



Home Office

Dated: Day of October 2010

CONTRACT FOR THE PROVISION OF SERVICES

SECRETARY OF STATE FOR THE HOME DEPARTMENT

-and-

IRON MOUNTAIN (UK) LTD

AGREEMENT

Home Office
2 Marsham Street
London
SW1P 4DF

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CONTRACT FOR THE PROVISION OF SERVICES

This Contract is made on this day of October two thousand and ten between:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** of 2 Marsham Street, London SW1P 4DF (“the Authority”) and
- (2) Iron Mountain (UK) Ltd, (company number 01478540) whose registered office is at 3rd Floor, The Cottons Centre, Tooley Street, London, SE1 2TT (“the Contractor”).

WHEREAS:

The Authority requires the provision of Record Management Services for off-site document storage, retrieval, transportation and destruction as specified in Schedule One (the “Service Specification”), and the Contractor is able and willing to provide these Services on the terms and conditions set out below.

THE FOLLOWING IS NOW AGREED:

GENERAL

1. DEFINITIONS

1.1. In this Contract:

1.1.1. “Affiliate” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

1.1.2. “Authority Data” means:

- (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 are:
 - (i) supplied to the Contractor by or on behalf of the Authority; or
 - (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

- 1.1.3. "Authority Software" means software which is owned by or licensed to the Authority, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software.
- 1.1.4. "Authority System" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.
- 1.1.5. "Authority's Premises" means any land or buildings owned or occupied by the Authority where the Services are to be performed.
- 1.1.6. "Authority's Property" means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract. For the avoidance of doubt this includes any equipment supplied by the Authority at Unit 17, 136-138 Beddington Farm Road, Croydon together with any such other items as the Authority may from time to time provide at Unit 17, 136-138 Beddington Farm Road, Croydon in support of the Services.
- 1.1.7. "Background Intellectual Property Rights" means Intellectual Property Rights owned, controlled or furnished by either Party other than Foreground Intellectual Property Rights.
- 1.1.8. "Business Continuity and Disaster Recovery Plan" means any plan prepared pursuant to Condition 10 (Business Continuity and Disaster Recovery) as may be amended from time to time.
- 1.1.9. "Change" means any change or variation to this Contract to the Contract made in accordance with Condition 59 (Variation).
- 1.1.10. "Change Request" means any request for a change or variation to this Contract made in accordance with the process set out in Schedule Six (Contract Variation Procedure).

- 1.1.11. "Charges" means the price, exclusive of Value Added Tax, payable by the Authority to the Contractor for the performance of the Services.
- 1.1.12. "Commencement Date" means the date to be agreed within 20 (twenty Working Days of the Effective Date on which Commencement of Full Services will take place, such date to fall not more than twelve months after the Effective Date.
- 1.1.13. "Commencement of Full Services" means the date on which the Contractor becomes responsible for the provision of all the Services following the completion of the Preparatory Work.
- 1.1.14. "Commercially Sensitive Information" means the information (if any) designated as such by the Contractor comprising the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.
- 1.1.15. "Confidential Information" means any and all information designated at confidential by either Party together with all information relating the business, trade-secrets, know-how, personnel, customers, suppliers and policies of either Party or other information which a reasonable person would regard as confidential or sensitive information.
- 1.1.16. "Condition" means a condition or sub-condition of this Contract.
- 1.1.17. "Contract" means this agreement between the Authority and the Contractor and includes all Schedules and Annexes.
- 1.1.18. "Contract Change Process" means the change process set out in Schedule Six (Contract Variation Procedure).
- 1.1.19. "Contract Manager" means the individual authorised to act on behalf of a Party as its contract manager for the purposes of the Contract whose details are given in Schedule Five (Representatives).
- 1.1.20. "Contract Variation Notice" means the notice by which this Contract may be varied in accordance with the process set out in Schedule Six (Contract Variation Procedure).

- 1.1.21. "Contract Variation Procedure" means the procedure set out in Schedule Six (Contract Variation Procedure) by which this Contract may be varied.
- 1.1.22. "Contracting Authority" means any UK contracting authority as defined in Regulation 3(1) of the Public Contracts Regulations 2006.
- 1.1.23. "Contractor's Background IPRs" means:
- (a) Intellectual Property Rights owned by the Contractor before the Commencement Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's Know-How or generic business methodologies; and/or
 - (b) Intellectual Property Rights created by the Contractor independently of this Contract but excluding Intellectual Property Rights owned by the Contractor subsisting in the Contractor Software.
- 1.1.24. "Contractor Equipment" means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services.
- 1.1.25. "Contractor Software" means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services including the software specified as such in Schedule One (Service Specification).
- 1.1.26. "Contractor System" means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).
- 1.1.27. "Control" means that a person possesses, directly or indirectly, 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.

- 1.1.28. "Crown" refers to Her Majesty's Government and includes (but is not limited to) any government department or agency and any Secretary of State.
- 1.1.29. "Crown Body" means any department, office or agency of the Crown.
- 1.1.30. "CRS" or "CRS Records" means case record sheets, which are printed copies of the electronic records held by the Authority. CRS Records do not have cardboard file covers and are stored (in no particular order) in boxes marked with unique numbered labels.
- 1.1.31. "Data Controller" shall have the same meaning as set out in the Data Protection Act 1998.
- 1.1.32. "Data Processor" shall have the same meaning as set out in the Data Protection Act 1998.
- 1.1.33. "Data Protection Legislation" means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
- 1.1.34. "Data Subject" shall have the same meaning as set out in the Data Protection Act 1998.
- 1.1.35. "Date Compliant" means that no previous or future date change has had or will have any adverse impact on the performance or functionality of the Contractor System.
- 1.1.36. "Day" means a period of 24 hours ending at 12 midnight.
- 1.1.37. "Default" means any breach of a legal obligation owed by one Party to the other including (but not limited to) any breach of this Contract and/or any breach of any common law duty of care by a Party.
- 1.1.38. "Delivery Plan" means the plan prepared in accordance with Condition 8 (Delivery Plan).

- 1.1.39. "Derogation Process" means the derogation process set out in Annex C to Schedule Six (Contract Variation Procedure).
- 1.1.40. "Disaster" means any event that has a serious impact on the provision of the Services.
- 1.1.41. "Dispute Procedure" means the procedure set out in Schedule Seven (Dispute Resolution) by which any dispute arising from or in connection with this Contract shall be resolved.
- 1.1.42. "Dispute Report" means the report that shall be prepared by the Party seeking to initiate the escalation process set out in Schedule Seven (Dispute Resolution).
- 1.1.43. "Effective Date" means the date on which the Parties sign the Contract.
- 1.1.44. "Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations.
- 1.1.45. "Equipment" means all plant, materials, consumables and goods, other than Authority's Property, to be used by the Contractor in the performance of the Services.
- 1.1.46. "Escalation Process" means the initial stages of the process for dealing with Disputes without the intervention of third parties as set out in Schedule Seven (Dispute Resolution).
- 1.1.47. "Euro Compliant" means that:
- (i) the introduction of the euro within any part of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business;
 - (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and

(iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- be able to perform all such functions in any number of currencies and/or in euros;
- during any transition phase applicable to the UK, be able to deal with multiple currencies in relation to the euro and the national currency of the UK;
- recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- incorporate protocols for dealing with rounding and currency conversion;
- recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the UK and/or the euro; and
- permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the UK.

1.1.48. "Expiry Date" means fifteen (15) years from the Commencement Date.

1.1.49. "File Services Contract Team" means those of the Authority's personnel responsible for the operational management of this Contract.

1.1.50. "Final Pay Details" means in respect of each of the Transferring Employees: (a) final month's copy pay slip data; (b) cumulative pay for tax and pension purposes; (c) cumulative tax paid; and (d) tax code.

- 1.1.51. "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.
- 1.1.52. "Force Majeure" – see Condition 60.4.
- 1.1.53. "Foreground Intellectual Property Rights" means:
- a) In the case of the Authority, all Intellectual Property Rights generated by the Authority during the provision of the Services or prepared for use or intended use in relation to the performance of the Contract; and
 - b) In the case of the Contractor, all Intellectual Property Rights specifically and exclusively generated by the Contractor for the Authority during the provision of the Services, but excluding all Intellectual Property Rights in the Third Party Software and Contractor Software.
- 1.1.54. "Good Industry Practice" means the exercise of the degree of skill, diligence, timeliness, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances and seeking in good faith to perform its obligations with sufficient financial resources and complying with all relevant Legislation and applicable law.
- 1.1.55. "ICT Environment" means the Authority System and the Contractor System.
- 1.1.56. "Improvement Notice" means the notice which the Authority may issue to the Contractor in order to initiate the improvement process set out in Condition 52.
- 1.1.57. "Index of Conditions" means the index to this Contract in which the headings of the Conditions are listed.
- 1.1.58. "Information" means all information including oral, electronic and visual information and written information in any medium.
- 1.1.59. "Initial Staff Information" has the meaning given to it in Section 1 of Schedule Ten (TUPE Information).

- 1.1.60. "Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or not), applications for any of the above rights, copyright, database rights, domain, trade or business names, moral rights and any other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
- 1.1.61. "Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the Contractor's or the Authority's possession before this Contract.
- 1.1.62. "Legislation" or "Laws" means any Act (including without limitation the Human Rights Act 1998) or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972 and in each such case includes the interpretation, administration or application thereof.
- 1.1.63. "Malicious Software" means 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.
- 1.1.64. "Management Information" means the information created or held by the Contractor relating to the management of the Services by the Contractor as detailed in Schedule Eight (Management Information).
- 1.1.65. "Management Information Reports" means the reports on the provision of the Services submitted by the Contractor in accordance with Condition 20 (Monitoring, Quality Plans and Management Information).
- 1.1.66. "Mediator" means a neutral adviser or mediator who is accredited by the Centre for Effective Dispute Resolution ("CEDR") in London or is otherwise appropriately qualified.

- 1.1.67. "Month" shall mean a calendar month, and "Monthly" shall be construed accordingly.
- 1.1.68. "Official Secrets Acts 1911-1989" has the meaning given to it by section 16(2) of the Official Secrets Act 1989.
- 1.1.69. "Parties" means both the Authority and the Contractor.
- 1.1.70. "Party" means the Authority or the Contractor.
- 1.1.71. "Performance Deduction" means the deductions from payments in respect of the Services that the Authority shall be entitled to make in accordance with the provisions of Schedule Two (Service Delivery Targets) and Schedule Three (Charges and Payment).
- 1.1.72. "Personal Data" means personal data as defined in the Data Protection Act 1998, which for the avoidance of doubt and the purposes of this Contract shall be deemed to include structured paper records.
- 1.1.73. "Premises" means the land or buildings where the Services are performed.
- 1.1.74. "Preparatory Work" means the activities the Contractor must undertake between the Effective Date and the Commencement of Full Services.
- 1.1.75. "Prescribed Particulars" has the meaning given to it in Section 2 of Schedule Ten (TUPE Information).
- 1.1.76. "Prevention of Corruption Acts 1889 to 1916" has the meaning given to it in by section 4 of the Prevention of Corruption Act 1916.
- 1.1.77. "Process" has the meaning given to it under the Data Protection Legislation but, for the purposes of these Conditions, it shall include both manual and automatic processing.
- 1.1.78. "Quality Plans" means the Contractor's plan that reflects the quality management systems as further described in Condition 20 (Monitoring, Quality Plans and Management Information Reports).

- 1.1.79. "Quarter" or "Quarterly Period" means a three monthly period during the term of this Contract, the first of which shall commence on the Commencement Date, the second of which shall commence on the day following the three month anniversary and so forth until the expiry of the Contract.
- 1.1.80. "Record Delivery Protocol" - see Schedule One, Section 2 part 8.
- 1.1.81. "Record Destruction Protocol" - see Schedule One, Section 3 part 11.
- 1.1.82. "Record Transfer Protocol" " - see Schedule One, Section 3 part 10.
- 1.1.83. "Records" means the physical files (together with their contents), boxed documents or other records of the Authority which are held or handled by the Contractor under or pursuant to this Contract.
- 1.1.84. "Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.
- 1.1.85. "Relevant Personnel Documentation" has the meaning given to it in Section 3 of Schedule Ten (TUPE Information).
- 1.1.86. "Request for Information" means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
- 1.1.87. "RPIX" means the Retail Prices Index excluding Mortgages.
- 1.1.88. "Security Plan" means the Contractor's systems and procedures approved from time to time by the Authority to support the Contractor's obligations to maintain security, control and safety.
- 1.1.89. "Security Policy" means the Security Policy Framework published by the Cabinet Office.

- 1.1.90. "Service Delivery Targets" means the required performance levels for key service activities as set in Schedule Two (Service Delivery Targets) in respect of which the Contractor's performance of the Services will be assessed.
- 1.1.91. "Services" means the services which form the subject matter of this Contract, as more particularly described in Schedule One (the "Service Specification")
- 1.1.92. "Software" means the Specially Written Software, Contractor Software and the Third Party Software.
- 1.1.93. "Specially Written Software" means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.
- 1.1.94. "Staff" means all persons used by the Contractor in the provision of the Services whether as its direct employees or otherwise. Staff includes any person employed or engaged by a sub-contractor to the Contractor.
- 1.1.95. "Staff Vetting Procedures" means the Authority's procedures (including pre-employment checks) for the vetting of Staff whose role will require access to the Authority's Premises or will involve the handling of information of a sensitive or confidential nature or the handling of which is subject to any relevant security measures. These procedures may (at the Authority's absolute discretion) be subject to change from time to time.
- 1.1.96. "Standards" means the British or international standards, Authority's internal policies and procedures, Government codes of practice and guidance referred to in Schedule One (Service Specification) together with any other specified policies or procedures identified in Schedule One (Service Specification).
- 1.1.97. "Successor Contractor" means the contractor (if any) nominated by the Authority to provide services that are substantially the same as the Services on or before the Transfer Date. Successor Contractor may include the Authority.

- 1.1.98. "Third Party Software" means software which is proprietary to any third party other than an Affiliate of the Contractor which is or will be used by the Contractor for the purposes of providing the Services specified in Schedule One (Service Specification) except any generally commercially available software. For the purposes of this Contract commercially available software shall be:
- (i) Adobe Reader and Adobe Acrobat software published by Adobe Systems Incorporated; and
 - (ii) the Microsoft Office suite of programs published by the Microsoft Corporation; and
 - (iii) such other software as the parties may agree from time to time.
- 1.1.99. "Transfer Date" means the date of expiry or termination of this Contract.
- 1.1.100. "Transferring Employee" means those employees of the Contractor who at the Transfer Date were employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers to the Successor Contractor on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive EEC 187/77 or otherwise.
- 1.1.101. "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 1.1.102. "Variation" means a variation to this Contract made in accordance with Condition 59.
- 1.1.103. "Week" means a 7 day period running from Sunday at 12:00am (UK time) until Saturday at 11:59pm (UK time) unless otherwise agreed by the Parties, and "Weekly" shall be construed accordingly.
- 1.1.104. "Working Day" means any day other than: (i) a Saturday, a Sunday, Christmas Day, Good Friday; or (ii) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.
- 1.1.105. "Year" shall mean 12 consecutive Months.

2. INTERPRETATION

- 2.1. The headings in these Conditions and the Index of Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions.
- 2.2. Where the context permits, the use of the singular shall be construed to include the plural, and the use of plural the singular, and the use of any gender shall include all genders.
- 2.3. References to an Act of Parliament shall be deemed to include any subordinate legislation of any sort made from time to time under that Act.
- 2.4. References to any statute, enactment, order, regulation, code or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code or instrument as subsequently amended or re-enacted.
- 2.5. References to Conditions, Schedules and Annexes are to the conditions of and schedules and annexes to this Contract. In the case of any conflict between the Conditions, the Schedules and the Annexes, the Conditions shall take precedence over the Schedules and Annexes and the Schedules shall take precedence over the Annexes.

3. ENTIRE AGREEMENT

- 3.1. This Contract constitutes the entire agreement between the Parties relating to its subject matter. It replaces all previous negotiations, agreements, understandings and representations between the Parties whether oral or in writing. However, nothing in this Contract shall limit or exclude any liability for fraud.

