

Dated

2022

**MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM  
FOREST**

and

[ ]

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**CONTRACT FOR THE PROVISION OF HEALTHY CHILD PROGRAMME  
AND CHILDREN AND FAMILY CENTRE SERVICES**

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THIS CONTRACT is made the

day of

2022

## BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM FOREST** of the Town Hall, Forest Road, Walthamstow" London, E17 4JF (the "**Authority**"); and
- (2) [REDACTED] (the "**Contractor**")

## BACKGROUND

- (A) The Authority placed a contract notice [REFERENCE] on [DATE] in the [Official Journal of the European Union] seeking expressions of interest from potential providers for the **Healthy Child Programme and Children And Family Centres Services**, divided into lots.
- (B) The Authority has, through a competitive process, selected the Contractor to provide these services for [delete as necessary] Lot 1: Children and Family Centres: Universal and Targeted Services for Children Aged 0-5 and their Parents; Lot 2: Best Start Services 0-5s; Lot 3: Healthy Child Programme 0-19 and the Contractor is willing and able to supply the services in accordance with the terms and conditions of this agreement for the Contract Period.

## AGREED TERMS

### 1. INTERPRETATION

#### 1.1 Definitions. In this Contract, the following definitions apply:

**Approval:** means the prior written approval of the Authority and Approve and Approved shall be construed accordingly.

**Authorised Officer:** means a person designated as such by the Authority from time to time as notified in writing to the Contractor to act as the representative of the Authority for all purposes connected with the Contract, including any authorised representative of such person.

**Authority:** means the Mayor and the Burgesses of the London Borough of Waltham Forest of, Waltham Forest Town Hall, Forest Road, Walthamstow, London E17 4JF.

**BCDR Plan:** means any plan relating to the Contractor's business continuity and disaster recovery as referred to in Schedule 8 (Disaster Recovery & Business Continuity).

**Bribery Act:** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of

practice issued by the relevant government department concerning the legislation.

**Commencement Date:** means 1 July 2022.

**Confidential Information:** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either Party, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.

**Contract:** means the contract between the Authority and the Contractor for the supply of Services for *delete as necessary* Lot 1: Children and Family Centres: Universal and Targeted Services for Children Aged 0-5 and their Parents; Lot 2: Best Start Services 0-5s; Lot 3: Healthy Child Programme 0-19 including but not limited to the Service Specification (Schedule 1), the Order (if applicable), the Pricing Schedule (Schedule 2) and all additional Schedules attached hereto in accordance with these conditions.

**Contractor:** means the person or firm from whom the Authority purchases the Services.

**Contract Manager:** means a person designated as such by the Contractor from time to time as notified in writing to the Authority to act as the duly authorised representative of the Contractor for all purposes connected with the Contract, including any authorised representative of such person.

**Contract Period:** means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Contract, starting on the Commencement Date until the Expiry Date.

**Contract Price:** means the monies payable by the Authority to the Contractor for the provision of the Services as set out in Schedule 2. In the absence of agreement by the Parties to the contrary, the Contract Price shall be inclusive of all taxes, duties, expenses and disbursements save for VAT (if applicable) and shall include the costs of all equipment and materials supplied by the Contractor, all travelling expenses involved and all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any Intellectual Property or Intellectual Property Rights for the purpose of performance of the Contract.

**Contractor Staff:** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, employees, consultants, agents, contractors, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

**Contract Standard:** means such standard as complies in each and every respect with all relevant provisions of the Contract.

**Convictions:** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988).

**Costs:** includes costs, charges, outgoings and expenses of every description.

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

**Data Loss Event:** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

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

**Data Protection Legislation:** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Data Protection Impact Assessment:** means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Officer:** shall have the same meaning as in the Data Protection Legislation.

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

**Data Subject Access Request:** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** means Data Protection Act 2018.

**Deliverable:** means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material produced by or to be produced by or acquired by or to be acquired by the Contractor in the course of the performance of the Services.

**Dispute:** means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services.

**Dispute Resolution Procedure:** means the procedure set out in Clause 23;

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

**Expiry Date:** means **30 June 2025** unless extended or terminated earlier by either Party pursuant to the terms of this Contract.

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

**Force Majeure:** means any event, occurrence or cause affecting the performance by either the Authority or the Contractor of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected party;
- (b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of government, local government or regulatory bodies;
- (d) fire, flood, any disaster and any failure or shortage of power or fuel;
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available.

Force Majeure shall exclude:

- i. any industrial dispute relating to the Contractor, the Contractor Staff or any other failure in the Contractor or the Sub-Contractor's supply chain; or
- ii. any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned; or
- iii. any changes in economic conditions, including without limit, currency exchange and currency movement, increased costs for or scarcity of raw materials from usual sources of supply; or
- iv. any consequences arising as a result of or in connection with the United Kingdom's withdrawal from the European Union.

**Fraud:** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Authority.

**Guarantee: NOT USED**

**Guarantor: NOT USED**

**GDPR:** means the General Data Protection Regulation (Regulation (EU) 2016/679);

**Good Industry Practice:** means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services like the Services under the same or similar circumstances as those applicable to the Contract and which are in accordance with any codes of practice published by relevant trade associations.

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

**Information Commissioner:** means the United Kingdom's independent data protection authority established under Part 5 of the Data Protection Act 2018.

**Insolvent:** means:

- (a) if the Contractor is an individual, that individual or where the Contractor is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted

by him for the benefit of his creditors;

- (b) if the Contractor is a company, the passing by the Contractor of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Contractor or the dissolution of the Contractor, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Contractor's assets, or if the Contractor makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and
- (c) any event in any jurisdiction other than England and Wales which is analogous to any of the above;

**Intellectual Property:** means any and all patents, trademarks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trademarks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;

**Intellectual Property Right:** means the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding.

**In writing:** shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages.

**Know-How:** means all information not publicly known which is used or required to be used in or in connection with the Services existing in any form (including, but not limited to, that comprised in or derived from

engineering, chemical and other data, specifications, formulae, experience, drawings, manuals, component lists, instructions, designs and circuit diagrams, brochures, catalogues and other descriptions) and relating to the design, development, manufacture or production of any products; the operation of any process; the provision of any Services; the selection, procurement, construction, installation, maintenance or use of raw materials, plant, machinery or other equipment or processes; the rectification, repair or service or maintenance of products, plant, machinery or other equipment; the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; quality control, testing or certification of any person.

**Law:** means

a) any law, statute, bye-law, regulation, directives, delegated or subordinate legislation in force from time to time and within the meaning of section 21(1) of the Interpretation Act 1978, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements of any regulatory body with which the Contractor is bound to comply; and

b) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("EU References") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after EU exit day as a reference to the EU References as modified by domestic law from time to time. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union.

**LED:** means the Law Enforcement Directive (Directive (EU) 2016/680).

**Loaned Equipment:** means equipment owned by the Authority which is loaned to the Contractor for the purposes of the Contract as set out in the Specification.

**Location:** means the location for the provision of the Services as set out in the Specification or as otherwise agreed in writing between the Authority and the Contractor.

**London Living Wage:** means the basic hourly wage payable to the Contractor's Staff and as defined on the Mayor of London Site (<https://www.london.gov.uk/>) (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Contractor.

**Loss:** includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and/or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Authority for the time spent by its officers in terminating the



Contract and in making alternative arrangements for the provision of the Services.

**Month:** means a calendar month.

**Order:** the Authority's order for the supply of Services, as set out in the Authority's written acceptance of the Contractor's quotation and tender submission.

**Party:** means a party to this Contract and "Parties" shall be construed accordingly.

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

**Personal Data Breach:** shall have the same meaning as in the Data Protection Legislation.

**Process:** has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity;  
or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**Protective Measures:** means appropriate technical and organisational measures in accordance with Article 32, which may include but not be limited to: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner

after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Recruits:** means any new employees engaged by the Contractor to work on the Services to which this Contract relates (and any amendment to those Services);

**Replacement Contractor:** means any contractor engaged to replace the Contractor or any sub-contractor of the contractor.

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

**Services:** means the services, including without limitation any Deliverables, to be provided by the Contractor under the Contract as set out in the Service Specification at Schedule 1.

**Sites:** means those areas at the Location for the use of the Contractor and its staff in the provision of the Services, as set out in the Specification;

**Specification:** means the description or specification for Services as per Schedule 1.

**Sub-Contract:** means any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

**Sub-Contractor:** means the contractors or service providers that enter into a Sub-Contract with the Contractor.

**Sub-processor:** means any third party appointed to process Personal Data on behalf of the Contractor under this Contract.

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**Working Day:** means any day as required by the Service save for Sundays and public holidays in England

**Working Hours:** As agreed with the Authority and as required by the Service which can mean Monday to Friday 8.00 a.m. until 8.00 p.m; some weekend support as where part of families' support requirements; some early evening and weekend group work.

- 1.2 In these terms and conditions, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any

orders, regulations, codes of practice, instruments or other subordinate legislation made there under and any clauses attaching thereto.

- 1.3 Any headings within these terms and conditions are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated references to Clauses and or Schedules shall mean the Clauses and or Schedules of these terms and conditions respectively.
- 1.4 Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning.
- 1.5 Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.6 In these terms and conditions, words importing any particular gender include all other genders.
- 1.7 In these terms and conditions, words importing the singular only shall include the plural and vice versa.
- 1.8 In these terms and conditions "staff" and "employees" shall have the same meaning.
- 1.9 Subject to the contrary being stated expressly in these terms and conditions, all communication between the Parties shall be in writing.
- 1.10 All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

- 1.11 Except where an express provision of these terms and conditions states the ~~contrary~~, each and every obligation of a Party under the terms and conditions is to be performed at that Party's cost.
- 1.12 Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 1.13 All references to the Contract include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.
- 1.14 The Authority reserves the right to invite competitive quotations and/or place orders ~~elsewhere~~ for other or complementing services during the term of the Contract. The Contractor shall co-operate to the fullest extent possible with any other contractors appointed to provide such other or complementing services.
- 1.15 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

## **2. APPOINTMENT**

- 2.1 The Authority appoints the Contractor to provide the Services:
- 2.1.1 promptly (and in any event within any time targets as may be set out in the Specification) and in a professional and courteous manner so as to reflect and promote the image of the Authority;
  - 2.1.2 strictly in accordance with the Specification and all provisions of the Contract; and
  - 2.1.3 in accordance with all applicable Laws and regulations and Good Industry Practice; and
  - 2.1.4 in accordance with the policies (including, when on any premises of the Authority or on any other premises where it works alongside the Authority's staff, any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Authority as amended from time to time.
- 2.2 The Contractor accepts the terms of appointment as provided in Clause 2.1 in consideration of the Contract Price.

### **3. SUPPLY OF SERVICES**

- 3.1 Subject to Clause 15.1, the Contractor shall provide at its own expense all Contractor Staff, equipment, tools, appliances, materials or items required for the provision of the Services to the Contract Standard.
- 3.2 To the extent that the Specification includes the date, format and method of delivery of the Services and Deliverables and/or the applicable performance measures, performance due-by dates, minimum performance levels and methods of performance measurement in respect of the Services, the Contractor will abide by the same.
- 3.3 Time shall be of the essence with regard to the obligations of the Contractor under the Contract.
- 3.4 If the Specification provides for performance of the Services in stages, the Contractor undertakes to perform the Services in strict compliance with the timetable for stages as provided in the Specification.
- 3.5 The Authority and the Contractor will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Authority to derive the full benefit of the Contract. At all times in the performance of the Services, the Contractor will co-operate fully with any other contractors appointed by the Authority in connection with other services at the Location.
- 3.6 Any request by either Party to amend the scope or execution of the Services shall be dealt with by the Parties in accordance with the Contract and any change control provisions set out in Schedule 4.
- 3.7 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Contractor to notify the Authorised Officer of all significant changes to Contractor Staff, rates of pay or conditions of employment, or hours of work or other technological changes at least one Month prior to the implementation of any such revised arrangements.
- 3.8 The Contractor shall provide information in a format, medium and at times specified by the Authority, related to the performance of the Services as may be reasonably required.

