third Party Software, a licence fee has been paid by the Authority to the relevant licensor which relates to any period after the Cutover Date, the Contractor shall reimburse the Authority on the Cutover Date for that part of the licence fee which relates to such period.

28.3 Contractor Software

- 28.3.1 Ownership of all Intellectual Property Rights in the Contractor Software shall remain with the Contractor and the Authority shall not acquire title to the Intellectual Property Rights in the Contractor Software. The Contractor shall retain all Intellectual Property Rights in any modifications or enhancements to the Contractor Software.
- 28.3.2 The Contractor hereby grants to the Authority a non-exclusive, royalty free, non-transferable and irrevocable licence to Use the Contractor Software for the purposes of receiving the Services during the term of this Agreement.
- 28.3.3 For the avoidance of doubt, any newly-created software (excluding any modifications or enhancements to the Contractor Software) which is developed by the Contractor (or its employees, agents or subcontractors) and used by the Contractor exclusively in the provision of the Services shall be deemed to be Specially Written Software unless otherwise agreed by the Parties.
- 28.3.4 The Authority shall be entitled to engage a third party to Use the Contractor Software to the extent that it is necessary to enable the Authority to receive the benefit of the Services subject to and in accordance with this Agreement on behalf of the Authority provided that such third party shall have entered into a confidentiality undertaking substantially in the form as set out in Clause 33 for the benefit of the Contractor and any of its Subcontractors. For the avoidance of doubt, the Authority shall not be entitled to exploit the Contractor Software for the benefit of third parties without the prior written consent of the Contractor.
- 28.3.5 The Contractor (and including where appropriate, its Subcontractors) shall have exclusive ownership of and hereby reserves all Intellectual Property Rights which may subsist in its own technology, information, data, know how, ideas, designs, software, inventions, documentation and all other tangible and intangible items of the Contractor (or Subcontractor) which exist as at the date of this Agreement or are otherwise outside the scope of this Agreement.

- 28.3.6 Nothing in this Agreement shall prevent the Contractor or any of its Subcontractors from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business to the extent that it does not relate to a disclosure of Confidential Information of the Authority or any infringement by the Contractor or its Subcontractors of any Intellectual Property Rights of the Authority.

28.4 Contractor Third Party Software

- 28.4.1 The Authority shall not acquire title to the Intellectual Property Rights in any Contractor Third Party Software which is supplied hereunder.
- 28.4.2 The Contractor shall, in respect of any Contractor Third Party Software provided by the Contractor and necessary for the receipt of the Services, grant to the Authority, or shall procure that the licensor of the Contractor Third Party Software grants to the Authority, the benefit of the right to use such Contractor Third Party Software for the purposes of the receipt of the Services, except where the Authority already has a licence to use such software (such as Microsoft) or has indicated that it will acquire a licence to use such software (such as Citrix).
- 28.4.3 For the avoidance of doubt, the Contractor shall be responsible for the cost and expense of procuring the use of the Contractor Third Party Software for the purposes of providing the Services.
- 28.4.4 The Contractor shall procure that the Authority be entitled to engage a third party to use the Contractor Third Party Software, but not the Subcontractors' software, to the extent that it is necessary to enable the Authority to receive the benefit of the Services subject to and in accordance with this Agreement on behalf of the Authority provided that such third party shall have entered into a confidentiality undertaking for the benefit of the Contractor and its Subcontractors substantially in the form set out in Clause 33.
- 28.4.5 With the exception of Clause 28.1.1, the Authority acknowledges and accepts that Clause 28 shall not apply in respect of the Services subcontracted to Royal Mail Group Plc nor shall it apply to Royal Mail Group Plc.

28.5 Specially Written Software

- 28.5.1 Specially Written Software shall be any newly-created software (excluding any modifications or enhancements to the Contractor Software, Contractor Third Party Software or Authority Third Party Software) which is:
- 28.5.1.1 requested by the Authority and which is, following agreement in accordance with the Change Control Procedure, developed by or on behalf of the Contractor during the term of this Agreement uniquely for the provision of the Services; or
- 28.5.1.2 proposed by the Contractor and which is, following agreement in accordance with the Change Control Procedure, developed by or on behalf of the Contractor during the term of this Agreement uniquely for the provision of the Services.
- 28.5.2 Any modifications to Authority Software or Specially Written Software shall be considered Specially Written Software.
- 28.5.3 The Contractor:

28.5.3.1 hereby assigns, or shall procure that any owner of Intellectual Property Rights in the Specially Written Software assigns, to the Authority with full title guarantee, where appropriate by way of present assignment of future rights, all rights, title and interest in the Intellectual Property Rights in the Specially Written Software. Such assignment shall take effect from the date of this Agreement or if later the date on which such Intellectual Property Rights come into existence; and

28.5.3.2 shall, to the extent permitted by law, procure a waiver in favour of the Authority of any moral rights in the Intellectual Property Rights in the Specially Written Software.

28.5.4 The Contractor shall, subject to the Change Control Procedure, execute any and all deeds and documents and do all such further acts as the Authority may reasonably require to perfect the assignment of the Intellectual Property Rights referred to in Clause 28.5.3.1 and/or to vest or register such Intellectual Property Rights in the name of the Authority and which may be required under the laws of any country in which any of such Intellectual Property Rights may subsist.

28.5.5 The Contractor shall ensure that the Contractor's employees, agents or Subcontractors (and the employees and agents of its Subcontractors) shall assign any Intellectual Property Rights in the Specially Written Software owned by them either direct to the Authority or to the Contractor to enable the Contractor to comply with its obligations hereunder.

28.5.6 The Authority hereby agrees to, and shall grant, to the Contractor a royalty-free, worldwide, non-transferable, non-exclusive licence to Use, copy and modify such Specially Written Software for the purpose of the performance of this Agreement.

28.5.7 The licences granted to the Contractor hereunder shall inure to the benefit of its Subcontractors solely for the purposes of providing the Services.

28.5.8 The Contractor shall not be entitled to use or exploit the Specially Written Software for the benefit of third parties unless the Authority consents to such use or exploitation in accordance with the provisions of Clause 27.

28.6 Deposited Software

28.6.1 The Contractor shall:

28.6.1.1 place the source code of any Contractor Software or Contractor Third Party Software identified in Schedule 13 as Deposited Software in escrow with the NCC Group on the basis of the appropriate standard agreement or on such other terms as the Authority, the Contractor and the NCC Group shall agree. Such escrow agreements are to be entered into within thirty (30) days of the Cutover Date; and

28.6.1.2 Subject to the Change Control Procedure, during the Term of the Agreement, place the source code of any Contractor Software nominated by the Authority in escrow with the NCC Group and shall, subject to Clause 28.6.2, use its reasonable endeavours to place any Contractor Third Party Software nominated by the Authority in escrow with the NCC Group on the basis of the appropriate standard agreement or on such other terms as the Authority, the Contractor and the NCC Group shall agree. Such escrow agreements are to be entered into within thirty (30) days of such request.

- 28.6.2 The parties agree that Clause 28.6.1.2 shall not apply to any Contractor Third Party Software identified in Schedule 13 as not available to be deposited in escrow. The Authority acknowledges and accepts that the Subcontractors software shall not be available to be deposited in escrow.
- 28.6.3 The parties agree that, in addition to the trigger events contained in the standard NCC Group escrow agreement, the Authority shall have the right to request the source code of any Deposited Software from the NCC Group if the Authority exercises its rights to take Step-In Action pursuant to Clause 58.
- 28.6.4 The Contractor and the Authority hereby agree that both parties shall each pay their respective fees as set out in any escrow agreement entered into pursuant to Clauses 28.6.1 .
- 28.6.5 Subject to any specific licence terms specified in Schedule 13, the Contractor hereby grants to the Authority a perpetual, non-transferable and non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) the source code and object code versions of the Deposited Software. However, the foregoing licence shall only become effective if the Authority becomes entitled to obtain access to the source code version of the Deposited Software pursuant to the source code escrow agreement referred to in Clause 28.6.1 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Deposited Software provided that such restrictions shall not detract from the rights granted hereunder.

