

PART VII - GENERAL

43. LIMITS OF LIABILITY

- 43.1 Notwithstanding any other provision of this Contract, neither party excludes or restricts its liability for death or personal injury caused by its negligence, or for fraudulent misrepresentation.
- 43.2 Neither party shall be liable to the other, whether for breach of contract, tort (including negligence and breach of statutory duty) misrepresentation or otherwise arising out of or in connection with this Contract for any loss of profit, loss of business, loss of contract, loss of revenue, loss of goodwill or anticipated savings and/or any indirect or consequential loss or damage except as expressly set out in clauses 26.8.1 to 26.8.12 inclusive, 26.9 and Part 2 of Schedule 21 (Termination Payments).
- 43.3 The provisions of clause 43.2 shall not apply to the direct and demonstrable procurement costs incurred by the Authority if the Contract is terminated due to Contractor Default under clause 36 or if a Service Element is terminated due to Contractor Default under clause 34, or clause 9. 7 (Transfer Criteria and Delay) or clause 29.6, (Authority Step-In) or due to termination for corrupt gifts and fraud under clause 38, or due to voluntary termination by the Contractor under clause 39. For the avoidance of doubt, the Contractor shall not be liable to the Authority in respect of additional charges raised by the Authority or a third party in performing the Services after termination of this Contract save as set out in Part 2 of Schedule 21 (Termination Payments).
- 43.4 Subject always to clauses 43.1, 43.2 and 43.3 the liability of the Contractor to the Authority in contract, tort (including negligence) or otherwise under this Contract resulting in loss or damage to tangible property ("Property Damage") shall not exceed:
- 43.4.1 £1,000,000 (Indexed) for any one event or series of related events;
- 43.4.2 £2,000,000 (Indexed) for all events in any period of 12 months; and
- 43.4.3 £5,000,000 (Indexed) for all events under this Contract.
- 43.5 Where this Contract is terminated by the Authority due to Contractor Default under clause 36, or due to corrupt gifts and fraud under clause 38 or where a Service Element is terminated by the Authority due to Contractor Default under clause 34 or clause 9.7 or clause 29.6 or where this Contract is terminated by the Contractor due

to voluntary termination under clause 39, the Contractor's aggregate liability for the direct and demonstrable re-procurement costs incurred by the Authority shall be limited to £1,000,000 (Indexed).

43.6 Subject at all times to the provisions of Schedule 7 (Service Performance and Credits) the aggregate liability of the Contractor for Service Credits during the Contract Period shall be limited to £4,400,000 (Indexed) and limited as to:

43.6.1 £50,000 (Indexed) in a Financial Year for Type A Service Credits, (£250,000 (Indexed) in a Financial Year if Type A Service Credits are at the Authority's option credited to the Service Improvement Fund);

43.6.2 £150,000 (Indexed) in a Financial Year for Type B Service Credits.

43.7 The aggregate liability of the Contractor to the Authority in contract, tort (including negligence) or otherwise for all breaches of this Contract (except any liability in respect of which clauses 9.7, 40.2, 40.3, 43.1, 43.4 and 43.6 apply) shall be limited to £2,000,000 (Indexed) for all events under this Contract.

43.8 The aggregate liability of the Authority to the Contractor whether for breach of contract, tort (including negligence and breach of statutory duty) misrepresentation or otherwise arising out of or in connection with this Contract (except any liability in respect of clauses 9.7, 40.1, 40.4, 40.5 and 43.1 apply) shall be limited to and shall not exceed £500,000 (Indexed) under this Contract in aggregate with a limit of £50,000 (Indexed) for all events in any period of 12 months provided that in the case of Funded Assets before Takeover (as defined in Schedule 18 the aggregate liability of the Authority to the Contractor shall be limited to and shall not exceed £3,000,000 (Indexed) for all events under this Contract.

43.9 Each provision of this clause 43 shall operate separately. If any part is held unreasonable or inapplicable in any circumstances the other parts shall continue to apply.

43.10 For the avoidance of doubt, the limitations specified within this clause 43 shall not apply to or prevent the Contractor from recovering Charges properly incurred, nor apply to or prevent the Contractor from recovering the Authority Termination Payment nor apply to or prevent the Authority from recovering the Contractor Termination Payment, nor apply to or prevent either party from recovering any sums due to it under clause 9.7 (Delay) or apply to limit the Authority's total aggregate liability under clause 46.4 (TUPE Indemnity)