4. DURATION AND EXTENSION

- 4.1. This Contract shall commence on the Effective Date and shall continue until the Expiry Date unless terminated in accordance with these Conditions.
- 4.2. The Authority may, upon the provision of not less than twelve (12) Months written notice, terminate the Contract at the following pre-determined break points:

- 4.2.1. the seventh anniversary of the Commencement Date; and
- 4.2.2. the twelfth anniversary of the Commencement Date.
- 4.3. For the avoidance of doubt, where the Authority chooses (in its absolute discretion) to terminate the Contract in accordance with provisions of Condition 4.2, the provisions of Condition 50 (Consequences of Termination) shall not be applicable.
- 4.4. The total duration of the Contract may not exceed fifteen (15) years.

PROVISION OF THE SERVICES

5. COMMENCEMENT OF FULL SERVICE

- 5.1. The Authority shall authorise the Commencement of Full Services on or before the Commencement Date if the Contractor has either:
 - 5.1.1. complied fully with the requirements set out in Schedule One (Service Specification) relating to Preparatory Work; or
 - 5.1.2. otherwise demonstrated to the satisfaction of the Authority that it is ready and able to deliver the Services.
- 5.2. If the Authority has not authorised the Commencement of Full Services in accordance with Condition 5.1 the Authority shall have the right to either:
 - 5.2.1. extend the period for completion of the Setting Up Operations for such additional time as may be specified by the Authority; or
 - 5.2.2. terminate the Contract in accordance with Condition 47 (Termination on Default).
- 5.3. Where the Authority has not authorised the Commencement of Full Services on the expiry of any extension of the Setting-Up Operations under Condition 5.2, the Authority shall have the right to repeat the exercise of the options set out in Condition 5.2.

6. NATURE OF SERVICES

- 6.1. The Contractor is deemed to have satisfied itself as regards the nature and extent of the Services to be carried out before execution of this Contract.

7. PERFORMANCE OF THE SERVICES

General

- 7.1. The Contractor shall perform the Services in accordance with Schedule One (Service Specification).
- 7.2. The Contractor shall meet or exceed the Service Delivery Targets as set out in Schedule Two (Service Delivery Targets).
- 7.3. The Contractor shall perform the Services with reasonable care and diligence including but not limited to industry best practice and in accordance with its own established internal procedures.
- 7.4. The Contractor warrants that all Staff assigned to the performance of the Services shall possess and exercise the skill and experience, qualifications and expertise necessary for the proper performance of the Services.
- 7.5. The Contractor warrants that the facilities, equipment and premises assigned for the performance of the Services shall be consistent with industry standards and suitable for the proper performance of the Services.
- 7.6. In the event that Schedule One (Service Specification) does not specify particular Equipment or processes for use in the Services the Contractor shall ensure that any Equipment and processes are suitable for the performance of the Services and (unless the Authority's Contract Manager agrees otherwise) approved by the Authority.
- 7.7. The Contractor warrants that it has full capacity and authority and all necessary consents (including, where relevant, the consent of its parent company) to enter into and perform this Contract and that this Contract has been executed by a duly authorised representative of the Contractor.

8. DELIVERY PLAN

- 8.1. The Contractor shall, no later than 60 Working Days prior to the Commencement Date, provide the Authority with a draft Delivery Plan setting out its plans for delivering the Services over the duration of the Contract, and in particular detailing the resources and plans that the Contractor has, or will have, in place and the actions that it shall take during the term of the Contract to ensure that it will:
 - 8.1.1. perform the Services in accordance with Schedule One (Service Specification); and

8.1.2. achieve the Service Delivery Targets as set out in Schedule Two (Service Delivery Targets).

8.2. Following receipt of the draft Delivery Plan the Authority shall consider its provisions and notify the Contractor of any comments that it may have.

9. THE AUTHORITY'S RESPONSIBILITIES

9.1. The Authority shall provide the Contractor with such information as may reasonably be required to agree protocols for the transfer or destruction (as appropriate) of Authority files as set out in paragraphs 7 and 8 of Schedule One (Service Specification).

9.2. The Authority acknowledges and agrees that the Contractor shall not be liable for any failure to provide or delay in providing the Services (including, without limitation, any Performance Deductions) to the extent that such failure arises as a result of or in connection with the Authority's breach of Condition 9.1.

10. BUSINESS CONTINUITY AND DISASTER RECOVERY

10.1. In complying with the requirements of this Condition 10 the Contractor shall take such actions as are necessary to ensure that its Business Continuity and Disaster Recovery arrangements take full account of the Records Management Software Supply and Support Services set out in Schedule Twelve (Records Management Software Supply and Support Services).

10.2. In order to minimise the effects of any Disaster affecting the Services (or any part of them) the Contractor shall ensure that:

10.2.1. at all times it has prudent Business Continuity and Disaster Recovery arrangements in place; and

10.2.2. it is able to implement its Business Continuity and Disaster Recovery arrangements at any time; and

10.2.3. its Business Continuity and Disaster Recovery arrangements are clearly set out in a Business Continuity and Disaster Recovery Plan for the Authority's approval.

- 10.3. No later than 20 Working Days prior to the Commencement Date the Contractor shall provide the Authority with a draft Business Continuity and Disaster Recovery Plan for its approval. Following receipt of such a draft Business Continuity and Disaster Recovery Plan, the Authority shall consider its provisions and notify the Contractor in writing of any comments it may have.
- 10.4. On the agreement or determination of the draft Business Continuity and Disaster Recovery Plan it shall, in accordance with this Condition 10, be adopted as the Business Continuity and Disaster Recovery Plan. Where the Parties are unable to agree the content of the Business Continuity and Disaster Recovery Plan within 30 Days of the issue of the Authority's comments, the provisions of Condition 62 (Dispute Resolution) shall apply.
- 10.5. If any event shall occur which has a detrimental impact upon the Contractor's ability to provide the Services in accordance with this Contract (including its ability to provide the volume of Services which the Authority requires) the Contractor agrees to implement, and comply with, the Business Continuity and Disaster Recovery Plan.
- 10.6. The Contractor shall undertake regular risk assessments in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Authority promptly in writing following each review.
- 10.7. The Contractor shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.
- 10.8. As and when reasonably required by the Authority, the Contractor shall review and test the Business Continuity and Disaster Recovery Plan to identify the extent to which it is then appropriate and to identify any changes which should be made to the plan. The result of any such review shall be discussed at the next Contract review meeting following the Authority's notification to the Contractor that such a review is required. If, within 30 Days of the relevant Contract review meeting the parties fail to agree any revision to the Business Continuity and Disaster Recovery Plan the provisions of Condition 62 (Dispute Resolution) shall apply.

- 10.9. The Contractor shall propose to the Authority any updates or other changes which the Contractor identifies as necessary or desirable to ensure that the Business Continuity and Disaster Recovery Plan always reflects the then current Services. Such changes shall be reviewed and, if approved by the Authority, incorporated in the Business Continuity and Disaster Recovery Plan.

11. SUB-STANDARD SERVICES

- 11.1. The Authority shall have the power at any time during the provision of the Services to give the Contractor written notice:
- 11.1.1. requiring the removal from the Authority's Premises of any Equipment which, in the reasonable opinion of the Authority's Contract Manager is not in accordance with the Contract or which is hazardous or noxious; and/or
 - 11.1.2. requiring the substitution of proper and suitable Equipment; and/or
 - 11.1.3. requiring the removal and re-execution of any work which, in the reasonable opinion of the Authority's Contract Manager, is not in accordance with the Contract.
- 11.2. The Contractor shall comply with the Authority's notice given under Condition 11.1 at its sole expense and within 14 Days of receiving the notice or such longer period as the Authority's Contract Manager may specify.

12. TIMESCALES

- 12.1. The Contractor shall provide the Services from the Commencement Date. The Contractor shall use its reasonable endeavours to carry out the Services in accordance with any timescales set out in Schedule One (Service Specification). The Authority may, by written notice, require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice, the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 12.2. In the event that the Contractor fails to fulfil an obligation with respect to:

- 12.2.1. a date specified in Schedule One, or
- 12.2.2. the requirements of Schedule Twelve (Records Management Software Supply and Support),

owing to its Default, the Contractor shall, subject to Condition 12.3, at the request of the Authority and without prejudice to the Authority's other rights and remedies, arrange all such additional resources as are reasonably necessary to fulfil this obligation as early as possible thereafter at no additional cost to the Authority. For the avoidance of doubt, the Contractor shall not be obliged to remedy any failure to fulfil an obligation in accordance with this Condition 12.2 to the extent that such failure has been caused wholly or partly by the Authority's, its agent's or subcontractor's delay, inadequate instruction or other act or omission (whether deliberate, negligent or otherwise).

- 12.3. In the event that the Contractor fails to fulfil an obligation by the relevant date as specified in Schedule One (Service Specification) owing to the Default of the Authority and/or any failure by the Authority to provide information which is then in its possession or control, or consents (both as reasonably required by the Contractor) in order to carry out the Services, then:

- 12.3.1. any timescales in Schedule One (Service Specification) shall be extended by a period equal to the period of delay for which the Authority is responsible; and

- 12.3.2. both Parties shall, and in doing so each Party shall bear its own costs, work together to take all reasonable steps to mitigate the effect of the delay on the performance of the Services.

13. AUTHORITY'S PROPERTY

- 13.1. All the Authority's Property shall remain the property of the Authority and shall be used in the performance of the Services and for no other purpose.
- 13.2. The Contractor shall notify the Authority within thirty (30) days of receipt where any Authority's Property (other than any one or more of the Records) is damaged or defective (or if later, 14 Days from the date which the Contractor becomes aware, or should have been reasonably aware, that the Authority's Property is damaged or defective) (or such other period as the Parties may agree). If the Contractor does not inform the Authority of any defects, it shall be assumed that the Authority's Property is in full working order for the purpose of Conditions 13.6 and 13.10.

- 13.3. The Authority shall within a reasonable time of receiving the notice of damage or defect to the Authority's Property pursuant Condition 13.2, replace, re-issue or authorise repair of such Authority's Property and if appropriate in the circumstances the Authority shall revise the time specified in the Contract for the completion of the Services.
- 13.4. Should the Authority fail to replace, re-issue or authorise repair or replacement of such Authority's Property within a reasonable time of receiving notification, such revisions of the time specified in the Contract for the completion of the Services shall be made by the Authority as may be appropriate provided that the Contractor shall have taken all reasonable measures to mitigate the consequences of such delay.
- 13.5. The Contractor shall take proper care of the Authority's Property and shall take all reasonable steps to ensure that no Authority's Property is lost or damaged. The Contractor shall ensure that all Authority's Property is used in accordance with Good Industry Practice.
- 13.6. The Contractor shall be liable for any loss or damage to Authority's Property unless the loss or damage was caused by the Authority's negligence or breach of Condition 13.7.
- 13.7. The Authority shall be responsible for the maintenance, repair and replacement of Authority's Property unless the need for repair or replacement was caused by the Contractor's negligence or breach of Condition 13.5.
- 13.8. The Contractor's Contract Manager shall inform the Authority's Contract Manager immediately if in the Contractor's view any Authority's Property (including any one or more of the Records) is in need of repair or replacement. The Authority's Contract Manager shall inform the Contractor within seven Days of the action to be taken (if any) and this decision (which in all circumstances shall be made acting reasonably) shall be final.
- 13.9. Subject to the provisions of 13.3, 13.4 and 13.7, the Contractor shall be responsible for its own costs arising from the failure of any piece of Authority's Property unless these costs were caused by the Authority's undue delay in repairing or replacing defective Authority's Property.
- 13.10. On the expiry or termination of this Contract, the Contractor shall indemnify the Authority in relation to any loss or damage to or deterioration in the Authority's Property during the Contract Period other than fair wear and tear resulting from normal and proper use.

14. CONTRACTOR'S EQUIPMENT

- 14.1. The Contractor shall provide all the Equipment necessary for the performance of the Services.
- 14.2. All Equipment shall be at the risk of the Contractor even when it is on the Authority's Premises. Where Equipment is brought onto the Authority's Premises the Contractor shall comply with any security requirements and/or access restrictions applied by the Authority in relation to such Equipment.
- 14.3. The Contractor shall be responsible for the safety of the Equipment it provides and shall maintain all items of Equipment in good and serviceable condition and carry out regular safety checks.
- 14.4. The Contractor shall be responsible for all necessary repairs to and replacement and insurance costs of the Equipment.

15. AUTHORITY'S PREMISES

- 15.1. Subject to Condition 16 (Security Clearance and Access to the Authority's Premises), where the Services are performed on the Authority's Premises, the Contractor shall have the use of the Authority's Premises without charge as a licensee and shall vacate those premises on expiry or termination of the Contract.
- 15.2. The Contractor shall use the Authority's Premises solely for the purposes of performing the Contract.
- 15.3. The Contractor shall co-ordinate its activities with those of any other person or contractor engaged in providing services to the Authority.
- 15.4. If the Contractor requires any modifications to the Authority's Premises it shall seek the prior written agreement of the Authority. Unless the Authority agrees otherwise, any modifications agreed by the Authority shall be carried out by the Authority at the Contractor's expense. Ownership of the modifications shall remain with the Authority at all times.
- 15.5. The Contractor shall leave the Authority's Premises clean and tidy on the expiry or termination of this Contract.

16. SECURITY CLEARANCE AND ACCESS TO THE AUTHORITY'S PREMISES

- 16.1. Where Staff are required to have a pass for admission to the Authority's Premises:

- 16.1.1. the Contractor shall provide the Authority with such information about the persons requiring access to the Authority's Premises as the Authority reasonably requests in order to enable the Authority to carry out its Staff Vetting Procedures;
- 16.1.2. the Authority's Contract Manager shall, subject to satisfactory completion of relevant Staff Vetting Procedures, make reasonable efforts to arrange for any requisite security passes to be issued in a timely manner and at the Authority's expense.
- 16.2. If so directed by the Authority, the Contractor shall provide:
 - 16.2.1. a list showing the name and address of every person whom the Contractor wishes to be admitted to the Authority's Premises;
 - 16.2.2. satisfactory evidence as to the identity of each such person; and
 - 16.2.3. any supporting documentation reasonably required by the Authority including birth certificates, evidence of qualifications and references.
- 16.3. Security passes issued by the Authority shall remain the property of the Authority at all times and can be withdrawn by the Authority at any time.
- 16.4. Staff who cannot produce a proper security pass when required to do so by any appropriate employee or agent of the Authority, or who contravene any conditions on the basis of which a security pass was issued, may be refused admission to the Authority's Premises or required to leave those Premises if already there.
- 16.5. The Contractor shall immediately return any security pass if at any time the Authority's Contract Manager requires it or if the person to whom it was issued ceases to be involved in the performance of the Contract. The Contractor shall immediately return all security passes on the termination of the Contract.
- 16.6. The Authority reserves the right to refuse to admit to the Authority's Premises any Staff whose admission would be, in the opinion of the Authority, undesirable. The opinion of the Authority on whether admission is desirable shall be final and binding and the Authority shall be under no obligation to give reasons for its decision. If the Authority gives the Contractor notice that a particular member of Staff is not to be admitted to

the Authority's Premises, the Contractor shall ensure that that person shall not seek admission or be further deployed in the provision of the Services at the Authority's Premises.

- 16.7. If the Contractor fails to comply with Condition 16.2 within a reasonable time and if the Authority (whose decision shall be final and binding) shall decide that such failure is prejudicial to security at the Authority's Premises, the Authority shall be entitled to terminate this Contract provided that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

17. SECURITY

Security on the Authority's Premises

- 17.1. While on the Authority's Premises, the Contractor shall be responsible for ensuring that all Staff comply with the provisions of any enactment relating to security and with all rules, regulations and other requirements that may be notified by the Authority to the Contractor from time to time as being applicable to persons visiting or working at the Authority's Premises.
- 17.2. The Contractor shall ensure that the rules, regulations and requirements applying to persons visiting or working at the Authority's Premises are brought to the attention of all Staff and shall take all necessary steps to ensure that they are complied with.
- 17.3. The Authority shall have the right to carry out a search of Staff or of vehicles used by the Contractor at the Authority's Premises.
- 17.4. The Contractor shall co-operate fully with any investigation relating to security which is carried out by or on behalf of the Authority and in particular:
- 17.4.1. shall use its best endeavours to ensure that any member of Staff whom the Authority wishes to interview in connection with such an investigation is available for such interview by the Authority;
- 17.4.2. shall (subject to any legal restriction on disclosure) provide any documents, records or other material of any sort which is reasonably requested by the Authority for the purpose of its investigation.