28.7 Licences on Expiry or Termination of the Agreement

- 28.7.1 In the event of the termination of this Agreement for whatever reason, the following licences shall be terminated automatically:
 - 28.7.1.1 the licence to Use, or Use, copy and modify the Authority Software pursuant to Clause 28.1.3;
 - 28.7.1.2 the licence to Use the Authority Third Party Software pursuant to Clause 28.2.2; and
 - 28.7.1.3 the licence to Use, copy and modify the Specially Written Software pursuant to Clause 28.5.6,and the Contractor shall provide the Authority with all copies of the source code and object code of all Authority Software, Authority Third Party Software and Specially Written Software in its possession in accordance with the provisions of Schedule 16.
- 28.7.2 In the event of the termination of this Agreement for whatever reason the Contractor shall grant to the Authority or a Replacement Contractor a non-exclusive, royalty free, non-transferable, perpetual and irrevocable licence to Use all Contractor Software (including any modification or enhancements thereof which are made after the termination hereof) listed in Schedule 13 for the purpose of providing or receiving any Replacement Services.
- 28.7.3 In the event of the termination of this Agreement the Contractor shall, if so required by the Authority, use all reasonable endeavours to assign or novate in favour of and at no cost to (except for any charges payable thereunder) the Authority or the Replacement Contractor any licence granted pursuant to

Clause 28.4.2 relating to Contractor Third Party Software in accordance with the provisions of Schedule 16, except where the Authority and/or the Replacement Contractor already have a licence to use such software.

- 28.7.4 The Contractor shall be entitled to retain copies of source code and object code in its possession which relate to any Authority Software or Specially Written Software for which the Contractor has a licence to exploit pursuant to Clause 27.

28.8 IPR Indemnity

- 28.8.1 The Contractor shall indemnify the Authority against all claims, demands, actions, costs, expenses (including but not limited to 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 but not limited to the defence of such alleged infringement) of any Intellectual Property Right in the Contractor Software, Specially Written Software and Contractor Third Party Software.
- 28.8.2 The Contractor shall promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use of the Services.
- 28.8.3 The Authority shall promptly notify the Contractor if any claim or demand is made or action brought against the Authority to which Clause 28.8.1 may apply. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Authority hereby agrees to grant to the Contractor exclusive control of any such litigation and such negotiations.
- 28.8.4 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which Clause 28.8.1 may apply or any claim or demand made or action brought against the Contractor to which Clause 28.8.2 may apply. The Contractor shall reimburse the Authority for all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 28.8.5 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 28.8.1 may apply or any claim or demand made or action brought against the Contractor to which Clause 28.8.2 may apply.
- 28.8.6 If a claim or demand is made or action brought to which Clause 28.8.1 may apply or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense:
- 28.8.6.1 modify any or all of the Services without reducing the performance and functionality of the same, or substitute services of equivalent performance and functionality for any or all of the Services, so as to avoid the infringement or the alleged infringement provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Authority, such acceptance not to be unreasonably withheld or delayed; or
 - 28.8.6.2 procure a licence to use the Software on terms which are acceptable to

the Authority (such acceptance not to be unreasonably withheld or delayed); or

28.8.6.3 take such other action as the Contractor may propose and the Authority may agree (such agreement not to be unreasonably withheld or delayed) as appropriate to avoid or settle such claim, demand or action.

28.8.7 The foregoing provisions of this Clause 28.8 shall not apply in so far as any such claim or demand or action is in respect of:

28.8.7.1 any use by or on behalf of the Authority of the Software in combination with any software, products or services not supplied by the Contractor in a manner not reasonably to be inferred from the provision of this Agreement where such combination directly gives rise to the claim, demand or action; or

28.8.7.2 any use by the Authority of the Software in a manner not reasonably to be inferred from the provisions of this Agreement.

28.8.8 If the Contractor has availed itself of its rights to modify the Services or to supply substitute services pursuant to Clause 28.8.6.1 or to procure a licence under Clause 28.8.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, or if the Contractor has otherwise avoided or settled the claim, demand or action for infringement or alleged infringement in accordance with Clause 28.8.6.3, then the Contractor shall have no further liability thereafter under this Clause in respect of the said claim, demand or action.

28.8.9 If a modification or substitution in accordance with Clause 28.8.6.1 above is not possible so as to avoid the infringement or the Contractor has been unable to procure a licence in accordance with Clause 28.8.6.2 or if the Contractor has been unable to take appropriate action in accordance with Clause 28.8.6.3:

28.8.9.1 it shall be deemed to be a Default not capable of remedy and the Authority shall be entitled to terminate this Agreement pursuant to Clause 59.4; and

28.8.9.2 the Contractor shall be liable for the additional costs of a reasonable equivalent replacement solution or services from a third party or part thereof together with all reasonable additional costs incurred in procuring, implementing and using such replacements from a third party.

28.8.10 This Clause 28.8 sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right by the use of the Services by or on behalf of the Authority. For the avoidance of doubt this shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise.

29. LOSS OF DATA

29.1 The Contractor acknowledges that the Authority's Data is at all times the property of the Authority and the Authority hereby reserves all Intellectual Property Rights, which may subsist in the Authority's Data. The Contractor shall not delete or remove any copyright notices contained within or relating to the Authority's Data.

Office Services Agreement

- 29.2 The Contractor and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's Data and to prevent any corruption or loss of the Authority's Data.
- 29.3 The Contractor shall ensure that a back-up copy of the Authority's Data is made and that such copy is recorded on media from which the Authority's Data can be re-loaded in the event of any corruption or loss of the Authority's Data.
- 29.4 In the event that the Authority's Data is corrupted or lost for whatever reason, including but not limited to where this is due to a Virus, the Authority shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:
- 29.4.1 the Authority may require the Contractor to restore or procure the restoration of the Authority's Data using the back-up copy referred to in Clause 29.3; or
 - 29.4.2 the Authority may itself restore or procure restoration of the Authority's Data using the back-up copy referred to in Clause 29.3.
- 29.5 Where the Authority's Data is corrupted or lost as a result of the Default of the Contractor:
- 29.5.1 any restoration of the Authority's Data under Clause 29.4.1 shall be completed at the Contractor's own expense; and
 - 29.5.2 any reasonable costs of the Authority in restoring or procuring the restoration of the Authority's Data under Clause 29.4.2 shall be repaid to the Authority by the Contractor,

otherwise such restoration pursuant to Clause 29.4 shall be at the Authority's expense.

30. ACCESS BY THE AUTHORITY TO DATA

- 30.1 The Authority may at any reasonable time have access to any Database containing Authority Data and to the Authority's Data in whatever form (including for the avoidance of doubt all Personal Data), for the purposes of viewing, inspecting, downloading or copying the Authority Data, including such access set out in Schedule 2, The Requirement.
- 30.2 The Authority will when accessing the Database cause as little disruption to the Contractor or its Staff as reasonably practicable and shall comply with all reasonable health, safety, security and confidentiality requirements of the Contractor.

31. LIMITATION ON USE AND APPLICATION OF THE AUTHORITY'S DATA

- 31.1 Subject to Clause 31.2 the Contractor is authorised to use the Authority's Data (including any Personal Data) solely for the purpose of providing the Services. The Contractor shall at all times ensure that the Authority's Data retains an identity independent of any other data that the Contractor may operate. The Contractor shall be responsible for all costs and expenses associated with the maintenance, safekeeping and use of the Authority's Data in its possession including its insurance, storage and security.
- 31.2 The Contractor may (for the purposes of conducting cross-project analyses) merge the Authority's Data with other data that the Contractor operates, provided that the Contractor:
- 31.2.1 first makes a written request to the Authority;
 - 31.2.2 the Authority approves the request in writing (such approval not to be unreasonably withheld or delayed); and

Office Services Agreement

31.2.3 the Contractor eliminates any information, which could be used to identify individuals from the file(s) prior to merging the data.

31.3 The Contractor shall not, without the Authority's prior written consent:

31.3.1 make any copy of the Authority's Data (or any part of it) unless it is specifically authorised to do so under this Agreement. Nothing in this Clause 31.3.1 shall prevent the Contractor making copies of the Authority's Data insofar as such copies are required for the provision of the Services, or for internal purposes or are temporary copies made in the memory of a computer system or are required for disclosure pursuant to Clause 33.10;

31.3.2 allow any information obtained to be disclosed, except as is required for the provision of the Services or in accordance with the provisions of Clause 33.