- 3.9 In providing the Services, the Contractor shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Authority's computer systems.
- 3.10 If at any time the Contractor becomes aware of any act or omission or any proposed act or omission by the Authority or by any member, official or employee of the Authority which prevents or hinders or may prevent or hinder the Contractor from providing the Services in accordance with the Contract then the Contractor shall immediately inform the Authorised Officer of that fact. For the avoidance of doubt, the Contractor's compliance with this Clause shall not in any way relieve the Contractor of any of its obligations under the Contract.
- 3.11 The Authority shall provide the Contractor with copies of its policies, rules, procedures and quality standards (and shall promptly inform the Contractor of any amendments to such documents) subject to the Authority (at its sole discretion) being of the opinion that such provision will enable the Contractor to comply with its obligations under the Contract.
- 3.12 The Authority may, where necessary, require the Contractor to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of the Contractor Staff whilst carrying out their duties in relation to the Contract at the Location. This shall include, but not be limited to, disciplinary and grievance procedures. The Contractor shall provide the Authority with copies of such policies, rules, procedures and quality standards (and shall promptly inform the Authority of any amendments to such documents). For the avoidance of doubt the Authority shall have no liability whatsoever to the Contractor in relation to the implementation of any such policies, rules, procedures and quality standards.
- 3.13 Subject to the definition for Force Majeure, the Contractor will immediately notify the Authorised Officer of any actual or potential problems relating to the Contractor's own suppliers that affects or might affect its ability to provide the Services.
- 3.14 The Contractor will be responsible for providing and maintaining the Services to the Contract Standard at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with the Specification. The Contractor must, always, have

in place contingency plans and arrangements which have the prior Approval of the Authority to ensure continuity of supply.

- 3.15 The Contractor will immediately notify the Authorised Officer of any actual or potential industrial action, including strike action, whether such action be of his own staff or others, that affects or might affect his ability at any time to provide the Services.
- 3.16 The Contractor will be responsible for providing and maintaining the Services to the Contract Standard during industrial action, at no additional cost to the Authority. The Contractor must have in place contingency plans and arrangements which are approved by the Authority.
- 3.17 In the event of the Contractor being unable to maintain the Services to the Contract Standard, the Contractor shall without prejudice to the remedies of the Authority permit the Authorised Officer and its staff, to have access to and unrestricted use of such machinery, equipment and materials which being the property of the Contractor deemed necessary to maintain the Services by the Authorised Officer during industrial action, or any other such occurrence, without additional charge.
- 3.18 In the event of a major incident (as determined by the Authority from time to time) the Contractor shall perform the Services in accordance with the relevant section of the Specification.
- 3.19 The Contractor shall:
  - 3.19.1 observe, and ensure that the Contractor Staff observe, all health and safety rules and regulations, Authority's ICT policy, and any other security requirements that apply at any of the Authority's premises. The Authority reserves the right to refuse the Contractor Staff access to the Authority's premises, which will only be given to the extent necessary for the performance of the Services;
  - 3.19.2 notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services;
  - 3.19.3 ensure that release of any new software or upgrade to any software complies with the interface requirements in the Services description and (except in relation to new software or upgrades which are released to address malicious software

shall notify the Authority 3 Months before the release of any new software or upgrade;

3.19.4 minimise any disruption to the Services, the IT environment and/or the Authority's operations when carrying out its obligations under this Contract;

3.19.5 ensure that any documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

3.19.6 co-operate with the Replacement Contractor and provide reasonable information (including any documentation), advice and assistance in connection with the Services to any Replacement Contractor to enable such Replacement Contractor to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Contractor;

3.19.7 ensure that neither it, nor any of its affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under this Contract; and

3.19.8 prior to the Commencement Date, obtain and at all times maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Services.

## **4 DELIVERABLES**

4.1 Wherever the Services require the Contractor to provide a Deliverable:

4.1.1 such Deliverable will be delivered in the form prescribed and in accordance with the Specification. If no such form is prescribed in the Specification, the Contractor will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Contractor by the Authorised



Officer;

- 4.1.2 the Authority may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification or the requirements otherwise made known to the Contractor by the Authority;
- 4.1.3 the Authority will not reject any Deliverable (wholly or in part) without providing written reasons to the Contractor as to why such Deliverable has been rejected;
- 4.1.4 any Dispute as to whether the Authority has correctly exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and
- 4.1.5 any Deliverables which are rejected shall be replaced by the Contractor (at no extra charge to the Authority) by Deliverables which are reasonably satisfactory to the Authorised Officer in accordance with the timescale set out in the Specification.

## **5. PERFORMANCE MEASUREMENT**

- 5.1 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Contractor to provide the Services to the Contract Standard which in all respects shall be to the satisfaction of the Authorised Officer.
- 5.2 The Contractor shall institute and maintain a properly documented system of quality control as set out in the Specification and which is to the satisfaction of the Authorised Officer to ensure that the Contract Standard is met.
- 5.3 In addition to any other rights of the Authority under the Contract, the Authorised Officer shall be entitled to inspect the Contractor's quality control system referred to in Clause 5.2 above.
- 5.4 During the Contract Period, the Authorised Officer may inspect, examine and audit the provision of the Services being carried out without notice at any time. The Contractor shall provide to the Authority all such facilities as the Authority may require for such inspection and examination.
- 5.5 The Contractor shall allow the Authority and any person, firm or organisation authorised by the Authority to have access to and to audit all records maintained by the Contractor in relation to the supply of the Services. The Contractor shall assist the Authority, or

any party authorised by the Authority (as the case may be) in the conduct of the audit.

- 5.6 If any part of any Service is found to be defective or different in any way from the Specification or otherwise has not been provided to the Contract Standard other than as a result of a default or negligence on the part of the Authority, the Contractor shall at its own expense re-perform the Services in question (without additional remuneration) within such time as the Authority may reasonably specify failing which the Authority shall be entitled to procure performance of the defective Services from a third party or to execute the tasks in question itself. If the cost to the Authority of executing or procuring such Services exceeds the amount that would have been payable to the Contractor for such Services, the excess shall be paid by the Contractor to the Authority on demand in addition to any other sums payable by the Contractor to the Authority in respect of the breach of this Contract.
- 5.7 If the performance of the Contract by the Contractor is delayed by reason of any act or default on the part of the Authority or by any other cause that the Contractor could not have reasonably foreseen or prevented and for which it was not responsible, the Contractor shall be allowed a reasonable extension of time (at the sole discretion of the Authority) for completion of the Services so affected.
- 5.8 For each Service, the Authority shall ascertain whether the Contractor's provision of the Service in question meets any performance criteria as specified in the Specification or, if the criteria are not so specified, meets the standards of a professional provider of the Services. On or before the fifteenth Working Day of each calendar Month during the Contract Period and within 14 days after termination of the Contract, the Authority may:
- 5.8.1 in respect of each of the Services during the preceding calendar Month, provide to the Contractor a notice (each called a "Performance Notice") which shall set out a statement of the Authority's dissatisfaction with the Contractor's performance and provision of the Services;
  - 5.8.2 each Performance Notice issued by the Authority shall include a proposed rebate of the Contract Price commensurate to the under-performance of the Contractor as recorded in the Performance Notice;
  - 5.8.3 if the Contractor disputes any matter referred to in any Performance Notice and/or the proposed rebate of the Contract Price, the Contractor may raise this objection with the Authority and if this matter is not

resolved within 7 days the matter shall be referred to the Dispute Resolution Procedure; and

5.8.4 if the Contractor has not raised any objection to the Performance Notice within 7 days of receipt (or such other period as agreed between the Parties) then that Performance Notice shall be deemed to have been accepted by the Contractor and the rebate on the Contract Price referred to therein shall become immediately effective.

5.9 The Authority's rights under Clause 5.8 are without prejudice to any other rights or remedies the Authority may be entitled to.

5.10 On request, the Contractor shall submit to the Authority progress reports detailing its adherence to the timetable (if any) as set out in the Specification in a format approved by the Authority. The submission and acceptance of such reports shall not prejudice any other rights or remedies of the Authority under the Contract.

5.11 If required by the Authority, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties efficiency. Any such agreements shall be fully recorded in writing by the Authority as the case may be.

## **6. CONTRACT PRICE AND PAYMENT**

6.1 In consideration of the Contractor's due and proper performance of its obligations under the Contract, the Contractor may charge the Authority the Contract Price in accordance with this Clause 6 and Schedule 2. Time for payment of the Contract Price shall not be of the essence of the Contract.

6.2 The only sums payable by the Authority to the Contractor for the provision of the Services shall be the Contract Price. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Contract shall be the responsibility of the Contractor.

6.3 In accordance with the Contract, where the Contractor is required to provide Deliverables, the Authority shall be entitled to withhold payment of the Contract Price pending receipt and acceptance of the Deliverables in accordance with the Specification.

6.4 Unless otherwise agreed in writing by the Authority and the Contractor, within 15 days of the end of each calendar Month, the Contractor shall invoice the Authority for any Services provided by the Contractor in that calendar Month. Such invoice

shall be rendered on the Contractor's own invoice form clearly marked with the Authority's order number (if any). Invoices must show the period to which they relate and the aspects of the Services for which payment is claimed together with the agreed charging rates and any other details the Authority may require from time to time. Failure to provide such information will entitle the Authority to delay payment of the Contract Price until such information is provided.

- 6.5 Subject to Clauses 6.3 and 6.6, the Authority shall pay any valid invoice submitted by the Contractor in accordance with Clause 6.4 within 30 days of receipt by the Authority of such invoice. The Authority shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the Authority and the Contractor. If any sum under the Contract is not paid by the Authority when due, then the Contractor may claim interest on such overdue sum from the due date until payment is made at 2% per annum over the Bank of England Base Rate from time to time. The Contractor is not entitled to suspend delivery of the provision of the Services as a result of any sums being outstanding.
- 6.6 Without prejudice to any other rights or remedies which it may have the Authority shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the Authority from the Contractor.
- 6.7 Where the performance of the Contractor does not meet the required standard then a deduction as set out in the Specification or as agreed by the Parties may be made.
- 6.8 Except where otherwise agreed between the Authority and the Contractor in writing, the Contract Price is exclusive of VAT which shall be payable upon receipt of a VAT invoice therefore, if applicable, by the Authority in addition to such Contract Price. The invoice provided to the Authority by the Contractor in accordance with Clause 6.4 shall show the VAT calculations separately.
- 6.9 The Contractor will keep accurate books and records in relation to the provision of the Services in accordance with sound and prudent financial management. All such books and records shall be made available to the Authority at regular intervals of not less than quarterly.
- 6.10 Subject to Clauses 6.11 and 6.12, the Contract Price shall not be subject to any increase whatsoever by the Contractor during the Contract Period.
- 6.11 In the event that the Contract is varied under Clauses 21 or 22 in such a way as to affect the Contract Price and if agreement between the Parties cannot be reached on the adjustment to the

Contract Price within 3 Months both Parties shall jointly act to resolve the Dispute in accordance with Clause 23.

- 6.12 If the adjusted Contract Price is not so agreed or certified until after such variation has taken effect, the Authority shall continue to pay the Contractor at the rate current prior to the variation but shall pay to the Contractor or be entitled to recover from the Contractor as the case may be such sum if any as is equal to the difference between the amount which should have been paid in accordance with the adjusted Contract Price and the amount which was actually paid.
- 6.13 In the event that the Contract ends or is terminated otherwise than at the end of a complete year, the sum payable by the Authority under Clause 6 shall be one twelfth of the annual sum which would otherwise have been payable for the complete year for each completed Month.
- 6.1.4 The Contractor shall ensure that any Sub-Contract entered into with any Sub-Contractor in connection with the Services or the performance thereof shall contain a clause requiring that the Contractor pays the Sub-Contractor within 30 days of receipt of a valid invoice.

## **7. RESOURCES**

- 7.1 The Contract Price includes payment in full for all facilities and resources required by the Contractor to provide the Services in accordance with the Contract. Any facilities or resources needed or used by the Contractor to perform the Services shall be provided by the Contractor without additional cost to the Authority.
- 7.2 The Contractor warrants its abilities and experience in all respects to perform the Services pursuant to the Contract to the reasonable satisfaction of the Authority.

## **8. CONTRACT PERIOD**

- 8.1 The Contract is for a period of three (3) years commencing on 1 July 2022 (the "Commencement Date") and subject to any earlier lawful termination, expiring on 30 June 2025 (the "Contract Period").
- 8.2 The Authority may, by notice in writing, extend the Contract Period for a further period of up to 24 Months from 1 July 2025, provided that the said notice shall have been given to the Contractor no later than 12 weeks before the Contract Period.
- 8.3 The agreed terms and conditions in this Contract will apply (subject to any variation) throughout any such extended period.

**9. AUTHORISED OFFICERS**

- 9.1 Any notice, information or communication given to or made by an Authorised Officer shall be deemed to have been given or made by the Authority.
- 9.2 Only Authorised Officers shall be able to authorise additional, or amendments to the Services.