Compliance with Security Policy and Plan

- 17.5. The Contractor shall comply, and shall procure the compliance of its Staff, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- 17.6. The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 17.7. If the Contractor believes that a change or proposed change to the Security Policy and or Staff Vetting Procedures will have a material and unavoidable cost implication to the Services it may submit a request for a Contract Variation. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be agreed in accordance with the Contract Variation Procedure as set out in Schedule Six (Contract Variation Procedure) of this Contract.
- 17.8. Until and/or unless a Variation to the Charges is agreed pursuant to Condition 17.7, the Contractor shall continue to perform the Services in accordance with its existing obligations.

ICT System Security

Malicious Software

- 17.9. The Contractor shall, as an enduring obligation throughout the duration of the Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the Contractor System.
- 17.10. Notwithstanding Condition 17.9, 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 Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 17.11. Any cost arising out of the actions of the parties taken in compliance with the provisions of Condition 17.10 shall be borne by the parties as follows:
 - 17.11.1. by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and

17.11.2. 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).

18. CONTRACTOR'S STAFF

- 18.1. The Contractor shall comply with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of the Services. The Contractor confirms that all Contractor Staff employed or engaged by the Contractor at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 18.2. The Contractor shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- 18.3. All Staff shall possess the qualifications, training and competence appropriate to the tasks for which they are employed.
- 18.4. The Contractor shall provide at all times the number of Staff required to fulfil its obligations under the Contract. In particular, the Contractor shall be responsible for providing suitably qualified Staff to cover periods of holiday and sick leave without disruption or compromise to the Services.
- 18.5. Unless otherwise agreed between the Parties, the Contractor shall make a Contract Manager available for the entire term of the Contract.
- 18.6. The Contractor shall take reasonable steps to ensure there are no changes to the Contract Manager while this Contract is in force. In the event that any change is made to the Contract Manager, the Contractor shall inform the Authority at once and shall ensure that the replacement is a suitably qualified person who is approved by the Authority.

19. CONTRACTOR'S STATUS

- 19.1. Nothing in this Contract shall be construed as creating a partnership, a joint venture, a contract of employment or a relationship of principal and agent between the Authority and Contractor.

20. MONITORING, QUALITY PLANS & MANAGEMENT INFORMATION

Monitoring

- 20.1. The Authority may monitor the performance of the Services by the Contractor, and the Contractor shall, upon the provision of reasonable notice, provide the Authority with access to such of its premises and personnel as are involved in the delivery of the Services in order that the Authority may reasonably satisfy itself that its requirements with respect to the Services are being met.
- 20.2. The Authority may increase the extent to which this monitoring is conducted if the quality of the Services is degraded in any way. The Authority shall give the Contractor prior notification of its intention to increase the level of monitoring.
- 20.3. The Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority in carrying out the monitoring referred to in Condition 20.1 at no additional charge to the Authority.

Management Information Reports

- 20.4. The Contractor shall submit management information reports to the Authority in accordance with the provisions of Schedule Eight (Management Information).
- 20.5. The Contractor agrees to indemnify and hold harmless the Authority from all claims, liabilities, costs and expenses (including legal expenses) which can be shown to arise out of, or is based upon the submission of, Management Information and/or data save where such Management Information or data were originally supplied by the Authority. Where the parties disagree whether the claim arises out of or is based upon the submission of Management Information and/or data then either party may escalate the issue using the Escalation Process set out in Schedule Seven (Dispute Resolution).
- 20.6. All right, title and interest (including all copyrights and other intellectual property rights) in the Management Information and any information contained therein belong to the Authority. The Contractor acknowledges that it will not acquire any rights or interest in the Management Information or any data or information within it other than as expressly set out in this Contract.

- 20.7. The Authority hereby grants to the Contractor a non-exclusive, royalty free licence to use the Management Information and other information contained therein for the purposes of fulfilling its obligations under this Contract (including, without limitation, any post-termination obligations).

Quality Plans

- 20.8. The Contractor shall, by no later than 20 Working Days prior to the Commencement Date, develop Quality Plans that:
- 20.8.1. ensure that all aspects of the Services are the subject of quality management systems; and
 - 20.8.2. are consistent with ISO 9001:2000 or any equivalent standard which is generally recognised as having replaced it.
- 20.9. The Contractor shall obtain the Authority Contract Manager's written approval of the Quality Plans developed pursuant to Condition 20.8 before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Contractor acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 20.10. The Contractor shall procure that the Services are carried out in compliance with the Quality Plans.
- 20.11. Any Changes to the Quality Plans shall be agreed in accordance with the Contract Variation Procedure as set out in Schedule Six (Contract Variation Procedure) of this Contract.

Quality Monitoring

- 20.12. The Authority's Contract Manager may carry out audits of the Contractor's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) at regular intervals. The parties anticipate that these audits will be carried out at intervals of approximately three months, but the Authority's Contract Manager may carry out other periodic monitoring or spot checks at any other time. In each case, the Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority's Contract Manager, including by providing the Authority's Contract Manager with all information and documentation, and access to any relevant Contractor Personnel and/or to any relevant Authority Premises, which they reasonably require in connection with their rights

under this Condition 20.12 at no additional charge to the Authority.

21. MEETINGS

- 21.1. The Parties' Contract Managers shall meet at regular intervals to review the Contractor's performance of the Services and any other issues which have arisen in relation to the Contract in accordance with the provisions of Schedule Four (Contract Management).
- 21.2. The Contractor's Contract Manager shall attend any meetings reasonably requested by the Authority's Contract Manager.

CHARGES AND PAYMENT

22. PAYMENT AND VAT

- 22.1. Subject to Condition 24 (Recovery of Sums Due) and Condition 28 (Service Delivery Targets), in consideration of the provision of the Services by the Contractor in accordance with the terms of this Contract, the Authority shall pay the Contractor the Charges as calculated in accordance with the provisions of Schedule Three (Charges and Payment).
- 22.2. The Charges set out in Schedule Three (Charges and Payment) shall not be subject to any form of adjustment during the first three (3) Years of the Contract. Thereafter, the Charges shall be increased or decreased by a percentage calculated in accordance with the Indexation process set out in Schedule Three (Charges and Payment) and the Contract shall be varied in accordance with the provisions of Condition 59 (Variation).
 - 22.2.1. For the avoidance of doubt, in any one year the Charges shall not be increased or decreased (in accordance with the Indexation process as set out in Schedule Three (Charges and Payment)) by more than 9%.
- 22.3. The Contractor shall submit an original and a copy invoice to the Authority at Monthly intervals in arrears in respect of the Services in accordance with the provisions of Schedule Three (Charges and Payment).
- 22.4. The Authority shall pay the Contractor within 30 Days of receiving the Contractor's valid and properly drawn up invoice at its nominated address for invoices. The date of payment by cheque shall be the date the cheque is posted, and the date of payment by electronic transmission shall be the date of transmission.

- 22.5. The Charges are exclusive of Value Added Tax. The Authority shall pay any Value Added Tax on the Charges and Payment at the rate and manner prescribed by law from time to time.

23. PAYMENT OF SUB-CONTRACTORS

- 23.1. Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period not exceeding 30 Days from the date of receipt of a valid invoice.

24. RECOVERY OF SUMS DUE

- 24.1. If any sum of money is recoverable by the Authority from the Contractor or payable by the Contractor to the Authority under the Contract, that sum may be deducted from any sum then due or which at a later time becomes due to the Contractor from the Authority under the Contract or under any other agreement with the Authority.

25. THE EURO

- 25.1. Any legislative requirement to account for (or to prepare for such accounting for) goods or services in euro instead of or as well as in sterling, shall be implemented by the Contractor at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement.

26. PRICE ADJUSTMENT ON EXTENSION OF CONTRACT PERIOD

- 26.1. Subject to the provisions of Condition 24 (Recovery of Sums Due) and Condition 28 (Service Delivery Targets), in the event that the term of the Contract is extended, there shall be no changes to the Charges other than those specified by the Indexation process set out in Schedule Three (Charges and Payment).

LIABILITIES

27. INDEMNITIES, LIMITATIONS ON LIABILITY AND INSURANCE

INDEMNITIES:

- 27.1. The Contractor shall indemnify the Authority fully against all claims, proceedings, damages, expenses, legal costs (on a solicitor and client basis) and any other liabilities in respect of any death or personal injury or loss of or damage to property

(excluding the Records) which is caused directly or indirectly by any act or omission of the Contractor, its Staff or its sub-contractors. This Condition shall not apply if and to the extent that the Contractor is able to demonstrate that such injury, death or loss or damage to property was not caused by its negligence or by the negligence of its Staff or sub-contractors.

- 27.2. In establishing or alleging a breach of Contract or a right to be indemnified in accordance with this Contract, each party shall be under a duty to take all reasonable measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience, delay or unreasonable cost provided that such costs of mitigation shall be reimbursed by the indemnifying party or the party in breach.

LIMITATIONS ON LIABILITY:

- 27.3. Neither Party limits its liability for:
- 27.3.1. death or personal injury caused by its negligence or that of its employees, agents or sub-contractors; or
 - 27.3.2. fraud by it or its employees; or
 - 27.3.3. breach of any obligation as to title implied by statute; or
 - 27.3.4. any other act or omission, liability for which may not be limited under the applicable law.
- 27.4. Subject to Condition 27.3 (and without prejudice to Condition 50.3) neither Party shall be liable to the other Party for:
- 27.4.1. any indirect or consequential loss or damage; or
 - 27.4.2. any loss of profits, business opportunities, revenue or damage to goodwill.
- 27.5. The Contractor shall incur no liability in case of loss or destruction of, or damage to the Authority's Records held by the Contractor under or pursuant to this Contract, for any reason, unless the loss or damage results from either:
- 27.5.1. any Default on the part of the Contractor; or
 - 27.5.2. the Contractor's negligence in performing the Services.
- 27.6. Subject to Condition 27.3 and without prejudice to the Authority's obligations in Condition 22, the total aggregate liability of either Party under or in connection with the Contract (including for the avoidance of doubt, its termination and/or any indemnity

contained in this Contract), whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £2,000,000 in any given Year, which the liability arises, throughout the term of the Contract.

27.7. Subject and without prejudice to Conditions 27.6 and 27.8 and without prejudice to Conditions 27.3, 27.4, 27.5, and 27.15 the Contractor shall be liable for:

27.7.1. loss, destruction, theft or mis-delivery of, or damage to, the Records; or

27.7.2. the consequences of any loss, destruction, theft or mis-delivery of, or damage to, the Records

whilst under the control of the Contractor under or in connection with the Contract; and

27.7.3. the replacement value of the Records; or

27.7.4. proven reasonable and properly incurred additional operational and administrative costs and expenses; and/or;

27.7.5. reasonable properly incurred expenditure or charges rendered unnecessary as a result of any Default by the Contractor;

27.8. Subject to Condition 27.6 in the case of reconstituting or recreating a physical Record or part thereof and any information contained therein resulting from the same being lost, destroyed, stolen, misdelivered or damaged whilst under the control of the Contractor, the liability of the Contractor shall be limited to £10 for each record. For the avoidance of doubt the Contractor shall not be liable under this Condition 27.8 for any Record where such Record:

27.8.1. has been notified to the Contractor as part of a pre-destruction order under Schedule One paragraph 52.2.1; or

27.8.2. is otherwise identified by the Authority as being of no further operational use.

27.9. The provisions of Condition 27.8 shall not be taken as limiting the right of the Authority to claim from the Contractor in accordance with Condition 27.7.4 and/or 27.7.5

INSURANCE:

- 27.10. Subject to Condition 27.15 the Contractor shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all insurable risks which may be incurred by the Contractor arising out of the performance of the Contract in respect of loss of or damage to property up to a maximum of £2,000,000 in any given Year, throughout the Term of the Contract. The Contractor shall maintain such insurance in full force throughout the term of this Contract and shall pay all premiums and other sums due in respect of such insurance and shall not do anything which may vitiate the insurance in whole or in part.
- 27.11. The Contractor shall effect and maintain with a reputable insurance company a professional indemnity insurance policy with a limit of £5 million to cover its relevant potential liabilities in connection with this Contract.
- 27.12. The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force with a limit of £5 million.
- 27.13. The Authority agrees that whilst the Contractor has a general insurance policy which will provide it with cover up to the maximum of the liabilities set out in this Contract, the Contractor is unable to (and will not) purchase insurance for the replacement value of the Records or the consequences of any loss of or damage to the Records.
- 27.14. The Contractor shall produce to the Authority's Contract Manager, on request, copies of all insurance policies referred to in this Condition or other evidence (such as a broker's letter of verification) confirming the existence and extent of the cover given by those policies together with any renewal certificates and evidence of payment of the latest premiums due under those policies. The Contractor shall inform the Authority immediately if any insurer issuing a policy to which this Condition relates amends, withdraws or extends cover or refuses a claim.
- 27.15. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

28. SERVICE DELIVERY TARGETS

- 28.1. Throughout the period of the Contract the Authority shall monitor the Contractor's performance against the Service Delivery Targets set out in Schedule Two (Service Delivery Targets).

- 28.2. Where so prescribed in Schedule Two (Service Delivery Targets) the Authority shall be entitled to reduce its payment to the Contractor through the Performance Deduction mechanism set out in Schedule Two (Service Delivery Targets), and may reduce such payments by the relevant amount or proportion as specified in that Schedule Two (Service Delivery Targets).
- 28.3. The Contractor shall issue a separate credit note for any amount due under this Condition 28

PROTECTION OF INFORMATION AND INTELLECTUAL PROPERTY RIGHTS.

29. INTELLECTUAL PROPERTY RIGHTS

- 29.1. Nothing in this Contract shall affect the Parties' ownership of Background Intellectual Property Rights.
- 29.2. Foreground Intellectual Property Rights shall belong to the Crown. The Contractor shall not (and shall procure that Contractor's Staff shall not) disclose any Foreground Intellectual Property Rights to any third party without the Authority's prior written approval.
- 29.3. Solely to the extent that use or exploitation of the Foreground Intellectual Property Rights requires use of Background Intellectual Property Rights which are owned by the Contractor, the Contractor hereby grants the Crown and the Authority a free, non-exclusive, non-transferable, non-assignable, perpetual, irrevocable, world-wide licence (together with the ability to grant sub-licences) to use the relevant Background Intellectual Property Rights to the requisite extent.

30. INDEMNITY FOR INTELLECTUAL PROPERTY RIGHTS

- 30.1. The Contractor shall procure that the provision of the Services by the Contractor and/or the receipt of the Services by the Authority shall not infringe any Intellectual Property Rights of any third party. Subject to Condition 30.2 and 30.5, the Contractor shall indemnify the Authority against all claims, proceedings, damages, expenses, legal costs (on a solicitor and client basis) and any other sort of liabilities arising from or incurred by reason of the provision of the Services by the Contractor and/or the receipt of the Services by the Authority infringing or allegedly infringing any Intellectual Property Rights of a third party.
- 30.2. Condition 30.1 shall not apply in respect of any infringement or alleged infringement relating to material which the Authority has supplied to the Contractor or which the Authority has specified for use by the Contractor.

- 30.3. The Contractor shall obtain the Authority's prior written approval before using any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. Where such approval is given by the Authority, the Contractor shall use all reasonable endeavours to procure that the owner of the rights grants the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant the Authority an authorised sub-licence to use, reproduce, modify, adapt and enhance the material subject to such rights. Such licence shall be perpetual and irrevocable and shall be granted at no cost to the Authority. If the Contractor is unable to obtain the rights specified under this Condition 30.3, it shall promptly notify the Authority.
- 30.4. The Contractor shall promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Rights which may affect the Services. The Contractor shall, at its sole expense, conduct any litigation or negotiations arising for any such claim provided that it shall consult with the Authority on all substantive matters arising during the conduct of such litigation or negotiations and shall, in such conduct, take due account of the interests of the Authority.
- 30.5. The Authority shall promptly notify the Contractor if any claim or demand is made or action brought against the Authority to which Condition 30.1 may apply. In the case of any such claim:
- 30.5.1. the Authority shall not pay or agree to pay any such claim or make any admissions which are prejudicial to the defence of the claim without the prior written consent of the Contractor; and
- 30.5.2. the Contractor shall have the right to take over conduct of the claim and proceedings at its sole expense.
- 30.6. If a claim or demand is made or action brought to which Condition 30.1 may apply, the Contractor may, at its sole expense, either:
- 30.6.1. Modify any or all of the Services without reducing the performance and functionality of the same or substitute alternatives of equivalent performance and functionality so as to avoid the infringement or alleged infringement provided that the terms of this Contract apply mutatis mutandis to such modified or substituted services and provided that the substituted services are acceptable to the Authority, such acceptance not to be unreasonably withheld; or

30.6.2. procure a licence to use the Services on terms that are acceptable to the Authority.