31.4 The Authority hereby consents to the Contractor having access to the Authority's Data in the Subcontractor's possession.

32. SECURITY

32.1 The Contractor shall comply with the security measures as set out in Schedule 17.

32.2 The Contractor shall implement and maintain security standards, facilities and procedures which fully comply with the policies, standards and other obligations set out in Schedule 17 insofar as such policies, standards and other obligations apply to the provision of the Services. The Contractor shall use reasonable endeavours to ensure that all Staff comply with the provisions of Schedule 17.

32.3 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Clause 32.1 will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Agreement.

32.4 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.

32.5 The Authority shall, subject to any statutory limitations, have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.

32.6 The Contractor shall co-operate with any investigation relating to security regarding the provision of the Services which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative:

32.6.1 shall use its best endeavours to make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Contractor's Representative; and

32.6.2 shall, subject to any legal restriction on their disclosure, provide copies of all documents, records or other material of any kind which may reasonably be

required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent or hinder the Contractor from performing the Services. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

33. **CONFIDENTIALITY**

33.1 Both parties hereby warrant that:

33.1.1 any person employed or engaged by either party shall only use Confidential Information of the other party and of the Subcontractors for the purposes of this Agreement; and

33.1.2 any person employed or engaged by either party shall not disclose any Confidential Information of the other party and of the Subcontractors to any third party without the prior written consent of the other party.

33.2 Both parties shall take all necessary precautions to ensure that all Confidential Information of the other party and of the Subcontractors is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by their employees, servants, agents or subcontractors.

33.3 Without prejudice to the generality of the foregoing neither party nor any person engaged by them shall use the Confidential Information for the solicitation of business from the other.

33.4 The parties shall comply (and shall ensure that their employees, servants, agents and subcontractors comply) with all reasonable instructions of the other party and of the Subcontractors issued from time to time for the handling and storage of Confidential Information generally or specific items of Confidential Information.

33.5 The Contractor shall obtain from any organisation engaged in connection with this Agreement (including any Subcontractors and any agents of such Subcontractors) a signed confidentiality undertaking in substantially the same terms as the confidentiality undertaking given by the Contractor under this Clause.

33.6 The Contractor shall ensure that Staff and Subcontractors are subject to obligations of confidentiality which are no less onerous than those set out in this Clause 33 and shall inform its employees who have access to Confidential Information that a breach of the obligations set out herein and imposed upon them will result in disciplinary proceedings, and the Contractor will institute and enforce such disciplinary proceedings.

33.7 The provisions of Clauses 33.1 to 33.6 shall not apply to any information which:

33.7.1 is or becomes public knowledge other than by breach of this Clause;

33.7.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;

33.7.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

33.7.4 is independently developed without access to the Confidential Information.

33.8 Nothing in this Clause shall be deemed or construed to prevent the Authority from disclosing any Confidential Information obtained from the Contractor:

Office Services Agreement

- 33.8.1 to any other department, office or agency of Her Majesty's Government, provided that the Authority has required that such information is treated as confidential by such departments, offices and agencies, and their servants or agents, including requiring such servants or agents to enter into a confidentiality undertaking in substantially the same terms as are contained in this Clause 33, where appropriate, and always for Confidential Information disclosed to a non-government department;
 - 33.8.2 to any consultant, contractor or other person engaged by the Authority in connection herewith, provided that the Authority shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 33;
 - 33.8.3 which is disclosed by the Authority in the discharge of the Authority's obligations to supply information for parliamentary, governmental, judicial or other administrative purposes; and
 - 33.8.4 to each Bidder in connection with the retender of the Services or any part thereof, in accordance with the provisions of Schedule 16 provided that such Bidders have each signed the confidentiality undertaking contained in Schedule 16.
- 33.9 Nothing in this Agreement shall prevent the Contractor or the Authority from using data processing techniques, ideas, principles learned, experience and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not involve a disclosure of Confidential Information or an infringement by the Authority or the Contractor of any Intellectual Property Right.
- 33.10 The provisions of this Clause 33 shall not apply so as to prevent disclosure of Confidential Information (including, for the avoidance of doubt, the award or existence of this Agreement) by the parties where and to the extent that such disclosure is required to be made:
- 33.10.1 by virtue of the regulations of the UKLA or the London Stock Exchange or any other recognised exchange upon which the shares of the Contractor or any Subcontractor are traded;
 - 33.10.2 by any court or governmental or administrative authority competent to require the same; or
 - 33.10.3 by any applicable law, legislation or regulation,
- provided that the Contractor, to the extent legally permitted, provides prompt written notice of such fact to the Authority, and to the extent legally permitted, fully co-operates with the Authority, in connection with the Authority's efforts to oppose any such requirements of disclosure.
34. **FREEDOM OF INFORMATION**
- 34.1 The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its information disclosure obligations.
- 34.2 The Contractor shall and shall procure that its Sub-contractors shall:
- 34.2.1 transfer to the Authority all Requests for Information that it receives as soon as

Office Services Agreement

practicable and in any event within two (2) Working Days of receiving a request for information;

34.2.2 provide the Authority with a copy of all information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

34.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

34.3 Subject to the provisions of Clause 34.4, the Authority shall be responsible for determining in its absolute discretion whether commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

34.4 Schedule 21 contains a list of information relating to the Agreement which the parties reasonably consider is exempt information (as defined at s84 FOIA), together with a reference to the relevant Section of the FOIA which confers the exemption. If the Authority receives a request under the FOIA to release information of a type listed in Schedule 21, the Authority shall:

34.4.1 consider if the information is, in fact, exempt information; and

34.4.2 unless the information benefits from an exemption conferring an absolute exemption, consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information; and

34.4.3 whenever it is reasonably practicable, consult with the Contractor prior to releasing the information.

34.5 The Authority shall not be liable for any loss or damage suffered by the Contractor, whether in contract, tort (including negligence) or any other way, as a result of the Authority releasing information in response to a request made under the FOIA if the information is not of a type listed in Schedule 21.

34.6 If following the procedures described in Clause 34.4 it transpires that information has been included in Schedule 21 which is not, in fact, exempt information (or if any competent authority orders disclosure of any of the information listed in Schedule 21), then the Contractor shall comply with the provisions of Clause 34.2 in relation to such information.

34.7 If, at the request of the Contractor, the Authority seeks to withhold information listed in Schedule 21 and a competent authority determines, or the parties subsequently agree, that the information is not exempt, then the Contractor shall reimburse the Authority for all reasonable costs (including but not limited to legal costs) incurred by the Authority in seeking to withhold such information from a request under the FOIA.

34.8 In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Authority.

34.9 The Contractor acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA, be obliged to disclose information without consulting or obtaining consent from the Contractor, or despite having taken the Contractors' views into account.

Office Services Agreement

- 34.10 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

35. VISITS AND PUBLICITY

- 35.1 The parties to this Agreement shall each give the other party reasonable advance notice, where possible, of proposed visits to the Contractor or its Subcontractors by any person to observe the delivery of the Services (including without limitation, Members of the Parliament, members of the press and media).
- 35.2 Where possible in all the circumstances neither party shall make any public statement with regard to the Services without first consulting the other party and obtaining their agreement, such agreement not to be unreasonably withheld or delayed. For the avoidance of doubt, this is not intended to prevent the Contractor from making internal statements to Staff and Subcontractors about the Services; nor is it intended to prevent the Contractor from making discreet reference to the existence of this Agreement in the context of work for other potential clients.
- 35.3 Where a party to this Agreement receives requests for information from the general or technical press, radio, television or other communications media on matters arising from or in connection with this Agreement such party shall inform the other and agree any response with them; such agreement not to be unreasonably withheld or delayed.
- 35.4 The Contractor shall provide information when reasonably required by the Authority in order to assist in the execution of the Authority's public relations duties.
- 35.5 The Contractor shall not distribute to any Authority Premises, any unauthorised publicity or promotional material concerning the Services, without obtaining the prior written consent of the Authority.

