

29 MARCH 2018

(1) CROWN COMMERCIAL SERVICE

-and-

(2) GEMSERV LTD

**UTILITIES SWITCHING SERVICES
CONCESSION CONTRACT**

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THIS CONTRACT is made on the 29th day of March 2018

BETWEEN:

The Minister for the Cabinet Office (“Cabinet Office”) as represented by Crown Commercial Service (CCS) which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, L3 9PP (the “Authority”); and

Gemserv Ltd which is a company registered in England and Wales under company number 4419878 and whose registered office is at 8 Fenchurch Place, London, EC3M 4AJ (the “Concessionaire”).

RECITALS

On 17 August 2017, the Authority dispatched a Prior Information Notice on Contracts Finder on Tenders Electronic Daily initially advertising the Utilities Switching Services concession contract opportunity.

On 28 November 2017, the Authority dispatched a Contract Notice on Tenders Electronic Daily advertising the Utilities Switching Services concession contract opportunity.

On 30 November 2017, the Authority issued an Invitation to Tender entitled “Utilities Switching Services Concession Contract Invitation to Tender” (the “ITT”) to potential concessionaires, including the Concessionaire, in respect of the provision of Utilities Switching Services.

In response to the ITT, the Concessionaire submitted its application to the Authority for the Utilities Switching Services concession contract in time before the submission date of 17:00hrs 4th January 2018 (“the Response”),

On the basis of the Response, the Authority has selected the Concessionaire to provide the Utilities Switching Services.

Accordingly, the Concessionaire has agreed to provide the Utilities Switching Services on the terms and conditions set out in this Contract.

ACCORDINGLY IT IS AGREED AS FOLLOWS

1. DEFINITIONS

- 1.1. In this Contract and in the Schedules unless the context otherwise requires or admits the following words and expressions shall have the following meanings:

Administration Levy	means the levy payable by a Supplier in accordance with Clause 5.2 that is necessary to cover the costs of administering each Switch.
Auditor	means: the Authority's internal and external auditors; the Authority's statutory or regulatory auditors; the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; HM Treasury or the Cabinet Office; any party formally appointed by the Authority to carry out audit or similar review functions; and successors or assigns of any of the above;
Authority Background IPRs	means (a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;

	<p>(b) IPRs created by the Authority independently of this Contract; and/or</p> <p>(c) any copyright owned by the Crown, which is not available to the Concessionaire otherwise than under this Contract;</p>
Authority Data	<p>means</p> <p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:</p> <p>(i) are supplied to the Concessionaire by or on behalf of the Authority; and/or</p> <p>(ii) which the Concessionaire generates, processes, stores or transmits pursuant to this Contract; or</p> <p>(iii) any Personal Data for which the Authority is the Data Controller;</p>
Authority Management Levy	means the amount specified in Clause 5.2.5 payable to the Authority by the Concessionaire.
Authority Software	any software which is owned by or licensed to the Authority and which is or will be used by the Concessionaire for the purposes of providing the Utilities Switching Services;
Authority System	The Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Concessionaire in connection with this Contract which is owned by or licensed to

	the Authority by a third party and which interfaces with the Concessionaire System or which is necessary for the Authority to receive the Utilities Switching Services
Business Continuity and Disaster Recovery Policy (or BCDR Policy)	means the business continuity and disaster recovery policy and procedures of the Authority and any other relevant requirements of the Authority from time to time;
Buyer(s)	means the public sector individual or organisation availing of the Utilities Switching Services provided by the Concessionaire;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency;
Co-Design	means the activity commencing immediately following signature of the Contract used by the Authority and the Concessionaire to agree those matters as set out in Schedule 6;

Commencement Date	means 29 th March 2018;
Commercially Sensitive Information	means the information listed in Schedule 4 (Commercial Sensitive Information) comprising the information of a commercially sensitive nature relating to the Concessionaire, its IPRs or its business or which the Concessionaire has indicated to the Authority that, if disclosed by the Authority, would cause the Concessionaire significant commercial disadvantage or material financial loss;
Complex / Higher volume transactions	means electricity and gas transactions usually requiring Bespoke Pricing for gas meter transactions of meters consuming higher than 293,000kWh per annum and electricity meter transactions of Half-Hourly meters or electricity meters consuming higher than 100,000KWh per annum.
Concessionaire	has the meaning given to it in the preamble to this Contract;
Concessionaire Administration Levy	means the amount specified in Clause 5.2.4 to be retained by the Concessionaire;.
Concessionaire Background IPRs	means (a) IPRs owned by the Concessionaire before the Commencement Date; and/or (b) IPRs created by the Concessionaire independently of this Contract, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Utilities Switching Services;

Concessionaire Software	any software which is proprietary to the Concessionaire or an Affiliate of the Supplier) and identified as such in the Annex to this Schedule together with all other such software which is not identified in the Annex to this Schedule but which is or will be used by the Concessionaire or any Sub-Contractor for the purposes of providing the Deliverables or is embedded in and in respect of such other software as required to be licensed in order for the Buyer to receive the benefit of and/or make use of the Deliverables;
Confidential Information	<p>means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the disclosing Party, including IPRs, together with 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 but not including any information which:</p> <p>was in the possession of the recipient Party without obligation of confidentiality prior to its disclosure by the disclosing Party;</p> <p>the recipient Party obtained on a non-confidential basis from a third party who is not, to the recipient Party's knowledge or</p>

	<p>belief, bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the recipient Party;</p> <p>was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;</p> <p>was independently developed without access to the Confidential Information; or</p> <p>relates to the Concessionaire's performance under this Contract;</p>
Contract	means this contract and the Schedules annexed thereto, which includes what the Parties agreed at Co-Design, as varied from time to time in accordance with its terms;
Contract Manager(s)	means the person(s) appointed and listed in Schedule 3 by the Authority and the Concessionaire respectively to manage the Contract;
Contract Year	<p>means</p> <p>a period of 12 Months commencing on the Commencement Date; or</p> <p>thereafter a period of 12 Months commencing on each anniversary of the Commencement Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Contract;</p>
Control	means the possession by person, directly or indirectly, of the power to direct or cause the

	direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
Corrective Action Plan	<p>A report to be provided by the Concessionaire to the Authority upon the occurrence of a Critical Service Level Failure which shall include:</p> <p>Full details of all Critical Service Level Failures;</p> <p>the actions to be undertaken by the Concessionaire to resolve (and/or, at the Authority’s request, mitigate) the failure to meet the KPIs.</p> <p>the timescale for achieving each of the remedial actions; and</p> <p>a measurement of improvement to be provided in monthly reports.</p>
Critical Service Level Failure	means the failure to meet the Service Levels to the extent described in table ‘Concessionaire’s incentivisation by KPIs’ of paragraph 2.16 of Schedule 1 - Part A(Specification)
Crown	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular

	bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
Data Controller	has the meaning given to it in the Data Protections Laws;
Data Processor	has the meaning given to it in the Data Protections Laws;
Data Subject	has the meaning given to it in the Data Protections Laws;
Data Protection Laws	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and , with effect from 25 May 2018, the GDPR);
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protections Laws to access his or her Personal Data;
Data Loss Event	means a breach of any system containing Personal Data that causes unauthorised access to Personal Data, actual or potential loss of Personal Data

Default	means any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: in the case of the Authority, of its employees, servants, agents; or in the case of the Concessionaire, of its Staff, in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;
Dispute	means any disputes or differences between the Parties arising out of the subject matter of this Contract;
Dispute Resolution Procedure	means the dispute resolution procedure set out in Clause 27;
DOTAS	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions

	(Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
Dynamic Purchasing System	The system(s) used to enable Suppliers to bid for Buyer demand to change their Utilities Services provision via an electronic restricted tender procedure (under Regulation 34) that is compliant with the Public Contracts Regulations 2015. Further Information is available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560265/Guidance_on_Dynamic_Purchasing_System_-_Oct_16.pdf
EIRs	means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
Emergency Maintenance	ad hoc and unplanned maintenance provided by the Concessionaire where either Party reasonably suspects that the ICT Environment or the Utilities Switching Services, or any part of the ICT Environment or the Utilities Switching Services, has or may have developed a fault;

Extension Period	means the period of any extensions of this Contract from the end of the Initial Period pursuant to Clause 4.2;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
Force Majeure	means any circumstances beyond the reasonable control of the Party affected by it including, without limitation: acts of God; explosion, flood, lightning, tempest, fire, storm, power failure or accident (except where caused by the negligence of the Party concerned), epidemics of disease; war, hostilities (whether war has been declared or not), invasion, terrorism, act of foreign enemies; rebellion, revolution, insurrection, military or usurped power or civil war; riot, civil commotion or disorder; acts, restrictions, regulations, by-laws, refusals to grant any licences or permissions, prohibitions or measures of any kind on the part of any governmental authority; import or export regulations or embargoes; and

	strikes, lock-outs or other industrial actions or trade disputes of whatever nature (unless involving the employees of either Party);
GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
General Anti-Abuse Principle	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
Good Industry Practice	means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from the Concessionaire to an authority like the Authority, such Concessionaire seeking to comply with its contractual obligations in full and complying with applicable Laws;
Halifax Abuse Principle	means the principle explained in the CJEU Case C-255/02 Halifax and others;
Health and Safety Policy	means the Authority's health and safety policy in force, as amended from time to time;

ICT Environment	means the Authority System and the Concessionaire System;
ICT Policy	means the Authority's policy in respect of information and communications technology, which is in force as at the Commencement Date (a copy of which has been supplied to the Concessionaire), as updated from time to time in accordance with the Variation Procedure;
Implementation Period	means the period after the Commencement Date during which the Co-Design will be agreed and the Concessionaire will implement the Specification and Co-Designed Utilities Switching Services for User Acceptance Testing;
Information	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
Initial Period	has the meaning given to it in Clause 4.1;
Insolvency Event	means (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: (b) (being a company or a LLP) is deemed unable to pay its debts within the meaning

	<p>of section 123 of the Insolvency Act 1986, or;</p> <p>(c) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;</p> <p>(d) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;</p> <p>(e) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets</p>
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	<p>and such attachment or process is not discharged within 14 days;</p> <p>(f) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(g) where the other Party is a company, a LLP or a partnership:</p> <p>a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;</p> <p>an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;</p> <p>(being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to</p>
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	<p>appoint or has appointed an agricultural receiver; or</p> <p>(h) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
Insurances	has the meaning given to it in Clause 15;
Intellectual Property Rights or IPRs	<p>means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, Know-How and any other intellectual property rights which subsist in computer Software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;</p>
IPR Claim	<p>means any claim against the Authority of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs save</p>

	for any such claim to the extent that it is caused by any use by or on behalf of the Authority of any IPRs;
ITT	means the Authority's invitation to tender as referred to and particularised in recital (B) of this Contract;
Know-How	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Utilities Switching Services but excluding know how already in the other Party's possession before this Contract;
Law	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Concessionaire is bound to comply;
Losses	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or

	otherwise and “Loss” shall be construed accordingly;
Malicious Software	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
Management Levy	the amount payable by the Concessionaire to the Authority in accordance with Clause 5.2.5 in order to cover the Authority’s costs of implementing and administering this Contract
Mediator	has the meaning given to in Clause 25.2;
Month	means the period of a calendar month and “Monthly” shall be construed accordingly;
Net Revenue	means the total gross income received by the Concessionaire in the course of providing the Utilities Switching Services less VAT;
New Release	an item produced primarily to extend, alter or improve the Software and/or any part of the Utilities Switching Services by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Utilities Switching Services

	are also corrected) while still retaining the original designated purpose of that item;
Occasion of Non-Tax Compliance	<p>means where:</p> <p>any tax return of the Concessionaire submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>a Relevant Tax Authority successfully challenging the Concessionaire under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>the failure of an avoidance scheme which the Concessionaire was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>any tax return of the Concessionaire submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;</p>
Open Book Data	means:

	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Start-Up Payment and Authority's Percentage Share already paid or payable and forecast to be paid during the remainder of this Contract;</p> <p>the Concessionaire's Costs broken down against the Services, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware, software, goods and/or services;</p> <p>operating expenditure relating to the provision of the Services including an analysis showing:</p> <p>the unit costs and quantity of goods and any other consumables and bought-in goods and services;</p> <p>manpower resources broken down into the number and grade/role of all Concessionaire Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</p> <p>a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Concessionaire's Profit Margin;</p> <p>and</p> <p>Overheads;</p> <p>all interest, expenses and any other third party financing costs incurred in relation to the provision of the Goods and/or Services;</p>
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	<p>the Concessionaire Profit achieved over the Contract Period and on an annual basis;</p> <p>confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Concessionaire;</p> <p>an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>the actual Costs profile for each Service Period;</p>
Operating Environment	<p>means the Authority System and any premises (including the Buyer premises, the Concessionaire's premises or third party premises) from, to or at which:</p> <p>(a) the Services are (or are to be) provided;</p> <p>or</p> <p>(b) the Concessionaire manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where any part of the Concessionaire System is situated;</p>
Parties	<p>means the parties to this Contract; and</p> <p>"Party" means any one of them;</p>
Personal Data	<p>personal data (as defined in the Data Protection Laws) which is Processed by the Concessionaire or any Sub-Contractor on behalf of the Authority or a Central</p>

	Government Body pursuant to or in connection with this Contract;
Process	has the meaning given to it under the Data Protection Laws and “Processed” and “Processing” shall be construed accordingly;
Prohibited Act	<p>means</p> <p>to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: induce that person to perform improperly a relevant function or activity; or reward that person for improper performance of a relevant function or activity;</p> <p>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;</p> <p>an offence:</p> <p>under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</p> <p>under legislation or common law concerning fraudulent acts; or</p> <p>defrauding, attempting to defraud or conspiring to defraud the Authority; or</p> <p>any activity, practice or conduct which would constitute one of the offences listed</p>

	under (c) above if such activity, practice or conduct had been carried out in the UK;
Project Specific IPRs	means (a) Intellectual Property Rights in items created by the Concessionaire (or by a third party on behalf of the Concessionaire) specifically for the purposes of this Contract (including during Co-design) and updates and amendments of these items including (but not limited to) database schema; and/or (b) Intellectual Property Rights arising as a result of the performance of the Concessionaire's obligations under this Contract; but shall not include the Concessionaire Background IPRs;
Regulator Correspondence	means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Contract
Relevant Requirements	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
Relevant Tax Authority	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Concessionaire is established;
Replacement Concessionaire	means any third party service provider appointed by the Authority from time to time to supply any Utilities Switching Services

	which are substantially similar to any of the Utilities Switching Services and which the Authority receives in substitution for any of the Utilities Switching Services following the expiry, termination or partial termination of the Contract (and shall also include the Authority if the Utilities Switching Services are to be performed by it instead);
Replacement Sub-Contractor	a sub-contractor of the Replacement Concessionaire to whom Transferring Concessionaire Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
Restricted Country	<p>“Restricted Countries” means</p> <p>(a) any country outside the European Economic Area; and</p> <p>(b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;</p>
Request For Information	means a Request for Information under the FOIA or the EIRs;
Required Service Levels	means the capabilities of the Utilities Switching Services specified paragraph 2.14 of the Specification;
Security Requirements	means any security policies that the Authority may have in force and as amended from time to time;
Service Live Date	means when the User Acceptance Testing has been approved by the Authority and the Dynamic Purchasing System is available for Suppliers to provide tariff information into;