**10. CONTRACTOR STAFF**

- 10.1 The Contractor shall be entirely responsible for the employment and conditions of service of the Contractor Staff.
- 10.2 The Contractor will employ sufficient Contractor Staff to ensure that all of the Services are provided at all times and in all respects in complete conformity with the Specification. This will include, but shall not be limited to, the Contractor providing a sufficient reserve of trained and competent Contractor Staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Contractor will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Contractor's expense) and carries out the Services with regard to:
  - 10.2.1 the task or tasks that person has to perform;
  - 10.2.2 all relevant provisions of the Contract and the Specification;
  - 10.2.3 all relevant policies, rules, procedures and standards of the Authority (including any racial discrimination and equal opportunities policies);
  - 10.2.4 the need for those working in a health service environment to observe the highest standards of safety, customer care, courtesy and consideration;
  - 10.2.5 the need to keep confidential all information howsoever acquired whether relating to the Authority and its business;
- 10.3 The Contractor will, when recruiting potential employees for the purpose of the Contract, act in accordance with the Specification.
- 10.4 The Contractor shall ensure that the Contractor Staff of appropriate levels of experience and expertise perform the Services to achieve cost efficiency.

10.5 The Authority reserves the right to reject Contractor Staff whom they consider to be unsuitable for the duties proposed. Where Contractor Staff are rejected the Contractor shall supply alternative Contractor Staff. In addition, the Authorised Officer may (but not unreasonably or vexatiously) instruct the Contractor in writing stating the reason therefor to or to remove from work in or about the provision of the Services any person employed by the Contractor and the Contractor shall immediately comply with such instruction, shall, as soon as it is reasonably practicable thereafter provide a substitute.

10.6 The Contractor shall ensure that any Contractor Staff to whom reference is made by name in the Specification are actively involved in the provision of the Services or are replaced with Contractor Staff acceptable to the Authorised Officer. The Contractor acknowledges that if it is ever the wish of the Contractor to change the Contractor Staff committed to provide the Services as provided for in the Specification it shall first give notice of such wish to the Authorised Officer explaining the reasons for such wish together with full details of any proposed replacement partner and/or Contractor Staff. The Authority shall be under no obligation to approve or accept any such replacement. If any of the Contractor Staff referred to in the Specification cease, in the reasonable opinion of the Authority, to provide and be responsible for the provision of the Services and the quality of those Services then the Authority may terminate the Contract in accordance with Clause 25 paying only for the Services provided up to the date of such termination.

10.7 The Contractor shall procure that all potential staff or Contractor Staff performing any of the Services during the Contract Period who will or may in the course of their employment or engagement have access to children or other vulnerable persons:

10.7.1 are questioned concerning their Convictions; and

10.7.2 comply with all safeguarding legislation and authorities including criminal record checks with the Disclosure Baring Service (DBS) and Part 5 of the Protection of Freedoms Act 2012 (and the Safeguarding Vulnerable Groups Act 2006 which has not been repealed by said 2012 Act) for the recruitment and supervision of staff, both paid and unpaid, (where this is applicable to the Services being performed), governing both recruitment and the on-going supervision of staff and volunteers who have access to children and vulnerable adults.

10.8 Where:

10.8.1 any matter which indicates past criminal or inappropriate past behaviour on the part of a prospective or current Contractor Staff, is revealed by a pre-recruitment check; or

10.8.2 failure to disclose any such matter by any current or prospective Contractor Staff, is discovered by the Contractor, its contractors or agents

the Contractor will consult the Authority as to how to proceed and take appropriate measured action as the Authority directs. The Authority shall not be liable in any way for any loss that may be sustained by the current or prospective employee in the event the Authority directs that such individual is not to be involved in the provision of the Goods and Services.

10.9 The Contractor shall procure that the Authority is kept advised at all times of any Contractor Staff who, subsequent to his/her commencement of employment as a Contractor Staff receives a Conviction or whose previous Convictions become known to the Authority.

10.10 The Contractor shall ensure that the Authority is kept advised at all times of any:

10.10.1 disciplinary incident relating to the Contractor Staff involving visitors, or the Authority's staff or property; and

10.10.2 any incidence of serious misconduct involving Contractor Staff.

10.11 The Contractor shall only employ staff for the purposes of the Contract who:

10.11.1 fulfil any minimum training and qualification requirements of the Authority as set out in the Specification and also all training and qualification requirements that may be deemed necessary by the Authorised Officers, legislation, or any special bodies or associations;

10.11.2 are medically and physically fit in so far as the requirements of the work are concerned taking into account any reasonable adjustments in accordance with the Equality Act 2010.

10.12 As a condition of employment in the contract, Contractor's Staff:

10.12.1 shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract assignments

10.12.2 shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of the Contract assignment instructions;



- 10.12.3 shall not act in a manner reasonably likely to bring discredit upon the Authority;
- 10.12.4 shall maintain proper standards of appearance and deportment whilst at work;
- 10.12.5 shall not at any time be on duty under the influence of alcohol or drugs;
- 10.12.6 shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract;
- 10.12.7 shall not misuse or abuse the Authority's property;
- 10.12.8 shall not smoke while on the Authority's premises, except in those areas where smoking is expressly permitted.
- 10.13 The Contractor shall provide the Contractor Staff with a form of identification that is acceptable to the Authority and which the Contractor Staff shall display on their clothing at all times when they are at the Location.
- 10.14 The Contractor and the Contractor Staff shall confine themselves to the locality of their work and shall cause as little interference and disruption as possible with other personnel and activities at the Location.
- 10.15 The Authority shall not be liable for loss of, or damage to, the personal property of Contractor's Staff, howsoever caused.
- 10.16 It is the joint responsibility of the Contractor and the Contractor Staff to ensure that the Contractor Staff supplied to carry out the Services have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998 it is the responsibility of the Contractor to monitor the hours of employees who appear to be close to the working time limit, and make sure they do not work too many hours.

## **11. CONTROL AND SUPERVISION OF THE CONTRACTOR STAFF**

- 11.1 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.
- 11.2 The Contract Manager shall be suitably qualified in accordance with the Specification. In addition, a work history/biography/CV will be submitted to the Authorised Officer for approval prior to interview.

- 11.3 The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Contract Manager and of any subsequent appointment. Until notice of a subsequent appointment shall have been given the Authority shall be entitled to treat as Contract Manager the person last notified to the Authorised Officer as being the Contract Manager.
- 11.4 The Contractor shall ensure that the Contract Manager, or a competent deputy who is duly authorised to act on its behalf, is available to the Authority at all times when any the Contractor Staff is on duty for the provision of the specified Services.
- 11.5 The Contractor shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Contract Manager before the start of that period.
- 11.6 The Contract Manager or his deputy shall consult with the Authorised Officer and such other of the Authority's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient provision of the Services in accordance with the Contract.
- 11.7 The Contractor shall provide a sufficient complement of supervisory staff in addition to the Contract Manager to ensure that the Contractor Staff engaged in and about the provision of the Services at the Location are adequately supervised and properly perform their duties at all times.
- 11.8 All persons appointed to managerial and supervisory positions as the Contractor Staff in accordance with the Specification must be to the acceptance of the Authorised Officer who will have the right to veto the appointment of any candidate who is deemed to be unsuitable.
- 11.9 The Contractor Staff engaged in the provision of the Services shall primarily be under the control and direction of the Contractor's own supervisory Contractor Staff but nevertheless while on the Authority's premises will obey all reasonable instructions given to them by the Authority's supervisory staff in any matter occasioned by the operational needs of the relevant Service or the health, safety or welfare of anyone.
- 11.10 The Contractor shall ensure that the Contractor Staff carry out their duties and behave while on the Authority's premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.

## **12. HEALTH AND SAFETY**

- 12.1 While at the Location, the Contractor shall comply, and shall ensure that the Contractor Staff comply with, the requirements of relevant health and safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with the Authority's own policies and procedures.
- 12.2 The Contractor shall at all times maintain a specific health and safety at work policy relating to the employment of the Contractor Staff whilst carrying out their duties in relation to the Contract on the Authority's premises.
- 12.3 The Contractor will be required to nominate a health and safety representative to liaise with the Authorised Officer on all health and safety matters.
- 12.4 The Contractor Staff shall follow a system of accident recording in accordance with the Authority's accident recording procedure and the Contractor's own accident reporting procedures.
- 12.5 All notifiable accidents shall immediately be brought to the attention of the Authorised Officer.
- 12.6 The Contractor shall ensure the co-operation of the Contractor Staff in all prevention measures designed against fire, or any other hazards, and shall notify the Authority of any change in the Contractor's working practices or other occurrences likely to increase such risks or to cause new hazards.
- 12.7 The Contractor Staff shall be trained to recognise situations which involve an actual or potential hazard including:
- 12.7.1 danger of personal injury to any person on the Authority's premises and
- (a) where possible, without personal risk, make safe any such situation; or
- (b) report any such situation to the Authorised Officer;
- 12.7.2 fire risks and fire precautions and procedures including attendance at fire lectures/drills in accordance with the Authority's policies;
- 12.7.3 security;
- 12.7.4 risk management;
- 12.7.5 major incident.
- 12.8 The Contractor shall provide such first aid facilities and ensure that

the Contractor Staff abide by such first aid procedures as shall be required by the Authority as detailed in the Specification.

- 12.9 The Contractor shall at any time ensure that the equipment used, and procedures operated conform to the Authority's fire policy as detailed in the Specification.
- 12.10 The Contractor shall co-operate with the Authority's fire, security and safety advisors and shall comply with their reasonable instructions.
- 12.11 The Contractor will comply with the Control of Substances Hazardous to Health (COSHH) Regulations and COSHH hazard management and control.

### **13. LOCATION**

- 13.1 Subject to satisfactory agreement between the Parties on price, the Authority reserves the right to increase or reduce the number of Locations under the Contract at any time during the Contract Period.
- 13.2 Without prejudice to any other right or remedy the Authority will endeavour to give as much notice as possible of increases or reductions to the number of Locations under the Contract, although a minimum period of time is not specified in these conditions.
- 13.3 Upon completion of this Contract the Authority shall grant a non-exclusive and ~~revocable~~ licence to the Contractor to enter upon the Locations for the sole purpose of providing the Services to the Authority, subject to the provisions of Clauses 5 and 25, for the term of the Contract. The licence thereby granted shall be subject to the conditions of the Contract and shall not be deemed to create a relationship of landlord and tenant as between the Authority and the Contractor.

### **14. ENTIRE AGREEMENT**

- 14.1 This Contract, the schedules, and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this Clause 14 shall operate to exclude any liability for Fraud.

### **15. EQUIPMENT AND MATERIALS**

- 15.1 The Contractor shall be responsible for the provision and installation of all equipment and materials used in connection with the Contract except where these are loaned to the Contractor by

the Authority in accordance with Clause 16 or transferred into the ownership of the Contractor under Clauses 15.13 and 15.14.

- 15.2 Where equipment and materials are supplied by the Authority these will be serviced and maintained by the Authority.
- 15.3 The Contract Manager shall forthwith inform the Authorised Officer of any defects appearing in or losses of, or damage, occurring to the Authority's equipment. The Contractor shall be liable to pay to the Authority for the cost of any replacement necessary as a result of loss or damage caused deliberately or negligently by the Contractor Staff.
- 15.4 In accordance with the Specification, the Contractor shall, at its own expense, install all necessary equipment for the provision of the Services.
- 15.5 The Contractor shall ensure that all equipment used in connection with the Contract is maintained in good working order in compliance with manufacturer's instructions and current legislation.
- 15.6 All equipment and materials used by the Contractor shall comply with latest relevant British Standard or European equivalent specifications where such exist, and the Contractor shall upon request furnish the Authorised Officer with evidence to prove that such equipment and materials comply with this condition.
- 15.7 The Contractor shall:
  - 15.7.1 establish effective planned maintenance programmes; and
  - 15.7.2 make adequate arrangements for emergency remedial maintenance, to ensure continuity of the Services; and
  - 15.7.3 agree all equipment purchases with the Authority; and
  - 15.7.4 ensure compliance with all regulations covering the inspection and testing of all equipment used at the Location in the provision of the Services; and
  - 15.7.5 maintain records, open for inspection by the Authority of maintenance testing and certification.
- 15.8 Any communication or electrical equipment used by the Contractor in connection with the Contract shall not cause any interference with or damage to any equipment used by the Authority.
- 15.9 Any communication or electrical equipment proposed to be used by the Contractor in connection with the Contract shall, at the discretion of the Authority be tested and approved by the

Authority before use on the Authority's premises.

- 15.10 Notwithstanding Clause 15.9 the Contractor shall be liable for any damage caused by any communication or electrical equipment used in connection with the Contract.
- 15.11 The Authority reserves the right to inspect equipment used by the Contractor in or about the provision of the Services at any time and the Contractor shall comply with any directions of the Authorised Officer as to the manner in which such equipment shall be used.
- 15.12 The Authority shall not be responsible, charged or chargeable for any equipment or materials brought on site by the Contractor.
- 15.13 At the commencement of the Contract any equipment transferred by the Authority to the Contractor in relation to the Contract shall be subject to the provisions of Clause 15.14 and shall be valued by an independent valuer appointed jointly by the Authority and the Contractor. Ownership of such equipment shall be transferred to the Contractor without charge.
- 15.14 On conclusion of the Contract, all equipment, whether provided by the Contractor or transferred into the ownership of the Contractor by the Authority will be re-valued and transferred into the ownership of the Authority as set out in the Specification. Where there is any increase or decrease in value of the equipment, this shall be added to (in the case of an increase in value) or deducted (in the case of a decrease in value) from the Contractor's final payment. Subject to the provision of this Clause, transfer of such equipment to the Authority shall be without charge.