36. RIGHT OF AUDIT

- 36.1 The Contractor shall keep or cause to be kept full and accurate records (including without limitation, financial documents detailing expenditure and income and including computerised records and data) on all materials used and Services performed in connection with this Agreement ("the Records.")
- 36.2 For the avoidance of doubt, except where specifically provided for in this Clause 36, neither the Contractor nor its Subcontractors or other representatives shall be entitled to reimbursement by the Authority for any costs or expenses incurred as a result of compliance with their respective obligations under this Clause 36.
- 36.3 The Contractor shall grant to the Authority, any statutory or regulatory auditors of the Authority and their respective authorised agents the right of reasonable access at all reasonable times and upon reasonable notice to inspect and take copies from the Records and shall provide access to the Contractor's personnel and provide all reasonable assistance at all times during the term of this Agreement and for a period of six (6) years after the expiry or termination of this Agreement for the purposes of allowing the Authority to obtain such information as is necessary to:

Office Services Agreement

- 36.3.1 fulfil the Authority's obligations to supply information relating to this Agreement for parliamentary, governmental, judicial or other external administrative purposes; and/or
 - 36.3.2 audit the Contractor's compliance with its obligations under this Agreement; and/or
 - 36.3.3 audit all activities, security and integrity in connection with the provision of the Services.
- 36.4 The Contractor shall be repaid any reasonable expenses incurred in giving any such reasonable assistance for the purposes set out in Clause 36.3.2 and 36.3.3 unless the audit is exercised in accordance with the audit access requirements set out in Clause 36.5.
- 36.5 Without prejudice to the foregoing, in the event of an investigation by the Authority or its authorised agents into suspected fraudulent activity or other impropriety by the Contractor or any third party in connection with this Agreement or the provision of the Services the Authority reserves for itself, any statutory or regulatory auditors of the Authority and their respective authorised agents the right of immediate access to the Records and/or personnel and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the term of this Agreement or at any time thereafter. The Contractor shall be repaid any reasonable expenses incurred in giving such assistance in the event that no fraud or other impropriety is discovered.
- 36.6 For the purposes of:
- 36.6.1 the examination and certification of the accounts of the Authority; and/or
 - 36.6.2 any 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,
- the Comptroller and Auditor General and/or his representatives ("C&AG") shall have the right to examine the Records and all such documents and other information owned, maintained or held by, or otherwise in the control of, the Contractor (including computerised records and data) in connection with the Services as the C&AG may reasonably require or consider necessary. The Contractor shall provide reasonable access (and shall procure that any person acting on the Contractor's behalf who has such documents and/or other information shall also provide reasonable access) to such documents and/or further information for the C&AG for such purposes. Further, the Contractor shall furnish to the C&AG such oral or written explanations as he requires for such purposes. The C&AG shall bear the costs incurred by himself of such examination and clarification. The Contractor shall bear its own costs of complying with the requirements of this Clause 36.6.
- 36.7 For the avoidance of doubt, it is hereby declared that Clause 36.6 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor by the C&AG under Section 6(3)(d) of the National Audit Act 1983.
- 36.8 The Contractor shall take all steps necessary and possible to procure that any Subcontractor or other representative engaged by it during the term hereof in connection with the provision of the Services (and shall use its reasonable endeavours to procure that the Subcontractors existing on the date hereof) shall also keep or cause to be kept full and accurate Records and shall grant and allow the same rights of access and accept the same obligations to provide information as are granted, allowed and/or accepted under this Clause 36.

Office Services Agreement

- 36.9 Notwithstanding the provisions of Clause 36.2, the Authority shall use its reasonable endeavours to co-ordinate the application of its audit rights so as to ensure that the provision of any of the Services by the Contractor is not unreasonably disrupted or delayed.

37. OPEN BOOK ACCOUNTS

- 37.1 The Contractor shall annually provide to the Authority a statement of costs no later than eight weeks after the date specified in Paragraph 8.1.1 of Schedule 6.
- 37.2 The statement of costs shall set out the Contractor's actual costs, expenses and profits in providing the Services since the date of the Agreement, or if it exists, any previous statement of costs:
- 37.2.1 the actual capital expenditure, including capital replacement costs (including details of expected assets lives);
 - 37.2.2 actual operating expenditure relating to the provision of the Services, with an analysis showing the costs of number of hours worked by reference to timesheets or any other suitable evidence of time spent providing the Services;
 - 37.2.3 all interest, expenses and other third party financing costs;
 - 37.2.4 details of the overhead recoveries that have been made; and
 - 37.2.5 the profit before tax which the Contractor has achieved in the provision of the Services including any profit element forming any part of the overhead recoveries disclosed by reason of Clause 37.2.4 above.

38. OFFICIAL SECRETS ACTS

- 38.1 The Contractor undertakes to abide by, and to use reasonable endeavours to ensure that Staff abide by the provisions of:-
- 38.1.1 the Official Secrets Acts 1911 to 1989; and
 - 38.1.2 Section 182 of the Finance Act 1989.

- 38.2 In the event that the Contractor or Staff fail to comply with this Clause 38, the Authority reserves the right to terminate the Agreement in accordance with Clause 59.6.

- 38.3 The provisions of Clause 38.1 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

39. GENERAL INDEMNITY

- 39.1 The Contractor shall fully indemnify the Authority in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its respective employees and authorised agents to the extent that such personal injury or loss of property is directly caused by any Default of the Contractor, its employees, Subcontractors or agents, or by any circumstances within its or their control in connection with the performance or purported performance of this Agreement.
- 39.2 The indemnity in Clause 39.1 above shall, in relation to loss or damage to tangible property only, be subject to the provisions of Clause 40 below.

39.3 In the event of any claim or demand being made or action brought to which Clause 39.1 applies, the Contractor shall be promptly notified thereof and the Contractor shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom, and the Authority hereby agrees to grant to the Contractor exclusive control over any such negotiations or litigation. The Contractor shall consult with and pay due regard to the interests and views of the Authority in the conduct of any defence to any claim or demand hereunder, but shall not be required to comply with such interests or views. The Authority, its employees and agents, shall at the request of the Contractor afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of such claim or demand or action. The Authority shall use its reasonable endeavours to mitigate any loss covered by this indemnity.

40. LIMITS OF LIABILITY

40.1 Neither party excludes or limits liability to the other party for death or personal injury, fraud or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

40.2 Subject always to Clause 40.1, the liability of either party for Defaults shall be subject to the financial limits set out in this Clause as follows:

40.2.1 the aggregate liability under this Agreement (by way of indemnity or otherwise) of either party for all Defaults that occur during the Transition Period shall not exceed twenty million pounds (£20,000,000);

40.2.2 the aggregate liability under this Agreement (by way of indemnity or otherwise) of either party during each Year of this Agreement following the Cutover Date for all Defaults that occur during that Year shall in no event exceed ninety per cent (90%) of the Charges paid and payable by the Authority for the Services during the Year of this Agreement in which the Default occurs (as determined at the date of the Default); and

40.2.3 the aggregate liability under or in connection with this Agreement (by way of indemnity or otherwise) (including any liability under the Transition Agreements) of either party shall not exceed seventy five million pounds (£75,000,000).

40.3 Subject always to Clause 40.1, in no event shall either party be liable to the other for:

40.3.1 loss of profits (except as provided in Table 16 of Schedule 6) business, revenue, goodwill or anticipated savings (including such losses incurred in the provision of services to third parties); and/or

40.3.2 indirect or consequential loss or damage.

howsoever caused including as a result of negligence, tortious act or omission, breach of statutory duty, breach of contract, strict liability, restitution or other legal theory or otherwise and whether such loss or damage was known to or in the contemplation of the Parties when they entered into this Agreement.

40.4 The provisions of Clause 40.3 shall not be taken as limiting the right of either party to claim from the other party for:

40.4.1 direct additional operational and administrative costs and expenses; and/or

Office Services Agreement

40.4.2 direct expenditure or charges rendered unnecessary as a result of any Default by the other party.

40.5 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

40.6 The liability of the Contractor for any loss or damage to mail or courier items will be subject to the general limitations provided in the relevant Scheme made under Section 89 of the Postal Services Act 2000. The Contractor shall have no liability under this Agreement in relation to lost or damaged mail or courier items except as specified in the relevant Scheme or in respect of any loss or damage to mail or courier items caused by the Default of the other Party.