Service Transfer	any transfer of the Services (or any part of the Services), for whatever reason, from the Concessionaire or any Sub-Contractor to a Replacement Concessionaire or a Replacement Sub-Contractor;
Service Transfer Date	the date of a Service Transfer;
Simple / Lower volume Transactions	means electricity and gas transactions usually priced via matrix/Instantaneous Pricing for gas meter transactions of meters consuming lower than 293,000kWh per annum and electricity meter transactions of Non Half-Hourly meters or electricity meters consuming lower than 100,000Kwh per annum;
Software	Specially Written Software, Concessionaire Software and Third Party Software;
Source Code	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
Specially Written Software	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Concessionaire(or by a Sub-Contractor or other third party on behalf of the Concessionaire) specifically for the

	purposes of this Contract, including any modifications or enhancements to Concessionaire Software or Third Party Software. For the avoidance of doubt Specially Written Software does not constitute Project Specific IPR;
Start Up Payment	The amount payable by the Authority to the Concessionaire in accordance with Clause 5.1.5 to assist with the Concessionaire's cash flow, which shall be fully reimbursed to the Authority immediately on demand if the User Acceptance Testing is not successfully completed (for any reason) within 1 year of the Commencement Date or such later date as otherwise specified by the Authority;
Staff	means all directors, officers, employees, Key Personnel, agents, consultants and contractors of the Concessionaire and/or of any Sub-Contractor engaged in the performance of the Concessionaire's obligations under this Contract;
Standards	means any: <ul style="list-style-type: none"> (a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that would be required as per Good Industry Practice; (b) standards detailed in Schedule 1;

	<p>(c) standards agreed between the Parties from time to time;</p> <p>(d) relevant Government codes of practice and guidance applicable from time to time;</p>
Sub-Contract	means any contract or agreement (or proposed contract or agreement) between the Concessionaire (or a Sub-Contractor) and any third party whereby that third party agrees to provide to the Concessionaire (or the Sub-Contractor) all or any part of the Utilities Switching Services or facilities or services which are material for the provision of the Utilities Switching Services or any part thereof or necessary for the management, direction or control of the Utilities Switching Services or any part thereof;
Sub-Contractor	means any third party with whom: <p>(a) the Concessionaire enters into a Sub-Contract; or</p> <p>(b) a third party under (a) above enters into a Sub-Contract,</p> <p>or the servants or agents of that third party;</p>
Suspension Period	has the meaning given to it in Clause 24.1;
Supplier	means a party actually or potentially providing Utilities services to Buyers under the Dynamic Purchasing System;
Switch	means when a Buyer is actually receiving the Utilities of a new Supplier of Utilities following a the use of the Dynamic

	Purchasing System managed by the Concessionaire under this Contract;
System	the information and communications technology system used by the Supplier in supplying the Deliverables, including the Concessionaire's Software, the Concessionaire Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);
Term	means the period commencing on the Commencement Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of this Contract;
Transferring Concessionaire Employees	those employees of the Concessionaire and/or the Concessionaire's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date;
Transparency Principles	means the principles which set out the requirement for the proactive release of information under the Government's transparency commitment to publish contract information. They set a presumption in favour of disclosure, to encourage both Government and suppliers to consider the information that should be made available when government signs a contract with a supplier;

Transparency Reports	means the information relating to the Utilities Switching Services and performance of this Contract which the Concessionaire is required to provide to the Authority in accordance with the reporting requirements in Schedule 5;
User Acceptance Testing	means the Authority's testing of the Utilities Switching Services to ensure that it meets the requirements of the Specification and any additional criteria agreed during Co-design;
Utilities	means the provision of electricity, water, gas either separately or as an integrated service;
Utilities Switching Services	means the services to be provided by the Concessionaire to the Authority in respect of transferring the provision of utility provision to public bodies from existing providers to an alternative Supplier under this Contract, as described in Schedule 1 including any modified or alternative services;
VAT	means value added tax as provided for in the Value Added Tax Act 1994;
Working Days	means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2. The interpretation and construction of this Contract shall be subject to the following provisions:

1.2.1. importing the singular meaning include where the context so admits the plural meaning and vice versa;

- 1.2.2. the words "include", "includes" "including" "for example" and "in particular" and words of similar effect shall be construed as if they were immediately followed by the words "without limitation";
 - 1.2.3. a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument subsequently amended or re-enacted;
 - 1.2.4. the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
 - 1.2.5. reference to a Clause or a Schedule or annex are references to a clause in or schedule or annex to this Contract unless otherwise stated; and
 - 1.2.6. where the context allows the masculine includes the feminine and the neuter and the single includes the plural and vice versa.
- 1.3. The following items form part of this Contract. If there is any conflict between the Clauses and the Schedules and/or any annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1. the Clauses; and
 - 1.3.2. Schedules 1, 2, 3, 4, 5, 6, 7 8, 9, 10, 11, 12, 14.
 - 1.3.3. Schedule 13 (Concessionaire Tender) provided that any parts of the Concessionaire Tender which offer a better commercial position for the Authority (as decided by the Authority) will take precedence over the documents above.

2. CAPACITY OF THE AUTHORITY

- 2.1. In entering into this Contract the Authority is acting as part of the Crown.

3. DUE DILIGENCE

3.1. The Concessionaire acknowledges that it has:

3.1.1. made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority including:

- a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Commencement Date) future Operating Environment;
- b) operating processes and procedures and the working methods of the Authority;
- c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Authority Assets;
- d) existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Concessionaire under this Contract and/or which the Concessionaire will require the benefit of for the provision of the Deliverables; and
- e) the likely number of Switches and Management Levy attainable.

3.1.2. raised any relevant questions with the Authority before the Commencement Date and agrees that it has received such answers from the Authority to enable it to enter into this Contract with all reasonable expectation of being able to fulfil its obligations hereunder; and

3.1.3. entered into this Contract in reliance on its own due diligence alone.

3.2. The Concessionaire confirms that it has advised the Authority in writing of:

3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;

3.2.2. the actions needed to remedy each such unsuitable aspect; and

3.2.3. a timetable for and the costs of those actions.

4. TERM

4.1. This Contract shall come into force on the Commencement Date and shall continue, unless terminated earlier in accordance with the provisions of the Contract or otherwise by operation of Law, for four (4) years ("Initial Period") when it shall terminate automatically without notice unless, no later than three (3) Months before the end of the Initial Period, the Authority gives notice to extend the Initial Period in accordance with Clause 4.2.

4.2. At the end of the Initial Period, the Authority shall have the option to extend the Initial Period of this Contract for up to one (1) further period of up to a maximum of twelve (12) Months ("Extension Period"). If the Authority intends to exercise the option to extend the Initial Period of this Contract, it shall give notice to the Concessionaire no later than three (3) Months prior to the end of the Initial Period and such notice shall include details of the duration of the relevant extension.

5. RIGHTS AND OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Provision of the Utilities Switching Services

- 5.1.1. The Concessionaire shall provide the Utilities Switching Services from the Commencement Date in Schedule 1.
- 5.1.2. The Concessionaire shall perform its obligations under this Contract in accordance with:
- a) the Required Service Levels
 - b) all applicable Law;
 - c) Good Industry Practice;
 - d) the Standards;
 - e) the Security Requirements; and
 - f) the Concessionaire's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.1.2(a) to 5.1.2(e).
- 5.1.3. In the event that the Concessionaire becomes aware of any inconsistency between the requirements of Clauses 4.1.2(a) to 4.1.2(e), the Concessionaire shall immediately notify the Authority in writing of such inconsistency and the Authority shall, as soon as practicable, notify the Concessionaire which requirement the Concessionaire shall comply with.
- 5.1.4. The Concessionaire shall maintain and enhance the good reputation which the Authority enjoys and shall do nothing to damage or prejudice such reputation.
- 5.1.5. The Concessionaire shall bear in full and shall have no recourse to the Authority for any expense, liability, or loss arising as a result of not

attracting any or sufficient numbers of customers to the Utilities Switching Services, however shall receive a Start Up Payment of £100,000.00 inclusive of VAT from the Authority which the Concessionaire may invoice the Authority for on the following basis:

- a) 75% on the Commencement Date; and
- b) 25% on successfully passing User Acceptance Testing.

- 5.1.6. The Concessionaire shall ensure that the release of any new Concessionaire Software or upgrade to any Concessionaire Software complies with the interface requirements of the Authority and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new Concessionaire Software or Upgrade;
- 5.1.7. The Concessionaire shall ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Concessionaire are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.8. The Concessionaire shall ensure that the Concessionaire System will be free of all encumbrances;
- 5.1.9. The Concessionaire shall ensure that the Utilities Switching Services are fully compatible with any Authority Software, Authority System, or otherwise used by the Concessionaire in connection with this Contract;
- 5.1.10. The Concessionaire shall minimise any disruption to the Utilities Switching Services and the ICT Environment and/or the Authority's operations when providing the Utilities Switching Services;

- 5.1.11. The Concessionaire shall develop within 3 months of the Commencement Date quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("Quality Plans").
- 5.1.12. The Concessionaire shall seek approval from the Authority (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Concessionaire of its responsibility for ensuring that the Utilities Switching Services are provided to the standard required by this Contract.
- 5.1.13. Following the approval of the Quality Plans, the Concessionaire shall provide all Utilities Switching Services in accordance with the Quality Plans.
- 5.1.14. The Concessionaire shall ensure that the Concessionaire Personnel shall at all times during the Term:
- a) be appropriately experienced, qualified and trained to supply the Utilities Switching Services in accordance with this Contract;
 - b) apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Utilities Switching Services; and
 - c) obey all lawful instructions and reasonable directions of the Authority (including, if so required by the Buyer, the ICT Policy) and provide the Utilities Switching Services to the reasonable satisfaction of the Authority.

- 5.1.15. The Concessionaire shall, throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 5.1.16. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 5.1.17. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 4.1.16 shall be borne by the Parties as follows:
- a) by the Concessionaire, where the Malicious Software originates from the Concessionaire Software, the Third Party Software supplied by the Concessionaire or the Authority Data (whilst the Authority Data was under the control of the Concessionaire) unless the Concessionaire can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Concessionaire; and
 - b) by the Authority, if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).
- 5.1.18. the Concessionaire represents and warrants that:
- a) it has and shall continue to have all necessary rights in and to the Software made available by the Concessionaire (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the

Concessionaire's obligations under this Contract including the receipt of the Deliverables by the Buyer;

5.1.19. all components of the Software used during the performance of this Contract shall:

- a) be free from material design and programming errors;
- b) perform in all material respects in accordance with the relevant specifications

5.2. MONETISING THE SERVICE

5.2.1. During the term of the Contract the Concessionaire may choose to impose a levy against Suppliers each time that a Buyer Switches its utilities service provision through use of the Utilities Switching Services ("Administration Levy").

5.2.2. The maximum Administration Levy per Switch which may be levied by the Concessionaire shall be:

Switch Type		Administration Levy
Category A	Up to 10 Simple /lower volume meter switches (cost per electricity/gas meter) e.g. Non Half-Hourly meters	[REDACTED]
Category B	Up to 10 Complex/higher volume meter switches (cost per electricity/gas meter) e.g. Half Hourly meters	[REDACTED]
Category C	11-100 simple/lower volume meter switches (cost per electricity/gas meter) e.g. Non Half-Hourly meters	[REDACTED]

Category D	11-100 complex/higher volume meter switches (cost per electricity/gas meter) eg Half Hourly meters	[REDACTED]
Category E	101-1000 simple/lower consuming meter switches (cost per electricity/gas meter) e.g. Non Half-Hourly meters	[REDACTED]
Category F	101-1000 complex/higher volume meter switches (cost per electricity/gas meter) e.g. Half Hourly meters	[REDACTED]
Category G	1001+ simple/lower volume meter switches (cost per electricity/gas meter_ e.g. Non Half-Hourly meters	[REDACTED]
Category H	1001+ complex/higher volume meter switches (cost per electricity/gas meter) e.g. Half Hourly meters	[REDACTED]
-	Switching of water	To be confirmed during Co-Design
-	Switching of other Utilities e.g. Fuel	To be confirmed during Co-Design

5.2.3. The Authority makes no guarantee as to the frequency or total amount of the Switches or Administration Levy that may arise.

5.2.4. The Concessionaire shall retain an Administration levy in order to cover its costs designing, facilitating, maintaining and operating the Utilities Switching Services.

5.2.5. The Concessionaire shall pay the Authority a Management Levy to cover the Authority's actual costs of setting up this Contract and managing the Utilities Switching Services in accordance with the following table:

Switch Type		Authority's Management Levy
Category A	Up to 10 Simple /lower volume meter switches (cost per electricity/gas meter) e.g. Non Half-Hourly meters	[REDACTED]

Category B	Up to 10 Complex/higher volume meter switches (cost per electricity/gas meter) e.g. Half Hourly meters	[REDACTED]
Category C	11-100 simple/lower volume meter switches (cost per electricity/gas meter) e.g. Non Half-Hourly meters	[REDACTED]
Category D	11-100 complex/higher volume meter switches (cost per electricity/gas meter) eg Half Hourly meters	[REDACTED]
Category E	101-1000 simple/lower consuming meter switches (cost per electricity/gas meter) e.g. Non Half-Hourly meters	[REDACTED]
Category F	101-1000 complex/higher volume meter switches (cost per electricity/gas meter) e.g. Half Hourly meters	[REDACTED]
Category G	1001+ simple/lower volume meter switches (cost per electricity/gas meter_ e.g. Non Half-Hourly meters	[REDACTED]
Category H	1001+ complex/higher volume meter switches (cost per electricity/gas meter) e.g. Half Hourly meters	[REDACTED]
-	Switching of water	To be confirmed during Co-Design
-	Switching of other Utilities e.g. Fuel	To be confirmed during Co-Design

5.2.6. The Management Levy indicated Clause 5.2.5 shall be adjusted to take into account of the Concessionaire's actual performance in each month using the Key Performance Indicators in Paragraph 12.15 of the Specification.

5.2.7. The Authority shall invoice the Concessionaire monthly in arrears for the total of Management Levy due each month (subject to any adjustment under Clause 5.2.6) based on the Management Information provided. Each invoice shall be payable by the Concessionaire within thirty (30) days of receipt of the invoice by the Concessionaire.

5.2.8. The Concessionaire must not charge Buyers any amount except where stated in this Contract or where expressly authorised by the Authority in writing.

5.2.9. Neither Party shall charge the Suppliers for receiving information to, entering onto or remaining on the Dynamic Purchasing System.

6. OBLIGATIONS OF THE AUTHORITY

6.1. The Concessionaire shall assume all commercial and economic risk of providing the Utilities Switching Services, which includes the risk of attracting any or a sufficient number of Buyers to the Utilities Switching Services and any cost associated with the delivery of them.

6.2. In consideration of Clause 6.1, the Authority shall permit the Concessionaire to exploit the Utilities Switching Services in accordance with this Contract.

6.3. Without prejudice to Clause 6.1, the Authority will in its absolute and sole discretion :

6.3.1. Provide official endorsement of the Concessionaire as developer and operator of the Dynamic Purchasing System;

6.3.2. provide assistance with high level marketing of the Dynamic Purchasing System including publicising of the service following collaborative development of the marketing material with the Authority's marketing team;

6.3.3. manage eligibility to use the Services by the Buyers and Suppliers;

6.3.4. provide terms and conditions for Utilities Suppliers utilising the Dynamic Purchasing System;

- 6.3.5. provide a process for credit checking customers and interaction with Utilities suppliers;
 - 6.3.6. Arrange customer focus groups for User Acceptance Testing; and
 - 6.3.7. provide instruction on refining the design as part of the Implementation and Co-design period.
- 6.4. The Authority offers no guarantee of any actual value or frequency in relation to what the Authority may offer to the Concessionaire under Clause 6.3.