## **16. LOAN OF AUTHORITY EQUIPMENT**

- 16.1 The Contractor shall satisfy itself that any Loaned Equipment is suitable for the purpose intended.
- 16.2 The Contractor shall be liable for any damage to any Loaned Equipment.
- 16.3 The Authority shall not be liable for any damage to the Loaned Equipment caused by a defect in or faulty operation of the Loaned Equipment.
- 16.4 The Authority shall have the right to withdraw Loaned Equipment at any time and shall be under no liability whatsoever for failing to lend equipment at any time.

## **17. CONTRACT PROGRAMME AND MANAGEMENT**

- 17.1 The Contractor shall perform the Services in accordance with

Schedule 1 and 2.

- 17.2 The management of the Contract shall be in accordance with the provisions of Schedule 1 and Schedule 6.

**18. ASSIGNMENT & SUB-CONTRACTING**

- 18.1 The Authority may assign the Contract or any part of it.
- 18.2 The Contractor shall not assign, novate, transfer or otherwise dispose of any or all of its rights and obligations or any benefit or advantage under this Contract (in part or in whole) or Sub-Contract any part of the Contract without the prior written consent of the Authority. The granting of any consent to Sub-Contract any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract.

**19. INSURANCE AND INDEMNITY**

- 19.1 Without prejudice to any rights or remedies of the Authority (including the Authority's rights and indemnities pursuant to the Contract the Contractor shall indemnify the Authority and keep the Authority indemnified in full against all actions direct, indirect or consequential liabilities, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from the performance of the Contractor of the Services or the negligent or wrongful act or omission of the Contractor or its obligations under the Contract or an infringement or alleged infringement of any Intellectual Property Rights caused by the Contractor's performance of the Services.
- 19.2 During the term of the Contract and for a period of 6 years thereafter the Contractor (but without limiting its obligations and responsibilities under the indemnity given by the Contract herein shall have in force and shall require any Sub-Contractor to have in force with a reputable insurer: -
- 19.2.1 public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one occurrence
- 19.2.2 employer's (compulsory) liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims arising out of any one occurrence
- 19.2.3 professional indemnity insurance with a limit of indemnity of not less than £2,000,000 for any one claim or £5,000,000 in

the aggregate.

- 19.3 The policy or policies of insurance referred to in Clause 19.2 shall include a term whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Authority, the insurer will indemnify the Contractor against such a claim and any costs, charges and expenses in respect thereof. The Contractor shall whenever required produce to the Authority the policy or policies of insurance and receipts for payment of the current premiums and the event that there is evidence that any required insurance is not in force the Authority may affect and keep in force any such insurance and the Contractor shall pay to the Authority any sums expended by it for such purposes.

## **20. REVIEW**

- 20.1 The Contractor shall attend formal, minuted review meetings (each such meeting being a "Review"), as required by the Authorised Officer, to discuss the Authority's levels of satisfaction in respect of the Services provided under the Contract and to agree any necessary action to address areas of dissatisfaction. The Contractor will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Authority and the Contractor together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

## **21. VARIATION OF THE CONTRACT**

- 21.1 Any variation to the terms of the Contract must be in accordance with any variation of change control provisions set out in Schedule 4 and be recorded in writing and executed by a director or authorised signatory of the Contractor and the Authorised Officer. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.
- 21.2 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.
- 21.3 Each record of variation must be dated and sequentially numbered. Each of the Authority and the Contractor will be entitled to an original executed counterpart of the record of variation.
- 21.4 Save as provided in any such record of variation, the Contract will continue in full force and effect.
- 21.5 For the avoidance of doubt, the Contractor shall neither be relieved



of its obligations to supply the Services (or any part of the services) in accordance with this Contract nor be entitled to an increase in the Contract Price as a result of:

- (a) a general change in Law; or
- (b) a specific change in any Law where the effect of that specific change in that Law on the Services is reasonably foreseeable at the starting date; or
- (c) an EU status change.

## **22. VARIATION OF THE SPECIFICATION**

- 22.1 The Authority may at any time propose to the Contractor any reasonable variation or addition to the Specification including reduction in scope of the Services and the Contractor shall not unreasonably withhold or delay its consent to such variation.
- 22.2 No such variation or addition shall affect the continuation of the Contract.

## **23. DISPUTE RESOLUTION PROCEDURE**

- 23.1 During any Dispute, including a Dispute as to the validity of the Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Contractor does not do so).
- 23.2 If a Dispute arises between the Authority and the Contractor in relation to any matter which cannot be resolved by the Authorised Officer and the Contractor Manager either of them may refer such Dispute to the Dispute Resolution Procedure.
- 23.3 In the first instance each of the Authority and the Contractor shall arrange for a more senior representative than those referred to in Clause 23.2 to meet solely in order to resolve the matter in Dispute. Such meeting(s) shall take place within 21 days of the date of the commencement of the relevant Dispute shall be minuted and shall be chaired by the Authority (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the Dispute in question at the discretion of the chairman.
- 23.4 If the meeting(s) referred to in Clause 23.3 does not resolve the matter in question then the Parties will attempt to settle it by

mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the Dispute in question has failed to resolve the Dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as the mediator shall require and will pay the costs, as the mediator shall determine or in the absence of such determination such costs will be shared equally.

## **24. ENVIRONMENTAL CONSIDERATIONS**

24.1 The Contractor shall comply in all material respects with applicable Laws and regulations (including but not limited to the environment and packaging) in force from time to time and best industry practice in relation to the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practices as if they were incorporated into Law ~~subject~~ to those voluntary agreements being cited in the Specification.

24.2 Without prejudice to the generality of the foregoing, the Contractor shall:

24.2.1 comply with all reasonable stipulations of the Authority aimed at minimising packaging in which any products supplied by the Contractor to the Authority, as part of the performance, of the Services are supplied;

24.2.2 promptly provide such data as may reasonably be requested by the Authority from time to time regarding the weight and type of packaging according to material type used in relation  
to all products supplied to the Authority under or pursuant to the Contract;

24.2.3 label all products supplied to the Authority by the

Contractor under the Contract and the packaging of those products, to highlight environmental and safety information as required by applicable Law or EU legislation;

24.2.4 unless otherwise agreed with the Authority insofar as any products supplied under the Contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment, recycling and provide any information which the Authority may reasonably require from time to time regarding the costs of such activity;

24.2.5 promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by the Authority to permit informed choices by end users.

24.3 The Contractor shall meet all reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this Clause.

## **25. TERMINATION**

25.1 The Authority may terminate the Contract (in whole or in part) by serving written notice on the Contractor in any of the following circumstances: -

25.1.1 a material failure (in whole or in part) by the Contractor to perform any obligation of the Contractor provided that (if capable of remedy) such failure has not been remedied to the Authority's reasonable satisfaction within a period of 30 days following written notice demanding remedy of the failure in question being served by the Authority on the Contractor; or

25.1.2 the Contractor fails (in whole or in part) to perform any material obligation of the Contractor owed to the Authority; or

25.1.3 the Contractor becomes Insolvent or otherwise ceases to be capable of providing the Services; or

25.1.4 the Contractor is in default of any duty of care or any fiduciary or statutory duty owed to the Authority or agent of the Authority; or

25.1.5 there is a change of ownership or control of the Contractor which, in the reasonable opinion of the Authority will have a material impact on the provision of the Services or the image of the Authority; or

- 25.1.6 the Contractor purports to assign the Contract in breach of Clause 18; or
- 25.1.7 the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract or any other contract with the Authority, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Authority; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor); or
- 25.1.8 if in relation to the Contract or any other contract with the Authority the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 (Clause 44.6 of this Contract), or Fraud (Clause 45.3 of this Contract) or shall have given any fee or reward to any officer of the Authority which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration contrary to s 117 of the Local Government Act 1972; or
- 25.1.9 the Contractor ceases or threatens to cease to carry on its business.
- 25.2 The Authority shall be entitled to recover from the Contractor the amount of any Loss resulting from termination under Clause 25.
- 25.3 The Contractor agrees that upon termination for any reason (under Clause 25 or otherwise) or expiry of the Contract it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Contractor in providing the Services or costs incurred in acquiring equipment and/or materials used in the provision of the Services or in engaging third parties in connection with the Services whether or not such costs were amortised in the calculation of the Contract Price payable by the Authority under the Contract. For the avoidance of doubt, the Contractor will not be restricted from making any claim in respect of the Contract Price to the extent the Contract Price is outstanding and due and payable.
- 25.4 The Authority and the Contractor agree that termination (in whole or in part) or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the termination or expiry of the Contract or the continuance of the part or parts not terminated where the Contract is terminated in part only.

- 25.5 Any termination (in whole or in part) of the Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.

**26. BREAK**

- 26.1 The Authority may terminate the Contract by giving the Contractor at least 90 days prior written notice and such termination shall not affect the Authority's obligation to pay for any Services to be performed up to the date of termination.

**27. ARRANGEMENTS ON TERMINATION**

- 27.1 The Authority and the Contractor agree that termination or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the expiration or termination of the Contract.

- 27.2 After termination or expiry all data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services (including any Deliverables which remain to be completed as at the date of termination or expiry) and all other items provided on loan or otherwise to the Contractor by the Authority shall be delivered by the Contractor to the Authority provided that the Contractor shall be entitled to keep copies thereof to the extent that the information contained therein does not relate solely to the Services or to the extent that the Contractor is required by Law to maintain copies thereof or to the extent that the Contractor was possessed of such data documents and records prior to the date of the Contract. In addition, the Contractor shall co-operate fully with the Authority during the handover leading to the termination of the Contract. This co-operation shall extend to full access to all documents, reports, summaries and any other information required to achieve an effective transition without disruption to routine operational requirements.

- 27.3 The Contractor shall retain all papers, files, records and documents relating to the provision of the Services as provided for under Clause 27.2 for the period of 6 years after the date of the termination of the Contract and thereafter shall not destroy them but deliver them to the Authority.

- 27.4 Upon termination of the Contract under Clause 25, all equipment and materials provided and/or assembled by (or which are in the process of being provided or assembled by) the Contractor or materials and parts of Sites or Locations which are being altered or modified by the Contractor, in accordance with the Contract shall be transferred into the ownership of the Authority regardless of whether the assembly of such equipment and materials or the

alteration or modification of such Sites or Locations has been completed.

## **28. RE-TENDERING AND HANDOVER**

28.1 Within 21 days of being so requested by the Authority, the Contractor shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue invitations to offer for the future provision of the Services.

28.2 Where, in the opinion of the Authority, TUPE is likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under 28.1 shall include, as applicable, accurate information relating to the Contractor Staff who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):

28.2.1 the number of Contractor Staff who would be transferred, but with no obligation on the Contractor to specify their names;

28.2.2 in respect of each of those Contractor Staff, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those Contractor Staff individually and any outstanding claims arising from their employment;

28.2.3 the general terms and conditions applicable to those Contractor Staff, including provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.

28.3 Subject to Clause 19, the Contractor shall fully indemnify the Authority against any claim made against the Authority at any time by any person in respect of the liability incurred by the Authority arising from any deficiency or inaccuracy in information, which the Contractor is required to provide under Clause 28.2.

28.4 The Contractor shall allow access to the Sites, in the presence of a representative of the Authority, to any person representing any Replacement Contractor whom the Authority has selected to offer for the future provision of services. For the

purpose of such access, where the site is on the Contractor's premises, the Authority shall give the Contractor seven days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.

- 28.5 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the Replacement Contractor, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 28.6 Within ten Working Days of being so requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised 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.

## **29. LONDON LIVING WAGE**

- 29.1 Without prejudice to any provision of this Contract, the Contractor shall ensure that none of its Contractor Staff engaged in the provision of any services in respect of the fulfilment of the Contractor's obligations under this Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage.

## **30. INTELLECTUAL PROPERTY**

- 30.1 The Contractor assigns to the Authority for the duration of the Contract with full title guarantee and free from all third-party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).
- 30.2 The Contractor shall, promptly at the Authority's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Contract including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Authority in accordance with Clause 30.1.
- 30.3 Unless otherwise agreed in writing, all materials, equipment and

tools, drawings, specifications and data supplied by the Authority to the Contractor shall at all times, be and remain the exclusive property of the Authority but shall be held by the Contractor in safe custody at his own risk and maintained and kept in good condition by the Authority until returned to Authority and shall not be disposed of or used other than in accordance with the Authority's written instructions or authorisation.

30.4 The Contractor agrees to fully indemnify and keep indemnified the Authority against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any Deliverable, process, article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.