40.7 Notwithstanding any other provisions of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

41. **INSURANCE**

41.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

41.2 The Contractor shall hold employer's liability insurance in respect of employees in accordance with any legal requirement for the time being in force.

41.3 The Contractor shall produce to the Authority's Representative, on request, copies of all insurance policies referred to in this Clause 41 or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

41.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability.

41.5 The Contractor shall notify the Authority of any material changes to the level or type of insurance cover from those notified to the Authority and shall, where requested by the Authority, inform the Authority of the reasons for those changes.

41.6 The Contractor shall use its reasonable endeavours to ensure that it shall not by its acts or omissions cause any policy of insurance to be invalidated or avoided.

42. **CORRUPT GIFTS AND PAYMENTS**

42.1 The Contractor shall not do (and warrants that in entering the Agreement he has not done) any of the following (referred to in this Clause 42 as "prohibited acts"):

Office Services Agreement

- 42.1.1 offer, give or agree to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Authority, or for showing or not showing favour or disfavour to any Person in relation to this or any other contract with the Authority;
- 42.1.2 enter into this or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Agreement is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Authority.
- 42.2 If the Contractor, Staff or any Subcontractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other contract with the Authority, the Authority shall be entitled -
 - 42.2.1 to terminate the Agreement in accordance with Clause 59.6 and recover from the Contractor the amount of any loss resulting from the termination;
 - 42.2.2 to recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - 42.2.3 to recover from the Contractor any other loss sustained in consequence of any breach of this Clause 42, whether or not the Agreement has been terminated.
- 42.3 In exercising its rights or remedies under this Clause 42, the Authority shall:-
 - 42.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
 - 42.3.2 give all due consideration, where appropriate, to action other than termination of the Agreement, including (without limitation to):
 - (i) requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
 - (ii) requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.
- 43. **RECOVERY OF SUMS DUE**
- 43.1 If any sum of money shall be due from the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Agreement or under any other agreement between the Contractor and the Authority.
- 44. **HEALTH AND SAFETY**
- 44.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 44.2 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Services.
- 44.3 The Contractor shall inform all Staff engaged in the provision of Services at the Authority's

Office Services Agreement

Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.

44.4 Whilst on the Authority's Premises, the Contractor and its Subcontractors (if applicable) shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.

44.5 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.

44.6 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.

45. **LEGISLATIVE AND POLICY CHANGE**

45.1 Any change to law or policy affecting this Agreement, the Services or the provision or receipt of the Services (including but not limited to the standards listed in Schedule 18) shall be subject to the Change Control Procedure with the following exceptions:

45.1.1 neither party shall withhold or delay their agreement to the change;

45.1.2 any change will be implemented even if the parties cannot agree a variation to the Agreement (including the Charges) before the change is due to be implemented; and

45.1.3 any agreed variation to the Agreement shall apply retrospectively to the date of implementation of the change.

45.2 The Contractor shall use its reasonable endeavours to mitigate any increase in costs arising from a change in law or policy.

45.3 In the event the parties are unable to agree the Charges applicable to such change, the parties shall deal with the dispute in accordance with the Dispute Resolution procedure.

46. **CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999**

46.1 This Agreement is not intended to be for the benefit of, and shall not be enforceable by, any third party (being any person other than the parties and their permitted successors and assignees) who claims rights under the Contracts (Rights of Third parties) Act 1999 or otherwise.

47. **DATA PROTECTION**

47.1 The Authority shall be the Data Controller in relation to all Personal Data processed by the Contractor and its Subcontractors in relation to the provision of the Services under this Agreement and shall comply with the provisions of the Data Protection Act as appropriate.

47.2 To the extent that the Contractor acts as Data Processor of any Personal Data processed by the Contractor in the provision of the Services under this Agreement, the Contractor;

47.2.1 confirms that it is not in breach of any laws of the country in which the data will be processed which would prevent the Contractor from processing the Personal Data on behalf of the Authority or would give rise to liability for the Authority;

Office Services Agreement

- 47.2.2 shall ensure that the Contractor's programs and procedures reflect the level of damage that might be suffered by a Data Subject as a result of any unauthorised access and disclosure and that the Contractor has specifically addressed the nature of Personal Data within such programs and procedures.
- 47.3 The Contractor undertakes:
 - 47.3.1 to the extent that the Contractor acts as Data Processor it shall process Personal Data in accordance with the Laws of the United Kingdom;
 - 47.3.2 not to use any Personal Data received under this Agreement for any purpose other than the purpose set out in this Agreement or for any other purpose that has not been otherwise authorised by the Authority;
 - 47.3.3 to process the Personal Data solely in the manner specified by the Authority and in accordance with written instructions issued by the Authority, which may be varied from time to time;
 - 47.3.4 not to disclose Personal Data to any third party without the prior written consent of the Authority except that the Contractor shall be entitled to disclose Personal Data to Sub-Contractors where necessary to enable the Sub-Contractor to carry out part of the Services;
 - 47.3.5 to appoint and identify to the Authority an individual within its organisation authorised to respond to enquiries from the Authority concerning its processing of Personal Data undertaken on behalf of the Authority. The Contractor will deal with all enquiries from the Authority relating to such Personal Data promptly, (including those from the Information Commissioner) and in any event within any time frame stipulated by the applicable Laws;
 - 47.3.6 to provide access upon reasonable notice to its data processing facilities, data files and documentation needed for processing, for auditing and/or certification by the Authority (or any other duly qualified auditors or inspection authorities) in order to ascertain compliance with the undertakings given in this Clause 47.3;
 - 47.3.7 to comply, subject to the provisions of Clause 45, with any changes in applicable Law notified to it by the Authority;
 - 47.3.8 to comply, subject to the Change Control Procedure, with any changes in applicable guidance from regulatory or professional bodies notified to it by the Authority; and
 - 47.3.9 to notify the Authority of any provisions in any local law or of any changes in the laws of the country in which the Personal Data is being processed which does or could affect the Contractor's ability to perform its obligations.
- 47.4 Subject to Clause 47.5 below the Contractor shall indemnify and keep indemnified the Authority against all losses, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause 47 by the Contractor and/or any act or omission of any Sub-Contractor, or any breach by the Authority where it is caused by the act or omission of the Contractor.
- 47.5 The Contractor shall not be responsible for or be obliged to indemnify the Authority to the extent such losses, costs or expenses are caused by the acts, omissions, negligence or wilful misconduct of the Authority, their employees, agents, or contractors (other than the Contractor or its sub-contractors).

48. DISPUTE RESOLUTION PROCEDURE

- 48.1 All disputes between the parties shall be determined in accordance with the Dispute Resolution Procedure as set out in Schedule 15.

49. COMPLIANCE WITH LEGISLATION

- 49.1 In performing the Services pursuant to this Agreement the Contractor shall comply in all respects with all relevant legislation and in particular, but without limitation the Contractor shall:

49.1.1 comply with the provisions of the Social Security Act 1998 and the Welfare Reform and Pensions Act 1999;

49.1.2 not commit an act of discrimination rendered unlawful by any Anti-Discrimination Legislation;

49.1.3 comply with all relevant requirements contained in or having effect under the legislation relating to health, safety and welfare at work; and

49.1.4 comply with the provisions of the National Minimum Wage Act 1998 and the Working Time Regulations 1998.

- 49.2 Where any of the Contractor's obligations under this Agreement are carried out by a sub-contractor, the Contractor shall use all reasonable endeavours to ensure that in carrying out those obligations the sub-contractor complies with the provisions of this Clause 49.

50. TRANSFER AND SUB-CONTRACTING

- 50.1 The Contractor shall not assign, novate, sub-contract or in any other way dispose of its rights or obligations under this Agreement or any part of it without prior written consent of the Authority (not to be unreasonably withheld or delayed). The Authority's approval of a Subcontractor shall be signified by the inclusion of the name in Schedule 5. Despite the Contractor's right to subcontract pursuant to this Clause 50.1, the Contractor shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own. Where any subcontracting arrangement involves a transfer of Authority employees or Contractor employees to the Subcontractor, the Authority's consent to such subcontracting may (at the Authority's sole discretion) be subject to the Contractor imposing provisions substantially in the form set out in Schedule 12 relating the transfer of, and the ongoing pension provisions for, such employees.