7. ACCOUNTING, AUDITING, REPORTING AND OPEN BOOK DATA

- 7.1. The Concessionaire shall keep and maintain for seven (7) years after the Contract Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract and in respect of the provision of the Utilities Switching Services, which shall, inter alia, include details relating to:
- 7.1.1. all income received or accrued by the Concessionaire broken down against each element of the Utilities Switching Services;
 - 7.1.2. the Concessionaire's costs broken down against each element of the Utilities Switching Services;
 - 7.1.3. all operating expenditure relating to the provision of the Utilities Switching Services including:
 - a) the unit costs and quantity of bought-in services;

b) amounts paid to all third party suppliers and any Sub-Contractors; and

c) Net Revenue for each Month.

7.2. The Concessionaire shall:

7.2.1. keep the records and accounts referred to in Clause 7.1 in accordance with Good Industry Practice and Law; and

7.2.2. afford any Auditor access to the records and accounts referred to in Clause 7.1 at the Concessionaire's premises and/or provide records and accounts (including copies of the Concessionaire's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 7.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Concessionaire and/or its Sub-Contractors of any of the Concessionaire's obligations under this Contract including in order to:

a) verify the accuracy of any other amounts payable by the Concessionaire under this Contract (and proposed or actual variations to them in accordance with this Contract);

b) verify the costs of the Concessionaire (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

c) verify the Open Book Data;

d) verify the Concessionaire's and each Sub-Contractor's compliance with the applicable Law;

- e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Concessionaire of the purpose or objective of its investigations;
- f) identify or investigate any circumstances which may impact upon the financial stability of the Concessionaire, the Guarantor and/or Guarantor and/or any Sub-Contractors or their ability to perform the Utilities Switching Services;
- g) obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- h) review any books of account and the internal contract management accounts kept by the Concessionaire in connection with this Contract;
- i) carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Concessionaire's annual and interim reports and accounts;
- j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Concessionaire has used its resources;
- k) review any Management Information Reports and/or other records relating to the Concessionaire's performance of the provision of the Utilities Switching Services and to verify that these reflect the Concessionaire's own internal reports and records;

- l) verify the accuracy and completeness of any information delivered or required by this Contract;
- m) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- n) review any records created during the design and development of the Concessionaire System and pre-operational environment such as information relating to User Acceptance Testing;
- o) review the Concessionaire's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- p) review the Concessionaire's compliance with the Standards;
- q) inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- r) review the integrity, confidentiality and security of the Authority Data.

7.3. The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Concessionaire or delay the provision of the Utilities Switching Services save insofar as the Concessionaire accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.

7.4. Subject to the Concessionaire's rights in respect of Confidential Information, the Concessionaire shall on demand provide the Auditor(s) with all reasonable cooperation and assistance in:

- 7.5. all reasonable information requested by the Authority within the scope of the audit;
- 7.6. reasonable access to sites controlled by the Concessionaire and to any Concessionaire Equipment used in the provision of the Utilities Switching Services; and
- 7.7. access to the Concessionaire Personnel.
- 7.8. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 7, unless the audit reveals a Default by the Concessionaire in which case the Concessionaire shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

8. CONSENTS, APPROVALS AND LICENCES

- 8.1. Unless stated otherwise in this Contract and subject to Clause 16 (Intellectual Property Rights), the Concessionaire shall ensure that all statutory consents, approvals or licences required for the provision of the Utilities Switching Services including, where appropriate, personal licences and at premises, are valid and in full force and effect and maintained, where appropriate, in the joint names of the Parties or their nominees. The Concessionaire shall, in the case of each such consent, approval or licence, apply at its own expense for all such renewals as may be required during the Term.
- 8.2. The Authority shall co-operate in all reasonable ways in assisting the Concessionaire to comply with its obligations under Clause 8.1 and will, in so far as they relate to the activities of the Authority, observe and perform the conditions and obligations attaching thereto.

9. PREVENTION OF FRAUD AND BRIBERY

9.1. The Concessionaire represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

9.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

9.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

9.2. The Concessionaire shall not during the Term:

9.2.1. commit a Prohibited Act; and/or

9.2.2. do or suffer anything to be done which would cause the Authority or Staff to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

9.3. The Concessionaire shall during the Term:

9.3.1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

9.3.2. keep appropriate records of its compliance with its obligations under Clause 9.3.1 and make such records available to the Authority on request.

- 9.4. The Concessionaire shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 9.1 and/or 9.2, or has reason to believe that it has or any of the Staff have:
- 9.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 9.4.2. been listed by any government department or agency as being debarred, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 9.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 9.5. If the Concessionaire makes a notification to the Authority pursuant to Clause 13.4, the Concessionaire shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 7.
- 9.6. If the Concessionaire commits a Default in relation to Clauses 9.1 and/or 9.2, the Authority may by notice:
- 9.6.1. require the Concessionaire to remove from performance of this Contract any Staff whose acts or omissions have caused the Default; or
 - 9.6.2. immediately terminate this Contract for material Default.

- 9.7. Any notice served by the Authority under Clause 9.6 shall specify the nature of the Prohibited Act, the identity of the Staff member who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

10. COMPLIANCE

10.1. Health and Safety

- 10.1.1. The Concessionaire shall perform its obligations under this Contract (including those in relation to the Utilities Switching Services) in accordance with:

- a) all applicable Law regarding health and safety; and
- b) its own health and safety policy, which shall be in accordance with Clause 10.1.2.

- 10.1.2. The Concessionaire shall review its own health and safety policy regularly and at least every twelve (12) Months to ensure that both on the Commencement Date and throughout the Term it complies with the Health and Safety Policy. The Concessionaire shall keep a copy of its own health and safety policy and make the same available to the Authority for inspection on the Authority's request.

- 10.1.3. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Concessionaire shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

10.2. Equality and Diversity

10.2.1. The Concessionaire shall perform its obligations under this Contract (including those in relation to the Utilities Switching Services) in accordance with:

- a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- b) the Authority's equality and diversity policy as provided to the Concessionaire from time to time; and
- c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law.

10.2.2. The Concessionaire shall take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

10.3. Official Secrets Act and Finance Act

10.3.1. The Concessionaire shall comply with the provisions of:

- a) the Official Secrets Acts 1911 to 1989; and
- b) section 182 of the Finance Act 1989.

10.4. Promoting Tax Compliance

10.4.1. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Concessionaire shall:

- a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- b) promptly provide to the Authority:

- (i) details of the steps that the Concessionaire is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonable requires.

10.4.2. In the event that the Concessionaire fails to comply with this Clause 10.4.2 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.

11. PROTECTION OF PERSONAL DATA

11.1. The Concessionaire shall (and shall procure that its entire Staff) comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with the Contract.

11.2. The Concessionaire will, in conjunction with the Authority, in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the provisions of the GDPR upon its implementation.

11.3. The Concessionaire will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection

and privacy to act as the point of contact for the purpose of observing its obligations in this Clause 11.

11.4. Notwithstanding the obligation in clause 11.1, if the Concessionaire is Processing Personal Data as a Data Processor for the Authority the Concessionaire shall:

11.4.1. Prior to the processing of any Personal Data under this Contract and where requested by the Authority provide a Privacy Impact Assessment (“PIA”) to the Authority which will include (but not be limited to);

- a) A systematic description of the envisaged processing operations and the purpose of the processing;
- b) An assessment of the necessity and proportionality on the processing operations in relation to the Utility Switching Services;
- c) an assessment of the risks to the rights and freedoms of data subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

11.4.2. implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected including the measures as are set out in Clause 13 (Authority Data) and Schedule 9 (Security);

- 11.4.3. Process the Personal Data only in accordance with written instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority;
- 11.4.4. Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Concessionaire's obligations under the Contract or as is required by Law or any Regulatory Body;
- 11.4.5. Keep a record of all categories of processing activities carried out on behalf of the Authority, containing;
 - a) the categories of processing carried out on behalf of the Authority;
 - b) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.
- 11.4.6. take all reasonable steps to ensure the reliability and integrity of any Concessionaire Personnel who have access to the Personal Data and ensure that the Concessionaire Personnel:
 - a) are aware of and comply with the Concessionaire's duties under this Clause 11 and Clauses 13 (Authority Data) and 30.7 (Confidentiality);
 - b) are subject to appropriate confidentiality undertakings with the Concessionaire or the relevant Sub-contractor;
 - c) 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

- d) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Laws);
- 11.4.7. not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- 11.4.8. notify the Authority within 48 hours if it:
- a) receives from a Data Subject (or third party on their behalf):
 - (i) a Data Subject Access Request (or purported Data Subject Access Request);
 - (ii) a request to rectify, block or erase any Personal Data; or
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - b) considers that any of the Authority's instructions from the Authority infringe the Data Protection Laws;
 - c) receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - d) 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

e) is required by Law to commit an act or omission to that would, but for Clause 11.10, constitute a breach of this Clause 11;

11.5. The Concessionaire shall provide the Authority with full co-operation and assistance (within the timescales reasonably required by the Authority) in relation to either Party's obligations under Data Protection Laws or any complaint, communication or request made as referred to in Clause 11.4.8, including by promptly providing:

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

11.5.2. where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Laws; and

11.5.3. the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and

11.5.4. assistance following a Data Loss Event as required by the Authority including with respect to the conduct of a data protection impact assessment and the Authority's consultation with the Information Commissioner's Office;

11.6. The Concessionaire shall, if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 11 and provide to the Authority copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.

- 11.7. The Concessionaire shall allow the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 7.3 (Audit Rights), the Concessionaire's data Processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Concessionaire is in full compliance with its obligations under the Contract;
- 11.8. The Concessionaire shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the Authority's prior written consent. If, after the Effective Date, the Concessionaire or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Concessionaire shall, in seeking consent, submit such information as the Authority's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Contract at the Concessionaire's cost and expense using the Change Control Procedure.
- 11.9. The Concessionaire will notify the Authority immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the Concessionaire will;
- 11.9.1. when notifying the Authority of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
 - 11.9.2. Cooperate fully with any Authority investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
 - 11.9.3. provide immediate access to the Concessionaire's premises and systems for the purposes of any Authority investigation under Clause 11.9.2 above

- 11.9.4. Take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;
 - 11.9.5. Not make any public statement of any kind without the prior approval of the Authority
 - 11.9.6. Where appropriate, provide all assistance necessary to enable the Authority to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event.
- 11.10. At the end of the Term or earlier termination of this Contract, at the Authority's request, the Concessionaire shall delete or return all personal data to the Authority and delete any copies of such personal data except where required to retain any copies by Law.
- 11.11. The Concessionaire shall comply at all times with Data Protection laws and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Laws.
- 11.12. The Concessionaire shall use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority's obligations under the Data Protection Laws to the extent the Concessionaire is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 11.13. The Concessionaire shall indemnify the Authority on a continuing basis against any and all Losses incurred by the Authority arising from the Concessionaire's Default under this Clause 11 and/or any failure by the Concessionaire or any Sub-contractor to comply with their respective obligations under Data Protection Laws.

11.14. Nothing in this Clause 11 shall be construed as requiring the Concessionaire or any relevant Sub-contractor to be in breach of any Data Protection Laws.

11.15. The provision of this Clause 11 applies during the Contract Period and indefinitely after its expiry.

12. FREEDOM OF INFORMATION

12.1. The Concessionaire acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Concessionaire shall:

12.1.1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

12.1.2. transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

12.1.3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

12.1.4. not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

12.2. The Concessionaire acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Concessionaire. The

Authority shall take reasonable steps to notify the Concessionaire of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Concessionaire's Confidential Information (including any Commercially Sensitive Information) and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

13. AUTHORITY DATA

13.1. The Concessionaire shall not:

- 13.1.1. delete or remove any proprietary notices contained within or relating to the Authority Data;
- 13.1.2. store, copy, disclose, or use the Authority Data except as necessary for the performance by the Concessionaire of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

13.2. To the extent that Authority Data is held and/or processed by the Concessionaire, the Concessionaire shall supply that Authority Data to the Authority as requested by the Authority in the format specified the Authority.

- 13.2.1. The Concessionaire shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-Contractor.

- 13.2.2. The Concessionaire shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Policy. The Concessionaire shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 13.2.3. The Concessionaire shall ensure that any system on which the Concessionaire holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 13.3. If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Concessionaire's Default so as to be unusable, the Authority may:
 - 13.3.1. require the Concessionaire (at the Concessionaire's expense) to restore or procure the restoration of Authority Data and the Concessionaire shall do so as soon as practicable but not later than within five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - 13.3.2. itself restore or procure the restoration of Authority Data, and shall be repaid by the Concessionaire any reasonable expenses incurred in doing so to the extent.
- 13.4. If at any time the Concessionaire suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Concessionaire shall notify the Authority immediately and inform the Authority of the remedial action the Concessionaire proposes to take.

14. LIABILITY

14.1. Unlimited Liability

14.1.1. Neither Party limits its liability for:

- a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- b) fraud or fraudulent misrepresentation by it or its employees;
- c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- d) any liability to the extent it cannot be limited or excluded by Law.
- e) The Concessionaire's liability in respect of the indemnity in Clause 19 (IPR Indemnity), Clause 11 (Data Protection) and Schedule 10 (Staff Transfer) shall be unlimited (whether before or after the making of the demand pursuant to the indemnity).

14.2. Financial and other Limits

14.2.1. Subject to Clause 14.1 (Unlimited Liability) and Clauses 14.3 (Consequential Losses) the Concessionaire's aggregate liability in respect of all Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Concessionaire shall in no event exceed the greater of £1 million or 125% of the total Administration Levies charged under this Contract in each Contract Year

14.2.2. Subject to Clause 14.1 (Unlimited Liability) and Clause 14.3 (Consequential Losses), the Authority's aggregate liability in respect of all Losses incurred by the Concessionaire under or in connection with this

Contract as a result of Defaults of the Authority shall in no event exceed £1 million.

14.3. Financial and other Limits

14.3.1. Consequential Losses

a) Subject to Clauses 14.1, neither Party shall be liable to the other Party for:

- (i) any indirect, special or consequential Loss; or
- (ii) any loss of profits (indirect and direct), turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

14.3.2. Recoverable Losses

a) Notwithstanding Clause 14.3 but subject to Clause 14.2 the Concessionaire acknowledges that the Authority may, amongst other things, recover from the Concessionaire the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Concessionaire:

- (i) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (ii) any wasted expenditure or charges;

- (iii) the additional cost of procuring replacement Utilities Switching Services for the remainder of the Term, which shall include any incremental costs associated with such replacement Utilities Switching Services above those which would have been payable under this Agreement;
- (iv) any compensation or interest paid to a third party by the Authority; and
- (v) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

15. INSURANCE

15.1. The Concessionaire shall effect and maintain in force all necessary insurances to cover its potential liabilities in connection with this Contract which shall include, as a minimum:

- 15.1.1. employers' liability insurance in respect of the Concessionaire's employees with a minimum limit of five million pounds sterling (£5,000,000) (or such higher minimum limit as required by Law from time to time);
- 15.1.2. public liability insurance with a minimum limit of ten million pounds sterling (£5,000,000) for claims arising from a single event or series of related events ;and
- 15.1.3. professional indemnity insurance with a minimum limit of indemnity of five million pounds sterling (£5,000,000) per claim; and
- 15.1.4. any other insurances as may be required by applicable Law;

together the “**Insurances**”.