30.7. If a modification or substitution in accordance with Condition 30.6.1 is not possible so as to avoid the infringement or the Contractor is unable to procure a licence in accordance with Condition 30.6.2, the Contractor shall be liable for the value of the replacement services or any part thereof together with additional costs incurred in implementing and maintaining such replacements.

31. CONFIDENTIAL INFORMATION

31.1. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to Confidential Information, the Contractor acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents, is the property of the Crown.

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

31.2.1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and

31.2.2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

31.3. Condition 31.2 shall not apply to the extent that:

31.3.1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to the provisions of regarding Freedom of Information;

31.3.2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

31.3.3. such information was obtained from a third party without obligation of confidentiality;

31.3.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

- 31.3.5. the receiving Party can demonstrate to the reasonable satisfaction of the disclosing Party that such information was independently developed without access to the other Party's Confidential Information.
- 31.4. The Contractor may only disclose the Authority's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 31.5. Each Party shall not, and shall procure that its Staff do not, use any of the other Party's Confidential Information received otherwise than for the purposes of this Contract.
- 31.6. At the written request of the Authority, the Contractor shall procure that those members of Staff identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 31.7. Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 31.7.1. to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to or used by a third party which is not part of any Crown Body or any Contracting Authority;
 - 31.7.2. to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
 - 31.7.3. for the purpose of the examination and certification of the Authority's accounts; or
 - 31.7.4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 31.8. The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Condition 31.7 is placed under express obligations of confidence no less

onerous than as set out in this Contract and is made aware of the Authority's obligations of confidentiality.

31.9. Nothing in this Condition 31 shall prevent either party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

31.10. The Contractor warrants for the duration of the Contract that:

31.10.1. all Staff used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards;

31.10.2. it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Contract;

31.10.3. it has and will continue to have for the duration of this Contract all necessary rights in and to the Contractor Software or the Third Party Software and/or the Contractor's Background IPRs, or any other materials made available by the Contractor and/or the Sub-contractors to the Authority necessary to perform the Contractor's obligations under this Contract;

31.10.4. in performing its obligations under this Contract, all Software used by or on behalf of the Contractor will:

(i) be currently supported versions of that Software;
and

(ii) perform in all material respects in accordance with its specification,

31.10.5. as at the Commencement Date all statements and representations made with respect to the Contract are to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;

31.10.6. the Contractor System and assets used in the performance of the Services:

- (i) will be free of all encumbrances except for any equipment leases taken out by the Contractor from time to time in the ordinary course of its business; and
- (ii) will be Date Compliant; and
- (iii) will be Euro Compliant.

31.10.7. it shall at all times comply with applicable Legislation in carrying out its obligations under this Contract.

32. PUBLICITY

- 32.1. The Contractor (and its sub-contractors, Staff and consultants) shall not make any public statement relating to the Contract or the performance of the Services without the prior written consent of the Authority, such consent not unreasonably to be withheld.
- 32.2. Nothing in this Condition shall prevent the Contractor from complying with any legal obligation placed upon it or from making any announcement required by any securities exchange or regulatory authority or government body to which it subscribes including the London Stock Exchange or the Panel on Takeovers and Mergers.

33. DATA PROTECTION ACT

Authority Data

- 33.1. The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 33.2. The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 33.3. To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule One (Service Specification).
- 33.4. Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by the Contractor of any Authority Data, the Contractor shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

- 33.5. The Contractor shall perform secure back-ups of all Authority Data (which for the purposes of this Condition 33.5 shall be deemed to exclude the Authority's physical (e.g. paper) Records) and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than three monthly intervals.
- 33.6. The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 33.7. If the Authority Data (which for the purposes of this Condition 33.5 shall be deemed to exclude the Authority's physical (e.g. paper) Records) is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 33.7.1. require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable but in any case within 24 hours of any such loss; and/or
 - 33.7.2. itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

Where the relevant corrupted, lost or degraded Authority Data is physical in nature (e.g. the Authority's Records), and the Contractor is unable to restore or procure the restoration of the Authority Data due the physical nature of that data, the provisions of Condition 27 (Indemnities Limitation of Liabilities and Insurance) shall apply.

- 33.8. If at any time the Contractor 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 Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

Personal Data

- 33.9. The Contractor shall not disclose or allow access to any Personal Data provided by the Authority, or acquired by the Contractor during the course of tendering or executing its obligations of the Contract, other than to the Authority or a person authorised to receive such by the Authority.

- 33.10. Any disclosure or access to Personal Data allowed under this Condition 33 shall be made in confidence and shall extend only so far as necessary for the purposes of the Contract except as otherwise required by the requirements of the Data Protection Act 1998.
- 33.11. The Contractor shall obtain the prior written agreement of the Authority to store or process Personal Data at sites outside the United Kingdom.
- 33.12. The Contractor agrees that it, its servants and agents and Sub-Contractors or any other person in the control of the Contractor shall store or process Personal Data in accordance with the Data Protection Act 1998 and any statutory re-enactment or modification thereof.
- 33.13. The Contractor shall fully indemnify the Authority against the costs of dealing with any successful civil claims made in respect of information subject to the Data Protection Act 1998, or any statutory re-enactment or modification thereof, which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, its servants, agents or Sub-Contractors.
 - 33.13.1. For the avoidance of doubt, the Authority is prepared to permit the Contractor to take over the conduct of such claims, provided always that the Contractor uses its best endeavours not to make an admission which may be detrimental to the defence of any such cases.
- 33.14. All Personal Data, which are the subject of this Condition 33, shall be retained at all times in the possession and under the control of the Contractor. All rights in any compilation or database of such Personal Data shall vest in and be the property of the Authority. The Contractor shall ensure that the Authority at all times has full rights of access to all such Personal Data and may take copies thereof.
- 33.15. With respect to the parties' rights and obligations under this Contract, the parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.
- 33.16. The Contractor shall:
 - 33.16.1. process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Contractor during the Term);

- 33.16.2. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by relevant Legislation or any Regulatory Body;
- 33.16.3. implement 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;
- 33.16.4. take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 33.16.5. obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
- 33.16.6. ensure that all Contractor Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 33;
- 33.16.7. ensure that none of the Contractor's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 33.16.8. notify the Authority (within five Working Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 33.16.9. provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection

Legislation and in accordance with the Authority's instructions;

(iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and

(iv) providing the Authority with any information requested by the Authority;

33.16.10. permit the Authority or the Authority's Contract Manager (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Condition 35 (Retention of Documents and Rights of Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;

33.16.11. provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and

33.16.12. not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:

(i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

(ii) any reasonable instructions notified to it by the Authority.

33.17. The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

33.18. The Authority shall not hold the Contractor liable for any loss, damage or costs arising out of or in connection with the Authority's breach of its obligations under the Data Protection

Legislation or the Contractor's compliance with any instruction given by the Authority concerning any Personal Data under this Contract.

34. FREEDOM OF INFORMATION

- 34.1. The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 34.2. The Contractor shall and shall procure that its Sub-contractors shall:
 - 34.2.1. transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 34.2.2. provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within
 - 34.2.3. provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 34.3. The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 34.4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 34.5. The Contractor acknowledges that (notwithstanding the other provisions of this Condition 34) the Authority may, acting in accordance with the Department of Constitutional Affairs' (now the Ministry of Justice's) Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA,

or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

- 34.5.1. in certain circumstances without consulting the Contractor; or
 - 34.5.2. following consultation with the Contractor and having taken its views into account;
 - 34.5.3. provided always that where 34.5.1 applies, the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 34.6. The Contractor shall ensure that all Information is retained for disclosure in accordance with Condition 35 (Retention of Documents and Right of Audit) and shall permit the Authority to inspect such records as requested from time to time.

35. RETENTION OF DOCUMENTS AND RIGHT OF AUDIT

- 35.1. The Contractor shall maintain and keep secure until two Years after the final payment of all sums due under the Contract (or such longer period as the Parties may agree) full and accurate records of the Services and of all payments made by the Authority and of any expenditure reimbursed by the Authority such that the Contractor is able to substantiate all invoices submitted to the Authority with respect to the Contract.
- 35.2. The Authority should endeavour to provide notice of its intention to conduct an audit pursuant to this Condition 35.
- 35.3. The Authority shall ensure that the audit rights are not duplicated, contradicted or undermined by other requests for information that may be included in the Contract.
- 35.4. The Authority may, not more than twice in any Year and for a period of 12 months following the Expiry Date, conduct audits for the following purposes:
 - 35.4.1. to verify the accuracy of the Charges and Payment (and proposed or actual variations to them in accordance with this Contract), any cost reduction and income generation initiatives carried out pursuant to this Contract, and/or the costs of all suppliers (including sub-contractors) of the Services at the level of detail agreed in Schedule Three (Charges and Payment);

- 35.4.2. to review the integrity, confidentiality and security of the Authority Data;
- 35.4.3. to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Conditions 33 (Data Protection Act) and 34 (Freedom of Information) and any other legislation applicable to the Services;
- 35.4.4. to review the Contractor's compliance with its obligations under Condition 7 (Performance of the Services);
- 35.4.5. to review the Contractor's compliance with its obligations with regard to the provision of Value for Money;
- 35.4.6. to review any records created during the design and development of the Contractor's System and pre-operational environment such as information relating to testing;
- 35.4.7. to review any books of account kept by the Contractor in connection with the provision of the Services;
- 35.4.8. to carry out the audit and certification of the Authority's accounts;
- 35.4.9. to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 35.4.10. to verify the accuracy and completeness of any management information delivered or required by this Contract;
- 35.4.11. to ensure that the Contractor is complying with the Standards; and/or
- 35.4.12. any other audit that may be required by any Regulatory Body.
- 35.5. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 35.6. Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- 35.6.1. all information requested by the Authority within the permitted scope of the audit;
- 35.6.2. reasonable access to any Premises controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- 35.6.3. access to the Contractor System; and
- 35.6.4. access to the Contractor's Staff.
- 35.7. The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Delivery Targets.
- 35.8. The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days notice of its intention to conduct an audit.
- 35.9. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition 35, unless the audit identifies a material Default by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 35.10. If an audit identifies that:
 - 35.10.1. the Contractor has failed to perform its obligations under this Contract in any material manner, the Parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 35.10.2. the Authority has overpaid any Charges, the Contractor shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and
 - 35.10.3. the Authority has underpaid any of the Charges, the Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Contractor in relation to invoicing, within 20 Working Days.

36. OFFICIAL SECRETS ACTS

- 36.1. The Contractor undertakes to abide by (and ensure that its Staff and sub-contractors abide by) the provisions of the Official Secrets Acts 1911 to 1989.
- 36.2. If the Authority's Contract Manager requires it, the Contractor shall ensure that any Staff nominated by the Authority sign a personal undertaking that they will comply with the provisions of the Official Secrets Acts 1911 to 1989.
- 36.3. In the event that the Contractor and/or its Staff fail to comply with this Condition, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

STATUTORY OBLIGATIONS AND REGULATIONS

37. HEALTH AND SAFETY

- 37.1. The Contractor shall promptly notify the Authority of any health and safety hazards that may arise in connection with the performance of the Services.
- 37.2. The Authority shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Contractor in the performance of the Services.
- 37.3. The Contractor shall inform all Staff engaged in the provision of the Services at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.
- 37.4. While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of persons working at its Premises.
- 37.5. The Contractor shall immediately notify the Authority's Contract Manager in the event of any incident occurring in the performance of the Services on the Authority's Premises where the incident causes any personal injury or any damage to property that could give rise to personal injury.
- 37.6. The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which apply to Staff and other persons working at the Authority's Premises in the performance of the Services.

38. UNLAWFUL DISCRIMINATION

- 38.1. The Contractor shall not unlawfully discriminate in relation to the performance of the Services within the meaning of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975 or the Disability Discrimination Act 1995 and/or any other anti-discrimination legislation from time to time in force. The Contractor shall take all reasonable steps to secure the observance of these provisions by all sub-contractors or agents used in the provision of the Services.

39. PREVENTION OF CORRUPTION

- 39.1. The Contractor shall not do (and warrants that in entering this Contract it has not done) any of the following:
- 39.1.1. offer, give or agree to give any employee or representative of the Authority or the Crown any gift or consideration of any kind as an inducement or reward for doing or refraining from doing (or having done or refrained to do) any act in relation to the obtaining or performance of this Contract or any other Contract with the Crown
 - 39.1.2. enter into this Contract or any other contract with the Crown in connection with which commission has been paid (or agreed to be paid) on the Contractor's behalf or with its knowledge unless, before the Contract was signed, particulars of the commission were disclosed in writing to the Authority.
- 39.2. Where the Contractor (or a sub-contractor or member of the Contractor's Staff or anyone acting on its behalf) commits or has committed any act or omission referred to in Condition 39.1 or any offence under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract with the Crown the Authority has the right to:
- 39.2.1. terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
 - 39.2.2. recover from the Contractor any other loss sustained in consequence of any breach of this Condition whether or not the Contract has been terminated.

40. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

40.1. No person who is not a Party to this Contract (including, without limitation, any sub-contractor, member of the Contractor's Staff or anyone else acting on the Contractor's behalf) shall have any right to enforce any term of this Contract which expressly or by implication confers a benefit on him without the prior written agreement of both Parties. Any agreement made under this Condition shall expressly refer to this Condition in its terms.

40.2. This Condition does not apply to the Crown.

41. NATIONAL MINIMUM WAGE

41.1. The Contractor shall ensure that, where appropriate, Staff are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1988.

42. ENVIRONMENTAL REQUIREMENTS

42.1. The Contractor shall, when working on the Authority's Premises perform the Contract in accordance with the Authority's environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

RE-TENDERING AND HANDOVER

43. CO-OPERATION WITH HANDOVER

43.1. The Contractor shall co-operate fully with the Authority in ensuring that there is a smooth handover to any subsequent provider of the Services when this Contract expires or is terminated.

43.2. Where required, the Contractor shall provide the Authority with any facilities and assistance reasonably required by the Authority to enable the Authority to re-tender for the future provision of the Services. Without prejudice to the generality of the preceding sentence, within 21 Days of a written request from the Authority, the Contractor shall provide the Authority with such information about the Services as the Authority reasonably requires to enable it to prepare tender documentation in such format as the Authority reasonably requires. The Contractor shall update any such information if requested by the Authority's Contract Manager.

- 43.3. Without prejudice to the obligations set out in Conditions 43.1 and 43.2 above, the Contractor shall comply with the obligations set out in Schedule Eleven (Exit Management).

44. PRE-TERMINATION TUPE OBLIGATIONS

- 44.1. The parties acknowledge and agree that where all or part of the Services cease to be provided by the Contractor for any reason and where all or part of the Services continue to be provided by the Authority and/or the Successor Contractor, there may be a relevant transfer of the Transferring Employees to the Authority and/or the Successor Contractor for the purposes of TUPE. If there is such a transfer, the employment of the Transferring Employees shall transfer to the Authority and/or the Successor Contractor in accordance with TUPE with effect from the Transfer Date.
- 44.2. Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Transferring Employees prior to the Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Transferring Employees to the Authority and/or the Successor Contractor.
- 44.3. On receiving a notice terminating this Contract or upon request by the Authority the Contractor shall not, for a period of six Months prior to the Expiry Date (or any extension of the Expiry Date agreed under Condition 4.2), do any of the following things without the prior written consent of the Authority (such consent not unreasonably be withheld):
- 44.3.1. Terminate the employment of any employee engaged in the performance of the Services;
 - 44.3.2. Materially change any of the terms or conditions of employment of any employee engaged in the performance of the Services whether with the person's consent or otherwise, save and except the Contractor may implement any changes that were agreed prior to receiving a notice terminating this Contract without the Authority's written consent;
 - 44.3.3. Relocate or assign to any new duties or to any other part of the Contractor's business any employee employed in the business of performing this Contract;
 - 44.3.4. Recruit, relocate or assign to the provision of the Services any employee who has not previously been involved in the provision of the Services.

For the purposes of clarity and the avoidance of doubt, where in the course of 'business as usual' (i.e. where the Contractor has not received a notice terminating this Contract or a request by the Authority as set out above) the Contractor wishes to do any of the things set out above, the Authority is prepared to accept such changes in principle provided that it is informed or consulted with respect to such.