30.5 This Clause shall survive termination of the Contract however arising.

### **31. MANAGEMENT INFORMATION**

31.1 If requested by the Authority, the Contractor shall provide the Authority a statement giving accurate and complete details of the quantity and value of the Services provided by the Contractor pursuant to the Contract. The format, level of detail and frequency of the statement shall be agreed between the Authority and the Contractor in writing.

### **32. RECORDS AND AUDIT**

32.1 The Contractor shall keep and maintain to the satisfaction of the Authority until six years after the Contract has expired or otherwise terminated, records of the Services provided and costs incurred by the Contractor in connection with the Contract. The Contractor shall on request afford the Authority or its representatives such access to and the right to make copies of those records as may be required by the Authority.

### **33. CONFIDENTIALITY**

33.1 In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this Clause 33, each Party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

33.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;



33.1.2 the provisions of this Clause 33 shall not apply to any Confidential Information which: -

- (a) is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;
- (b) is obtained by a third party who is lawfully authorised to disclose such information; or
- (c) is authorised for release by the prior written consent of the Discloser; or
- (d) the disclosure of which is required to ensure the compliance of the Authority with the FOIA.

33.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract: -

33.2.1 is given only to such Contactor Staff and professional advisors engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

33.2.2. is treated as confidential and not disclosed (without prior Approval from the Authority) or used by any Contactor Staff or such professional advisors otherwise than for the purpose of the Contract.

33.3 Where it is considered necessary in the opinion of the Authority, the Contractor shall and shall ensure that the Contactor Staff or such professional advisors sign a confidentiality undertaking in a form approved by the Authority before commencing work in connection with the Contract. The Contractor shall ensure that the Contactor Staff, its professional advisors and consultants are aware of the Contractor's confidentiality obligations under these terms and conditions.

33.4 Nothing in this Clause 33 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this Clause 33 as if any reference to the Contractor in this Clause 33 were a reference to such holding company.

- 33.5 The Contractor authorises the Authority to disclose the Confidential Information to such person(s) as may be notified to the Contractor in writing by the Authority from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Services supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The Authority shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Authority shall not without good reason claim that the lowest price available in the market is the realistic market price.
- 33.6 The Contractor acknowledges and agrees that the Authority is or may be subject to the FOIA. The Contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions (the "Codes of Practice") and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time (the "EIR"). The Contractor will act in accordance with the FOIA, the Codes of Practice and EIR (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under the Contract.
- 33.7 The Contractor agrees that:
- 33.7.1 without prejudice to the generality of Clause 33.2, the provisions of this Clause 33 are subject to the respective obligations and commitments of the Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and EIR;
  - 33.7.2 subject to Clause 33.7.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
  - 33.7.3 where the Authority is managing a request as referred to in Clause 33.7.2, the Contractor shall co-operate with the Authority making the request and shall respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.
- 33.8 The Contractor shall and shall procure that its Sub-Contractors shall:

- 33.8.1 transfer any request for information, as defined under section 8 of the FOIA, or EIR (as appropriate) to the Authority as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;
  - 33.8.2 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 requesting that Information; and
  - 33.8.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for Information within the time for compliance set out in section 10 of the FOIA or EIR (as appropriate).
- 33.9 The Authority may consult the Contractor in relation to any request for disclosure of the Contractor's Confidential Information in accordance with all applicable guidance.
- 33.10 This Clause 33 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in the Contract, this Clause 33 shall remain in force for a period of 3 years after the termination or expiry of this Contract.
- 33.11 In the event that the Contractor fails to comply with this Clause 33, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

#### **34. DATA PROTECTION**

- 44.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority, is the Data Controller and the Contractor is the Data Processor. The only processing that the Contractor is authorised to do by the Authority is in accordance with this Contract and may not be determined by the Contractor.
- 44.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 44.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment, if necessary, prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:

- 34.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 34.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - 34.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 34.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 44.4 The Contractor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 34.4.1 Process that Personal Data only in accordance with this Contract, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
  - 34.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
    - 34.4.2.1 nature of the data to be protected;
    - 34.4.2.2 harm that might result from a Data Loss Event;
    - 34.4.2.3 state of technological development; and
    - 34.4.2.4 cost of implementing any measures;
  - 34.4.3 ensure that:
    - 34.4.3.1 the Contractor Staff do not process Personal Data except in accordance with this Contract [(and in particular Schedule 3)];

34.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Staff who have access to the Personal Data and ensure that they:

34.4.3.2.1 are aware of and comply with the Contractor's duties under this Clause 34 (Data Protection);

34.4.3.2.2 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

34.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

34.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and

34.4.3.3 do not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

34.4.3.3.1 the Authority or the Contractor has provided appropriate safeguards in relation to the transfer;

34.4.3.3.2 the Data Subject has enforceable rights and effective legal remedies;

34.4.3.3.3 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

34.4.3.3.4 the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;

34.4.3.4 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

34.5 Subject to Sub-Clause 34.6 below, the Contractor shall notify the Authority immediately if it:

34.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

34.5.2 receives a request to rectify, block or erase any Personal Data;

34.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

34.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with the Personal Data Processed under this Contract;

34.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

34.5.6 becomes aware of a Data Loss Event.

34.6 The Contractor's obligation to notify under Sub-Clause 34.5 above shall include the provision of further information to the Authority in phases, as details become available.

34.7 Taking into account the nature of the Processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Sub-Clause 34.5 above (and insofar as possible within the timescales reasonably required by the Authority including by promptly providing:

34.7.1 the Authority with full details and copies of the complaint, communication or request;

34.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- 34.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 34.7.4 assistance as requested by the Authority following any Data Loss Event;
  - 34.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's office, or any consultation with the Information Commissioner's office.
- 34.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 34 (Data Protection). This requirement does not apply where the Contractor employs fewer than two hundred and fifty (250) staff, unless:
- 34.8.1 the Authority determines that the Processing is not occasional;
  - 34.8.2 the Authority determines that the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 34.8.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 34.9 The Contractor shall allow for audits of its Personal Data Processing activity by the Authority or the Authority's designated auditor.
- 34.10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 34.11 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Contractor must:
- 34.11.1 notify the Authority in writing of the intended Sub-processor and Processing;
  - 34.11.2 obtain the written consent of the Authority;
  - 34.11.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 34 (Data Protection) such that they apply to the Sub-processor; and

- 34.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 34.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 34.13 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 34 (Data Protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 34.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's office. The Authority may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's officer.

## **35. WARRANTY**

- 35.1 The Contractor warrants to the Authority that it has all necessary corporate ~~standing~~ and authorisation to enter into and be bound by the terms of the Contract. At all times in connection with the Contract, the Contractor shall be an independent contractor and nothing in the Contract shall create a relationship of agency or partnership or a joint venture as between the Contractor and the Authority and accordingly the Contractor shall not be authorised to bind the Authority.
- 35.2 The Contractor warrants to the Authority that it will perform the Services in accordance with the terms of the Contract (including but not limited to the Specification).
- 35.3 The Authority's rights under the Contract are in addition to the statutory terms implied in favour of the Authority by the Supply of Goods and Services Act 1982 and any other statute.

## **36. RELATIONSHIP OF THE PARTIES**

- 36.1 The Authority has placed the Order on the Contractor as principal. The Contractor shall not incur any liabilities on behalf of the Authority make any representations or give any warranty on behalf of the Authority or, enter into any contract or obligation on behalf of the Authority.



**37. INDUCEMENTS TO PURCHASE**

37.1 The Authority shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination if:

37.1.1 in relation to any contract with the Council the Contractor or any person employed by him or acting on his behalf shall-

- (a) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, or
- (b) where collusion has taken place between two or more tenderers or parties in fixing or adjusting the bids submitted for the Contract.

**38. GENERAL PROVISIONS**

38.1 Save as required by Law and/or the requirements of any relevant stock exchange, no publicity shall be made by any of the Parties relating to any matter in connection with the Contract without the prior written consent of the other Party.

38.2 Any decision, act or thing that the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Authority shall inform the Contractor of the name of any person so authorised.

38.3 The Contractor shall from time to time upon the request of the Authority, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of the Contract.

38.4 Any provision of the Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

38.5 The Contractor acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of the Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the Authority for any misrepresentation (whether made carelessly or not) or for breach of any

warranty unless the representation relied upon is set out in the Contract or unless such representation was made fraudulently.

- 38.6 The failure by the Authority to insist upon the strict performance of any provision, term or condition of the Contract or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 38.7 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.
- 38.8 The Contractor warrants represents and undertakes to the Authority that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Contractor and that there are no material contracts existing to which the Contractor is a party which prevent it from entering into the Contract; and that the Contractor has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 38.9 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other contract or document. In this provision "general law" includes the law of a country other than England, and "right" includes any power, privilege, remedy, or proprietary or security interest.

#### **39. THIRD PARTY RIGHTS**

- 39.1 The Parties hereby declare that no term of the Contract is intended by the Parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

#### **40. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT**

- 40.1 The Contractor:
- 40.1.1 shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;
  - 40.1.2 shall not require any Contractor Staff to lodge deposits or identify papers with the Contractor or Sub-Contractor (as applicable) and shall be free to leave their employer after reasonable notice;

- 40.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 40.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- 40.1.5 shall make reasonable enquires to ensure that the Contractor Staff have not been convicted of slavery or human trafficking offenses anywhere around the world;
- 40.1.6 shall have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;
- 40.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 40.1.8 if required by the Authority, shall prepare and deliver to the Council, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance;
- 40.1.9 shall not use, nor allow any of the Contractor Staff to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of any Contractor Staff;
- 40.1.10 shall not use or allow child or slave labour to be used by its Sub-Contractors;
- 40.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority.

#### **41. FORCE MAJEURE**

41.1 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from the Force Majeure events. If the period of delay or non-performance continues for 4 months, the Party not affected may terminate this Contract by giving 90 days' written notice to the affected Party.

#### **42. QUALITY ASSURANCE AND BEST VALUE**

- 42.1 The Contractor shall maintain an effective and economical programme for quality, planned and developed in conjunction with any other functions of the Contractor necessary to satisfy the Contract requirements. The Contractor acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority is required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Contractor shall assist the Authority to discharge this duty where possible and agrees to negotiate in good faith (acting reasonably) any changes to this Contract in order for the Authority to achieve best value.

### **43 DISCRIMINATION**

- 43.1 The Contractor and the Contractor Staff shall not, and shall procure that any Sub-Contractor shall not:

43.1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on; and

43.1.2 contravene the provisions of the Equality Act 2010.

- 43.2 The Contractor and the Contractor Staff shall, and shall procure that any Sub-Contractor shall, for purposes of ensuring compliance with Sub-Clauses 43.1.1 and 43.1.2 above, in relation to the Contractor Staff engaged in the provision Services observe as far as possible the provisions of:

43.2.1 the Equality and Human Rights Commission's Employment Statutory Code of Practice and the Equality and Human Rights Commission's Code of Practice on the Public Sector Equality Duty; and

43.2.2 any other relevant guidance or code of practice introduced by the Equality and Human Rights Commission or other a commission or other body set up by Parliament to promote, monitor and enforce the Equality Act 2010, including but not limited to those provisions commending the adoption, implementation and monitoring of an equal opportunity policy.

- 43.3 The Contractor shall, and shall procure that any Sub-Contractor shall, in performing its/their obligations under this Contract, comply (to the extent permitted by Law) with the provisions of Section 149 of the Equality Act 2010, as if they

were a body within the meaning of Section 150 of the Equality Act 2010.

- 43.4 Where in connection with this Contract the Contractor and the Contractor Staff or any Sub-Contractor are required to carry out work on the Authority's premises or alongside the Authority's employees on any other premises, they shall comply with the Authority's own employment policy and codes of practice relating to discrimination and equal opportunities.
- 43.5 The Contractor shall, and shall procure that any Sub-Contractor, notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor or any Sub-Contractor under the Equality Act 2010.
- 43.6 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Sub-Contractor's performance of its obligations under this Contract being in contravention of the equalities legislation, the Contractor shall, and shall procure that any Sub-Contractor shall, free of charge:
- 43.6.1 provide any information requested in the timescale allotted;
  - 43.6.2 attend any meetings as required and permit any of its staff to attend;
  - 43.6.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
  - 43.6.4 allow itself and any of its staff to appear as witnesses in any ensuing proceedings; and
  - 43.6.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 43.7 The Contractor shall provide within such reasonable time period specified all such information as may be reasonably requested by the Authority relating to the Contractor's compliance with this Clause 43 and any Sub-Contractor's compliance with the Equality Act 2010.
- 43.8 The Contractor shall notify the Authority immediately of

any investigation of or proceedings against the Contractor in relation to the discrimination acts and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

- 43.9 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought in relation to the discrimination acts due directly or indirectly to any act or omission by the Contractor or Contractor Staff.
- 43.10 The Contractor shall impose on any Sub-Contractor obligations substantially similar to those imposed on the Contractor by this Clause 43.