- 15.2. The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 15.3. On the written request of the Authority, the Concessionaire shall provide the Authority with a copy of each insurance policy.
- 15.4. The Concessionaire will maintain such effect and maintain in force such Insurances during the Term and one year thereafter.
- 15.5. The Concessionaire shall produce evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Clause 15.
- 15.6. The Concessionaire shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 15.7. In the event that the Concessionaire fails to purchase or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Concessionaire to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Concessionaire.
- 15.8. The Concessionaire shall promptly notify to insurers any matter arising from, or in relation to, the Utilities Switching Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Utilities Switching Services and/or this

Contract, the Concessionaire shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

16. INTELLECTUAL PROPERTY RIGHTS

16.1. Except as expressly set out in this Contract:

16.1.1. the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Concessionaire or its licensors, including the Concessionaire Background IPRs;

16.1.2. the Concessionaire shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- a) the Authority Data
- b) Specially Written Software;
- c) Project Specific IPR; and
- d) the Authority Background IPRs.

16.2. Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

16.3. Neither Party shall have any right to use any of the other Party's or the other Party's licensors' names, logos or trademarks on any of its products or services without the other Party's prior written consent.

17. LICENCES AND TRANSFERS GRANTED BY THE CONCESSIONAIRE

17.1. Assignments granted by the Concessionaire: Specially Written Software

17.1.1. The Concessionaire assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Authority with full guarantee (or shall procure assignment to the Authority), title to and all rights and interest in the Specially Written Software together with and including:

- a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the Project Specific IPR (together the "Software Supporting Materials").

17.1.2. The Concessionaire shall:

- a) inform the Authority of all Specially Written Software or Project Specific IPR that are a modification, customisation, configuration or enhancement to Concessionaire Software or Third Party Software;
- b) deliver to the Authority the Specially Written Software and any computer program elements of the Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of the Service Live Date, and shall provide updates of them promptly following each New Release of the Specially Written Software, in each case on media that is reasonably acceptable to the

Authority and the Authority shall become the owner of such media upon receipt; and

- c) without prejudice to paragraph 17.1.2.(b), provide full details to the Authority of any of the Concessionaire's Background IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or Project Specific IPR and the Concessionaire hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Concessionaire's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and Project Specific IPRs for the Term of this Contract and for the reprourement of the Utilities Switching Services by a Replacement Concessionaire.

- 17.1.3. The Concessionaire shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

17.2. Licences granted by the Concessionaire: Concessionaire Software and Concessionaire IPR

- 17.2.1. The Concessionaire hereby grants to the Authority a royalty-free and non-exclusive licence to use adapt, and sub-license the Concessionaire Software and the Concessionaire Background IPR for any purpose relating to the Utilities Switching Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function including (in relation to Concessionaire Software) the right to load, execute, store,

transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) for:

- a) the Term of the Contract; and
- b) reprocurement of the Utilities Switching Services by a Replacement Concessionaire.

17.2.2. The Concessionaire may terminate a licence granted under Clause 17.2.1 by giving at least thirty (30) days' notice in writing if there is a Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Concessionaire gives the Authority written notice specifying the breach and requiring its remedy.

17.3. Authority's right to assign/novate licences

17.3.1. The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 17.2 (Licences granted by the Concessionaire: Concessionaire Software) to:

- a) a Central Government Body; or
- b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

17.3.2. If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.2.

17.4. Third Party IPR and Third Party Software

17.4.1. The Concessionaire shall procure that the owners or the authorised licensors of any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Buyer on terms at least equivalent to those set out in Clauses 17.2 and 17.3. If the Concessionaire cannot obtain such a licence, the Concessionaire shall:

- a) notify the Authority in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Concessionaire could seek to use; and
- b) only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.

17.4.2. The Concessionaire shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Authority on terms no less favourable than those on which such software is usually made available.

17.5. Termination and Replacement Concessionaires

17.5.1. For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Concessionaire pursuant to or as contemplated by this Clause 17.

17.5.2. The Concessionaire shall, if requested by the Authority and at the Concessionaire's cost, grant (or procure the grant), to any Replacement Concessionaire of a licence to use any Concessionaire Background IPRs to the Replacement Concessionaire and on terms no less favourable than those granted to the Authority in respect of the relevant IPRs pursuant to or as contemplated by this Clause 17 with a royalty not exceeding the market rate, subject to receipt by the Concessionaire of a confidentiality

undertaking in its favour duly executed by the Replacement Concessionaire.

18. LICENCES GRANTED BY THE AUTHORITY

18.1. The Authority hereby grants to the Concessionaire a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Background IPRs, the Project Specific IPRs, the Specially Written Software and the Authority Data solely to the extent necessary for performing the Utilities Switching Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

18.1.1. any relevant Sub-Contractor has entered into a confidentiality undertaking with the Concessionaire on the same terms as set out in Clause 30.7 (Confidentiality); and

18.1.2. the Concessionaire shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

18.2. In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Concessionaire in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Concessionaire shall:

18.2.1. immediately cease all use of the Authority Background IPRs and the Authority Data (as the case may be);

18.2.2. at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Concessionaire may

destroy the documents and other tangible materials that contain any of the Authority Background IPRs and the Authority Data (as the case may be); and

- 18.2.3. ensure, so far as reasonably practicable, that any Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Concessionaire computer, word processor, voicemail system or any other Concessionaire device containing such Authority Background IPRs and/or Authority Data.

19. IPR INDEMNITY

- 19.1. The Concessionaire shall ensure and procure that the availability and provision of the Utilities Switching Services and the performance of the Concessionaire's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 19.2. The Concessionaire shall, during and after the Term, on written demand indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 19.3. If an IPR Claim is made, or the Concessionaire anticipates that an IPR Claim might be made, the Concessionaire may, at its own expense and sole option, either:
 - 19.3.1. procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - 19.3.2. replace or modify the relevant item with non-infringing substitutes provided that:

- a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- b) the replaced or modified item does not have an adverse effect on any other Utilities Switching Services;
- c) there is no additional cost to the Authority; and
- d) the terms and conditions of this Contract shall apply to the replaced or modified Utilities Switching Services.

19.4. If the Concessionaire elects to procure a licence in accordance with Clause 19.3.1. or to modify or replace an item pursuant to Clause 19.3.2, but this has not avoided or resolved the IPR Claim, then:

19.4.1. the Authority may terminate this Contract by written notice with immediate effect for material Default; and

19.4.2. without prejudice to the indemnity set out in Clause 19.2 , the Concessionaire shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

20. BRANDING AND PUBLICITY

20.1. The Concessionaire shall not:

20.1.1. make any press announcements or publicise this Contract or its contents in any way; or

20.1.2. use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

21. GOVERNANCE AND COMMUNICATION

21.1. The Parties shall comply with Schedule 3.

22. COOPERATION

22.1. The Parties acknowledge and confirm their understanding of the need for a reasonable approach to the planning, carrying out and variation of the Utilities Switching Services and the importance of taking full account of the circumstances and context in which they will be provided.

22.2. In this spirit, and without prejudice to the Authority's rights under Clause 23, the Parties agree to co-operate and consult with each other to the fullest extent practicable and to act reasonably with due regard to the standard of the Utilities Switching Services and in particular the Authority will consult in good faith and in a timely manner with the Concessionaire in connection with the design of all additions to or alterations of the services which may affect the provision of the Utilities Switching Services.

23. TERMINATION

23.1. The Authority may terminate the Contract for any reason by giving six months' notice in writing to the other Party, such notice cannot be served before 12 months from the Commencement Date.

23.2. The Authority may, by serving written notice on the Concessionaire, terminate this Contract immediately (or on such other date specified in the written notice) in the event that:

23.2.1. the Concessionaire commits a Default:

- a) that the Concessionaire has not remedied the Default to the satisfaction of the Authority within twenty five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material Default and requesting it to be remedied; or
- b) that is not, in the opinion of the Authority, capable of being remedied;
- c) that is a material Default, whether a single Default or series of repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default. For the avoidance of doubt right of termination for material Default of the Concessionaire is expressly reserved in this Contract including, without limit to:
 - (i) Clauses 9.6.2,
 - (ii) Clause 10.4.2
 - (iii) Underpayment to the Authority amounting to greater than 5% of the Authority's Percentage Share due;

23.2.2. the Concessionaire has ceased to carry on the business of the supply, sale or provision of the Utilities Switching Services;

23.2.3. there has been a change of Control over the Concessionaire, unless the Authority has:

- a) given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
- b) not served its notice of objection within six (6) Months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control; and/or

23.2.4. an Insolvency Event occurs in respect of the Concessionaire.

23.2.5. following a Critical Service Level Failure:

- a) the Authority has rejected three (3) draft Corrective Action Plans; or
- b) If following implementation of the Corrective Action Plan:
 - (i) The Critical Service Level Failure(s) persists;
 - (ii) the Critical Service Level Failure(s) has not been remedied to the satisfaction of the Authority; or
 - (iii) The Critical Service Level Failure(s) reoccurs within the subsequent six (6) month period from the date of approval of the Corrective Action Plan by the Authority.

23.3. Where the Authority has the right to terminate this Contract, it shall be entitled to terminate all or part of this Contract provided always that, if the Authority elects to terminate this Contract in part, the parts of this Contract not terminated can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

24. SUSPENSION

- 24.1. In the event that the Concessionaire fails to rectify any remediable Default(s) or persistently commits remediable Defaults, the Authority shall be entitled, without prejudice to any of its other rights under this Contract and on reasonable notice to the Concessionaire, to suspend the Concessionaire's provision of part or all of the Utilities Switching Services for such period as it shall consider sufficient for the Concessionaire to remedy the Default(s) (the "Suspension Period").

25. EFFECTS OF TERMINATION

- 25.1. Upon the expiry of this Contract or its earlier termination (for whatever reason), the Concessionaire shall:

25.1.1. immediately return to the Authority all the Authority Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Utilities Switching Services;

25.1.2. not be entitled to any compensation in respect of any Administration Levy;

25.1.3. provide all reasonable assistance and information to the Authority (and to any Replacement Concessionaire appointed by the Authority) if requested, to the extent necessary to effect an orderly assumption of the Utilities Switching Services by the Authority or the Replacement Concessionaire including but not limited to the following:

- a) within 10 Working Days (including at any other time during the Term prior to termination) of being so requested by the Authority, the Concessionaire shall provide a copy of (and requisite licence to use), and thereafter keep updated, in a fully indexed and catalogued

format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Utilities Switching Services including (but without limitation) details which relate to the performance and monitoring of the Utilities Switching Services including all historical Utilities Switching Services reports and documents; training and induction manuals; business process and procedures; know-how (which the Concessionaire shall capture and document); any information relating to the delivery of the Utilities Switching Services which the Concessionaire is under an obligation to record and report, including historical information of previous Service performance; and any other information which in the reasonable opinion of the Authority is required for a smooth transfer of the Utilities Switching Services to a Replacement Concessionaire;

- b) following notification by the Authority to award a contract to the Replacement Concessionaire, the Authority shall be entitled to bring the Replacement Concessionaire to any meetings between the Concessionaire and the Authority relating to the Utilities Switching Services throughout the Term plus up to one (1) year thereafter, provided that the Concessionaire may request that the Replacement Concessionaire be excluded from discussions relating to commercial issues which are sensitive to the Concessionaire's business and which are not relevant to the provision of the replacement Utilities Switching Services (including discussion of any proprietary processes or information that are considered commercially sensitive by the Concessionaire); and
- c) cease to use the Authority Data and, at the direction of the Authority, provide the Authority and/or the Replacement Concessionaire with a complete and uncorrupted version of the Authority Data in electronic form in the formats and on media agreed with the Authority and/or the Replacement Concessionaire.

- 25.2. Following termination of this Contract by either Party, the Authority shall be entitled to:
- 25.2.1. require the Concessionaire to assign and the Concessionaire shall agree to assign the full benefit of all existing future Switches, together with full details of all associated contacts, to the Authority, and all deposits and advance payments shall be transferred to the incoming Concessionaire; and
 - 25.2.2. require the Concessionaire to assist in any application to transfer the benefit of any licences obtained pursuant to this Contract to the Authority or to any third party nominated by the Authority and the Concessionaire shall agree to so assist, at the expense of the new licensee.
- 25.3. Upon the expiry of this Contract or its earlier termination (for whatever reason), the Parties shall comply with the provisions of Schedule 8 and the Exit Plan agreed between the Parties in relation to orderly transition of the Utilities Switching Services to the Authority or a Replacement Concessionaire.
- 25.4. Where the Authority terminates the Contract, other than under Clauses 23.1 the Concessionaire hereby indemnifies the Authority against all claims, proceedings, actions, losses, damages, costs, expenses, and any other liabilities (including legal fees) which may arise out of, or in consequence of, such termination including but not limited to making alternative arrangements for the supply of the Utilities Switching Services.
- 25.5. The following Clauses survive the termination of each Contract: 9, (Prevention of fraud and bribery), 10 (Compliance), 14 (liability), 16-19 (IPR), 27 (Dispute Resolution) 30 (General), 31 (Law and Jurisdiction) and any clauses and Schedules which are expressly or by implication intended to continue.

26. FORCE MAJEURE

- 26.1. Neither Party shall be liable for any delay in performing or failure to perform its obligations under this Contract if and to the extent that such delay or failure results from Force Majeure. Such delay or failure shall not constitute a breach of this Contract.
- 26.2. Subject to the Party claiming Force Majeure sending to the other Party a written notice giving reasonable details of the happening of Force Majeure, if such delay or failure of the nature referred to in Clause 26.1 above continues for more than sixty (60) days either Party may terminate this Contract immediately by sending a written notice to the other Party.
- 26.3. So long as the event of Force Majeure subsists, the Authority may, in its absolute discretion, contract with other persons for the provision of the Utilities Switching Services.

27. DISPUTE RESOLUTION PROCEDURE

- 27.1. In the event of a Dispute, the senior representatives of the Parties with authority to settle the Dispute will, within 28 days of a written request from one Party to the other, meet in good faith to resolve the Dispute.
- 27.2. If the Dispute is not resolved at that meeting, the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure then in force. The mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute shall be resolved in accordance with Clauses 27.3 to 27.6 below.
- 27.3. The Concessionaire agrees that the Authority shall have the exclusive right, at its sole option, to refer any Dispute to be resolved by arbitration under the LCIA Rules

then in force. The number of arbitrators shall be one. The seat, or legal place, of the arbitration shall be London and the language to be used in the proceedings shall be English.

- 27.4. The right of the Relevant Authority to refer a Dispute to arbitration shall be exercisable even if the Concessionaire has or has purported to commence proceedings under Clause 27.2 unless the Relevant Authority has consented to such proceedings. Where the Relevant Authority commences arbitration proceedings in accordance with Clause 27.3, notwithstanding the commencement of any court proceedings, the Parties shall take all steps and do all things necessary to ensure that the court proceedings are stayed in favour of the arbitration proceedings.
- 27.5. The right of the Relevant Authority to commence court proceedings arises each time there is a Dispute and shall not be affected by any previous decision made.
- 27.6. During the course of any Dispute, the Concessionaire shall not be entitled to suspend the performance of this Contract.
- 27.7. The courts of England and Wales have exclusive jurisdiction to settle any Dispute under this Contract.

28. NOTICES

- 28.1. Any notice required or authorised to be given under this Contract or required by statute, law or regulation shall be (save where otherwise specified):
- 28.1.1. in writing;
- 28.1.2. signed by or on behalf of the Party giving it;

28.1.3. sent for the attention of the person, at the address specified in this Clause (or to such other address or person as that Party may notify to the other, in accordance with the provisions of this Clause);

a) shall be:

(i) delivered personally; or

(ii) sent by recorded delivery or registered post.

28.2. A notice shall be deemed to have been received:

28.2.1. if delivered personally, at the time of delivery or, if delivered after 16.00 hours on the next Working Day; or

28.2.2. in the case of recorded delivery or registered post, provided the relevant notice is not returned as undelivered, at 9.00 am on the second Working Day after posting.