- 44.4. On receiving a notice of termination of this Contract and during the twelve Month period prior to the Expiry Date (including any extension of the Expiry Date under Condition 4.2), the Contractor shall (if so requested):
 - 44.4.1. Fully and accurately disclose to the Authority the Initial Staff Information and the Relevant Personnel Documentation relating to those employees who are involved in the provision of the Services within 14 Days of receiving a written request to do so; and/or
 - 44.4.2. Permit the Authority to disclose the Initial Staff Information and the Relevant Personnel Documentation to any prospective tenderer subject to that tenderer's signing a confidentiality undertaking in relation to such information; and/or
 - 44.4.3. Fully and accurately disclose the Initial Staff Information and the Relevant Personnel Documentation relating to those employees who are involved in the provision of the Services directly to any prospective tenderer whose name has been notified to the Contractor by the Authority within 14 Days of receiving a written request to do so subject to that tenderer's having signed a confidentiality undertaking in relation to such information.
- 44.5. On receiving a notice of termination of this Contract and on receiving a request from the Authority during the three Month period before the Expiry Date (including any extension of the Expiry Date under Condition 4.2), the Contractor shall provide, and thereafter regularly provide in updated form at Monthly intervals (until the point of transfer for the relevant staff), to the Authority and to any Successor Contractor information equivalent to the Relevant Personnel Documentation and the Prescribed Particulars in respect of each employee who the Contractor reasonably believes will be a Transferring Employee provided that prior to so doing the Successor Contractor nominated by the Authority shall have executed in writing a confidentiality undertaking in favour of the Contractor.
- 44.6. The Contractor shall make reasonable endeavours to assist the Successor Contractor to communicate with, meet, inform and

consult with any employee whom the Contractor reasonably believes may be a Transferring Employee and with their trade union or other employee representative for the purposes of complying with regulations 13 and 14 of TUPE.

- 44.7. The Authority shall use reasonable endeavours to procure that any Successor Contractor shall comply with its obligations under regulations 13 and 14 of TUPE in respect of the Transferring Employees.
- 44.8. Immediately prior to the Transfer Date the Contractor shall provide to the Authority or the Successor Contractor a complete and accurate list of all employees whom it reasonably believes will be Transferring Employees.
- 44.9. Within a period of 30 Days following the expiry or termination of this Contract the Contractor shall provide to the Authority or to the Successor Contractor in writing Final Pay Details of the Transferring Employees.
- 44.10. If the Contractor becomes aware of any changes or inaccuracies in the information provided pursuant to its obligations under this Condition it will immediately inform the Authority of such changes or inaccuracies and provide the correct information as soon as is reasonably possible.

45. TUPE INDEMNITIES

- 45.1. On the termination or expiry of this Contract, the Contractor shall indemnify and keep indemnified the Authority in respect of any loss, damage, expense or other liability incurred by the Authority (either directly or by reason of any indemnity given to a Successor Contractor in relation to such liability) as a result of or arising from:
 - 45.1.1. the inaccuracy or incompleteness of the information provided by the Contractor to the Authority, a prospective tenderer or the Successor Contractor pursuant to Conditions 44.4, 44.5, 44.8, 44.9, and 44.10 in respect of the Transferring Employees;
 - 45.1.2. any failure by the Contractor to pay any of the Transferring Employees any sum owed to them prior to the Transfer Date;
 - 45.1.3. any claim, liability or expense arising from a breach by the Contractor of any contract of employment in relation to a Transferring Employee or collective agreement that is applicable to Transferring Employees prior to the Transfer Date under TUPE;

- 45.1.4. Any claim by a trade union, staff association or staff body recognised by the Contractor in respect of all or any of the Contractor's current or former personnel arising out of the Contractor's failure to comply with its legal obligations to inform and consult with such associations under regulations 13 and 14 of TUPE, save where such failure arises from the failure of the Authority or the Successor Contractor to comply with its or their duties under regulation 13 of TUPE;
- 45.1.5. Anything done or omitted to be done on behalf of the Contractor in respect of any contract of employment of a Transferring Employee or any collective agreement that applies to a Transferring Employee prior to the Transfer Date under the TUPE where the liability for such act or omission transfers to the Authority or the Successor Contractor pursuant to TUPE.
- 45.2. In the event that the Transferring Employees transfer to the Authority under TUPE, the Authority shall indemnify and keep the Contractor indemnified in respect of any claim or other legal recourse by a Transferring Employee for compensation for loss of office, redundancy, unfair dismissal, breach of contract or otherwise to the extent that such claim or legal recourse arises after the Transfer Date.

DEFAULT, DISRUPTION AND TERMINATION

46. TERMINATION ON CHANGE OF CONTROL OR INSOLVENCY

- 46.1. The Authority may terminate the Contract by written notice having immediate effect if:
 - 46.1.1. The Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Contract; and/or
 - 46.1.2. The Contractor, if a company, passes a resolution (or the court makes an order) that the Contractor be wound up otherwise than for the purpose of solvent amalgamation or reconstruction or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it or if the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; and/or

- 46.1.3. The Contractor, if an individual or firm, or in the case of a firm any partner in that firm, is the subject of a bankruptcy petition or bankruptcy order or has a receiving order or administration order made against him or makes any compromise or arrangement with or for the benefit of its creditors or appears unable to pay a debt or has no reasonable prospects of doing so within the meaning of sections 267 and 268 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

47. TERMINATION ON DEFAULT

- 47.1. The Authority may terminate the Contract or terminate the provision of any part of the Services:
- 47.1.1. in accordance with the provisions of Condition 52 (Improvement and Rectification) in respect of a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default; or
 - 47.1.2. by giving written notice to the Contractor with immediate effect if the Contractor is in material breach of any obligation under the Contract and:
 - a) the breach is not capable of remedy; or
 - b) the breach is a fundamental breach of the Contract; or
 - 47.1.3. the Contractor is in persistent breach of any obligation under this Contract.
- 47.2 The Contractor may immediately terminate this Contract by giving the Authority written notice in the event that the Authority fails to pay an undisputed sum due to the Contractor under this Contract and such failure continues for 90 days from receipt by the Authority of notice of non-payment from the Contractor.

48. BREAK

- 48.1. The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving three Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

49. PARTIAL TERMINATION

- 49.1. The Parties shall agree any amendments to this Contract which are necessary as a consequence of any partial termination (including the effect such partial termination may have on the Services and Charges) in accordance with the Contract Variation Procedure, provided that the Contractor shall not be entitled to an increase in the Charges as a consequence of any such partial termination.

50. CONSEQUENCES OF TERMINATION

- 50.1. If the Authority terminates the Contract under Condition 47 (Termination on Default), or terminates any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor:

50.1.1. the cost of making those other arrangements; and

50.1.2. any additional expenditure or costs incurred by the Authority in respect of the provision of the Services (beyond that which it would have had to pay to the Contractor under this Contract if the Contract (or part of it) had not been terminated) throughout the term of the Contract.

- 50.2. Where the Contract or any part of the Services is terminated under Condition 47 (Termination on Default) no further payments shall be payable to the Contractor until the Authority has determined whether:

50.2.1. any sum is payable to the Contractor under Condition 50.1 and the amount of any such sum. Any sum due under Condition 50.1 may be set off against any sum otherwise due to the Contractor from the Authority; and

50.2.2. any sum is due to the Authority under Condition 28.2 and the amount of any such sum. Any sum due under Condition 28.2 may be set off against any sum otherwise due to the Contractor from the Authority.

- 50.3. If the Authority terminates the Contract or terminates the provision of any part of the Services under Condition 48 (Break), the Authority shall re-imburse the Contractor for:

50.3.1. a maximum of 9.78% of the annual net profit the Contractor would have earned under this Contract prorated for the six month period following the three Months' written notice to the Contractor (provided always

that the Contractor is able to substantiate such to the Authority's reasonable satisfaction); and

- 50.3.2. any statutory redundancy payments for Staff that have or will be reasonably incurred by the Contractor as a direct result of termination of this Contract, provided always that the Contractor has used its best endeavours to mitigate such (and provided that in doing so the Contractor does incur disproportionate cost); and
- 50.3.3. any proven losses actually and reasonably incurred by the Contractor as a direct result of early termination including, without limitation sub-contractor breakage costs provided that the Contractor has included terms in all sub-contracts in substantially the same form as Condition 48 (Break) allowing it to terminate the sub-contract by giving three Months notice in writing without incurring any financial penalty beyond payment of the sub-contractor's reasonable termination expenses and provided that the Contractor takes reasonable steps, consistent with the obligation to provide the Services during the period of notice to mitigate its losses including:
 - terminating all Contracts with sub-contractors on the best available terms;
 - cancelling all capital and recurring cost commitments; and
 - reducing Equipment and labour costs.
- 50.4. The Authority shall only pay termination costs in relation to arrangements or agreements that:
 - 50.4.1. are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
 - 50.4.2. do not relate to contracts or subcontracts with Affiliates of the Contractor;
- 50.5. Any payment under this Condition 50 shall be the Contractor's sole remedy for termination of the Contract by the Authority in accordance with Condition 48 (Break).
- 50.6. For the purposes of obtaining payment under Condition 50.3, the Contractor shall in accordance with the provisions of Schedule 3 (Paragraph 2.1.1) submit to the Authority within 20 Working Days of service of the notice, a fully itemised and costed list,

with supporting evidence, of the losses incurred by the Contractor in respect of the matters listed at Condition 50.3 above as a result of the termination of the Contract or the termination of any part of the Services, such list to be updated (only in respect of ongoing costs) each week until the Contract is terminated.

- 50.7. If requested by the Authority's Contract Manager, the Contractor shall submit its best estimate of the total costs it is likely to claim under Condition 50.3 together with a breakdown of how those costs have been determined. The Contractor shall not be bound by any estimate given under this Condition provided it can demonstrate that it used reasonable skill and care in putting it together.
- 50.8. The Authority shall not be liable under Condition 50.3 for any sum which exceeds the amount which would have or could reasonably be expected to have been paid to the Contractor under the unexpired part of the Contract.

51. SURVIVAL OF OBLIGATIONS

- 51.1. The expiry or termination of this Contract however caused shall not affect any right or remedy which has accrued to the Contractor or the Authority or which accrues to the Contractor or Authority thereafter. Without prejudice to the generality of the previous sentence, the following Conditions of this Contract shall survive termination: Condition 27.1 (Indemnities Limitations of Liability and Insurance); Condition 29 (Intellectual Property Rights); Condition 30 (Indemnity for Intellectual Property Rights); Condition 31 (Confidential Information); Condition 32 (Publicity); Condition 34 (Freedom of Information); Condition 35 (Retention of Documents and Right of Audit); Condition 36 (Official Secrets Acts); Condition 39.2 (Prevention of Corruption); Condition 43 (Co-operation with Handover); Condition 45 (TUPE Indemnities) and Condition 62 (Dispute Resolution).

52. IMPROVEMENT AND RECTIFICATION

- 52.1. If the Contractor fails to perform the Services (or any part of them), fails to fulfil any obligation under this Contract or fails to achieve a Service Delivery Target during the term of the Contract, the Authority may issue an Improvement Notice which shall set out details of the Default.
- 52.2. Following the issuing of an Improvement Notice, the Contractor and the Authority shall agree a plan of remedial measures together with a timetable for such remedial measures to improve performance (the "Improvement Plan"). If an Improvement Plan cannot be agreed within 15 Working Days of an Improvement

Notice being served, the Authority shall be entitled to escalate any issues through the Disputes Procedure as set out in Schedule Seven (Dispute Resolution).

- 52.3. Where the Contractor fails to rectify the Default within the timescale specified by the Improvement Plan, or such longer period as the Authority may agree, the Authority may issue a Rectification Notice which shall set out details of the Default, the action which the Authority requires the Contractor to take and the timescale within which the Default is to be rectified.
- 52.4. Within 15 Working Days of receipt of a Rectification Notice the Contractor shall provide the Authority with a programme of improvement ("Rectification Proposal") for the Authority's approval.
- 52.5. The Authority shall notify the Contractor in writing whether or not it approves the Rectification Proposal within 15 Working Days of its receipt by the Authority.
- 52.6. If the Authority reasonably considers that the draft Rectification Proposal is insufficiently detailed to be properly evaluated, or will take too long to complete, or will not remedy the matters complained of then it may:
 - 52.6.1. require the Contractor to produce a revised Rectification Proposal (specifying a further period of time for the development of such); or
 - 52.6.2. serve a notice of termination which will take effect unless the Contractor remedies the Default within a period specified in the notice of termination which shall not be less than 30 Days from the date on which the notice of termination is sent to the Contractor; or
 - 52.6.3. terminate all or part of the Contract.
- 52.7. If the Authority approves the Rectification Proposal the Contractor shall carry out such approved rectification and remedy the Default within 60 Days from the date of the Rectification Notice or such other period as the Authority may reasonably require.
- 52.8. The Authority may in its absolute discretion extend the period of time within which the Default is to be rectified.
- 52.9. If a Rectification Proposal is agreed between the Parties but the Contractor fails to implement the Rectification Proposal to the Authority's reasonable satisfaction, the Authority may:

- 52.9.1. give the Contractor a further opportunity to resume full implementation of the Rectification Proposal; or
 - 52.9.2. serve a notice of termination which will take effect unless the Contractor remedies the Default within a period specified in the notice of termination which shall not be less than 30 Days from the date on which the notice of termination is sent to the Contractor; or
 - 52.9.3. terminate all or part of the Contract; or
 - 52.9.4. take such further actions as it is entitled to take in accordance with the provisions of Condition 53 (The Authority Further Action).
- 52.10. The Authority shall not be obliged to follow the Rectification Process if a Rectification Proposal has been implemented but the Contractor has failed to remedy the Default by those means, or if there is a repetition of substantially the same material Default within a period of three (3) months following the conclusion of the Rectification Proposal. In either case the Authority may serve a notice of termination of the whole or part of this Contract and the Contract (or the relevant part of it) shall terminate on the last Day of the period specified by the Authority in its notice which shall not be less than 30 Days from the date on which the notice of termination is sent to the Contractor, unless the Contractor remedies the Default within that period.

53. THE AUTHORITY FURTHER ACTION

- 53.1. The Authority may exercise its rights under this Condition 53 in relation to all or any part of the Services if there is a Default entitling the Authority to terminate this Contract (or any part of it) in accordance with Condition 47 or the Authority is otherwise entitled to terminate the Contract.
- 53.2. Notwithstanding the provisions of this Condition, the Authority shall work with the Contractor to minimise the use of the Authority's rights under this Condition 53.
- 53.3. Where the Authority is entitled to terminate this Contract (or any part of it) in accordance with Condition 47, pursuant to Condition 53.1 the Authority may:
 - 53.3.1. where it considers it expedient to do so, require the Contractor by notice in writing to take those steps that the Authority reasonably considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Authority's right to intervention; or

- 53.3.2. appoint any person (or group of persons) to work with the Contractor in performing all or a part of the Services (including those provided by any Sub-Contractor); and/or
 - 53.3.3. take the steps that it considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-Contractor).
- 53.4. The Contractor shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of Condition 53.3.2, and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.
- 53.5. If the Contractor:
- 53.5.1. fails to confirm within ten (10) Working Days of a notice served pursuant to Condition 53.3.1 that it is willing to comply with that notice; or
 - 53.5.2. fails to work with a person appointed in accordance with Condition 53.3.2; or
 - 53.5.3. fails to take the steps notified to it by the Authority pursuant to Condition 53.3.3,
- then the Authority may take action under this Condition 53 either through itself or with the assistance of third party service providers, provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to Condition 31 (Confidential Information).
- 53.6. If the Authority takes action pursuant to Condition 53.5, the Authority shall serve notice ("Intervention Notice") on the Contractor. The Intervention Notice shall set out the following:
- 53.6.1. the action the Authority wishes to take and in particular the Services it wishes to control;
 - 53.6.2. the reason for and the objective of taking the action;
 - 53.6.3. the date it wishes to commence the action;
 - 53.6.4. the time period which it believes will be necessary for the action;
 - 53.6.5. whether the Authority will require access to the Contractor's premises;

- 53.6.6. to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period the action is being taken.
- 53.7. Following service of an Intervention Notice, the Authority shall:
 - 53.7.1. take the action set out in the Intervention Notice and any consequential additional action as it reasonably believes is necessary (together, the "Required Action"); and
 - 53.7.2. keep records of the Required Action taken and provide information about the Required Action to the Contractor; and
 - 53.7.3. co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide any Services in relation to which the Authority is not assuming control; and
 - 53.7.4. act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this Condition 53.
- 53.8. For so long as and to the extent that the Required Action is continuing, then:
 - 53.8.1. the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 53.8.2. subject to Condition 53.9, the Authority shall pay to the Contractor the Service Charges after (where the Required Action arose due to Contractor Default) the deduction of any applicable Service Credits, delay payments and the Authority's costs of taking the Required Action.
- 53.9. If the Required Action results in:
 - 53.9.1. the degradation of any Services not subject to the Required Action; or
 - 53.9.2. the non-achievement of a Service Delivery Target,beyond that which would have been the case had the Authority not taken the Required Action, then the Contractor shall be entitled to an agreed adjustment of the Charges, provided that the Contractor can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-achievement.