#### 44 **PREVENTION OF BRIBERY**

##### 44.1 The Contractor:

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

##### 44.2 The Contractor shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within 10 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this Clause 44 by the Contractor, the Contractor Staff and all persons associated with it or other persons who are supplying services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 44.3 The Contractor shall have an anti-bribery policy (which shall

be disclosed to the Authority) to prevent the Contractor and the Contractor Staff from committing a Prohibited Act and shall enforce it where appropriate.

- 44.4 If any breach of Clause 44 is suspected or known, the Contractor must notify the Authority immediately.
- 44.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of Clause 44, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation ~~shall~~ continue for 7 years following the expiry or termination of this Contract howsoever determined.
- 44.6 The Authority may terminate this Contract by written notice with immediate effect if the Contractor or the Contractor Staff breaches Clause 44. In determining whether to exercise the right of termination under this Clause 44, the Authority shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or the Contractor Staff, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:
- (a) with the authority; or,
  - (b) with the actual knowledge; of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
  - (c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.
- 44.7 Any notice of termination under Clause 44 must specify:
- i. the nature of the Prohibited Act;
  - ii. the identity of the party whom the Authority believes has committed the Prohibited Act; and
  - iii. the date on which this Contract will terminate.
- 44.8 Notwithstanding Clause 23 (Dispute Resolution Procedure), any dispute relating to:
- i. the interpretation of Clause 44; or
  - ii. the amount or value of any gift, consideration or commission, shall be ~~determined~~ by the Authority and its decision shall be final and conclusive.

- 44.9 Any termination under Clause 44.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

**45 PREVENTION OF FRAUD**

- 45.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by any Contractor Staff (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.
- 45.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 45.3 If the Contractor or any Contractor Staff commits Fraud in relation to this or any other contract with the Authority (including the Authority itself) the Authority may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
  - (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this Clause.

**46. NOTICES**

- 46.1 Any notice to be given under the Contract shall either be delivered personally, sent by email or sent by first class recorded delivery post (airmail if overseas). The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

46.1.1 if personally delivered, at the time of delivery;

46.1.2 if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities;

46.1.3 if sent by email at the time the email enters the information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender.



## **47     GOVERNING LAW**

47.1 The construction, performance and validity of the Contract shall be governed by English Law. The Parties submit to the exclusive jurisdiction of the Courts of England and Wales provided that the Authority has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated.

## **48     EXIT PLANNING**

48.1 The Parties shall comply with the provisions of Schedule 4 (Exit Management).

## **49     STAFF TRANSFER**

49.1 The Parties shall comply with the provisions of Schedule 3 (Staff Transfer).

49.2 The Contractor shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities (defined in Schedule 3 (Staff Transfer)) that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Contractor or any Contractor Staff.

49.3 The Authority and Contractor agree and acknowledge that in the event of the Contractor ceasing to provide the Services or part of them for any reason Schedule 3 (Staff Transfer) shall apply.

## **59     DISASTER RECOVERY & BUSINESS CONTINUITY**

59.1 The Parties shall comply with the provisions of Schedule 8 (Disaster Recovery & Business Continuity).

## **60     GUARANTEE NOT USED**

## **61     CONTINUOUS IMPROVEMENT**

61.1 The Contractor shall have an ongoing obligation during the Contract Period to identify new or potential improvements to the Service.

61.2 As part of its obligations the Contractor shall identify and report to the Authorised Officer from time to time and at least every 12 Months during the Contract Period review:

61.2.1 the adoption of new or emerging technological or product / service developments that can be used to improve this Contract offering and deliver increased benefits to the service users, the Contractor and the Authority.

61.2.2 improvements to the Contractor's service offering in areas such as people skills, support, knowledge, quality, service user satisfaction and Contract performance, in areas such as leadership and management.

61.2.3 environmental impact considerations, such as biodegradability, sourcing from local businesses, improved travel arrangements, improved software media, community involvement.

61.3 For the avoidance of doubt, the provisions of clause 61.2 provides an indicative list and not an exhaustive list.

61.4 In undertaking the Services, the Contractor shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost quality and health and safety standards of the various processes involved in delivery of the Services and generally to provide best value outcomes to the Authority as are set out in the Service Specification and further the Contractor shall co-operate with the Authority and other providers to the extent required so that the Authority can keep under review the performance required under this Contract and this clause in particular.

The Common Seal of **THE** )  
**MAYOR AND BURGESSES OF** )  
**THE LONDON BOROUGH OF** )  
**WALTHAM FOREST** was )  
hereunto affixed in the presence )  
of:

.....  
Authorised Signatory

Signed as a Deed by Director 1:

Signature.....

Print name.....

Signed as a Deed by Director

2/Secretary:

Signature.....

Print name.....

**SCHEDULE 1**

**SERVICES SPECIFICATION**

**[ATTACHED SEPARATELY]**

**SCHEDULE 2**

**PRICING SCHEDULE**

### **SCHEDULE 3**

#### **STAFF TRANSFER**

#### **DEFINITIONS**

In this Schedule, the following definitions shall apply:

<b>“Acquired Rights Directive”</b>	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
<b>“Admission Agreement”</b>	the agreement to be entered into by which the Contractor agrees to participate in the Schemes as amended from time to time;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Employee Liabilities”</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> <li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>(b) unfair, wrongful or constructive dismissal compensation;</li> <li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li> <li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>(e) outstanding debts and unlawful deduction of wages including any PAYE and national insurance contributions in relation to payments made by the Authority or the Replacement Contractor to a Transferring Contractor Employee which would have been payable by the Contractor or the Sub-Contractor if such payment should have been made prior to</li> </ul>

	<p>the Service Transfer Date;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise;</p> <p>any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
<b>“Employment Regulations”</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced by any other Regulations implementing the Acquired Rights Directive;
<b>“Fair Deal Employees”</b>	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
<b>“Former Contractor”</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“Losses”</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>“Loss”</b> shall be interpreted accordingly;
<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
<b>“Notified Sub-contractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-contractor”</b>	a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the

	Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Contractor by the Minister for the Cabinet Office);
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-Contractor to a Replacement Contractor or a Replacement Sub-Contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer;
<b>“Staffing Information”</b>	<p>in relation to all persons identified on the Contractor's Provisional Personnel List or Contractor's Final Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement and gender;</li> <li>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries and profit sharing arrangements as applicable;</li> <li>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and</li> <li>(j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;</li> </ul>



<b>“Contractor's Final Personnel List”</b>	a list provided by the Contractor of all Contractor Staff who will transfer under the Employment Regulations on the Relevant Transfer Date;
<b>“Contractor's Provisional Personnel List”</b>	a list prepared and updated by the Contractor of all Contractor Staff who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
<b>“Transferring Authority Employees”</b>	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>“Transferring Former Contractor Employees”</b>	in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date; and
<b>“Transferring Contractor Employees”</b>	those employees of the Contractor and/or the Contractor's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 1. **INTERPRETATION**

- 1.1 Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.
- 1.2 The Parties agree that:
- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, this Contract Schedule 3 (Staff Transfer) shall apply as follows:
    - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of this Schedule (Staff Transfer) shall apply;
    - (ii) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B of this Schedule (Staff Transfer) shall apply;
    - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Contractor Employees, Parts A and B of this Schedule (Staff Transfer) shall apply; and
    - (iv) Part C of this Schedule (Staff Transfer) shall not apply;
  - (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of this Schedule shall apply and Parts A and B of this Schedule (Staff Transfer) shall not apply; and

- (c) Part D of this Schedule (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

## **PART A - TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1. RELEVANT TRANSFERS**

1.1 The Authority and the Contractor agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Contractor and/or any Notified Sub-contractor (as appropriate).

### **2. AUTHORITY INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Authority occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any

failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- (d) any proceeding, claim or demand by HMRC or other statutory Authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or

- (b) arising from the failure by the Contractor or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
  - (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Contractor and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in paragraph 2.3(b):
  - (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,

the Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 provided that the Contractor takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6:
  - (a) shall not apply to:
    - (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or

- (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 Months of the Service Commencement Date.

- 2.8 If any such person as is referred to in paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in paragraph 2.5 such person shall be treated as having transferred to the Contractor and/or any Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### 3. **CONTRACTOR INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to paragraph 3.2, the Contractor shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Contractor or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Contractor or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Contractor or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Contractor or any Sub-Contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date

including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Contractor.

4. **INFORMATION**

The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Contractor of employees whose employment begins after the Relevant Transfer Date, and the Contractor undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.



- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraphs 5.1 or 5.2 shall be agreed in accordance with clause 38.

6. **PENSIONS**

The Contractor shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

## **ANNEX TO PART A: PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Contractor undertakes to enter into the Admission Agreement.
- 1.2 The Contractor and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Contractor shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Contractor shall indemnify and keep fully indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

#### **4 PROVISION OF INFORMATION**

The Contractor and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5 INDEMNITY**

The Contractor undertakes to the Authority to indemnify and keep fully indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of Service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6 EMPLOYER OBLIGATION**

The Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### **7 SUBSEQUENT TRANSFERS**

The Contractor shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes, the Replacement Contractor, and/or the Authority may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such

employees are not reduced without (in any case) the prior Approval of the Authority (such Approval not to be unreasonably withheld). Save that this subparagraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **PART B - TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 RELEVANT TRANSFERS**

1.1 The Authority and the Contractor agree that:

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

1.2 Subject to paragraph 6, the Authority shall procure that each Former Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and the Authority shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

### **2 FORMER CONTRACTOR INDEMNITIES**

2.1 Subject to paragraphs 2.2 and 6, the Authority shall procure that each Former Contractor shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Former Contractor arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Contractor Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour;

- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Contractor other than a Transferring Former Contractor Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or

- (b) arising from the failure by the Contractor and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Contractor; and
  - (b) the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-contractor or take such other reasonable steps as the Former Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or the Authority, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in paragraph 2.3(b):
  - (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,

the Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to paragraph 6 and the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6:
  - (a) shall not apply to:
    - (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or

- (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Contractor, within 6 Months of the Service Commencement Date.

- 2.8 If any such person as is described in paragraph 2.3 is neither re-employed by the Former Contractor nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Contractor or Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

### 3 **CONTRACTOR INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to paragraph 3.2, the Contractor shall indemnify the Authority and/or the Former Contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Contractor or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Contractor Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;



- (d) any proposal by the Contractor or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Contractor or a Sub-Contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations.

- 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Contractor.

#### 4 **INFORMATION**

The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Contractor, in writing such information as is necessary to enable the Authority and/or the Former Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to paragraph 6, the Authority shall procure that the Former Contractor shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### 5 **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Contractor Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.

- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with clause 38.

6 **PROCUREMENT OBLIGATIONS**

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

7 **PENSIONS**

The Contractor shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Contractor Employees who transfer from the Former Contractor to the Contractor.

## **ANNEX TO PART B: PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Contractor undertakes to enter into the Admission Agreement.
- 1.2 The Contractor and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Contractor shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 If the Contractor is rejoining the Schemes for the first time, the Contractor shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

- 3.2 The Contractor shall indemnify and keep fully indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

#### **4 PROVISION OF INFORMATION**

The Contractor and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5 INDEMNITY**

The Contractor undertakes to the Authority to indemnify and keep fully indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6 EMPLOYER OBLIGATION**

The Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### **7 SUBSEQUENT TRANSFERS**

The Contractor shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes, the Replacement Contractor and/or the Authority may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or

- (ii) after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior Approval of the Authority (such Approval not to be unreasonably withheld).

## **PART C - NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Authority and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Contractor.
- 1.2 If any employee of the Authority and/or a Former Contractor claims, or it is determined in relation to any employee of the Authority and/or a Former Contractor, that his/her contract of employment has been transferred from the Authority and/or the Former Contractor to the Contractor and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Contractor shall, and shall procure that the relevant Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Contractor; and
  - (b) the Authority and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,

the Contractor and/or the Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### **2 INDEMNITIES**

- 2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4, the Authority shall:
- (a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of

any employees of the Authority referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) subject to paragraph 3, procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in paragraph 1.2 is neither re employed by the Authority and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-Contractor within the 15 Working Day period referred to in paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-Contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Contractor and/or any Sub-Contractor pursuant to paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-Contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-Contractor.

2.4 The indemnities in paragraph 2.1:

- (a) shall not apply to:

- (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or

- (ii) any claim that the termination of employment was unfair because the Contractor and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in paragraph 1.2(a) is made by the Contractor and/or any Sub-Contractor to the Authority and, if



applicable, Former Contractor within 6 Months of the Service Commencement Date.