28.3. For the purposes of this Clause 28:

28.3.1. all times are to be read as local time in the place of deemed receipt;

28.3.2. if deemed receipt under this Clause is not within business hours (meaning 9.00 am to 5.30 pm on a Working Day), the notice is deemed to have been received the next Working Day.

28.3.3. in servicing notice for the purposes of Clauses 28.1.4(a), it shall be sufficient to prove that personal delivery was made or that the envelope containing the notice was properly addressed and delivered to the relevant Party.

28.4. For the purposes of this Clause 28, the addresses for service of a notice are as follows:

28.4.1. Authority:

Address: The Cabinet Office, 70 Whitehall, London, SW1A 2AS

For the attention of: switch@crowncommercial.gov.uk

28.4.2. Concessionaire:

Address: 8 Fenchurch Place, London, EC3M 4AJ

For the attention of: **[REDACTED]**

28.5. The provisions of this Clause 28 shall not apply to the service of any process in any legal action or proceedings.

28.6. A notice required to be given under this Contract shall not be validly served if sent by e-mail.

29. VARIATION

29.1. Except as otherwise permitted by this Contract, no change to its terms shall be effective unless it is in writing and signed by or on behalf of both Parties.

30. GENERAL

30.1. Assignment

- 30.1.1. The Concessionaire shall not assign, encumber, dispose of or otherwise transfer any of its rights under this Contract without the prior written consent of the Authority.
- 30.1.2. The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
- a) any Central Government Body; or
 - b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,
- 30.1.3. and the Concessionaire shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause.

30.2. Sub-Contracting

- 30.2.1. The Concessionaire may employ Sub-Contractors or otherwise delegate to any third party the performance of any of its obligations under this Contract provided that it is reasonable to do so and the Concessionaire has notified the Authority in advance. The Authority will notify the Concessionaire if it considers any Sub-Contractor or third party is unsuitable. Every act or omission of the Sub-Contractor or third party shall for the purposes of this Contract be deemed to be the act or omission of the Concessionaire.
- 30.2.2. Where the Concessionaire enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall ensure that a

provision is included in such Sub-Contract which requires payment to be made of all sums due by the Concessionaire to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

- 30.2.3. The Concessionaire shall take all reasonable steps to satisfy itself that its employees or Sub-Contractors (or their employees) are suitable in all respects to perform the Services.
- 30.2.4. The Concessionaire shall immediately notify the Authority if they have any concerns regarding the propriety of any of its Sub-Contractors in respect of work/services rendered in connection with this Contract.

30.3. Partnership

- 30.3.1. Nothing in this Contract shall constitute or be construed as creating a partnership or the relationship of principal and agent or employer and employee between the Authority and the Concessionaire. Neither Party shall be responsible for the acts or omissions of the employees or representatives of the other Party.

30.4. Waiver and cumulative remedies

- 30.4.1. The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. No delay or failure by either Party to exercise any of its powers, rights or remedies under this Contract shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Unless otherwise provided in this Contract, the remedies and rights provided in this Contract are cumulative and not exclusive of any remedies and rights provided by Law, in equity or otherwise.

30.5. Severability

- 30.5.1. If any part of this Contract is found by any court or other competent Authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Contract which shall continue to be valid and enforceable to the fullest extent permitted by Law.

30.6. Rights of Third Parties

- 30.6.1. The provisions of Clause 25 ("Third Party Provisions") confer benefits on persons named in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by such named parties by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 30.6.2. Subject to clause 30.6.1, a person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 30.6.3. No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 30.6.4. Any amendments or modifications to this Contract may be made, and any rights created under Clause 30.6.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

30.7. Confidentiality

30.7.1. Except to the extent set out in this Clause 30.7.1 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- a) treat the other Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- b) not disclose the disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
- c) not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
- d) immediately notify the disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the disclosing Party's Confidential Information.
- e) The recipient shall be entitled to disclose the Confidential Information of the disclosing Party where:
 - (i) the recipient is required to disclose the Confidential Information by Law;
 - (ii) the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;

- (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
- (c) the conduct of a Central Government Body review in respect of this Contract; or
- (d) the recipient has reasonable grounds to believe that the disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

30.7.2. The Authority may disclose the Concessionaire's Confidential Information:

- a) to any Central Government Body or other public body on the basis that the information may only be further disclosed to Central Government Bodies or other public bodies;
- b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 30.7.2(b) for any purpose relating to or connected with Contract;

- e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

30.7.3. and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 30.7.3.

30.8. Transparency

30.8.1. The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf and the Transparency Principles referred to therein. The Authority shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Concessionaire to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

30.9. Entire Contract

30.9.1. This Contract supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral and constitutes the entire agreement between the Parties in relation to the subject matter of this Contract.

30.9.2. Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

30.9.3. Nothing in this Clause 30.9 shall exclude any liability in respect of misrepresentations made fraudulently.

30.10. Law and Jurisdiction

30.10.1. This Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and be construed and take effect in all respects in accordance with English Law.

30.10.2. For the benefit of the Parties, it is hereby agreed that the courts of England are to have jurisdiction to settle any Disputes arising out of or in connection with this Contract or its termination and that accordingly any suit, action or proceedings arising out of or in connection with this Contract or its termination may be brought in such courts.

AS WITNESS the hands of the Parties hereto:

SIGNED by **[REDACTED]**.....

for and on behalf of the Authority in the presence of:

[REDACTED].....

SIGNED by **[REDACTED]**.....

for and on behalf of the Concessionaire in the presence of:

[REDACTED].....

SCHEDULE 1 – UTILITIES SWITCHING SERVICES

PART A: Specification



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PART B: Services and Standards

1. Introduction

2. The Concessionaire has been given the right to exploit the Utilities Switching Services. This Schedule sets out the nature of the Utilities Switching Services that the Concessionaire shall provide under the Contract and some of the applicable standards. Any standards set out in this Schedule are the minimum acceptable level to be achieved on a consistent basis.
3. Where the type and volume of Utilities Switching Services required are described under this Contract, this is to give a broad indication of what is currently envisaged. It is expected that the Concessionaire will co-operate with the Authority during the course of the Contract to provide such services as are required and develop or adapt the Utilities Switching Services to meet ever changing requirements.

4. Services Required

- 4.1. The Concessionaire shall provide the new Utilities Switching Services under this Contract.
- 4.2. The Concessionaire shall provide the Utilities Switching Services, which include the following:
 - 4.2.1. the requirements set out in Part A of this Schedule;
 - 4.2.2. marketing the offer across government and the wider public sector with the endorsement and support of the Authority;
 - 4.2.3. other services as may be agreed during Co-Design.

4.3. The Concessionaire shall meet the following aims and objectives of the Authority in relation to the delivery of the Utilities Switching Services:

4.3.1. To provide Utilities Switching services to Potential Utilities Switching Services Buyers;

4.3.2. [INSERT AT CO-DESIGN]

4.4. The [INSERT AGREED EXCLUSIONS IN CO-DESIGN] function(s) of the Utilities Switching Services is specifically excluded from this Contract.

Other Utilities Switching Services

4.5. The Concessionaire shall provide other support services, subject to demand.

[INSERT CENTRAL DESCRIPTION IN CO-DESIGN]

4.6. Continuous Improvement

The Concessionaire shall be proactive in the identification and introduction of new services that would enhance the reputation of the Authority.

4.7. Service Standards

The Concessionaire shall [INSERT AT CO-DESIGN].

4.8. The Concessionaire shall ensure that the Staff shall deliver the Utilities Switching Services at all times in a professional manner and in accordance with Good Industry Practice.

5. Marketing and Advertising

The Concessionaire shall promote the Utilities Switching Services to potential Buyers.. The Authority shall co-operate with the Concessionaire in initiatives that enable the income from the Utilities Switching Services to be increased and enhance the standings / reputations of both the Authority and the Concessionaire.

The Concessionaire shall advertise, the Utilities Switching Services to potential Buyers incorporating references to the Authority, according to style guidelines set by the Authority and with its prior approval.

6. Buyer Feedback and/or Complaints

6.1. The Concessionaire shall notify the Authority of any material Buyer complaints as soon as it is reasonably practicable. A record is to be kept of all complaints and the subsequent action taken and the Concessionaire is to make it available to the Authority. The Concessionaire shall provide the Authority with a copy of any proposed response, prior to the issue to the complainer, to allow the Authority the opportunity to comment.

7. Quality Performance Criteria

7.1. Performance will be monitored by the Authority and discussed between the Contract Managers. Management information will be provided monthly as set out in Schedule 4. In the event of an unsatisfactory level being sustained, the Concessionaire will be notified of the Defaults and the time by which they must be rectified

8. Evaluation Criteria

8.1. The Concessionaire shall provide the Authority with evaluation of the impact of the Utilities Switching during the period of the Contract **[INSERT AT CO-DESIGN]**.

SCHEDULE 2 – MANAGEMENT INFORMATION

[INSERT AT CO-DESIGN]

1. The Concessionaire must report the following Management information and other Management Information as detailed in Paragraph 3.13.13 of the Specification to the Authority on a monthly basis by the 5th working day of the month based on the previous month's performance. For example, a KPI report submitted on the 2nd of February will be for the performance in January. KPI reports should be issued via email to the dedicated Authority Agreement manager.

Area	KPI	Description	Measure
Customer Service	3.15.1 Query Responses	3.15.1.1 Number of email queries responded to within the Agreement SLA (1 working days)	>98% = Green 90 - 97.9% = Amber <90% = Red
		3.15.1.2 % of phone calls answered within 30 seconds	>98% = Green 90 - 97.9% = Amber <90% = Red
		3.15.1.3 % of phone queries resolved over the phone (first contact)	>75% = Green 75 - 50% = Amber <50% = Red
	3.15.2 Outstanding Complaints	Number of complaints received	For information only To be compared on a month by month basis as part of SRM process
		3.15.2.1 Number of complaints open five (5) working days after receipt	% against total complaints received that month >75% = Red 75 - 50% = Amber <50% = Green
		3.15.2.2 Number of long term unresolved complaints (complaints unresolved for over twenty (20) working days)	% against total complaints received that month >99% = Red 95 - 99% = Amber

			<95% = Green
	3.15.3 Customer Satisfaction (of switching experience only)	% of customers with positive satisfaction scores of switching website experience. These questions/ratings will be designed to reflect the customer's experience of the switching website only - and not of incumbent or new Utilities suppliers.	>80% = Green 60 - 80% = Amber <60% = Red
System availability	3.15.4 Availability of the online system	Uptime during 8:00 - 18:00 Monday to Friday, excluding public holidays	>99.5% = Green 99 - 99.5% = Amber <99% = Red
		Uptime outside of the period of 8:00 - 18:00 Monday to Friday and including public holidays	>95% = Green 90 - 95% = Amber <90% = Red
	3.15.5 Incidents (including unplanned downtime)	Number of incidents during the period	For information only To be compared on a month by month basis as part of SRM process
		Number of incidents, to which an initial response was not provided within the timelines specified in 3.14.1	For information only To be compared on a month by month basis as part of SRM process
		Number of incidents, which were not resolved within the target resolution times specified in 3.14.1	For information only To be compared on a month by month basis as part of SRM process
	3.15.6 Problems	Number of problems during the period	For information only To be compared on a month by month basis as part of SRM process
		Number of problems, which were not resolved within the target resolution times specified in 3.14.2	For information only To be compared on a month by month basis as part of SRM process

Reporting	3.15.7(a) Reporting of Successful Switches via the Authority's dedicated system	Submission of reports on Successful Switches through the Authority's dedicated online spend reporting portal or other as requested by the Authority on or prior to the Reporting Date every Month during the Contract Period at which point the methodology for ongoing report should be handed over to the replacement Contractor.	PASS = Submitted on time No errors in the system Whole months information provided Accurate information submitted Correct customer URN's provided In correct/most up to date submission format All criteria above satisfied AND Accuracy of Successful Switches declared within 10% = Green Not meeting one of the above criteria OR Accuracy of Successful Switches declared within 20% = Amber Failing to meet two or more of the above criteria OR Accuracy of Successful Switches declared within 30% = Red
	3.15.7(b) Reporting of Contracts	Publishing of all successful switches on a quarterly basis, within 30 days after the end of each quarter to: www.ted.europa.eu and https://www.gov.uk/contracts-finder	Accuracy 100% = Green 96 - 99% = Amber <96% = Red
	3.15.7(c) Authority Management Information	Management Information as specified within 3.13.13	Instant availability or submission within 24 hours = Green Submission of Delay of less than 24 hours of submission of Management Information = Amber Delay of more than 24 hours of submission of Management Information = Red
Payment	3.15.8 Payment of	Monthly payment of Management Levy to Us, as submitted in	PASS = Accuracy of Payment of

	Switch Fee percentage to Us.	Management Information 3.15.7(a)	<p>Authority Percentage Share within 10% of the amount verified by the Authority within 30 days of invoice = Green</p> <p>Accuracy of Payment of Authority Percentage Share within 20% of the amount verified by the Authority within 30 days of invoice = Amber</p> <p>Accuracy of Payment of Authority Percentage Share within 30% of the amount verified by the Authority within 30 days of invoice = Red</p>
Annual Financial Business Accounts	3.15.9 Submission of annual accounts	The Supplier will provide the Authority with a completed Self Audit Certificate no later than two (2) months after the end of each Contract Year during the Term and will complete any actions outlined by Authority conducted Audits within specified timescales.	<p>Receipt of a completed Self Audit Certificate no later than two (2) Months after the end of each Contract Year confirmed by the Authority.</p> <p>Completion of any actions arising from audits conducted by the Authority within specified timescales and confirmed by the Authority.</p>
Supply Chain	3.15.10 SME Usage	Percentage of supply chain classified as SME's	For information Only (to be used to produce a normalised league table on a quarterly basis)
	3.15.11 Prompt Payment	Percentage of supply chain (any Supplier subcontractors) and the Authority paid within 30 days	<p>>98% = Green</p> <p>90 - 97.9% = Amber</p> <p><90% = Red</p>
Sustainability	3.15.12 Use of apprentices - to be submitted to Us in bi-annual	Number of apprentices employed directly as a result of the framework agreement	For Information Only
		% of apprentices gaining full time employment at the end of appointment	For Information Only

	reports	% of apprentices gaining nationally recognised qualification during their apprenticeship	For Information Only
	3.15.13 Generation of Jobs - to be submitted to Us in bi-annual reports	Number of job created directly as a result of this framework agreements	For Information Only

2. The Concessionaire shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of this Schedule 2.

3. The Concessionaire grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to any Management Information supplied or due to be to be Supplied under this Contract, (including but not limited to for administering this Contracts and the Utilities Switching Services, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity) with a right to grant sub-licences) which shall survive termination of this Contract to:
 - 3.1 use and to share with any central government department

 - 3.2 use and to share with any Replacement Concessionaire; and/or

 - 3.3 publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

4. The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.
5. The Authority may consult with the Concessionaire to help with its decision regarding any exemptions under Paragraph 4 above but, for the purpose of this Contract, the Authority shall have the final decision in its absolute and sole discretion.