- 50.2 Where the Contractor, with the consent of the Authority, sub-contracts the delivery of all or any part of the Services, the Contractor shall nonetheless remain accountable in all respects to the Authority for the full and proper delivery of the Services.

- 50.3 The Contractor shall include in its contracts with suppliers or Subcontractors engaged for the purposes of providing the Services a written condition undertaking to make payment for the supply of their goods and/or services within thirty (30) days of receipt of the suppliers' or Subcontractors' invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract and such invoices are valid and undisputed).

- 50.4 The Contractor shall promptly notify the Authority of any claim brought against the Contractor arising out of or relating to the Contractor's provision of the Services including any claim made against any Subcontractor of the Contractor of which the Contractor becomes aware.

Office Services Agreement

- 50.5 The Contractor shall be responsible for the acts and omissions of his Subcontractors as though they were his own.
- 50.6 The Authority reserves the right upon giving reasonable advance written notice to the Contractor to withdraw its consent to any Subcontractor where it has reasonable grounds to no longer consent to the Subcontractor or the sub-contracting arrangement and the Contractor shall use all reasonable endeavours to promptly find a suitable sub-contractor acceptable to the Authority or perform the relevant part of the Services itself. The Authority accepts and acknowledges that it shall not be entitled to withdraw its consent to Royal Mail Group plc as a Subcontractor solely on the grounds of Royal Mail Group plc's insolvency.
- 50.7 Subject to Clause 50.9, the Authority shall be entitled, upon reasonable notice to the Contractor, to:
- 50.7.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations pursuant to this Agreement; or
 - 50.7.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Authority provided that such novation shall not increase the burden of the Contractor's obligations pursuant to this Agreement.
- 50.8 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 50.10, affect the validity of this Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any successor body to the Authority provided that such change in the legal status of the Authority shall not increase the burden of the Contractor's obligations pursuant to this Agreement.
- 50.9 If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 50.7.2 or if a successor body which is not a Contracting Authority becomes the Authority pursuant to Clause 50.8 (in the remainder of this Clause 50.10 both such bodies are referred to as the "transferee"):
- 50.9.1 the rights of termination of the Authority in Clauses 59.1 and 59.4 shall be available, mutatis mutandis, to the Contractor in the event of the bankruptcy, insolvency or Default of the transferee;
 - 50.9.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Contractor; and
 - 50.9.3 any rights acquired by the transferee relating to any Use of the Intellectual Property Rights or the Software shall not extend beyond the activities previously performed by the Authority;
- 50.10 The Authority shall be entitled to disclose to any transferee any Confidential Information of the Contractor or its Subcontractors which relates to the performance of the Services by the Contractor and which the transferee needs to know in order to fulfil its obligations hereunder. In such circumstances the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the provision of the Services and for no other purposes and, for the avoidance of doubt, the Authority shall procure that the transferee enters into a confidentiality agreement in favour of the Contractor and the Subcontractors and shall procure that they shall be bound by confidentiality provisions no less onerous than those provisions of Clause 33 in relation to such Confidential Information.

51. SERVICE OF NOTICES AND COMMUNICATIONS

- 51.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the party concerned.
- 51.2 Any notice or other communication which is to be given by either party to the other shall be given by letter, or by facsimile transmission or electronic mail confirmed by letter. Such letters shall be delivered by hand or sent prepaid by first class post to the address of the other party as set out in Schedule 8. If the other party does not acknowledge receipt of any such letter, facsimile transmission or item of electronic mail, and the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given three (3) Working Days after the day on which the letter was posted.
- 51.3 Either party may change its address for service by notice given in accordance with this Clause 51.

52. SEVERABILITY

- 52.1 If any provision of the Agreement is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

53. WAIVER

- 53.1 The failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 53.2 No waiver shall be effective unless it is communicated to the other party in writing.
- 53.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

54. AMENDMENTS TO THE AGREEMENT

- 54.1 Subject to the provisions of Clause 3.7, no change under this Agreement shall be effective unless made in accordance with the Change Control Procedure. For these purposes, a "change" includes any proposed amendment to the Agreement (including any proposed additional or substituted Schedule), any proposed Additional Services, any proposed assignment, novation or subcontracting of the Agreement and any variations of the charges or other changes. For each such change which is agreed by the parties the Agreement shall be amended to the extent necessary to give effect to that change.
- 54.2 The change must be approved on behalf of each party at the appropriate level of authorisation as specified in Schedule 9 and must be made in accordance with the Change Control Procedure by a written instrument which expressly purports to amend this Agreement and which expressly refers to the Clause(s) or Schedule(s) so amended.
- 54.3 However, unless and until such amendment is made in accordance with the Change Control Procedure, this Agreement shall not in any way be considered to have been amended.

55. REMEDIES CUMULATIVE

- 55.1 Except as otherwise expressly provided by the Agreement, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

56. FORCE MAJEURE

- 56.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster, or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its servants, agents or employees. For the avoidance of doubt (except as provided in Clause 57.6), any industrial dispute affecting the employees of the Authority or of the Contractor or its Subcontractors shall not be considered an event of Force Majeure.
- 56.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges or Service Credits whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to an event of Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event. In the case of the Contractor, the parties shall agree an orderly process for such continuation or resumption of performance (such agreement not to be unreasonably withheld or delayed), and the Contractor shall comply with such process. The Contractor shall remain liable to perform any disaster recovery services, save where such disaster recovery services are themselves also affected by Force Majeure, in which case the Contractor shall be required to use all reasonable endeavours to perform such disaster recovery services.
- 56.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 56.4 It is expressly agreed that any failure by either party to perform or any delay by either party in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which either party shall have entered into any such contract, supply arrangement or Subcontract or otherwise, shall be regarded as a failure or delay due to an event of Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Subcontract or otherwise as a result of circumstances of Force Majeure.
- 56.5 The Authority may terminate this Agreement by notice in writing to the Contractor where a Force Majeure event has substantially prevented or delayed either party from performing its obligations under this Agreement continuously during the immediately preceding six (6) months.
- 56.6 Where the Services are only partially affected by a Force Majeure event the Charges shall continue to be payable in respect of those Services that the Contractor continues to provide

Office Services Agreement

in accordance with this Agreement. The Charges payable shall be calculated in accordance with the provisions of Schedule 6.

57. **DISRUPTION**

- 57.1 The Contractor shall take reasonable care to ensure that in the performance of the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 57.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.
- 57.3 In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek the Authority's consent to its proposals to perform its obligations under the Agreement.
- 57.4 If the Contractor's proposals referred to in Clause 57.3 are considered insufficient or unacceptable by the Authority, the Contractor shall, within five (5) Working Days, re-submit to the Authority a revised proposal taking into account any comments of the Authority. If the Contractor's re-submitted proposals are still considered insufficient or unacceptable by the Authority, the Authority may terminate this Agreement after following the procedure set out in Clause 59.4.
- 57.5 If the Contractor is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business by direction of the Authority or because of industrial action by Authority employees, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense incurred by the Contractor in fulfilling the provisions of the Agreement as a result of such disruption.
- 57.6 For the avoidance of doubt, any industrial action by Royal Mail (i) which affects Royal Mail's ability to provide its statutory postal delivery service, and/or (ii) which affects Royal Mail's ability to provide its statutory postal delivery service which in turn affects Royal Mail Group plc's ability to provide the Services which are sub-contracted to Royal Mail Group plc, will be considered a Force Majeure event.