### 3 **PROCUREMENT OBLIGATIONS**

Where in this Part C the Authority accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Contractor contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

## **PART D - EMPLOYMENT EXIT PROVISIONS**

### **1 PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Contractor agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any partial termination of this Contract;
  - (c) the date which is 12 Months before the end of the Contract Period; and
  - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 Months period),

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

- 1.2 At least 30 Working Days prior to the Service Transfer Date, the Contractor shall provide to the Authority or at the direction of the Authority to any Replacement Contractor and/or any Replacement Sub-contractor:
- (a) the Contractor's Final Personnel List, which shall identify which of the Contractor Staff are Transferring Contractor Employees; and
  - (b) the Staffing Information in relation to the Contractor's Final Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Contractor under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.
- 1.4 The Contractor warrants, for the benefit of the Authority, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in paragraph 1.1(a), 1.1(b) and 1.1(c), the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Personnel List and shall not without the Approval of the Authority (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Contractor Staff listed on the Contractor Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Contractor Staff (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Staff save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Personnel List save by due disciplinary process,

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

1.6 During the Contract Period, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

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

1.7 The Contractor shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Contractor and/or any Replacement Sub-contractor (as

appropriate), in respect of each person on the Contractor's Final Personnel List who is a Transferring Contractor Employee:

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

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Authority and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.
- 2.3 Subject to paragraph 2.4, where a Relevant Transfer occurs the Contractor shall fully indemnify the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any

Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

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

contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

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

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

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

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

2.7 If after the 15 Working Day period specified in paragraph 2.5(b) has elapsed:

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

the Authority shall advise the Replacement Contractor and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in paragraph 2.8:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within 6 Months of the Service Transfer Date.

2.10 If any such person as is described in paragraph 2.5 is neither re-employed by the Contractor or any Sub-Contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee and the Replacement Contractor and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

- 2.11 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Contractor Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Contractor and/or any Sub-Contractor; and
  - (b) the Replacement Contractor and/or the Replacement Sub-contractor.
- 2.12 The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-Contractor in writing such information as is necessary to enable the Contractor and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to paragraph 2.14, where a Relevant Transfer occurs the Authority shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Contractor and/or Replacement Sub-contractor;
  - (b) the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Contractor Employees which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-



contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-Contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.



## **SCHEDULE 4**

### **CHANGE CONTROL PROCEDURE**

#### **Authority Variation Procedure**

- 1.1 The Authorised Officer shall be entitled to issue to the Contractor, and the Contractor shall be obliged to comply with, a change control notice containing instructions in writing in an agreed format requiring the Contractor to do (or as appropriate refrain from doing) all or any of the following:
- a) to vary the Specification (including changes in equipment) and/or any method of delivery;
  - b) to omit and/or to cease to perform any part of the Services for such period or periods as the Authorised Officer may direct; and/or
  - c) to perform such additional services other than those contained in the Specification as the Authorised Officer may reasonably require provided that such additional services shall be the same as or similar to the Services under this Contract.
- 1.2 Where this Contract is so varied, the value of that part of the Services so varied (as determined where possible by reference to the appropriate rates contained in or derived from the pricing Schedule) shall be deducted from or added to the sums due to the Contractor, and the Contract shall be deemed to be amended accordingly.
- 1.3 If required to by the Authorised Officer, the Contractor shall prepare within the period required by the Authorised Officer a detailed price estimate of the cost of any proposed change, including a breakdown of how the costing has been calculated. Such estimate shall be provided to the Authorised Officer without charge to the Authority.
- 1.4 In the event that any modifications or variations are required by the Authorised Officer for the Contractor to perform the Services or any part thereof to the standards required by this Contract those modifications and variations shall be carried out promptly and at no additional cost to the Authority, irrespective

of whether they require the use of additional Contractor Staff or other resources by the Contractor to achieve the requisite standards.

- 1.5 The Authority shall not use its powers contained within this Schedule in a capricious or vexatious manner. It shall endeavour to predict major variations of service in advance and consult on these with the Contractor. The Contractor shall use its best endeavours to facilitate these changes in the most expeditious and cost-effective manner.
- 1.6 For the avoidance of doubt the Authority may use its powers under this Schedule in order to reflect legislative changes to the Authority's statutory functions, which have an impact upon the manner in which the Services are provided (inclusive of any change to the frequency and/or extent thereof).
- 1.7 Wherever a change control notice is to be issued under this Schedule, then if, in the reasonable opinion of the Authorised Officer, the change is material it shall include the provision of such notice of such proposed change to the Contractor as the Authorised Officer shall deem reasonable and/or practicable in the circumstances then prevailing.
- 1.8 Without prejudice to the operation of any other Clause under this Contract no omission from, addition to or variation of the Contract shall be valid or of any effect unless it is agreed in writing and signed by the Authorised Officer.

## **2 Contractor Variation**

2.1 If the Contractor wishes to introduce a change, it must serve a Contractor change notice on the Authority in accordance with the provisions of this paragraph 2 (the "Contractor Change Notice").

2.2 The Contractor Change Notice must:

- set out the proposed change in sufficient detail to enable the Authority to evaluate it;
- specify the Contractor's reasons for proposing the change;
- indicate whether an adjustment to the Contract Price is proposed and if so to give a detailed estimate;
- indicate if there are any dates by which a decision by the Authority is critical;
- and

- set out the timetable for implementing the proposed variation.

2.3 The Authority shall evaluate the Contractor's proposed change in good faith, taking account all relevant issues, including whether:

- the change is required as a result of a change in Law;
- a change in the Contract Price will occur;
- the change affects the quality of the Services or the likelihood of successful delivery of the Services;
- the change will interfere with the relationship of the Authority with third parties;
- the financial strength of the Contractor is sufficient to perform the proposed change; and
- whether the change materially affects the risks or costs to which the Authority is exposed.

2.4 As soon as practicable after receiving the Contractor Change Notice the Parties shall meet and discuss the matters referred to in it. During their discussions the Authority may propose modifications or accept or (in its absolute discretion) reject the change proposed in the Contractor Change Notice.

2.5 If the Authority accepts the Contractor Change Notice (with or without modification), the relevant change shall be implemented by the Contractor within such reasonable period as shall be specified by the Authority in its acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend the Contract which are necessary to give effect to the change.

2.6 If the Authority rejects the Contractor Change Notice, it shall not be obliged to give its reasons for such a rejection and the Contractor shall not be entitled to refer the matter to the Dispute Resolution Procedure.

## SCHEDULE 5 EXIT MANAGEMENT

### 1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>"Exclusive Assets"</b>	means those Contractor used by the Contractor or the Sub-Contractor which are used exclusively in the provision of the Services;
<b>"Exit Information"</b>	has the meaning given to it in paragraph 4.1 of this Schedule;
<b>"Exit Manager"</b>	means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule for managing the Parties' respective obligations under this Schedule;
<b>"Exit Plan"</b>	has the meaning given to it in paragraph 5.1 of this Schedule;
<b>"Net Book Value"</b>	means the net book value of the relevant Contractor calculated in accordance with the depreciation policy of the Contractor set out in the letter in the agreed form from the Contractor to the Authority of the date with this Contract;
<b>"Non-Exclusive Assets"</b>	means those Contractor (if any) which are used by the Contractor or the Sub-Contractor in connection with the Services but which are also used by the Contractor or the Sub-Contractor for other purposes;
<b>"Registers"</b>	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Schedule;
<b>"Termination Assistance"</b>	means the activities to be performed by the Contractor pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in paragraph 6.1 of this Schedule;
<b>"Termination Assistance Period"</b>	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Contractor is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule;

<b>"Transferable Assets"</b>	means those of the Exclusive Assets which are capable of legal transfer to the Authority;
<b>"Transferable Contracts"</b>	means the Sub-Contracts, licences for Contractor's Intellectual Property Rights or other agreements which are necessary to enable the Authority or any Replacement Contractor to perform the Services or the Replacement Services, including in relation to licences all relevant documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in paragraph 9.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in paragraph 9.2.3 of this Schedule.

## 2. INTRODUCTION

- 2.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Contractor to the Authority leading up to and covering the expiry of the Contract Period and the transfer of service provision to the Authority and/or a Replacement Contractor.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Contractor to the Authority and/or a Replacement Contractor at the expiry of the Contract Period.

## 3. OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT

- 3.1 During the Contract Period, the Contractor shall:
- 3.1.1 create and maintain a Register of all:
- (a) Contractor assets, detailing their:
    - (i) make, model and asset number;
    - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (iii) Net Book Value;
    - (iv) condition and physical location; and
    - (v) use (including technical specifications); and
  - (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support



agreements and equipment rental and lease agreements) required for the performance of the Services;

- 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Contractor provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Contractor to understand how the Contractor provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- 3.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- 3.1.4 at all times keep the Registers up to date, in particular in the event that assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Contractor shall:

- 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract; and
- 3.2.2 (unless otherwise agreed by the Authority in writing) procure that all required licences and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Contractor upon the Contractor ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.

3.3 Where the Contractor is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this which the Contractor proposes to enter into after the Service Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Contractor without restriction or payment, the Contractor shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Contractor seeking an alternative Sub-Contractor or provider of Services to which the relevant agreement relates.

3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) Months of the Service Commencement Date. The Contractor's Exit Manager shall be responsible for ensuring that the Contractor and the Contractor Staff comply with this Schedule. The Contractor shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues

relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

#### **4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

4.1 On reasonable notice at any point during the Contract Period, the Contractor shall provide to the Authority and/or its potential Replacement Contractors (subject to the potential Replacement Contractors entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Contractors undertaking due diligence:

- 4.1.1 details of the Service(s);
- 4.1.2 a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
- 4.1.3 an inventory of Authority data in the Contractor's possession or control;
- 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
- 4.1.6 all information relating to Transferring Contractor Employees required to be provided by the Contractor under this Contract; and
- 4.1.7 such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

4.2 The Contractor acknowledges that the Authority may disclose the Contractor's Confidential Information to an actual or prospective Replacement Contractor or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Schedule disclose any Contractor's Confidential Information which is information relating to the Contractor's or its Sub-Contractors' prices or costs).

4.3 The Contractor shall:

- 4.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and

- 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
- 4.4 The Contractor may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) Months period.
- 4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:
  - 4.5.1 prepare an informed offer for those Services; and
  - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

## 5. EXIT PLAN

- 5.1 The Contractor shall, within three (3) Months after the Service Commencement Date, deliver to the Authority a plan ("**Exit Plan**") which sets out the Contractor's proposed methodology for achieving orderly transition of the provision of the Services from the Contractor to the Authority and/or the Replacement Contractor on the expiry or termination of this Contract. Within thirty (30) Working Days after submission of the draft Exit Plan (or any revised Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the Dispute shall be referred to the Dispute Resolution Procedure. The Contractor shall review and update the Exit Plan within one (1) Month of each anniversary of the Service Commencement Date and shall comply with the exit planning provisions as set out in this Schedule.
- 5.2 Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:
  - 5.2.1 how the Exit Information is obtained;
  - 5.2.2 the management structure to be employed during both transfer and cessation of the Services;
  - 5.2.3 the management structure to be employed during the Termination Assistance Period;
  - 5.2.4 a detailed description of both the transfer and cessation processes, including a timetable;
  - 5.2.5 how the Services will transfer to the Replacement Contractor and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from

any technology components operated by the Contractor or its Sub-Contractors (where applicable);

- 5.2.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Contractor upon the Contract expiry date together with any reasonable costs required to effect such transfer (and the Contractor agrees that all assets and contracts used by the Contractor in connection with the provision of the Services will be available for such transfer);
- 5.2.7 proposals for the training of key members of the Replacement Contractor's personnel in connection with the continuation of the provision of the Services following the Contract expiry date charged at rates agreed between the Parties at that time;
- 5.2.8 proposals for providing the Authority or a Replacement Contractor copies of all documentation:
  - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Contractor; and
  - (b) relating to the use and operation of the Services;
- 5.2.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Contractor in connection with the performance of the supply of the Services;
- 5.2.10 proposals for the identification and return of all Authority Property in the possession of and/or control of the Contractor or any third party (including any Sub-Contractor);
- 5.2.11 proposals for the disposal of any redundant Services and materials;
- 5.2.12 procedures to deal with requests made by the Authority and/or a Replacement Contractor for Staffing Information pursuant to Contract Schedule 3 (Staff Transfer);
- 5.2.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- 5.2.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Contractor in order to effect an orderly handover of the provision of the Services.

## **6. TERMINATION ASSISTANCE**

- 6.1 The Authority shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Contractor (a "**Termination Assistance Notice**") at least four (4) Months prior to the Contract expiry date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Assistance Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Assistance is required;
  - 6.1.2 the nature of the Termination Assistance required; and
  - 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Contractor ceases to provide the Services.
- 6.2 The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Contractor ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Contractor to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Contractor to such effect.