SCHEDULE 3 – GOVERNANCE AND COMMUNICATION

- 1 The Contract shall be managed at the day to day level through the Contract Managers. The initial Contract Managers are as follows:

- 1.1 For the Authority:

Utilities Switching Services Contract Manager
Crown Commercial Service, 9th Floor, The Capital, Old Hall Street, L3 9PP.
switch@crowncommercial.gov.uk

- 1.2 For the Concessionaire:

[REDACTED]

Gemserv Limited, 8 Fenchurch Place, London, EC3M 4AJ

- 2 Both Parties will ensure that the appropriate resource is made available on a regular basis such that the aims, objectives and the specific provisions of this Contract can be fully realised.
- 3 The Authority's Contract Manager and the Concessionaire's Contract Manager shall formally meet once a Month throughout the Term (or at such other intervals or occasions as the Authority may reasonably request) to discuss sales, new initiatives, marketing programmes, Buyer feedback, performance issues, Authority feedback and any issues or potential issues which may arise under the Contract and/or in the delivery or the Utilities Switching Services.
- 4 Contract Manager and the Concessionaire's Contract Manager shall formally meet to discuss performance of the Utilities Switching Services and the Contract during the meeting described in Paragraph 3 (or at such other intervals or on such occasions as the Authority may reasonably request).

- 5 The Concessionaire's Contract Manager shall be required to attend any additional meetings requested by the Authority pursuant to this Schedule at no additional cost to the Authority.

SCHEDULE 4 – COMMERCIAL SENSITIVE INFORMATION

SCHEDULE 5 - TRANSPARENCY REPORTS

1. GENERAL

- 1.1 Within three (3) months of the Commencement Date or the date so specified by the Authority the Concessionaire shall provide to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements in Annex 1 of this Schedule 5 below.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Concessionaire, the Concessionaire shall submit a revised version of the relevant report for Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have agreed versions of each Transparency Report.
- 1.3 The Concessionaire shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 5 below.
- 1.4 Any Dispute in connection with the preparation and/or approval of Transparency Reports shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 The requirements in this Schedule 5 are in addition to any other reporting requirements in this Contract.

ANNEX 1 - LIST OF TRANSPARENCY REPORTS

Title of Report	Content	Format	Frequency
[e.g. Technical]	[]	[]	[]

SCHEDULE 6 - CO-DESIGN

During the Implementation Period the parties shall enter into good faith discussions to agree the Co-Design of the following items, however the ultimate decision shall be that of the authority in its absolute discretion:

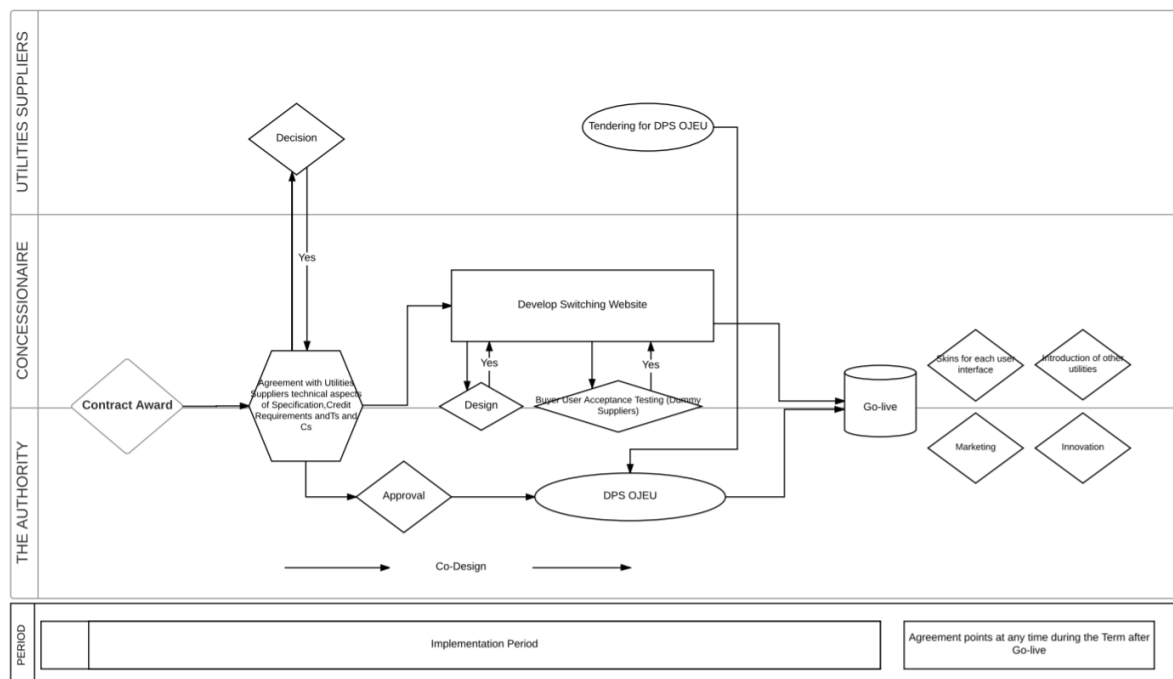
- 1.1.1.1. The extent of the Authority's obligations under the Contract;
- 1.1.1.2. The Implementation plan;
- 1.1.1.3. The impact of the Services on Buyers and Utilities Suppliers
- 1.1.1.4. Services' innovation;
- 1.1.1.5. The use of technology to support Buyers
- 1.1.1.6. Changes in the Services
- 1.1.1.7. Development of the Utilities Suppliers' specification(s) and requirements
- 1.1.1.8. Assistance in management of Utilities Suppliers' performance
- 1.1.1.9. Facilitating prompting and validation of Utilities Suppliers' declaration of Successful Switches in order to receive Switch Fee(s) promptly and correctly, and forward the relevant percentage onto the Authority
- 1.1.1.10. Agreement of Terms and Conditions for Utilities Suppliers utilising the Dynamic Purchasing System
- 1.1.1.11. Agreement of process for credit checking customers and interaction with Utilities suppliers

- 1.1.1.12. Collaborative marketing approach
- 1.1.1.13. Buyer focus groups User Acceptance Testing and creating a Buyer journey to suit Buyers with longer approval processes
- 1.1.1.14. Design of the Services

At any time before or after the Service Live Date, the Parties shall enter into good faith discussions to agree the Co-Design of the following items, however the ultimate decision shall be that of the authority in its absolute discretion:

- 1.1.1.15. The introduction of additional utilities to be made available under the Dynamic Purchasing System
- 1.1.1.16. Skins for each guided user interface
- 1.1.1.17. Marketing of the Utilities Switching Services; and
- 1.1.1.18. Innovations

Indicative process flow of Implementation Period



SCHEDULE 7 – BUSINESS CONTINUITY AND DISASTER RECOVERY

1. Definitions

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Clause 1 (Definitions):

"BCDR Plan"	has the meaning given to it in paragraph 2 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in paragraph 2.3.2 of this Schedule;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Utilities Switching Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form (for the purposes of this definition the "Disaster Period");
"Disaster Recovery Plan"	has the meaning given to it in paragraph 2.3.3 of this Schedule;
"Disaster Recovery System"	the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster;

"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the provision of Utilities Switching Services following the occurrence of a Disaster;
"Related Supplier"	any person who provides services to the Authority which are related to the Utilities Switching Services from time to time;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Schedule; and
" Concessionaire's Proposals"	has the meaning given to it in paragraph 6.3 of this Schedule;

2. BCDR PLAN

2.1. [Not used]

2.2. Within thirty 30 Working Days of the Commencement Date the Concessionaire shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Concessionaire shall follow to:

2.2.1. ensure continuity of the business processes and operations supported by the Utilities Switching Services following any failure or disruption of any element of the Services; and

2.2.2. the recovery of the Utilities Switching Services in the event of a Disaster ("BCDR Plan").

2.3. The BCDR Plan shall be divided into three sections:

2.3.1. Section 1 which shall set out general principles applicable to the BCDR Plan;

2.3.2. Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and

2.3.3. Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").

2.4. Following receipt of the draft BCDR Plan from the Concessionaire, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Clause 29 (dispute resolution procedure).

3. Section 1 OF THE BCDR PLAN - GENERAL PRINCIPLES

3.1. Section 1 of the BCDR Plan shall:

3.1.1. set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;

3.1.2. provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Utilities Switching Services and any goods and/or services provided to the Authority by a Related Supplier;

- 3.1.3. contain an obligation upon the Concessionaire to liaise with the Authority and any Related Suppliers with respect to business continuity and disaster recovery;
- 3.1.4. detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Authority and any of its other Related Supplier in each case as notified to the Concessionaire 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 multiple channels;
- 3.1.6. contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Services and processes for managing those risks;
 - (c) identification of risks arising from the interaction of the provision of the Utilities Switching Services with the goods and/or services provided by a Related Supplier; and
 - (d) a business impact analysis 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 for the Concessionaire (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 minimise data loss;
 - 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 assistance to key contacts at the Authority as required by the Authority 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 this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2. the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3. it complies with the relevant provisions of Schedule 9 and all other industry standards from time to time in force; and
 - 3.2.4. it details a process for the management of disaster recovery testing.
- 3.3. The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services and the business operations supported by the provision of Services.

- 3.4. The Concessionaire shall not be entitled to any relief from its obligations to meet the Required Service Levels or Key Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Concessionaire of this Contract.

4. Section 2 OF THE BCDR PLAN - BUSINESS CONTINUITY

- 4.1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of the Utilities Switching Utilities Switching Services remain supported and to ensure continuity of the business operations supported by the Services including:

4.1.1. the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Utilities Switching Services; and

4.1.2. the steps to be taken by the Concessionaire upon resumption of the provision of the Utilities Switching Services in order to address the effect of the failure or disruption.

- 4.2. The Business Continuity Plan shall:

4.2.1. address the various possible levels of failures of or disruptions to the provision of Services;

4.2.2. set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services;

4.2.3. specify any applicable Required Service Levels or Key Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Required Service Levels or Key Performance Indicators in respect of the provision of other

Services during any period of invocation of the Business Continuity Plan;
and

4.2.4. set out the circumstances in which the Business Continuity Plan is invoked.

5. Section 3 OF THE BCDR PLAN - DISASTER RECOVERY

5.1. The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Concessionaire 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 Disaster Recovery Plan shall include the following:

5.2.1. the design and build specification of the Disaster Recovery System;

5.2.2. details of the procedures and processes to be put in place by the Concessionaire in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including:

- (a) data centre and disaster recovery site audits;
- (b) backup methodology and details of the Concessionaire's approach to data back-up and data verification;
- (c) identification of all potential disaster scenarios;
- (d) risk analysis;

- (e) documentation of processes and procedures;
- (f) hardware configuration details;
- (g) network planning including details of all relevant data networks and communication links;
- (h) invocation rules;
- (i) Service recovery procedures; and
- (j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;

5.2.3. any applicable Required Service Levels or Key Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Required Service Levels or Key Performance Indicators in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;

5.2.4. details of how the Concessionaire shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

5.2.5. access controls to any disaster recovery sites used by the Concessionaire in relation to its obligations pursuant to this Schedule; and

5.2.6. testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1. The Concessionaire shall review the BCDR Plan:
- 6.1.1. on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2. within three calendar Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 6.1.3. where the Authority requests in writing any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Concessionaire shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Concessionaire shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Concessionaire shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 6.2. Each review of the BCDR Plan pursuant to paragraph 6.1 shall assess its 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 any 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 Concessionaire within such period as the Authority shall reasonably require.
- 6.3. The Concessionaire shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the a report (a "Review Report") setting out the Concessionaire's proposals (the "Concessionaire's Proposals") for

addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.

- 6.4. Following receipt of the Review Report and the Concessionaire's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Concessionaire's Proposals. If the Parties are unable to agree Review Report and the Concessionaire's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5. The Concessionaire shall as soon as is reasonably practicable after receiving the approval of the Concessionaire's Proposals effect any change in its practices or procedures necessary so as to give effect to the Concessionaire's Proposals. Any such change shall be at the Concessionaire's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

- 7.1. The Concessionaire shall test the BCDR Plan:
 - 7.1.1. regularly and in any event not less than once in every Contract Year;
 - 7.1.2. in the event of any major reconfiguration of the Services
 - 7.1.3. at any time where the Authority considers it necessary (acting in its sole discretion).
- 7.2. If the Authority requires an additional test of the BCDR Plan, it shall give the Concessionaire written notice and the Concessionaire shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Concessionaire's costs of the additional test shall be borne by

the Authority unless the BCDR Plan fails the additional test in which case the Concessionaire's costs of that failed test shall be borne by the Concessionaire.

- 7.3. The Concessionaire shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of 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.
- 7.4. The Concessionaire 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.
- 7.5. The Concessionaire shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
 - 7.5.1. the outcome of the test;
 - 7.5.2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3. the Concessionaire's proposals for remedying any such failures.
- 7.6. Following each test, the Concessionaire shall take all measures requested by the Authority to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Concessionaire, at its own cost, by the date reasonably required by the Authority.

8. INVOCATION OF THE BCDR PLAN

- 8.1. In the event of a complete loss of service or in the event of a Disaster, the Concessionaire shall immediately invoke the BCDR Plan (and shall inform the

Authority promptly of such invocation). In all other instances the Concessionaire shall invoke or test the BCDR Plan only with the prior consent of the Authority.

9. FORCE MAJEURE

- 9.1. The Concessionaire shall not be entitled to relief under Clause 26 (Force Majeure) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

SCHEDULE 8– EXIT MANAGEMENT

1. DEFINITIONS

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Clause 1 (Definitions):

"Authority Assets"	the Authority's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services
"Concessionaire Assets"	all assets and rights used by the Concessionaire to provide the Services in accordance with this Contract but excluding any Buyer Assets
"Exclusive Assets"	Concessionaire Assets used exclusively by the Concessionaire in the provision of the Services;
"Exit Information"	has the meaning given to it in paragraph 3.1 of this Schedule;
"Exit Manager"	the person appointed by each Party to manage their respective obligations under this Schedule;

"Exit Plan"	means a plan submitted by the Concessionaire to the Authority in accordance with paragraph 13 of this Schedule;
"Net Book Value"	the current net book value of the relevant Concessionaire Asset(s) calculated in accordance with the Concessionaire's Tender (if stated) or (if not stated) the depreciation policy of the Concessionaire (which the Concessionaire shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	those Concessionaire Assets used by the Concessionaire in connection with the Services but which are also used by the Concessionaire for other purposes;
"Registers"	the register and configuration database referred to in paragraph 2.2 of this Schedule;
"Replacement Services"	any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of this Contract whether those goods are provided by the Authority internally and/or by any third party;
"Termination Assistance"	the activities to be performed by the Concessionaire pursuant to the Exit Plan,

	and other assistance required by the Authority pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 5.1 of this Schedule;
"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the Concessionaire is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 5.2 of this Schedule;
"Transferable Assets"	Exclusive Assets which are capable of legal transfer to the Authority;
"Transferable Contracts"	Sub-Contracts, licences for Concessionaire's software, licences for third party software or other agreements which are necessary to enable the Authority or any Replacement Concessionaire to provide the Services or the Replacement Services, including in relation to licences all relevant documentation;
"Transferring Assets"	has the meaning given to it in paragraph 8.2.1 of this Schedule;
"Transferring Contracts"	has the meaning given to it in paragraph 8.2.3 of this Schedule.

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2. OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT

2.1. The Concessionaire shall within 30 days from the Commencement Date provide to the Authority a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2. During the term of the Contract the Concessionaire shall promptly:

2.2.1. create and maintain a detailed register of all Concessionaire Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Services; and

2.2.2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Concessionaire provides the Services

("Registers").

2.3. The Concessionaire shall:

2.3.1. ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and

2.3.2. procure that all licences for third party software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Authority)

at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Concessionaire upon the Concessionaire ceasing to provide the Services (or part of them) and if the Concessionaire is unable to do so then the Concessionaire shall promptly notify the Authority and the Authority may require the Concessionaire to procure an alternative Sub-Contractor or provider of Services.