58. **STEP IN**

- 58.1 The Authority may take Step In Action in respect of all or any part of the Services in the following circumstances:
- 58.1.1 an event of Force Majeure has occurred which would prevent or delay the provision of such Service, or there is a serious risk of such an event of Force Majeure occurring, or
- 58.1.2 there is a Default entitling the Authority to terminate in accordance with Clause 59.4 or there is a serious risk of such a Default occurring,
- the Authority shall be entitled to take Step-in Action in accordance with this Clause 58.
- 58.2 Where the Authority wishes to exercise its entitlement in Clause 58.1 to take Step-in Action and provided that the Authority has, where reasonably practicable, first consulted with the Contractor and the Contractor has been unable to demonstrate to the Authority's reasonable satisfaction that it is able to provide the Services in accordance with this Agreement, it shall notify the Contractor in writing of the following matters (and shall use

Office Services Agreement

reasonable endeavours to provide such notification at least fourteen (14) days prior to the date the action will commence):

58.2.1 the action that it intends to take;

58.2.2 the reason for taking such action;

58.2.3 the date from which such action shall commence;

58.2.4 the time period that it believes to be necessary for such action; and

58.2.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

- 58.3 Following service of such notice, the Authority may take Step-In Action as notified under Clause 58.2 above and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking such Required Action. The Authority shall be permitted to engage the services of any third party to assist it in the performance of the Required Action. The Authority shall notify the Contractor in advance of the identity of the third party and shall procure that such third party enters into a confidentiality agreement in favour of the Contractor on no less onerous terms than those set out in Clause 33.
- 58.4 If Step-In Action arises then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services the Contractor's rights and obligations to provide such part of the Services shall be suspended for so long as such Required Action continues and the Contractor shall be relieved from any liability for not providing such Services and/or for any consequences of such non-performance as a result of the Required Action.
- 58.5 While the Contractor's rights and obligations to provide any or all elements of the Services are suspended under Clause 58.4 the Authority will not be obliged to pay the Charges in respect of the suspended elements of the Services.
- 58.6 Where the Authority continues to use the Contractor's Staff and resources to take the Required Action, the Authority shall reimburse the Contractor for the cost of such Staff and resources as calculated using the Financial Model.
- 58.7 Where the Authority exercises its right to take Step-In Action pursuant to Clauses 58.1.2 and where the Authority has engaged a third party to assist in the performance of the Required Action, the Contractor shall reimburse the Authority all reasonable additional costs (above what the Authority would have paid the Contractor as Charges for the suspended Services) in procuring such third party assistance.
- 58.8 For the avoidance of doubt, where the Authority exercises its right to take Step-In Action pursuant to Clause 58.1.1 and where the Authority has engaged a third party to assist in the performance of the Required Action, the Authority shall be responsible for any additional costs in procuring such third party assistance.
- 58.9 Where the Authority has exercised its rights to take the Required Action pursuant to this Clause, it shall act in accordance with good industry practice and (without prejudice to the obligation to act in accordance with good industry practice) in accordance with its own established internal procedures.
- 58.10 Where the Authority has exercised its right to take Step-In Action then the Authority shall cease to take Step-In Action and shall allow the Contractor to resume the performance of

the affected Services, where the Contractor has demonstrated to the reasonable satisfaction of the Authority that it will be capable of providing such Services in accordance with this Agreement. Where the Contractor has so demonstrated the Authority shall deliver written notice (a Step-Out Notice) to the Contractor, specifying in reasonable detail (to the extent that it is reasonably practicable to do so in all the circumstances):

58.10.1 the action it has taken in exercising the Step-In Action; and

58.10.2 the date from which the Contractor is to resume the performance of the Services, such date being reasonable in all the circumstances.

58.11 The Contractor shall ensure that each subcontract contains provisions enabling the Contractor or the Authority to step-in on substantially the same terms as set out in this Clause 58.

59. TERMINATION

Insolvency

59.1 The Authority may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

59.1.1 a judgement or order made against the Contractor is not complied with or set aside (or an application to set aside is not made) within twenty-one (21) days or an encumbrancer takes possession of the whole or any part of the undertaking, assets, rights or revenues having an aggregate value of more than two hundred and fifty thousand pounds (£250,000) in the possession of the Contractor under any hire purchase, conditional sale, leasing, retention of title or similar agreement or a distress, distraint, execution or other process is levied or enforced upon any of the assets, rights, undertaking or revenues having an aggregate value of more than two hundred and fifty thousand pounds (£250,000) of the Contractor or upon any goods having an aggregate value of more than two hundred and fifty thousand pounds (£250,000) in the possession of the Contractor under any hire purchase, conditional sale, leasing, retention of title or similar agreement and is not discharged within twenty-one (21) days; or

59.1.2 the Contractor, being an individual, or where the Contractor is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall purport to do so, including, without limitation, an individual voluntary arrangement pursuant to the Insolvency Act 1986 or stops or suspends payment of its debts or is unable to or admits inability to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or in Scotland he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or

59.1.3 where the Contractor is a company:

Office Services Agreement

- (a) an administrative receiver or a receiver or a manager is appointed of the whole or any part of the undertaking, assets, rights or revenues of the Contractor (being a company); or
- (b) the Contractor (being a company) stops or suspends payment of its debts or is unable to or admits inability to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 or otherwise but ignoring the references in that section to determination by the court) or becomes insolvent or proposes or commences negotiations with one or more of its creditors with a view to the general rescheduling of its debts or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or any class of its creditors including, without limitation, a scheme of arrangement pursuant to the Companies Act 1985 or a company voluntary arrangement pursuant to the Insolvency Act 1986; or
- (c) a resolution is passed or an order made for the liquidation of the Contractor (otherwise than for the purpose of a bona fide reconstruction or amalgamation); or
- (d) an order is made for the administration of the Contractor; or
- (e) the Contractor is subject to insolvency proceedings for the purposes of the EC Regulation on Insolvency Proceedings 2000 opened in respect of it; or
- (f) any event occurs or proceeding is taken with respect to the Contractor in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in the sub-clauses above.

Change of Control

- 59.2 Subject to Clause 59.3, the Authority may at any time by notice in writing terminate this Agreement as from the date of service of such notice if there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Contractor or its Parent Company.
- 59.3 The Authority shall only be permitted to exercise its rights pursuant to Clause 59.2 for six (6) Months after the later of the date of receipt by the Authority of notification of a change of control or the date of a change of control actually taking place and shall not be permitted to exercise such rights where the Authority has consented in advance in writing to the particular change of control (such consent not to be unreasonably withheld or delayed) and such change of control takes place as proposed provided that the Contractor shall notify the Authority within two (2) Months of any change of control taking place.

Termination for Cause by the Authority

- 59.4 The Authority may at any time by notice in writing terminate this Agreement (or any part of the Services pursuant to Clause 59.12) on written notice if the Contractor is in Default of any obligation under this Agreement and:

59.4.1 such Default is capable of remedy and:

- (a) the Authority has served upon the Contractor a written notice specifying the Default and requiring its remedy and the Contractor has failed to remedy the

Office Services Agreement

Default within thirty (30) days of receipt of the written notice (or such other reasonable period as may be agreed by the parties), and

- (b) the Authority has served upon the Contractor a written notice specifying that the Default has not been remedied, in what respects it has not been remedied and requiring its remedy and the Contractor has failed to remedy the Default within thirty (30) days of receipt of the written notice (or such other reasonable period as may be agreed by the parties); or

59.4.2 such Default is not capable of remedy and:

- (a) the Authority has served upon the Contractor a written notice specifying the Default and the Contractor has failed to take reasonable action to prevent the Default from recurring ("Preventative Action"), such action to be taken within the period of thirty (30) days (or such other reasonable period as may be agreed by the parties) of receipt of the written notice (the "First Preventative Action Period") or the Authority has agreed that no Preventative Action is possible, and
- (b) the Authority has served upon the Contractor a written notice specifying that the Default has recurred in the First Preventative Action Period and the Contractor has again failed to take Preventative Action, such action to be taken within the period of thirty (30) days (or such other period as may be agreed by the parties) of receipt of the written notice (the "Second Preventative Action Period") or the Authority has agreed that no Preventative Action is possible, and
- (c) notwithstanding the taking or non-taking of Preventative Action by the Contractor, there is a further recurrence of the Default within a ninety (90) day period immediately following the end of the Second Preventative Action Period.

59.5 The Authority may at any time by notice in writing terminate any Services to which Service Levels and Service Credits apply forthwith if at any time after the Cutover Date:

- (a) the Contractor fails, due to its Default, to provide such Services in accordance with the Service Level(s) applicable to such Services; and
- (b) the Service Credits that have been applied by the Authority with respect to such failure exceed the Service Level Termination Threshold with regard to such Services.