- 53.10. The Contractor shall bear its own costs in connection with any intervention by the Authority under this Condition 53, provided that the Authority shall reimburse the Contractor's reasonable additional expenses in respect of any intervention by the Authority under this Condition 53.

CONTROL OF THE CONTRACT

54. SERVICE OF NOTICES AND COMMUNICATIONS

- 54.1. All notices, invoices and other communications relating to this Contract shall be in writing and shall be deemed to be duly given when sent by prepaid first class post, by electronic mail or by hand delivery to the other party at the number or address set out below:

If to the Contractor:
Address:

Attention of the Company Secretary
Iron Mountain (UK) Ltd
65 Egerton Road
Birmingham
West Midlands
B24 0RR

Electronic mail address:

[REDACTED]

If to the Authority:
Address:

Attention of [REDACTED]
on behalf of
UK Border Agency
1st Floor Seacole Building
2 Marsham Street
London
SW1P 4DF

Electronic mail address:

[REDACTED]

- 54.2. Provided the notice or communication is not returned as undelivered (or, in the case of electronic mail, provided there is no notice of failed transmission), the notice or communication shall be deemed to have been given or made three working

Days after posting if sent by post or at the time of delivery if delivered by hand or by electronic mail.

- 54.3. In proving that a notice or communication was given or made it shall be sufficient to prove that:

54.3.1. in the case of posting to prove that the envelope containing the notice or communication was properly stamped, addressed and posted;

54.3.2. in the case of a hand delivered letter to provide a statement from the person who delivered it indicating that it was hand delivered to the correct address;

54.3.3. in the case of electronic mail to prove that it was sent to the correct electronic mail address or that it was acknowledged.

- 54.4. Either Party may change the addresses and details for delivery of notices under this Condition by notifying the other Party in writing.

55. SUB-CONTRACTING AND TRANSFER

- 55.1. The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior written approval (such consent not to be unreasonably withheld or delayed). Any sub-contractor approved by the Authority shall be listed in Schedule Nine (Approved Sub-Contractors).

- 55.2. Where the Authority has consented to the sub-contracting of all or part of the Services, the Contractor shall (unless the Authority's Contract Manager agrees otherwise) send the Authority a copy of the relevant sub-contract as soon as it has been signed.

- 55.3. The Contractor shall be responsible for the errors and omissions of its sub-contractors as if they were its own.

- 55.4. The Contractor shall not use self-employed individuals in the provision of the Services without the Authority's prior written approval.

56. NOVATION

- 56.1. On giving notice to the Contractor of not less than 30 Days, the Authority shall be entitled to:

56.1.1. assign, novate or otherwise dispose of its rights or obligations under the Contract to any Contracting

Authority provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract;

- 56.1.2. novate this Contract to any body (including but not limited to any private sector body) which substantially performs any of the functions that have previously been performed by the Authority provided that any such novation shall not increase the burden of the Contractor's obligations under this Contract.
- 56.2. If the Contract is novated to a body which is not a Contracting Authority pursuant to this Condition, then, from the date of the novation, the following changes shall be made:
 - 56.2.1. All references in the Contract to "the Authority" shall be replaced with references to "the Client";
 - 56.2.2. In Condition 29 (Intellectual Property Rights), references to "the Crown" in Conditions 27.2 and 27.3 shall be replaced with references to "the Client";
 - 56.2.3. In Condition 31 (Confidential Information), references to "the Crown" in Condition 29.1 shall be replaced with references to "the Client" and Condition 29.5 shall be deleted;
 - 56.2.4. Condition 34 (Freedom of Information) shall be deleted unless the body to which this Contract is novated is subject to obligations under the Freedom of Information Act 2000;
 - 56.2.5. In Condition 35 (Retention of Documents and Right of Audit), Condition 35.3 shall be deleted unless the body to which this Contract is novated can have its accounts examined and certified under the National Audit Act 1983;
 - 56.2.6. Condition 36 (Official Secrets Acts) shall be deleted;
 - 56.2.7. In Condition 39 (Prevention of Corruption), the words "or the Crown" shall be deleted from Condition 39.1.1 and the words "or any other contract with the Crown" shall be deleted from Conditions 39.1.1, 39.1.2 and 39.2 and in the case of Condition 39.2 shall be replaced with the word "Contract".

57. WAIVER

- 57.1. The failure of either Party to exercise a right or remedy under this Contract shall not constitute a waiver of that right or remedy.
- 57.2. No waiver shall be effective unless it is communicated to the other Party in writing.
- 57.3. A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any separate breach.

58. SEVERABILITY

- 58.1. If any provision or Condition of this Contract is held to be invalid, illegal or unenforceable by any court, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had executed without the provision or Condition in question.
- 58.2. In the event that a court holds a provision or condition to be invalid, illegal and unenforceable and the provision is so fundamental that its removal would prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to ensure that the purpose of the Contract is achieved in the absence of the provision or Condition in question.

59. VARIATION

- 59.1. The Contract shall not be varied unless such variation is made in writing by means of a Contract Variation Notice as set out in Schedule Six (Contract Variation Procedure).
- 59.2. In the event of an emergency, the Authority shall have the right to vary the Contract by way of oral instructions given by the Authority's Contract Manager which shall subsequently be confirmed via the Contract Variation Procedure as set out in Schedule Six (Contract Variation Procedure), such procedure to be initiated within seven Days of the issue of such instructions.
- 59.3. For the avoidance of doubt:
 - 59.3.1. Condition 59.2 shall not apply where the Contractor would be entitled to reject such a variation on the grounds that the provisions of paragraph 4.5 of Schedule Six (Contract Variation Procedure); and

59.3.2. paragraph 4.4.3 of Schedule Six (Contract Variation Procedure) shall apply in the event that an emergency occurs under Condition 59.2.

59.4. The Authority shall have the right to vary the Services at any time provided that the variation required is related in nature to the Services being provided and does not impose any material burden on the Contractor.

59.4.1. For the avoidance of doubt, the Authority's intent is that Condition 59.4 be used for de minimis changes, and that it not be used as a derogation process.

60. **FORCE MAJEURE**

60.1. Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure where there is no practicable means available to the Party concerned to avoid such failure or delay.

60.2. If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as is practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.

60.3. Each Party shall use all reasonable endeavours to mitigate the impact of the Force Majeure event on the performance of the Services. However if any such event prevents either Party from performing all of its obligations for a period in excess of 3 Months, either Party shall be entitled to terminate the Contract at no cost to the terminating Party by notice in writing with immediate effect.

60.4. For the purposes of this Condition, "Force Majeure" means an event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventative action by the Party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

60.5. Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with the obligation to the Contractor by Force Majeure.

61. CONFLICT OF INTEREST

- 61.1. The Contractor shall not do anything, or knowingly or negligently permit a situation to arise, whereby a conflict may be created between the interests of the Authority and the Contractor or which may be likely to prejudice its independence and/or objectivity in providing the Services.
- 61.2. In the event of the Contractor becoming aware of any conflict of interest (whether such existed on or before the Commencement Date or has come to exist thereafter) it shall immediately notify the Authority of such in writing providing full particulars of such together with any additional information which the Authority may require in connection with such matter.
- 61.3. If the Authority considers that the conflict of interest notified to it under Condition 61.2 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as are necessary to avoid or, as the case may be, remove such conflict of interest.
- 61.4. In the event that:
- 61.4.1. the Contractor fails to avoid or remove such conflict as required in Condition 61.3 or such conflict cannot in the view of the Authority be avoided or removed; or
 - 61.4.2. the Authority considers that a conflict of interest existed at or prior to the Commencement Date which could have been discovered by the Contractor's due diligence and which should have been disclosed in writing by the Contractor prior to the Commencement Date,
- such matter may be deemed to constitute a material default.
- 61.5. Any dispute in respect of this Condition shall be determined in accordance with Condition 62 (Dispute Resolution).

DISPUTES AND LAW

62. DISPUTE RESOLUTION

- 62.1. Any Disputes between the Parties arising out of or in connection with the Contract shall be resolved in accordance with the provisions of Schedule Seven (Dispute Resolution).

63. FURTHER ASSURANCE

- 63.1. At any time after the date of this Contract each Party shall execute or procure the execution of such documents and do or

procure the doing of such acts and things as the other Party may reasonably require for the purpose of giving to the other Party the full benefit of its rights under this Contract.

64. COUNTERPARTS

- 64.1. This Contract may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts together will constitute one and the same instrument.

65. GOVERNING LAW

- 65.1. This Contract shall be governed by, and interpreted in accordance with, English law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

SIGNED

For and on behalf of the Authority by:

Date:

Full name and position:

For and on behalf of the Contractor by:

Date:

Full name and position:

SCHEDULE ONE: SERVICE SPECIFICATION

Service Specification for the Record Management Services Contract for Off-Site Record Storage, Retrieval, Transportation and Destruction Services.

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Section 1: Overview

1. Summary of Requirement

- 1.1. The Authority requires a records management service to manage its externally stored Records.
- 1.2. The Contractor is required to provide record management services for the duration of this Contract in order to:
 - 1.2.1. provide a record retrieval and delivery service to the Authority with respect to those of the Authority's Records held by the Contractor, and
 - 1.2.2. such other associated support services as are set out in this Schedule One, and
 - 1.2.3. where instructed effect the secure destruction of certain of the Authority's Records currently held in the Contractor's premises.
- 1.3. The operational details shall be agreed by the Parties by no later than 20 Working Days prior to the Commencement Date.
- 1.4. The requirements for the Contract are set out in this Schedule One (Service Specification).

2. Context

- 2.1. The Authority currently has a record holding of approximately 10 million. Some of these are made up of a traditional cardboard file cover of approximate dimensions of 24cm wide X 35cm high that (with contents) vary in thickness from 1cm to 10cm or more and may consist of one or more sub-files with the same main reference number.
- 2.2. A revision of processes and business change has led to some Records being stored in boxes measuring 36.8cms x 29.2cms x 26.7cms. Typically (although not always) these boxes contain between 80 -100 Records.
- 2.3. The Records stored fall into two broad categories:
 - 2.3.1. those that are subject to frequent use by the Authority's case workers and are regularly retrieved from storage (sometimes known as 'active files'); and
 - 2.3.2. those that are rarely or never retrieved (sometimes known as 'archive' or 'concluded' files).

For the purposes of this Contract no differentiation is made between these categories.

3. The Authority's Records

- 3.1. For the purposes of this Schedule One, a Record is deemed to include all of the files, sub-files and other such other documents or related media as may be associated with it.
- 3.2. The Parties acknowledge and agree that the risk and the responsibility for any Record shall:
 - 3.2.1. pass from the Contractor to the Authority once the Authority has taken delivery of such Record, and
 - 3.2.2. pass from the Authority to the Contractor once such Record is collected by the Contractor from the Authority.

4. Charges

- 4.1. The Charges that shall apply for the delivery of the Services specified in this Schedule One are set out in Annex A of Schedule Three (Charges and Payment) of this Contract.

5. Standards

- 5.1. The Contractor shall ensure that the standards and quality control procedures it has in place are (as a minimum) consistent with industry standards and practices, the provisions of Condition 20 (Monitoring, Quality Plans and Management Information) and are compliant with ISO 9001:2000 (or any equivalent standard generally recognised as having replaced it).

6. Monitoring & Audit

- 6.1. The Authority may monitor the delivery of the Services in accordance with the provisions of Condition 20 (Monitoring, Quality Plans and Management Information).
- 6.2. The Contractor acknowledges that the proper management of the Authority's Record holding requires a continuous and ongoing cycle of sample and 'spot-check' audits.
- 6.3. The Authority shall require the Contractor to conduct an audit process with respect to those of its Records that the Contractor either holds in storage or handles during the lifetime of the Contract. The Parties shall agree the process and schedule for such an audit process within 12 Months of the Commencement Date.

7. Operational Protocols

- 7.1. In developing the protocols specified within this Schedule One the Parties shall share such information or data as is required to develop such.

8. Process Maps

- 8.1. The Parties shall agree a set of process documents and definitions in support of the protocols specified and other operational processes required by, or referred to, within this Schedule One.
- 8.2. This set of process documents and definitions (the “Process Maps”) shall be agreed by the Parties by no later than 20 Working Days prior to the Commencement Date.
- 8.3. Such Process Maps shall be set out as Annex A of this Schedule One.

9. Containers

- 9.1. The Contractor shall only use such containers as are deemed suitable by the Authority to transport the Authority’s Records, and shall not accept delivery of any Records supplied in any other types of container.
- 9.2. For the avoidance of doubt:
- 9.2.1. the Parties shall, by no later than 20 Working Days prior to the Commencement Date, agree the types of container that are suitable for use in the performance of the Services (for the purposes of clarity, the Authority shall require that all containers used within its premises comply with its health and safety procedures), and
- 9.2.2. provided that such are not damaged so as to render them unfit for the purpose of storing the Authority’s Records, where the Contractor receives any of the Authority’s Records in boxes it shall store them in those boxes. Where the Contractor wishes to ‘re-box’ Records for any other reason it shall do so at its own expense.

10. Operating Hours

- 10.1. The Contractor shall ensure that, unless specifically agreed otherwise by the Parties, the Services detailed in this Schedule One (which for the avoidance of doubt shall include the Enforcement Enquiries & File Services Contract Team Hotline service set out at paragraph 40 below) are available to the Authority between the

hours of 08:00 and 18:00 on each Working Day during the term of the Contract.

Section 2: Security

11. Security Requirements

- 11.1. The Contractor shall ensure that no access to the Authority's Records is given to any third party without the Authority's express consent.
- 11.2. The Contractor shall ensure that in performing the Services it is compliant with the Cabinet Office requirements for protective security as set out in the Cabinet Office document "HMG Security Policy Framework", and with any amendments to such which the Cabinet Office may make from time to time.
- 11.3. The Contractor's shall ensure that:
 - 11.3.1. its electronic security systems are compliant with the standards and procedures set out by the National Security Inspectorate (NSI); and
 - 11.3.2. its intruder detection systems are compliant with EN 50131-1 Grade 3.
- 11.4. The Contractor shall, upon provision of reasonable notice, provide the Authority access to such of its premises as are utilised in the performance of the Services to satisfy itself that the Contractor has appropriate security arrangements, policies and procedures in place.
- 11.5. The Contractor shall take such reasonable actions as are required to ensure that it has such physical protection measures as are deemed to represent Good Industry Practice in place to protect the Authority's Records against damage from fire, flood, vermin, earthquake, explosion, civil unrest, and other forms of natural or man-made disaster.

Section 3: Preparatory Work

12. Pre-Commencement Activity

- 12.1. The Authority shall require the Contractor, as part its preparatory work prior to the Commencement Date, to take such actions as are necessary to ensure that:
 - 12.1.1. it designs, develops and implements an electronic records management system in accordance with the provisions of Schedule Twelve (Records Management Software Supply and Support); and
 - 12.1.2. it has the technical and operational capability to perform the Services as set out in this Schedule One (which for the avoidance of doubt shall include electronic document scanning); and
 - 12.1.3. during the period preceding the Commencement Date its Contract Manager meets regularly with the Authority to:
 - 12.1.3.1. review the development of its delivery plan (as specified in Condition 8 (Delivery Plan)); and
 - 12.1.3.2. develop detailed operational implementation plans.

13. Roadshows

- 13.1. The Authority shall require the Contractor, as part its preparatory work prior to the Commencement Date, to participate in the design, development and delivery of a series of events intended to communicate, to such of the Authority's staff as are specified by Authority's File Services Contract Team, the following with respect to the Contract:
 - 13.1.1. the obligations placed upon the Parties, and
 - 13.1.2. the compliance requirement; and
 - 13.1.3. the information security requirement; and
 - 13.1.4. the required standards to be met by both Parties,together with such elements of the Authority's strategic objectives with respect to its information assets, and best practice with respect to Record life-cycle management, as the Authority's File Services Contract Team considers appropriate or necessary.