2.4. Each Party shall appoint an Exit Manager within three (3) Months of the Commencement Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

3.1. The Concessionaire shall, on reasonable notice, provide to the Authority and/or its potential Replacement Concessionaires (subject to the potential Replacement Concessionaires entering into reasonable written confidentiality undertakings), such information as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Concessionaires undertaking due diligence (the "Exit Information").

3.2. The Concessionaire acknowledges that the Authority may disclose the Concessionaire's Confidential Information (excluding the Concessionaire's or its Sub-contractors' prices or costs) to an actual or prospective Replacement Concessionaire to the extent that such disclosure is necessary in connection with such engagement.

3.3. The Concessionaire shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and 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 the Authority in relation to any such changes).

3.4. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the Concessionaire.

4. EXIT PLAN

4.1. The Concessionaire shall, within three (3) Months after the Commencement Date, deliver to the Authority an Exit Plan which complies with the requirements set out in paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Authority.

4.2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3. The Exit Plan shall set out, as a minimum:

4.3.1. a detailed description of both the transfer and cessation processes, including a timetable;

4.3.2. how the Services will transfer to the Replacement Concessionaire and/or the Authority;

4.3.3. details of any contracts which will be available for transfer to the Authority and/or the Replacement Concessionaire upon the expiry or earlier termination of this Contract together with any reasonable costs required to effect such transfer;

- 4.3.4. proposals for the training of key members of the Replacement Concessionaire's personnel in connection with the continuation of the provision of the Services following the expiry or earlier termination of this Contract;
- 4.3.5. proposals for providing the Authority or a Replacement Concessionaire copies of all documentation relating to the use and operation of the Services required for their continued use;
- 4.3.6. proposals for the assignment or novation of all services utilised by the Concessionaire in connection with the supply of the Services;
- 4.3.7. proposals for the identification and return of all Authority Property in the possession of and/or control of the Concessionaire or any third party;
- 4.3.8. proposals for the disposal of any redundant Services and materials;
- 4.3.9. how the Concessionaire will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- 4.3.10. any other information or assistance reasonably required by the Authority or a Replacement Concessionaire.

5. TERMINATION ASSISTANCE

5.1. 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 Concessionaire (a "Termination Assistance Notice") at least four (4) Months prior to the 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 notice of termination under Clause 23. The Termination Assistance Notice shall specify:

- 5.1.1. the nature of the Termination Assistance required; and

5.1.2. the start date and 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 Concessionaire ceases to provide the Services.

5.2. The Authority shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Concessionaire of such this extension 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 Concessionaire.

6. TERMINATION ASSISTANCE PERIOD

6.1. Throughout the Termination Assistance Period the Concessionaire shall:

6.1.1. continue to provide the Services (as applicable) and, if required by the Authority, provide the Termination Assistance;

6.1.2. provide to the Authority any reasonable assistance requested by the Authority including assistance to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Concessionaire;

6.1.3. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Authority;

6.1.4. provide the Services and the Termination Assistance at no detriment to the achievement of the Required Service Levels or Key Performance Indicators specified in Schedule 1; and

6.1.5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

6.2. If it is not possible for the Concessionaire to reallocate resources to provide such assistance as is referred to in paragraph 6.1.2 without additional costs to the Authority, any additional costs incurred by the Concessionaire in providing such reasonable assistance shall be subject to the Variation Procedure.

6.3. If the Concessionaire demonstrates to the Authority's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Concessionaire's ability to meet one or more particular Required Service Levels or Key Performance Indicators (s), the Parties shall vary the relevant Required Service Levels or Key Performance Indicators (s) and/or the applicable impact on the Concessionaire's Percentage Share accordingly.

7. TERMINATION OBLIGATIONS

7.1. The Concessionaire shall comply with all of its obligations contained in the Exit Plan.

7.2. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Concessionaire's performance of the Services and the Termination Assistance), the Concessionaire shall:

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

7.2.2. such information relating to the Services as remains in the possession or control of the Concessionaire; and

7.2.3. such members of the Concessionaire Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Concessionaire, provided that the Authority and/or the Replacement

Concessionaire shall pay the reasonable costs of the Concessionaire actually incurred in responding to such requests for access.

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

8. ASSETS, SUBCONTRACTS AND SOFTWARE

8.1. Following notice of termination of this Contract and during the Termination Assistance Period, the Concessionaire shall not, without the Authority's prior written consent:

8.1.1. terminate, enter into or vary any Sub-contract or licence for any software in connection with the Services; or

8.1.2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Concessionaire Assets or acquire any new Concessionaire Assets.

8.2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Concessionaire, the Authority shall notify the Concessionaire setting out:

8.2.1. which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Concessionaire ("Transferring Assets");

8.2.2. which, if any, of:

8.2.2.1. the Exclusive Assets that are not Transferable Assets; and

8.2.2.2. the Non-Exclusive Assets,

the Authority and/or the Replacement Concessionaire requires the continued use of; and

8.2.3. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Concessionaire (the "Transferring Contracts"),

8.3. in order for the Authority and/or its Replacement Concessionaire to provide the Services from the expiry of the Termination Assistance Period. The Concessionaire shall provide all reasonable assistance required by the Authority and/or its Replacement Concessionaire to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Services or the Replacement Goods and/or Replacement Services.

8.4. With effect from the expiry of the Termination Assistance Period, the Concessionaire shall sell the Transferring Assets to the Authority and/or the Replacement Concessionaire for their Net Book Value less any amount already paid for them through the Charges.

8.5. Risk in the Transferring Assets shall pass to the Authority or the Replacement Concessionaire (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.6. Where the Authority and/or the Replacement Concessionaire requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Concessionaire shall as soon as reasonably practicable:

8.6.1. procure a non-exclusive, perpetual, royalty-free licence for the Authority and/or the Replacement Concessionaire to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

8.6.2. procure a suitable alternative to such assets, the Authority or the Replacement Concessionaire to bear the reasonable proven costs of procuring the same.

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

8.8. The Authority shall:

8.8.1. accept assignments from the Concessionaire or join with the Concessionaire in procuring a novation of each Transferring Contract; and

8.8.2. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Concessionaire, 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 Concessionaire does the same.

8.9. The Concessionaire shall hold any Transferring Contracts on trust for the Authority until the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Concessionaire has taken place.

8.10. The Concessionaire shall indemnify the Authority (and/or the Replacement Concessionaire, 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 Concessionaire) pursuant to paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Third Party Rights) shall not apply to this paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the ontright Rig=.

9. CHARGES

9.1. Unless otherwise stated, the Authority shall not be obliged to pay for costs incurred by the Concessionaire in relation to its compliance with, this Schedule.

10. APPORTIONMENTS

10.1. All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and/or the Replacement and the Concessionaire as follows:

10.1.1. the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2. the Authority or Replacement Concessionaire (as applicable) 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

10.1.3. the Concessionaire shall be responsible for or entitled to (as the case may be) the rest of the invoice.

SCHEDULE 9 – SECURITY

1. SECURITY DEFINITIONS

In this Schedule 9, the following definitions shall apply:

"Breach of Security"	means the occurrence of: any unauthorised access to or use of the Utilities Switching Services and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Concessionaire in connection with this Contract; and/or the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Concessionaire in connection with this Contract, in either case as more particularly set out in the Security Policy;
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2. INTRODUCTION

2.1 The purpose of this Schedule 9 is to ensure a good organisational approach to security under which the specific requirements of this Contract will be met;

2.2 This Schedule 9 covers:

2.2.1 principles of protective security to be applied in delivering the Utilities Switching Services;

2.2.2 the creation and maintenance of the Security Management Plan;

2.2.3 obligations in the event of actual or attempted Breaches of Security;

2.2.4 interim security requirements at Commencement Date; and

2.2.5 Full security approval at the Service Live Date

3. PRINCIPLES OF SECURITY

3.1 The Concessionaire acknowledges that the Authority places great emphasis on the reliability of the performance of the Utilities Switching Services, confidentiality, integrity and availability of information and consequently on security.

3.2 The Concessionaire shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

- 3.2.1 is in accordance with the Law and this Contract;
 - 3.2.2 as a minimum demonstrates Good Industry Practice;
 - 3.2.3 complies with the Security Policy;
 - 3.2.4 meets any specific security threats of immediate relevance to the Goods and/or Services and/or the Customer/Authority Data; and
 - 3.2.5 complies with the Authority's ICT Policy.
- 3.3 The references to standards, guidance and policies contained or set out in paragraph 3.2 of this Schedule 9 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Concessionaire from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Concessionaire should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Concessionaire which provision the Concessionaire shall be required to comply with.

4. SECURITY MANAGEMENT PLAN

4.1 Introduction

- 4.1.1 The Concessionaire shall develop and maintain a Security Management Plan in accordance with this Schedule 9. The Concessionaire shall thereafter comply with its obligations set out in the Security Management Plan.

4.2 Content of the Security Management Plan

4.2.1 The Security Management Plan shall:

- a) comply with the principles of security set out in paragraph 3 of this Schedule 9 and any other provisions of this Contract relevant to security;
- b) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Concessionaire;
- c) detail the process for managing any security risks from SubContractors and third parties authorised by the Concessionaire with access to the Utilities Switching Services, processes associated with the provision of the Utilities Switching Services, the Authorities premises, the Sites and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Utilities Switching Services;
- d) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Utilities Switching Services and all processes associated with the provision of the Utilities Switching Services, including the Sites, and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Concessionaire in connection with this Contract or in connection with any system that could directly or

indirectly have an impact on that Information, data and/or the Utilities Switching Services;

- e) set out the security measures to be implemented and maintained by the Concessionaire in relation to all aspects of the Utilities Switching Services and all processes associated with the provision of the Utilities Switching Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Utilities Switching Services comply with the provisions of this Contract;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Concessionaire to meet the full obligations of the security requirements set out in this Contract and the Security Policy; and
- g) be written in plain English in language which is readily comprehensible to the staff of the Concessionaire and the Authority engaged in the provision of the Utilities Switching Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule 9.

4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Contract Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), the Concessionaire shall prepare and deliver to the Authority for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.

- 4.3.2 If the Security Management Plan submitted to the Authority in accordance with paragraph 4.3.1, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule 9.
- 4.3.3 If the Security Management Plan is not Approved, the Concessionaire shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Authority and re-submit to the Authority for Approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.4 The Authority shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to paragraph 4.3.2.
- 4.3.5 However a refusal by the Authority to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 shall be deemed to be reasonable.

4.3.6 Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3.2 of this Schedule 9 or of any change to the Security Management Plan in accordance with paragraph 4.4 shall not relieve the Concessionaire of its obligations under this Schedule 9.

4.4 Amendment and Revision of the Security Management Plan

4.4.1 The Security Management Plan shall be fully reviewed and updated by the Concessionaire at least annually to reflect:

- a) emerging changes in Good Industry Practice;
- b) any change or proposed change to the Utilities Switching Services and/or associated processes;
- c) any change to the Security Policy;
- d) any new perceived or changed security threats; and
- e) any reasonable change in requirements requested by the Authority.

4.4.2 The Concessionaire shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

- a) suggested improvements to the effectiveness of the Security Management Plan;
- b) updates to the risk assessments; and
- c) suggested improvements in measuring the effectiveness of controls.

4.4.3 Subject to paragraph 4.4.4, any change or amendment which the Concessionaire proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph 4.4.1, a request by the Customer or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Authority.

4.4.4 The Authority may, where it is reasonable to do so, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

5. BREACH OF SECURITY

- 5.1 Either party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Concessionaire shall:

5.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Authority) necessary to:

- a) minimise the extent of actual or potential harm caused by any Breach of Security;
- b) remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Utilities Switching Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
- c) prevent an equivalent breach in the future exploiting the same cause failure; and
- d) as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Authority.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security policy or the requirements of this Schedule 9, then any required change to the Security Management Plan shall be at no cost to the Authority.

6. INTERIM SECURITY REQUIREMENTS

6.1 The Concessionaire shall ensure that the following interim security requirements are put in place and maintained on or before the Service Live Date:

6.1.1 The Concessionaire has obtained Cyber Essentials Certification;

6.1.2 The Concessionaire's website has been positively tested by a third party to demonstrate that it meets the security requirements under this Schedule 9;

6.1.3 The Concessionaire has established a security working group who shall be responsible for compliance with this Schedule 9;

6.1.4 The Authority has approved the Service security architecture;

6.1.5 The Concessionaire shall put in place security monitoring and incident management processes in place;

6.1.6 The Concessionaire has basic personnel clearances in place for Concessionaire Personnel.

6.1.7 The Concessionaire endeavours to implement any outstanding security controls.

6.1.8 The Concessionaire shall maintain an up to date security risk register which it shall share with the Authority.

6.1.9 The Concessionaire shall produce a set of reduced security documentation.

6.1.10 The Privacy Impact Assessment has been approved by the Authority's data protection officer.

6.1.11 The Authority has approved the Concessionaire's Personnel for supply assurance.

6.1.12 CCS Interim Security Authority to Operate.

7. FULL SECURITY REQUIREMENTS

7.1 The Concessionaire shall ensure that the following Security Requirements are put in place and maintained on or before 12 months following the Commencement Date or as otherwise agreed by the Parties:

7.1.2 The Concessionaire has obtained ISO27001 or equivalent level of security evidence;

7.1.3 The Concessionaire has provided the Authority with evidence of effective implementation of security controls.

7.1.4 Internal and external CHECK security test as defined by <http://www.ncsc.gov.uk/guidance/penetration-testing>

7.1.5 The Concessionaire continues to maintain its security working group operating described in 6.1.2

7.1.6 The Concessionaire shall conduct a monthly vulnerability scan of Utilities Switching Services

- 7.1.7 The Concessionaire has put in place full personnel clearances for all Concessionaire Personnel as required by Paragraph 2.6.2 and 2.6.3 of the Specification
- 7.1.8 The Concessionaire shall provide an updated security risk register
- 7.1.9 The Authority has approved a full security documentation set approved.
- 7.1.10 The Authority and the Concessionaire must agree a security remediation plan for residual risks outlined in the risk register.
- 7.1.11 The Authority shall audit the supply chain security assurance audit of the Concessionaire Personnel.
- 7.1.12 The Concessionaire shall provide ongoing operational security reports to the Authority.
- 7.1.13 The Authority's senior information risk owner (SIRO) has approved the Concessionaire's security assurance recommendations.