59.6 The Authority may at any time by notice in writing terminate this Agreement if there is a breach by the Contractor of any provision hereof which expressly entitles the Authority to terminate this Agreement.

Break Option

59.7 Without prejudice to the Authority's other rights to terminate this Agreement (or any part of the Services pursuant to Clause 59.12) or otherwise at law or in equity, the Authority shall have the right to exercise the Break Option at any time after the Effective Date by service on the Contractor of twelve (12) Months prior written notice exercising the Break Option. Upon service of notice in accordance with this Clause the performance of any Additional Services which the Contractor has not at that time commenced performance of shall automatically be cancelled irrevocably as at the date of the notice.

59.8 The Agreement (or any part of the Services pursuant to Clause 59.12) shall terminate on the date specified in the notice.

Termination Charge

- 59.9 On the termination of this Agreement or the termination or partial termination of the Services for the reasons set out in Paragraph 5.2.1 of Schedule 6 the Authority shall pay to the Contractor the Termination Charges specified in Schedule 6. Such payment shall be in full and final settlement of all claims, demands, suits, actions or liabilities of any nature relating to the termination of this Agreement for the reasons set out in Paragraph 5.2.1 of Schedule 6 including all representations made prior thereto.

Rights and Obligations on Termination and Expiry

- 59.10 The Contractor shall use all reasonable efforts to ensure that any contracts it enters into with a Subcontractor, landlord of property or other third party in connection with or for the purposes of the provision of the Services, the occupation of property in connection with the provision of the Services or otherwise in connection with this Agreement shall provide the Contractor with rights equal to those pertaining to the Authority under this Clause 59.
- 59.11 In the event that this Agreement expires or is terminated as provided for herein:
- 59.11.1 notwithstanding the service by the Authority, pursuant to this Clause 59, of a notice to terminate this Agreement, the Contractor shall continue to provide the Services to the required Service Levels until the date of termination of this Agreement and the Authority shall continue to perform its obligations under this Agreement including payment of the Charges;
 - 59.11.2 the Contractor shall repay forthwith to the Authority all Charges paid up to and including such date of termination other than Charges in respect of any Services or part thereof properly performed in accordance with this Agreement subject to revision for any Service Credits outstanding; and
 - 59.11.3 the parties shall comply with their respective obligations as set out in Schedule 16, and the Contractor shall, if requested by the Authority enter into the Transition Agreement with the Authority and a Replacement Contractor.

Partial Termination

- 59.12 The Authority may terminate part of the Services when exercising its right to terminate this Agreement under this Clause 59 in which case:
- 59.12.1 the remaining Services shall continue to be performed for the remainder of the Agreement;
 - 59.12.2 the Charges in respect of the remaining Services shall be agreed pursuant to the Change Control Procedure;
 - 59.12.3 the Authority shall pay a Termination Charge calculated in accordance with the provision of Schedule 6; and
 - 59.12.4 the responsibilities of the parties in respect of such terminated Services shall be performed in accordance with Schedule 19.
- 59.12.A The Authority shall not partially terminate the Services subcontracted to Royal Mail Group plc, which Services can only be terminated in their entirety.

Authority Default

- 59.13 The Contractor may at any time on thirty (30) days written notice terminate this Agreement if the Authority fails to make payment to the Contractor of any amount of money over two hundred and fifty thousand pounds (£250,000) that is properly due and payable by the Authority under this Agreement within thirty (30) days of services of a formal written demand by the Contractor, where the amount fell properly due and payable at least two (2) months prior to the date of service of such written demand.

60. CONSEQUENCES OF TERMINATION

- 60.1 Upon expiry or termination of this Agreement (however caused) the Contractor shall:

- 60.1.1 repay forthwith to the Authority all monies paid up to and including such date of expiry or termination other than monies in respect of any Services properly performed in accordance with this Agreement;
- 60.1.2 at the sole option of the Authority, either return to the Authority or destroy all records, Authority Data (in such format as requested by the Authority), and any other information and all copies thereof which are owned by the Authority or generated by the Contractor on behalf of the Authority, in all the medium specified by the Authority;
- 60.1.3 return to the Authority all Authority Property in its possession;
- 60.1.4 transfer to a location specified by the Authority (at no cost to the Authority) any Equipment and technical infrastructure which may be purchased by the Authority and/or the Incoming Service Provider; and
- 60.1.5 assign or novate in favour of the Authority (or to any person as may be designated for this purpose by the Authority) any Equipment leases, maintenance agreements and support agreements as the Authority may designate which are relevant and necessary for the provision of the Services and on the basis that no charges are payable by the Authority or such other person for entering into the assignment or novation.

- 60.2 If the Authority terminates the Agreement under Clauses 59.4, 59.5 or 59.6 or terminates the provision of any part of the Services under Clause 59.12 as a result of the matters specified in Clauses 59.4, 59.5 or 59.6, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. Where the Agreement is terminated under Clauses 59.4, 59.5 or 59.6 no further payments shall be payable by the Authority until the Authority has established the final cost of making those other arrangements.

- 60.3 Termination of the Agreement shall not affect the coming into, or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force upon termination of this Agreement.

61. SUPPLY CHAIN RIGHTS

- 61.1 The Contractor's Subcontractor Royal Mail Group plc is a regulated company. The Authority acknowledges and accepts that Royal Mail Group plc is subject to regulatory and competition requirements. Therefore, to the extent that the provisions of the Subcontracts between the Contractor and Royal Mail Group plc differ from the provisions of this Agreement as a result of the regulatory and competition requirements to which Royal Mail Group plc is subject, the provisions of the Subcontracts between the Contractor and Royal

Office Services Agreement

Mail Group plc shall prevail as between the Contractor and Royal Mail Group plc. If as a result of such differences the Contractor has not complied with any provision of this Agreement, the Contractor shall be relieved from its obligations to comply with such provisions in relation to the Services subcontracted to Royal Mail Group plc, and for the avoidance of doubt, the Contractor shall not be in Default of this Agreement in relation to any such differences and non-compliance.

- 61.2 The Contractor shall not terminate or materially amend the terms of any Subcontract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.
- 61.3 Where any Subcontractor fails to perform its obligations in accordance with the relevant Subcontract, the Authority may exercise its right of step in to the relevant Subcontract.
- 61.4 The Authority may require the Contractor to terminate a Subcontract where the acts or omissions of the relevant Subcontractor have given rise to the Authority's right of termination pursuant to Clauses 59.4, 59.5 or 59.6.
- 61.5 The Authority may require the Contractor to terminate the relevant Subcontract (subject to the restrictions contained in Clause 59.3) if there is a Change of Control of a Subcontractor on the same terms as those set out in Clause 59.2 (except in the case of Royal Mail Group Plc in which case the terms will be those set out in the agreement between Royal Mail Group Plc and the Contractor).
- 61.6 Where the Authority has a right to terminate all or part of the Services, the Authority may require the Contractor by written notice to novate to the Authority any Subcontracts relating to those parts of the Services in respect of which the Authority has a right of termination. Such novation shall take effect on the date of termination of the relevant parts (or all) of the Services.
- 61.7 The Authority shall have the right to monitor the performance of Subcontractors under this Agreement. At the Authority's request, the Contractor shall provide all necessary information and assistance to enable the Authority to monitor the performance of the Subcontractors.

62. ENTIRE AGREEMENT

- 62.1 This Agreement, together with the Transition Agreements, constitutes the entire agreement between the parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 62 shall not exclude liability in respect of any fraudulent misrepresentation.

63. RELATIONSHIP OF THE PARTIES

- 63.1 In carrying out its obligations under this Agreement the Contractor agrees that it shall be acting as principal and not as the agent of the Authority. Nothing in this Agreement shall be deemed to constitute or create a partnership (as defined in the Partnership Act 1890) between the parties to this Agreement.
- 63.2 The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Authority.

64. LAW AND JURISDICTION

- 64.1 This Agreement shall be governed by and interpreted in accordance with English Law and without prejudice to the Dispute Resolution Procedure shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the parties as follows:

Signed for and on behalf of the Authority

By

Name

Title

Date

Signed for and on behalf of the Contractor

By

Name

Title

Date