- 13.2. Accordingly with respect to such roadshows the Parties shall, within 6 months of the Effective Date, agree the format and content of such roadshows together with a detailed schedule for the delivery of such.
- 13.3. For the avoidance of doubt, the Authority shall require such roadshows to be delivered in each of its UK regions in the three months immediately preceding the Commencement Date

14. Training

- 14.1. The Authority shall require the Contractor, as part its preparatory work prior to the Commencement Date, to participate in the design, development and delivery of a series of training events to ensure that, in performing the Services, its staff have an appropriate level of understanding of the Authority's operational requirements.
- 14.2. Accordingly the Parties shall, within 6 months of the Effective Date, agree the format and content of such training events together with a detailed schedule for the delivery of such.
- 14.3. For the avoidance of doubt, the Authority shall further require:
 - 14.3.1. that the Contractor shall continue to deliver such training events to its staff throughout the duration of the Contract, and
 - 14.3.2. that the Contractor complies with the training requirement specified in Schedule Twelve (Records Management Software Supply and Support).

Section 4: Liaison and Data Provision

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16. *Deliberately Blank*

17. Data Provision

- 17.1. The Contractor shall ensure all of the actions and activities it undertakes in performing the Services are recorded appropriately in accordance with the provisions of paragraph 22.4.2 of this Schedule One
- 17.2. The Contractor shall ensure that any data it submits to, or receives from, the Authority is managed in accordance with the provisions of Conditions 31 (Confidential Information) and 33 (Data Protection Act).
- 17.3. From time to time the Authority may require the Contractor to provide electronic lists or data regarding such of the Authority's Records as are being, or have been held by, the Contractor. Where the Authority requests such, the Contractor shall (at its own cost, provided always that such costs are not disproportionate) provide such lists or data to the Authority within such timescale as the Parties shall agree and in such format as the Parties shall agree.

Section 5 Storage and Retrieval

18. Record Storage

18.1. The Contractor shall ensure that:

- 18.1.1. the environment within which the Authority's Records are stored is consistent with appropriate industry standards for doing so, and
- 18.1.2. its storage facility is maintained at temperatures and humidity levels that are suitable for the proper storage of paper media, and
- 18.1.3. that such of its premises as are utilised in the performance of the Services have adequate fire detection, alarm, suppression and extinguishing systems in place, and
- 18.1.4. that its systems and processes necessary for doing so are properly controlled, monitored and maintained, and
- 18.1.5. that the storage capacity made available to the Authority is consistent with the position as represented within in its tender documentation,

such that no unreasonable damage or deterioration occurs to the Authority's Records.

- 18.2. For the avoidance of doubt the Charges for the storage of the Authority's Records shall be calculated by the linear metre of Records stored (record linear metres) in accordance with the provisions of Schedule Three (Charges and Payment).
- 18.3. The Authority may require the Contractor to store audio tapes, analogue audio/visual tape or other electronic audio/visual media. Where such storage is required the Contractor shall ensure that appropriate facilities are provided for the storage of electronic media.
- 18.4. The Contractor shall ensure that those Records identified by the Authority as requiring enhanced security conditions are kept in lidded boxes and stored separately from the rest of the Authority's Records in a secure and locked environment.
 - 18.4.1. The Contractor shall further ensure that such Records are only accessed or handled by those of its staff as have been expressly (and in writing) authorised to do so by the Authority's File Services Contract Team.

19. Compliant Record Types

19.1. The Authority's File Services Contract Team shall, by no later than 20 Working Days prior to the Commencement Date, provide the Contractor with a list describing those distinct types (to include criteria such as size and physical condition) of the Authority's Records that the Authority has designated as compliant and that the Contractor is therefore authorised to receive into its storage facilities.

19.1.1. The Authority reserves the right to update such list of compliant Record types from time to time as it may require.

19.2. The Contractor shall take such actions as are necessary to ensure that only those types of the Authority's Records as are detailed on the Authority's list of compliant Record types shall be placed into its storage facilities.

19.3. Where the Contractor collects, takes delivery of, or otherwise receives any of the Authority's Records that are of a type not designated as compliant by the Authority's list of compliant Record types (as set out in 19.1 above), it shall:

19.3.1. return such Records to their point of origin (i.e. the point from such Records were dispatched or collected), and

19.3.2. ensure that all Records so returned are accompanied by written notification that clearly identifies the reason(s) for such return.

Where the point of origin of such Records is unclear the Contractor shall advise the Authority's File Services Contract Team which shall instruct the Contractor:

19.3.3. to which of the Authority's premises such Records should be returned, or

19.3.4. to accept such Records into storage (in accordance with the provisions of paragraph 21 (Record Put-Away) below.

20. Deliberately Blank

21. Record Put-Away

21.1. Subject to paragraph 19 (Compliant Record Types) above, in receiving such of the Authority's Records as are to be placed into storage the Contractor shall take such actions as are necessary to ensure that:

- 21.1.1. Bar code reading devices are used to register all Records, along with any associated documents and related media, on its electronic record management system, and in doing so (and where possible) the Contractor shall ensure that all of the constituent parts of each Record are so registered.
- 21.1.2. All such Record(s), along with any associated documents and related media, are subsequently placed into storage in accordance with the requirements of this Schedule One.
- 21.1.3. It maintains accurate electronic records of the location of all of the Authority's Records, along with any associated documents and related media, so stored such that:
 - 21.1.3.1. it is able to quickly and efficiently retrieve such upon request; and
 - 21.1.3.2. that it is able to provide detailed management information regarding the movement of the Authority's Records in accordance with the provisions of Schedule Eight (Management Information).
- 21.1.4. any Records that the Authority has designated as requiring enhanced security conditions are placed into storage in lidded boxes, and that such Records are stored separately from the rest of the Authority's Records in a secure and locked environment.
 - 21.1.4.1. For the avoidance of doubt, given the limited number of Records that require storage under such conditions, the Authority shall provide the Contractor with clear instructions regarding those Records that require storage under such conditions.

22. Record Retrieval

- 22.1. The Authority's staff will regularly require Records to be retrieved from storage. Retrieval requests shall (subject to the provisions of paragraph 40) be submitted to the Contractor electronically.
- 22.2. For the avoidance of doubt the process for the retrieval of CRS Records is set out in paragraph 38 below.
- 22.3. When making a retrieval request the Authority will specify whether it requires the Records requested within 24 hours or 48 hours (if it is not clear whether the Records requested are required within 24 hours, or within 48 hours, the Contractor shall assume that such Records are required within 48 hours).

- 22.3.1. For the avoidance of doubt any such 24 or 48 hour periods shall be deemed to commence from the time at which the Contractor receives any such request. Where a request is submitted to the Contractor outside of the operating hours specified in paragraph 10 (Operating Hours) of this Schedule One, the Contractor shall be deemed to have received that request at the commencement of its operating hours on the next Working Day.
- 22.4. Upon receipt of a retrieval request the Contractor shall:
 - 22.4.1. Retrieve the specified Record(s) from storage; and
 - 22.4.2. Use bar code reading devices to register all Records and documents so retrieved on its electronic record management system so as to ensure that all such are appropriately recorded; and
 - 22.4.3. Within either 24 or 48 hours (as specified by the Authority) of receiving a retrieval request make such arrangements as are necessary to ensure that all Record(s) requested are delivered to the Authority in accordance with the provisions of paragraphs 30 and 31 of this Schedule One.
- 22.5. In the event that the Authority makes a retrieval request for a Record that it requires on an urgent basis the Contractor shall ensure that such an urgently requested Record is made available for collection by the Authority (or such courier as the Authority shall appoint and make payment for) within four hours (or such other period of time as the Parties may agree) of receiving such a request.

23. Deliberately Blank

24. Retrieval of Damaged Records

- 24.1. Where a Record has been requested:
 - 24.1.1. that is in such a condition that the physical integrity of that Record would be adversely affected by handling, or
 - 24.1.2. where the bar code label is either missing or is damaged to the extent that it can no longer be read by electronic bar code reading devices,
- the Contractor shall, before delivering such Record(s) in accordance with paragraph 22.4.3 above:

- 24.1.3. in the case of Records in such a condition that the physical integrity of that Record would be adversely affected by handling:
 - 24.1.3.1. scan (using bar code reading devices) that Record such that its electronic record management system reflects (as set out in paragraph 22.4.2 of this Schedule One) the condition of that Record; and
 - 24.1.3.2. prepare that Record for delivery by placing it in a lidded box,
- 24.1.4. in the case of Records where the bar code label for a Record that has been requested is either missing or is damaged to the extent that it can no longer be read by electronic bar code reading devices:
 - 24.1.4.1. attach new bar code label to that Record; and
 - 24.1.4.2. ensure that its electronic record management system is updated (in accordance with the provisions of paragraph 22.4.2 of this Schedule One) to reflect such.

25. Missing Records

25.1. Where the Authority has either:

- 25.1.1. made a retrieval request and the Contractor has been unable to locate the Record or Records requested, or
- 25.1.2. not received a Record requested (where the Contractor's records show that such has been delivered to the Authority),

the Contractor shall conduct an immediate investigation into such, and shall use its reasonable endeavours to undertake all such actions as may be required to locate such Record or Records reported as missing within such timescales as the Authority may reasonably request.

- 25.1.3. The outcomes of such investigations shall be reviewed at the Monthly operational review meetings detailed in Schedule 4 (Contract Management).
- 25.1.4. Where the Contractor is unable to supply missing Records, it shall immediately report such to the Authority (detailing all relevant circumstances and information).

- 25.1.5. Where it can be demonstrated (by proof of receipt or record of activity on the Contractor's electronic record management system) that the Contractor has lost a Record or part thereof, the provisions of Condition 27 (Indemnities and Insurance) shall apply.

26. Bulk Ordering

- 26.1. Any single request made by the Authority for the retrieval of 50 or more Records shall be treated as a bulk order.
- 26.2. The timescale for the delivery of such bulk orders shall be agreed by the Parties on a case by case basis.
- 26.3. The Parties agree that where:
- 26.3.1. a bulk order request for a significant volume of Records has been made, or
- 26.3.2. a significant number of bulk order requests are likely to be made within a short period of time,
- the procedure set out in paragraph 54 (Ad Hoc Service Requests) of this Schedule One shall be used.

27. Deliberately Blank

28. Records Damaged Beyond Reasonable Use

- 28.1. Where any of the Authority's Records have suffered damage or deterioration to such an extent that such Record or Records (or any parts thereof) is/are, in the reasonable opinion of the Authority, in such poor physical condition so as to no longer be of practical use to the Authority; and where it can be clearly demonstrated that such damage or deterioration is the result of:
- 28.1.1. any Default on the part of the Contractor; or
- 28.1.2. the Contractor's negligence in performing the Services,
- then the provisions of Condition 27 (Indemnities and Insurance) shall apply.

Section 6: Collection, Delivery & Transportation of Retrieved Records

29. Record Collection

- 29.1. The Contractor shall, by no later than 20 Working Days prior to the Commencement Date, agree with the Authority a schedule for the regular collection of the Authority's Records from:
 - 29.1.1. the Authority's premises at Lunar House, 40 Wellesley Road, Croydon; and
 - 29.1.2. such other of the Authority's premises within Croydon as the Authority may from time to time require; and
 - 29.1.3. such other of the Authority's premises elsewhere within the UK as the Authority may from time to time require.
- 29.2. The Contractor shall also, by no later than 20 Working Days prior to the Commencement Date, agree with the Authority a protocol for the collection on demand of such of the Authority's Records, from such of its sites, as it may from time to time require.
- 29.3. The Contractor shall ensure that all Records collected in accordance with paragraphs 29.1 and 29.2 above are transported (in accordance with the provisions of paragraph 31 below) to the storage facilities being utilised in the performance of the Services.

30. Record Delivery

- 30.1. The Contractor shall, by no later than 20 Working Days prior to the Commencement Date, agree with the Authority a schedule for the regular delivery of the Authority's Records from storage to:
 - 30.1.1. the Authority's premises at Lunar House, 40 Wellesley Road, Croydon; and
 - 30.1.2. such other of the Authority's premises within Croydon as the Authority may from time to time require; and
 - 30.1.3. such other of the Authority's premises elsewhere within the UK as the Authority may from time to time require.
- 30.2. The Contractor shall take such actions as are necessary to ensure that such Records as the Authority has requested are transported (in accordance with the provisions of paragraph 31 below), to such of the Authority's premises as are set out at 30.1 above, within such timescales as are specified in Schedule Two (Service Delivery Targets).

31. Record Transportation

- 31.1. In transporting the Authority's Records the Contractor shall ensure that:
 - 31.1.1. it uses its reasonable endeavours to ensure that the physical condition of such Records does not deteriorate whilst they are in transit, and that the physical condition in which such Records are unloaded at their destination is no worse than that in which they were loaded at their point of origin; and
 - 31.1.2. it uses the shortest practical route between collection and delivery locations so as to minimise the period during which the Authority's Records are in transit; and
 - 31.1.3. such vehicles as it uses to transport the Authority's Records are securely locked when not on site at either the Authority's or the Contractor's premises; and
 - 31.1.4. the Authority's Records are not, without the Authority's express consent, stored in any vehicle overnight; and
- 31.2. The Contractor shall take such actions as are necessary to ensure that it is able to load and unload (as appropriate) its vehicles at all collection or delivery points. For the avoidance of doubt this shall include making appropriate provisions for a forklift truck and other such equipment as may be necessary to facilitate such loading/unloading.
- 31.3. The Parties shall, by no later than 20 Working Days prior to the Commencement Date, agree such appropriate control mechanisms with respect to the delivery of the Authority's Records as are necessary to ensure that:
 - 31.3.1. there is a clear transfer of accountability at each point of the collection, delivery and transportation processes; and
 - 31.3.2. that a clear audit trail exists with respect to the time and date of the movement or handling of any of the Authority's Records, together with details of the individual responsible for the such Records during each part of such movement and handling processes.

Section 7: Other Services

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33. *Deliberately Blank*

34. *Deliberately Blank*

35. *Deliberately Blank*

36. *Deliberately Blank*

37. *Deliberately Blank*

38. Image on Demand Service

38.1. The Authority will regularly require the Contractor to retrieve specified Records from storage and to transmit scanned images of specific pages or documents from that Record. Requests for this image on demand service shall be submitted electronically.

38.2. The Parties shall, by no later than 20 Working Days prior to the Commencement Date, agree a protocol that sets out the operational and technical processes required to support such.

38.3. Upon receiving an image on demand request the Contractor shall:

38.3.1. In the case of CRS Records, within 48 hours:

38.3.1.1. use its electronic record management system to identify the box within which the specified CRS Record is stored; and

38.3.1.2. locate the box so identified and verify that it contains the requested CRS Record (where the requested CRS Record cannot be located the Contractor shall inform the requesting member of the Authority's staff of such); and

38.3.1.3. retrieve the relevant CRS Record from store; and within a further 2 hours:

38.3.1.4. prepare and electronically scan (in accordance with the protocol specified at paragraph 38.2) the specified Record; and

38.3.1.5. carry out quality control checks with respect to the quality of the resultant electronic image (where such quality control checks demonstrate

the electronic image to be of insufficient quality (as set out in the protocol specified at paragraph 38.2) the Contractor shall repeat the processes specified in paragraph 38.3.1.4 above and in this paragraph 38.3.1.5 until an image compliant with the protocol specified at paragraph 38.2 above is obtained); and

38.3.1.6. make such arrangements as are necessary to make an electronic version of the scanned image available to the Authority and update its electronic record management system to reflect such; and

38.3.1.7. return that CRS Record to a storage location specifically reserved for CRS Records that have been scanned in accordance with the provisions of this paragraph 38.

38.3.2. In the case of all other types of Record, within two hours of receiving the request:

38.3.2.1. use its electronic record management system to confirm that it is holding the specified Record in store (where the Contractor's electronic record management system does not show the specified Record as being held in store, the Contractor shall inform the requesting member of the Authority's staff of such); and

38.3.2.2. retrieve the relevant Record from store; and

38.3.2.3. prepare and electronically scan (in accordance with the protocol specified at paragraph 38.2 above) the required parts of the specified Record; and

38.3.2.4. carry out quality control checks with respect to the quality of the resultant electronic image (where such quality control checks demonstrate the electronic image to be of insufficient quality (as set out in the protocol specified at paragraph 38.2) the Contractor shall repeat the processes specified in paragraph 38.3.2.3 and in this paragraph 38.3.2.4 until an image compliant with the protocol specified at paragraph 38.2 above is obtained); and

38.3.2.5. make such arrangements as are necessary to make an electronic version of the scanned image

available to the Authority and update its electronic record management system to reflect such; and

38.3.2.6. return the Record to the store.