SCHEDULE 10 – STAFF TRANSFER ON EXIT

1.1 DEFINITIONS

1.1.1 In this Schedule, the following words have the following meanings and they shall supplement Clause 1 (Definitions):

"Employee Liability"	<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 including in relation to the following:</p> <ul style="list-style-type: none"> f) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; g) unfair, wrongful or constructive dismissal compensation; h) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and
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	<p>maternity or sexual orientation or claims for equal pay;</p> <p>i) compensation for less favourable treatment of part-time workers or fixed term employees;</p> <p>j) 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 Concessionaire to a Transferring Concessionaire Employee which would have been payable by the Concessionaire or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;</p> <p>k) claims whether in tort, contract or statute or otherwise;</p> <p>l) any investigation 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>
"Employment Regulations"	<p>the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing</p>

	the European Council Directive 77/187/EEC;
"Former Concessionaire"	a Concessionaire supplying the 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 Concessionaire (or any Sub-Contractor of any such Sub-Contractor);
"Partial Termination"	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 23 (Authority Termination);
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Concessionaire's Final Concessionaire Personnel List"	a list provided by the Concessionaire of all Concessionaire Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
"Concessionaire's Provisional Concessionaire Personnel List"	a list prepared and updated by the Concessionaire of all Concessionaire Personnel who are at the date of the list wholly or mainly engaged in or 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 Concessionaire;
"Concessionaire Personnel"	all directors, officers, employees, agents, consultants and contractors of the Concessionaire and/or of any Sub-Contractor engaged in the performance of the Concessionaire's obligations under a Contract;
"Staffing Information"	in relation to all persons identified on the Concessionaire's Provisional Concessionaire Personnel List or Concessionaire's Final Concessionaire Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement, gender and place of work;
	(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
	(c) the identity of the employer or relevant contracting Party;

	(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
	(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
	(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
	(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
	(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
	(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
	(j) any other "employee liability information" as such term is defined in

	regulation 11 of the Employment Regulations;
"Transferring Authority Employees"	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Concessionaire on or prior to the Relevant Transfer Date;
"Transferring Former Concessionaire Employees"	in relation to a Former Concessionaire, those employees of the Former Concessionaire to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Concessionaire on or prior to the Relevant Transfer Date.
"Transferring Concessionaire Employees"	those employees of the Concessionaire and/or the Concessionaire Sub-contractors to whom the Employment Regulations will apply on the Relevant Transfer Date;

1.2 INTERPRETATION

Where a provision in this Schedule imposes any obligation on the Concessionaire including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Concessionaire shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Concessionaire, Replacement Concessionaire or Replacement Sub-

Contractor, as the case may be and where the Sub-Contractor fails to satisfy any claims under such indemnities the Concessionaire will be liable for satisfying any such claim as if it had provided the indemnity itself.

PART A – (OUTSOURCING) NOT USED

PART B – (REPROCUREMENT) NOT USED

PART C: NO STAFF TRANSFER ON START DATE (OPTIONAL)

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Concessionaire 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 Concessionaire.
- 1.2 Subject to paragraphs 1.3, 1.4 and 1.5, if any employee of the Authority and/or a Former Concessionaire claims, or it is determined in relation to any employee of the Authority and/or a Former Concessionaire, that his/her contract of employment has been transferred from the Authority and/or the Former Concessionaire to the Concessionaire and/or any Sub-Contractor pursuant to the Employment Regulations then:
- (a) the Concessionaire will, within 5 Working Days of becoming aware of that fact, notify the Authority in writing;
 - (b) the Authority may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Concessionaire;
 - (c) if such offer of employment is accepted, the Concessionaire shall immediately release the person from its employment;
 - (d) if after the period referred to in paragraph (b) no such offer has been made, or such offer has been made but not accepted, the Concessionaire may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Concessionaire's compliance with paragraphs (a) to (d):

- (i) the Authority will indemnify the Concessionaire and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Authority's employees referred to in paragraph 1.2; and
- (ii) the Authority will procure that the Former Concessionaire indemnifies the Concessionaire and/or any Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Concessionaire referred to in paragraph 1.2.

1.3 The indemnities in paragraph 1.2 shall not apply to any claim:

- (a) for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Concessionaire and/or Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Concessionaire and/or any Sub-Contractor neglected to follow a fair dismissal procedure
- (c) (C) The indemnities in paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Effective Date.

1.4 If the Concessionaire and/or the Sub-Contractor does not comply with paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Concessionaire and/or the Sub-Contractor and the Concessionaire shall indemnify the Authority and any Former Concessionaire against any Employee

Liabilities that either of them may incur in respect of any such employees of the Concessionaire and/or employees of the Sub-Contractor.

- 1.5 If the Concessionaire and/or the Sub-Contractor does not comply with paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Concessionaire and/or the Sub-Contractor and the Concessionaire shall indemnify the Buyer and any Former Concessionaire against any Employee Liabilities that either of them may incur in respect of any such employees of the Concessionaire and/or employees of the Sub-Contractor.

2. PROCUREMENT OBLIGATIONS

Where in this Part C the Authority accepts an obligation to procure that a Former Concessionaire 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 Concessionaire 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 Concessionaire does or does not act accordingly.

PART D: PENSIONS – NOT USED

PART E: STAFF TRANSFER ON EXIT (MANDATORY)

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Concessionaire agrees that within 20 Working Days of the earliest of:

1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;

1.1.3 the date which is 12 Months before the end of the Term; and

1.1.4 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 Month period),

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

1.2 At least 20 Working Days prior to the Service Transfer Date, the Concessionaire shall provide to the Authority or at the direction of the Authority to any Replacement Concessionaire and/or any Replacement Sub-Contractor (i) the Concessionaire's Final Concessionaire Personnel List, which shall identify the basis upon which they are Transferring Concessionaire Employees and (ii) the Staffing Information in relation to the Concessionaire's Final Concessionaire 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 Concessionaire under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Concessionaire and/or Replacement Sub-Contractor.
- 1.4 The Concessionaire warrants, for the benefit of The Authority, any Replacement Concessionaire, 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, the Concessionaire agrees that it shall not assign any person to the provision of the Services who is not listed on the Concessionaire's Provisional Concessionaire Personnel List and shall, unless otherwise instructed by the Authority (acting reasonably):
- 1.5.1 not replace or re-deploy any Concessionaire Personnel listed on the Concessionaire Provisional Concessionaire 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;
 - 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Concessionaire Personnel (including any payments connected with the termination of employment);
 - 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Concessionaire Personnel

save for fulfilling assignments and projects previously scheduled and agreed;

- 1.5.4 not 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 Concessionaire's Provisional Concessionaire Personnel List;
- 1.5.5 not 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);
- 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Concessionaire's Provisional Concessionaire Personnel List save by due disciplinary process;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Concessionaire and/or Replacement Sub-Contractor;
- 1.5.8 give the Authority and/or the Replacement Concessionaire and/or Replacement Sub-Contractor reasonable access to Concessionaire Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Authority, Replacement Concessionaire and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Concessionaire Employees;
- 1.5.9 co-operate with the Authority and the Replacement Concessionaire to ensure an effective consultation process and smooth transfer in respect of Transferring Concessionaire Employees in line with good employee relations and the effective continuity of the Services, and to allow for

participation in any pension arrangements to be put in place to comply with New Fair Deal;

- 1.5.10 promptly notify the Authority or, at the direction of the Authority, any Replacement Concessionaire and any Replacement Sub-Contractor of any notice to terminate employment given by the Concessionaire or received from any persons listed on the Concessionaire's Provisional Concessionaire Personnel List regardless of when such notice takes effect;
- 1.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, Concessionaires or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Concessionaire (unless otherwise instructed by the Authority(acting reasonably));
- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Concessionaire;
- 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Concessionaire or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
- 1.5.15 promptly provide to the Authority such documents and information mentioned in paragraph 3.1(a) of Part D: Pensions which the Authority may reasonably request in advance of the expiry or termination of this Contract; and

- 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Concessionaire relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Concessionaire or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 During the Term, the Concessionaire shall provide to the Authority any information that the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
- 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any Broadly Comparable pension scheme set up pursuant to the provisions of Part D: Pensions and its Annexes; and
- 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Concessionaire shall provide all reasonable cooperation and assistance to the Authority, any Replacement Concessionaire and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Concessionaire 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 Concessionaire Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the

Concessionaire shall provide to the Authority or, at the direction of the Authority, to any Replacement Concessionaire and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Concessionaire's Final Concessionaire Personnel List who is a Transferring Concessionaire Employee:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 A change in the identity of the Concessionaire of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Concessionaire agree that where a Relevant Transfer occurs, the contracts of employment between the Concessionaire and the Transferring Concessionaire 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 Concessionaire and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Concessionaire Employee.
- 2.2 The Concessionaire shall comply with all its obligations in respect of the Transferring Concessionaire Employees arising under the Employment

Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes.

- 2.3 Subject to paragraph 2.4, the Concessionaire shall indemnify the Authority and/or the Replacement Concessionaire and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission of the Concessionaire or any Sub-Contractor in respect of any Transferring Concessionaire Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Concessionaire Employee whether occurring before, on or after the Service Transfer Date.
- 2.4 The indemnity 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 Concessionaire and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date.
- 2.5 Subject to paragraphs 2.6 and 2.7, if any employee of the Concessionaire who is not identified in the Concessionaire's Final Transferring Concessionaire Employee List claims, or it is determined in relation to any employees of the Concessionaire, that his/her contract of employment has been transferred from the Concessionaire to the Replacement Concessionaire and/or Replacement Sub-Contractor pursuant to the Employment Regulations then,
- 2.5.1 the Replacement Concessionaire and/or Replacement Sub-Contractor will, within 5 Working Days of becoming aware of that fact, notify the Authority and the Concessionaire in writing;

2.5.2 the Concessionaire may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Concessionaire and/or Replacement Sub-Contractor;

2.5.3 if such offer of employment is accepted, the Replacement Concessionaire and/or Replacement Sub-Contractor shall immediately release the person from its employment;

2.5.4 if after the period referred to in paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Concessionaire and/or Replacement Sub-Contractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Concessionaire's and/or Replacement Sub-Contractor's compliance with paragraphs 2.5.1 to 2.5.4 the Concessionaire will indemnify the Replacement Concessionaire and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Concessionaire's employees referred to in paragraph 2.5.

2.6 The indemnity in paragraph 2.5 shall not apply to:

- a) any claim for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Concessionaire and/or Replacement Sub-Contractor, or
- b) any claim that the termination of employment was unfair because the Replacement Concessionaire and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure.

- 2.7 The indemnity in paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
- 2.8 If at any point the Replacement Concessionaire and/or Replacement Sub-contract accepts the employment of any such person as is described in paragraph 2.5, such person shall be treated as a Transferring Concessionaire Employee and paragraph 2.5 shall cease to apply to such person.
- 2.9 The Concessionaire shall promptly provide the Authority and any Replacement Concessionaire and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Concessionaire 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 Concessionaire and/or Replacement Sub-Contractor, shall promptly provide to the Concessionaire and each Sub-Contractor in writing such information as is necessary to enable the Concessionaire and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.10 Subject to paragraph 2.9, the Authority shall procure that the Replacement Concessionaire indemnifies the Concessionaire on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Concessionaire and/or Replacement Sub-Contractor in respect of any Transferring Concessionaire Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Concessionaire Employee.
- 2.11 The indemnity in paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Concessionaire

and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Concessionaire and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Concessionaire's Final Concessionaire Personnel List in accordance with paragraph 2.5 (and subject to the limitations set out in paragraphs 2.6 and 2.7 above).

SCHEDULE 11 – CYBER ESSENTIALS SCHEME

1. DEFINITIONS

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Clause 1 (Definitions):

"Cyber Essentials Scheme"	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
"Cyber Essentials Basic Certificate"	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
"Cyber Essentials Certificate"	Cyber Essentials Basic Certificate or the Cyber Essential Scheme certificate equivalent;
"Cyber Essential Scheme Data"	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and

2. CYBER ESSENTIALS OBLIGATIONS

- 2.1. The Concessionaire shall provide a Cyber Essentials Certificate before the Service Live Date. Concessionaire shall provide a valid Cyber Essentials Certificate, then on or prior to the execution of the Contract the Concessionaire must have delivered to the Authority evidence of the same. Where the Concessionaire fails to comply with this paragraph it shall be prohibited from commencing the provision of Services under the Contract until such time as the Concessionaire has evidenced to Authority its compliance with this paragraph 2.1.
- 2.2. Where the Concessionaire continues to Process Cyber Essentials Scheme Data during the Term of the Contract the Concessionaire shall deliver to the Authority evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Concessionaire under paragraph 2.1.2.3. In the event that the Concessionaire fails to comply with paragraphs 2.2, the Authority reserves the right to terminate this Contract for material Default.
- 2.3. The Concessionaire shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Concessionaire under this Contract in respect of the Cyber Essentials Scheme under paragraph 2.1 of this Schedule.
- 2.4. This Schedule shall survive termination or expiry of this Contract.

SCHEDULE 12 – VARIATION FORM

CONTRACT DETAILS	
This variation is between:	[insert name of Authority] ("Authority") And [insert name of Concessionaire] ("the Concessionaire")
Contract name:	[]
Contract reference number:	[]
DETAILS OF PROPOSED VARIATION	
Variation initiated by:	[Authority/Concessionaire]
Variation number:	[]
Date variation is raised:	[]
Reason for the variation:	[]
An Impact Assessment shall be provided within:	[X] days
IMPACT OF VARIATION	
Likely impact of the proposed variation:	[]
OUTCOME OF VARIATION	
Contract variation:	This Contract Ref: RM [] is varied as follows: [insert]
Financial variation:	Original Contract Value: £[insert]
	Additional cost due to variation: £[insert]
	New Contract value: £[insert]

a) *This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Authority.*

1. *Words and expressions in this Variation shall have the meanings given to them in the Contract.*

2. *The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.*

Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

.....

.....

.....

.....

Signed by an authorised signatory to sign for and on behalf of the Concessionaire

Signature

Date

Name (in Capitals)

Address

.....

.....

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.....

SCHEDULE 13 – CONCESSIONAIRE TENDER

[REDACTED]

SCHEDULE 14 – SOFTWARE

CONCESSIONAIRE SOFTWARE

[]

THIRD PARTY SOFTWARE

[]

SCHEDULE 15 – CORPORATE SOCIAL RESPONSIBILITY

1. Equality

1.1 In addition to the Concessionaire's legal obligations, the Concessionaire shall support CCS in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:

1.1.1. eliminate discrimination, harassment or victimisation of any kind; and

1.1.2. advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

2. Modern Slavery, Child Labour & Inhumane Treatment

"Modern Slavery Helpline" means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

2.1 The Concessionaire:

2.1.1. shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;

2.1.2. shall not require any Concessionaire Personnel or Sub-Contractor personnel to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;

- 2.1.3. warrants and represents that it has not been convicted of any slavery or human tracking offenses anywhere around the world.
- 2.1.4. 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 tracking offenses anywhere around the world.
- 2.1.5. shall make reasonable enquiries to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human tracking offenses anywhere around the world.
- 2.1.6. shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- 2.1.7. 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 a Contract;
- 2.1.8. shall prepare and deliver to CCS, 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 with paragraph 3;
- 2.1.9. shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;

2.1.10. shall not use or allow child or slave labour to be used by its Sub-Contractors;

2.1.11. shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to CCS, the Buyer and Modern Slavery Helpline.

3. Income Security

3.1 The Concessionaire shall:

3.1.1. ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;

3.1.2. ensure that all Concessionaire Personnel are provided with written and understandable Information about their employment conditions in respect to wages before they enter;

3.1.3. employment and about the particulars of their wages for the pay period concerned each time that they are paid;

3.1.4. not make deductions from wages:

3.1.5. as a disciplinary measure

3.1.6. except where permitted by law; or

3.1.7. without expressed permission of the worker concerned;

3.1.8. record all disciplinary measures taken against Concessionaire Personnel; and

3.1.9. ensure that Concessionaire personnel are engaged under a recognised employment relationship established through national law and practice.

4. working hours

4.1 The Concessionaire shall:

4.1.1. ensure that the working hours of Concessionaire Personnel comply with national laws, and any collective agreements;

4.1.2. that the working hours of Concessionaire Personnel , excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;

4.1.3. ensure that use of overtime used responsibly, taking into account:

4.1.4. the extent;

4.1.5. frequency; and

4.1.6. hours worked;

by individuals and by the Concessionaire Personnel as a whole;

4.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by paragraph 5.3 below.

4.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

- 4.3.1 this is allowed by national law;
- 4.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;

appropriate safeguards are taken to protect the workers' health and safety; and

- 4.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

- 4.4 All Concessionaire Personnel shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

5 Sustainability and Environment

- 5.1 The supplier must meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

SCHEDULE 16 – NOT USED