## **7. TERMINATION ASSISTANCE PERIOD**

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Contractor shall:
- 7.1.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;
  - 7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Contractor;
  - 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority;
  - 7.1.4 provide the Services and the Termination Assistance at no detriment to the service level performance measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and

- 7.1.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 7.2 Without prejudice to the Contractor's obligations under paragraph 7.1.3 of this Schedule, if it is not possible for the Contractor to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority, any additional costs incurred by the Contractor in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the variation procedure.
- 7.3 If the Contractor demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Contractor's ability to meet one or more particular service level performance measure(s), the Parties shall vary the relevant service level performance measure(s) to take account of such adverse effect.

## **8. TERMINATION OBLIGATIONS**

- 8.1 The Contractor shall comply with all of its obligations contained in the Exit Plan.
- 8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Contractor shall:
- 8.2.1 cease to use the Authority data;
  - 8.2.2 provide the Authority and/or the Replacement Contractor with a complete and uncorrupted version of the Authority data in electronic form (or such other format as reasonably required by the Authority);
  - 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Assistance Period all Authority data and promptly certify to the Authority that it has completed such deletion;
  - 8.2.4 return to the Authority such of the following as is in the Contractor's possession or control:
    - (a) all materials created by the Contractor under this Contract in which the Intellectual Property Rights are owned by the Authority;
    - (b) any equipment which belongs to the Authority;
    - (c) any items that have been on-charged to the Authority, such as consumables; and

- (d) all Property issued to the Contractor. Such Property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
- (e) any sums prepaid by the Authority in respect of Services not delivered by the Contract expiry date;

8.2.5 vacate any Premises;

8.2.6 remove the Contractor Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor and/or any Staff;

8.2.7 provide access during normal working hours to the Authority and/or the Replacement Contractor for up to twelve (12) Months after expiry or termination to:

- (a) such information relating to the Services as remains in the possession or control of the Contractor; and
- (b) such Staff as have been involved in the design, development and provision of the Services and who are still employed by the Contractor, provided that the Authority and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually incurred in responding to requests for access under this paragraph.

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information and (if any) Personal Data of the other Party and shall certify that it does not retain the other Party's Confidential Information and (if any) Personal Data save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

8.4 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Contractor in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## **9. ASSETS AND SUB-CONTRACTS**

- 9.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Contractor shall not, without the Authority's Approval:
  - 9.1.1 terminate, enter into or vary any Sub-Contract;
  - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Contractor assets or acquire any new Contractor assets; or
  - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Contractor pursuant to paragraph 7.1.5 of this Schedule, the Authority shall provide written notice to the Contractor setting out:
  - 9.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Contractor ("**Transferring Assets**");
  - 9.2.2 which, if any, of:
    - (a) the Exclusive Assets that are not Transferable Assets; and
    - (b) the Non-Exclusive Assets,
 the Authority and/or the Replacement Contractor requires the continued use of; and
  - 9.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Contractor (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Contractor to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Contractor, the Contractor shall provide all reasonable assistance to the Authority and/or its Replacement Contractor to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Contractor requires to provide the Services or the replacement services.
- 9.3 With effect from the expiry of the Termination Assistance Period, the Contractor shall sell the Transferring Assets to the Authority and/or its nominated Replacement Contractor for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Contract Price at the Contract expiry date, in which case the Authority shall pay the Contractor the Net Book Value of the Transferring Asset less the amount already paid through the Contract Price.
- 9.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Contractor (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the



Authority or the Replacement Contractor (as appropriate) on payment for the same.

- 9.5 Where the Contractor is notified in accordance with paragraph 9.2.2 of this Schedule that the Authority and/or the Replacement Contractor requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Contractor shall as soon as reasonably practicable:

9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Contractor to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

9.5.2 procure a suitable alternative to such assets and the Authority or the Replacement Contractor shall bear the reasonable proven costs of procuring the same.

- 9.6 The Contractor shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Contractor of the Transferring Contracts. The Contractor shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

- 9.7 The Authority shall:

9.7.1 accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract; and

9.7.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Contractor, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Contractor does the same.

- 9.8 The Contractor shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Contractor has been effected.

- 9.9 The Contractor shall indemnify the Authority (and/or the Replacement Contractor, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Contractor) pursuant to paragraph 9.6 of this Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

## **10. CONTRACTOR PERSONNEL**

- 10.1 The Authority and Contractor agree and acknowledge that in the event of the Contractor ceasing to provide the Services or part of them for any reason, Schedule 3 (Staff Transfer) shall apply.
- 10.2 The Contractor shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any Staff engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Contractor.
- 10.3 During the Termination Assistance Period, the Contractor shall give the Authority and/or the Replacement Contractor reasonable access to the Contractor's personnel to present the case for transferring their employment to the Authority and/or the Replacement Contractor.
- 10.4 The Contractor shall immediately notify the Authority or, at the direction of the Authority, the Replacement Contractor of any period of notice given by the Contractor or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Contractor shall not for a period of twelve (12) Months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Contractor, unless Approval has been obtained from the Authority which shall not be unreasonably withheld.

## **11. CHARGES**

- 11.1 Except as otherwise expressly specified in this Contract, the Contractor shall not make any charges for the Services provided by the Contractor pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Contractor in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **12. APPORTIONMENTS**

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Contractor and/or the Replacement Contractor and the Contractor (as applicable) as follows:
  - 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 12.1.2 the Authority shall be responsible for (or shall procure that the Replacement Contractor shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

- 12.1.3 the Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Contractor shall pay) any monies due under paragraph 12.1 of this Schedule as soon as reasonably practicable.

## SCHEDULE 6: CONTRACT MANAGEMENT

The Provider shall meet with the Authority's Contract Manager for the purpose of jointly monitoring and evaluation of the service on a quarterly basis to ensure that the service is being provided. The Provider shall ensure that a report is presented at each meeting in the format provided by the Authority (with qualitative and quantitative data as appropriate).

The submission dates for quarterly reporting are listed below: -

Year One: 1 July 2022 – 30 June 2023	Quarter One 1.11.22	Quarter Two 1.2.23	Quarter Three 1.5.23	Quarter Four 1.8.23
Year Two: 1 July 2023 - 30 June 2024	Quarter One 1.11.23	Quarter Two 1.2.24	Quarter Three 1.5.24	Quarter Four 1.8.24
Year Three: 1 July 2024 - 30 June 2025	Quarter One 1.11.24	Quarter Two 1.2.25	Quarter Three 1.5.25	Quarter Four 1.8.25

These reports shall be provided to the Authority's Contract Manager no less than five (5) working days ahead of the scheduled time for the quarterly meetings.

### 16.2 Reporting activity: annual reporting

The Provider shall produce an annual report in August, following the end of each contract year. The template for this annual report shall be agreed by the Provider with the Authority's commissioner ahead of time.

**[SCHEDULE 7: GUARANTEE] NOT USED**

## **SCHEDULE 8: DISASTER RECOVERY AND BUSINESS CONTINUITY**

### **1. PURPOSE OF THIS SCHEDULE**

- 1.1 This Schedule sets out the Authority's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of Services disruption or failure and for restoring the delivery of the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Contractor to develop, review, test, change and maintain a BCDR Plan in respect of the Services.
- 1.2 The BCDR Plan shall be divided into three parts:
  - 1.2.1 Part A which shall set out general principles applicable to the BCDR Plan ("**General Principles**").
  - 1.2.2 Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
  - 1.2.3 Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**"); and
- 1.3 The BCDR Plan shall detail the processes and arrangements which the Contractor shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a disaster.

### **2. DEVELOPMENT OF BCDR PLAN**

- 2.1 The BCDR Plan shall unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3 and 5 of this Schedule 8 (Disaster Recovery and Business Continuity Provisions).
- 2.2 The Contractor shall ensure that its Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

### **3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1 The BCDR Plan shall:
  - 3.1.1 set out how its business continuity and disaster recovery elements link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services;
  - 3.1.3 contain an obligation upon the Contractor to liaise with the Authority and (at the Authority's request) any other supplier with respect to issues concerning business continuity and disaster recovery where applicable;
  - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other suppliers as notified to the Contractor by the Authority from time to time;

- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), email and phone) for both portable and desk top configurations, where required by the Authority;
- 3.1.6 contain a risk analysis, including:
  - 3.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - 3.1.6.2 identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - 3.1.6.3 identification of risks arising from the interaction of the Services with the services provided by another supplier; and
  - 3.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-Contractors) and for the Authority;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than 1% of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Services are provided in accordance with the Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any disaster, Services failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
  - 3.2.3 it aligns with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and

- 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Contractor shall not be entitled to any relief from its obligations under the service levels or to any increase in the Contract Prices to the extent that a disaster occurs as a consequence of any breach by the Contractor of this Contract.
- 4. **PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**
  - 4.1 The BCDR Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Authority expressly states otherwise in writing:
    - 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
    - 4.1.2 the steps to be taken by the Contractor upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
  - 4.2 The BCDR Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The BCDR Plan shall also clearly set out the conditions and/or circumstances under which the disaster recovery plan is invoked.
- 5. **PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**
  - 5.1 The BCDR Plan shall be designed so as to ensure that upon the occurrence of a disaster the Contractor ensures continuity of the business operations of the Authority supported by the Services following any disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
  - 5.2 The BCDR Plan shall only be invoked upon the occurrence of a disaster.
  - 5.3 The BCDR shall include the following:
    - 5.3.1 the technical design and build specification of the disaster recovery system;
    - 5.3.2 details of the procedures and processes to be put in place by the Contractor and any Sub-Contractor in relation to the disaster recovery system and the provision of the disaster recovery services and any testing of the same including but not limited to the following:
      - 5.3.2.1 data centre and disaster recovery site audits;



- 5.3.2.2 backup methodology and details of the Contractor's approach to data back-up and data verification;
- 5.3.2.3 identification of all potential disaster scenarios;
- 5.3.2.4 risk analysis;
- 5.3.2.5 documentation of processes and procedures;
- 5.3.2.6 hardware configuration details;
- 5.3.2.7 network planning including details of all relevant data networks and communication links;
- 5.3.2.8 invocation rules;
- 5.3.2.9 Services recovery procedures;
- 5.3.2.10 steps to be taken upon Services resumption to address any prevailing effect of the Services failure or disruption;
- 5.3.3 any applicable service levels with respect to the provision of disaster recovery services and details of any agreed relaxation upon the service levels during any period of invocation of the BCDR Plan;
- 5.3.4 details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the BCDR Plan is invoked;
- 5.3.5 access controls (to any disaster recovery sites used by the Contractor or any Sub-Contractor in relation to its obligations pursuant to this Schedule 8); and
- 5.3.6 testing and management arrangements.

## 6. **PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN**

- 6.1 The Contractor shall provide a draft of the BCDR Plan within twenty (20) Working Days following the Service Commencement Date.
- 6.2 The Contractor shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
  - 6.2.1 on a regular basis and as a minimum once every six (6) Months;
  - 6.2.2 within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
  - 6.2.3 where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.2.1 and 6.2.2 of this Schedule) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Authority's written requirements. The costs of both Parties for any such additional reviews will be met by the Authority.
- 6.3 Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their

suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original Approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to the occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within the period required by the BCDR Plan or if no such period is required within such period as the Authority shall reasonably require. The Contractor shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report ("**Review Report**") setting out:

- 6.3.1 the findings of the review;
  - 6.3.2 any changes in the risk profile associated with the Services; and
  - 6.3.3 the Contractor's proposals ("**Contractor's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 6.4 The Contractor shall as soon as is reasonably practicable after receiving the Authority's Approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.
7. **TESTING OF THE BCDR PLAN**
- 7.1 The Contractor shall test the BCDR Plan on a regular basis (and in any event not less than once in every year during the Contract Period). Subject to paragraph 7.2, the Authority may require the Contractor to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Authority requires an additional test of the BCDR Plan it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Contractor's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.
- 7.3 Following each test, the Contractor shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.
- 7.4 The Contractor shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the

planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Where required by the Authority, each test shall be carried out under the supervision of the Authority or its nominee.

- 7.5 The Contractor shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first Approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.6 The Contractor shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
  - 7.6.1 the outcome of the test;
  - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.6.3 the Contractor's proposals for remedying any such failures.
- 7.7 Following each test, the Contractor shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Contractor of any of its obligations under this Schedule 8 or otherwise.
- 7.9 The Contractor shall also perform a test of the BCDR Plan as part of the commissioning of the Services.
- 8. **INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**
- 8.1 In the event of a complete loss of service or in the event of a disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Contractor shall only invoke or test the BCDR Plan with the prior consent of the Authority.
- 8.2 Following a request from the Authority, the Contractor shall provide a written incident report and the BCDR Plan review following a plan invocation, but in any event within twenty (20) Working Days of full business recovery.