38.4. For the avoidance of doubt:

38.4.1. Other than in the case of CRS Records (where the Contractor shall be required to electronically scan the entire Record), the Contractor shall not be obliged to accept requests for more than 20 pages (i.e. 20 single sides of paper) of information, as part of any single image on demand request; and

38.4.2. The Contractor shall not provide any interpretation of, or any opinion regarding, any of the information or detail contained within any of the Authority's Records.

39. *Deliberately Blank*

40. Enforcement Enquiries & File Services Contract Team Hotline

40.1. The Contractor shall provide a dedicated telephone hotline service for the use of:

40.1.1. the Authority's File Services Contract Team; and

40.1.2. enforcement team enquiries

40.2. For the avoidance of doubt the Parties agree that this telephone hotline service:

40.2.1. shall only be used by the Authority's File Services Contract Team and enforcement teams (the Authority shall, by no later than 20 Working Days prior to the Commencement Date, provide the Contractor with a list of those parts of its organisation as are authorised to make use of such hotline services); and

40.2.2. may not, with the sole exception of the Authority's File Services Contract Team, be used by any of the Authority's staff to make Record retrieval requests.

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42. *Deliberately Blank*

Section 8: Record Transfer and Destruction

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52. Business as Usual Record Destruction Process

52.1. As part of the Contract, the Authority shall, in accordance with its file retention policy, require the Contractor to destroy certain documents and Records by means of a secure and controlled process.

52.2. The Contractor shall only destroy such Records as the Authority has authorised.

52.2.1. In order to confirm an instruction from the Authority to destroy a Record or Records, the Contractor shall provide the Authority with a pre-destruction order that sets out the details of the Record or Records to be destroyed. The Contractor shall not undertake the destruction of any Record without a pre-destruction order for that Record that has been duly authorised by the Authority.

52.2.1.1. The Authority shall provide the Contractor with a list detailing those individuals which it has authorised to authorise such pre-destruction orders.

52.3. Where it can be demonstrated that the Contractor has destroyed a Record (or part thereof) not authorised for destruction by the Authority, the provisions of Condition 27 (Indemnities and Insurance) shall apply.

52.4. In destroying the Authority's Records the Contractor shall ensure that:

- 52.4.1. its electronic record management system is updated so that it reflects the status of such Records at each stage of the process outlined above; and
- 52.4.2. all Records (and all of their constituent parts) are mechanically shredded by means of a secure and controlled process; and
- 52.4.3. the residue of such mechanical shredding process shall be securely disposed of in a manner approved by the Authority that the Parties shall agree upon by no later than 20 Working Days prior to the Commencement Date; and
- 52.4.4. it provides the Authority with a destruction certificate for each Record so destroyed.

53. Electronic Media

- 53.1. Where the Authority requires the Contractor to transfer or destroy any electronic media it is holding in storage, such transfer or destruction shall be treated as an Ad Hoc Service and shall be managed in accordance with the provisions of paragraph 54 (Ad Hoc Service Requests) of this Schedule One.

Section 9: Ad Hoc Service Requests

54. Ad Hoc Service Requests

- 54.1. The Authority may from time to time require the Contractor to provide 'Ad Hoc' services. These will typically, although not always, be project based and may involve additional costs on the part of the Contractor.
- 54.2. The Contractor shall use its reasonable endeavours to support such requirements, and upon request shall provide the Authority (within a timescale mutually agreed by the Parties) with a detailed proposal that includes:
 - 54.2.1. an impact analysis (including any resultant impact upon activity levels required, resources and costs etc.); and
 - 54.2.2. a detailed project plan; and
 - 54.2.3. a costing proposal.
- 54.3. Where the Authority approves such a proposal it shall include the service requested within the scope of the Contract in accordance with the provisions of Schedule Six (Contract Variation Procedure).

Section 10: Information Technology

55. Records Management Software Supply & Support

- 55.1. The Authority shall, in accordance with the provisions of Schedule Twelve (Records Management Software Supply and Support) require the Contractor to design, develop and implement an electronic records management system to support the effective management (by both the Authority and the Contractor) of the Authority's Records.

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58. *Deliberately Blank*

59. *Deliberately Blank*

Section 11:

60. Provision of

- 60.1. The Authority shall, at its own expense, make the premises it has leased at (the Site") available to the Contractor for the performance of the Services.

60.2. For the avoidance of doubt:

60.2.1. the Authority shall not require the Contractor to make any payment for facilities management services or utility charges associated with the Site, and

60.2.2. for the purposes of this Section 11 of Schedule One, the Site should be considered to be included within the definition of Authority Premises provided at Condition 1.1.5.

60.3. The Site has been equipped for the specific purpose of the storage and management of paper media and the Parties agree that the Site is deemed to be fit for that purpose.

60.4. The Contractor shall not, without prior written approval from the Authority:

60.4.1. execute any structural or other material work to the Site or fixed plant or install additional items of fixed plant, or

- 60.4.2. carry out any business or trading activity from the Site other than those required in the performance of the Services, or
- 60.4.3. display any advertisement, sign or notice of any description outside the Site (unless such sign or notice is required to be displayed by Legislation), or
- 60.4.4. permit the Site to be used for any purpose other than:
 - 60.4.4.1. the performance of the Services, or
 - 60.4.4.2. such other purposes as the Authority may from time to time require.

61. Exit from [REDACTED]

- 61.1. For the purposes of clarity and the avoidance of doubt, the Authority shall require the Contractor to vacate the Site by no later than the end of February 2012.
- 61.2. In vacating the Site the Contractor shall be required to effect the transfer of all of the Authority's Records as are held in store at the Site to such other of the Contractor's premises as the Parties agreed in agreeing the Contract.
 - 61.2.1. In so transferring the Authority's Records, the Contractor shall ensure that such Records are transported in accordance with the following:
 - 61.2.1.1. The Contractor shall ensure that all Records so collected are transported (in accordance with the provisions of paragraph 31) to the Site.
 - 61.2.1.2. In collecting and transporting the Authority's Records the Contractor shall use its reasonable endeavours to ensure that such Records are delivered to the Site in no worse a physical condition than that in which they were collected.
 - 61.2.1.3. In transporting the Authority's Records the Contractor shall ensure that:
 - (i) It uses the shortest practical route between collection and delivery locations so as to minimise the period during which the Authority's Records are in transit; and
 - (ii) Such vehicles as it uses to transport the Authority's Records are securely locked

when not on site at either the Authority's or the Contractor's Premises; and

(iii) The Authority's Records are not, without the Authority's express consent, stored in any vehicle overnight; and

(iv) It uses its reasonable endeavours to ensure that the physical condition of any of the Authority's Records does not deteriorate whilst such Records are in transit.

61.2.1.4. The Contractor shall take such actions as are necessary to ensure that it is able to load and unload its vehicles (as appropriate) at:

(i) the collection point for the Authority's Records and

(ii) the Site.

For the avoidance of doubt this includes making appropriate provision for a forklift truck and other such equipment as may be necessary to facilitate such loading/unloading.

61.2.1.5. For the avoidance of doubt, the Contractor shall be responsible for the provision of such pallets as may be required for the collection and transportation of the Authority's Records.

61.2.1.6. In transporting the Authority's Records the Contractor shall ensure that:

(i) there is a clear transfer of accountability at each stage of the collection and transportation processes; and

(ii) that a clear audit trail exists with respect to the time and date of the movement or handling of any of the Authority's Records, together with details of the role of the individual responsible for the such Records during each part of such movement and handling processes.

61.2.2. The Charges for such bulk transfer are set out in the Table of Charges set out in Annex A to Schedule Three (Charges and Payment).

- 61.3. Prior to the Commencement Date the Contractor shall provide the Authority with detailed plans setting how it intends to achieve such.

62. Services Provided by the Authority

- 62.1. The Authority (acting either directly or through its sub-contractors) shall, at its own expense, ensure that the following services are provided at the Site:
- 62.1.1. telephony and (appropriate) access to the Authority's IT network, and
 - 62.1.2. the Authority's file tracking system, and
 - 62.1.3. heating and lighting, and
 - 62.1.4. cleaning and maintenance, and
 - 62.1.5. kitchen and toilet facilities, and
 - 62.1.6. security and facilities management services.
- 62.2. For the avoidance of doubt the Authority shall not be required to provide stationery equipment or supplies, and shall not provide the Contractor with any scanning equipment at the Site.

63. Accommodation, Facilities, Plant, Furnishings and Equipment

- 63.1. The Parties shall, within 10 Working Days of the Commencement Date, agree a schedule of the state and condition of the accommodation, equipment and facilities provided to the Contractor by the Authority.
- 63.2. The Contractor shall advise the Authority promptly in writing of any major damage to property or equipment made available to it by the Authority.
- 63.3. Subject to the provisions of paragraph 63.4, in supplying such services the Authority shall ensure that the Site, including all plant, furnishings and equipment (including software), remains in such condition as to enable the Contractor to comply with its obligations under the Contract in all respects.
- 63.4. The Contractor shall, in making use of such accommodation, plant, furnishings and equipment (including software) as the Authority has supplied, use its reasonable endeavours to ensure:
- 63.4.1. that it exercises reasonable care in the use of such accommodation, plant, furnishings and equipment (including software), and

- 63.4.2. that such accommodation, plant, furnishings and equipment (including software) are not subject to any deterioration beyond that arising from their normal and proper use, and
- 63.4.3. that such accommodation plant, furnishings and equipment (including software) are not subject to unreasonable wear and tear.
- 63.5. The Contractor shall not sell, lease, assign, part with possession or otherwise dispose of the Authority's premises equipment, or any interest in the same, without the express consent in writing of the Authority.
- 63.6. Any furniture, fittings, vehicles, equipment and buildings provided by the Authority shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose whatsoever without the prior approval in writing of the Authority.

64. Contractor's Equipment

- 64.1. Any furnishings, equipment or vehicles etc. supplied by the Contractor shall be the entire responsibility of the Contractor, and the Contractor shall be responsible for the clear identification, maintenance, repair, replacement, insurance and security of such equipment.
- 64.2. Any furniture, fittings, vehicles or equipment supplied by the Contractor shall comply with Health and Safety Regulations and other Relevant Legislation at all times.
 - 64.2.1. For the avoidance of doubt, with the sole exception of connection points to the Authority's IT network, the Contractor shall be responsible for the provision, upkeep and maintenance, as well as any costs as may be associated with such, for both the hardware and software required to operate its electronic records management system at the Site.
- 64.3. Upon the Expiry or termination of the Contract, the Contractor shall be responsible for removing its furnishings, equipment and vehicles etc. from the Site (unless an agreement is reached between the Contractor and the Authority or some other person or corporation for the purchase of certain items).

65. Charges at [REDACTED]

- 65.1. For the avoidance of doubt the Contractor shall not charge the Authority for the storage of its Records at the Site.

66. Issues of the Authority's Property

- 66.1. Neither the Contractor nor any sub-contractor, nor any other person, shall have a lien on property provided by the Authority, whether paid by or charged against the Contractor or not, for any sum due to the Contractor, sub-contractor or any other person and the Contractor shall take all such steps as may be reasonably necessary to ensure that the title of the Authority and the exclusion of any such lien are brought to the notice of all persons dealing with any issued property.

67. Dilapidation Survey

- 67.1. The Contractor shall:
- 67.1.1. not less than 20 Working Days days prior to the termination or expiry of the Contract, or
 - 67.1.2. not less than 20 Working Days prior to vacating the Site,
- (whichever occurs first) advise the Authority in writing of any dilapidation.
- 67.2. The Authority may conduct a "Dilapidation Survey" for the purpose of determining the physical condition and the state of maintenance of the Site by providing the Contractor with reasonable notice of its intention to do so. The costs of any such survey shall be borne by the Authority.
- 67.3. Any such survey may include a review of the schedule of the state and condition of the accommodation, equipment and facilities provided to the Contractor by the Authority detailed in paragraph 63.1 above.

68. Liabilities for Loss, Damage or Destruction

- 68.1. For the avoidance of doubt liabilities for loss, damage or destruction shall be managed in accordance with the provisions of Conditions 13 (Authority's Property), 14 (Contractor's Equipment), 15 (Authority's Premises) and 27 (Indemnities and Insurance).

69. Deliberately Blank

Section 12: Exit

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71. Exit

71.1. The provisions of Schedule Eleven (Exit Management) shall apply.

Annex A: Process Maps

The Process Maps for this Schedule One (being a set of process documents and definitions in support of the protocols specified and other operational processes required by, or referred to, within this Schedule One) shall be inserted here in accordance with the provisions of paragraphs 8.2 and 8.3 of this Schedule One.

- End of Schedule One -

SCHEDULE TWO: SERVICE DELIVERY TARGETS

1. Service Delivery Targets

- 1.1. The required performance levels for key Service activities are set out in Annex A to this Schedule Two.
- 1.2. In accordance with the requirements of Schedule Eight (Management Information Reporting), the Contractor shall provide performance reports against each of the Service Delivery Targets set out in Annex A.

2. Performance Deductions

- 2.1. Where the Contractor fails to achieve the performance level required for any of the Service Delivery Targets set out in Table 1 of Annex A, then the Authority shall be entitled to make Performance Deductions from payments in respect of the Services. For the avoidance of doubt, any such deductions shall not necessarily represent the Authority's exclusive financial remedy.
- 2.2. The value of any such Performance Deductions shall be calculated on the basis of the Performance Deduction calculation process set out in Annex A of this Schedule Two.
- 2.3. Where the Authority has exercised its entitlement to make a Performance Deduction the Contractor shall within 30 Days (subject to the provisions of 2.4 below) provide the Authority with a credit note to the value of that Performance Deduction.
- 2.4. The Contractor shall not be deemed to have failed to achieve against any Service Delivery Target where such failure would not have occurred but for:
 - 2.4.1. any Force Majeure circumstance; or
 - 2.4.2. any acts or omissions on the part of the Authority, its employees, agents, sub-contractors or suppliers (other than the Contractor).

Annex A to Schedule Two Service Delivery Targets and Performance Deductions

1. Service Delivery Targets

- 1.1. Table 1 below sets out the Service Delivery Target measures that shall be used in measuring the Contractor's performance in delivering the Services
- 1.2. In assessing the Contractor's performance against Service Delivery Targets set out in Table 1 below the Authority shall consider the total Monthly aggregate volume of activity for each Service Delivery Target measure, and the Contractor's performance against each such expressed as percentage of the total Monthly aggregate volume of activity for that Service Delivery Target measure within the relevant Month or Monthly period.
- 1.3. The Contractor's performance against each Service Delivery Target measure shall be assessed on a Monthly basis.

Table 1

Service Delivery Target measure		Service delivery requirement	Service Delivery Target
1	Record Receipt & Put Away (inc. damaged records)	Receipt and put-away of Records in accordance with paragraph 21 of Schedule One	98% within 24hrs of receipt into the Contractor's storage facility
2	24 hour Record Retrieval & Delivery (inc. retrieval & delivery of damaged records)	Retrieval and delivery of Records in accordance with paragraphs 22 and 24 of Schedule One	98% within 24hrs of request
3	48 hour Record Retrieval & Delivery (inc. retrieval & delivery of damaged records)	Retrieval and delivery of Records in accordance with paragraphs 22 and 24 of Schedule One	98% within 48hrs of request
4	Bulk Order Retrieval & Delivery	Retrieval and delivery of bulk Record orders in accordance with paragraph 26 of Schedule One	99% within agreed timescale
5	Collection and Delivery of Records	Collection and delivery Records in accordance with paragraphs 29, 30 & 31 of Schedule One	95% within +/- 30 minutes of agreed collection / delivery times
6	<i>Deliberately Blank</i>		
7	Image on Demand Retrieval & Scanning	Retrieval and scanning of Records in accordance with paragraph 38 of Schedule One	98% within 2hrs of request
8	Record Destruction	Destruction of Records in accordance with paragraph 52 of Schedule One	100% within 5 days of instruction (such 5 day period to commence upon receipt of the pre-destruction order)

Service Delivery Target measure		Service delivery requirement	Service Delivery Target
9	Ad Hoc Services	As agreed in accordance with paragraph 54 of Schedule One	As agreed in accordance with paragraph 54 of Schedule One

2. Calculation of Performance Deductions

- 2.1. The value of all Performance Deductions shall be based upon the Charges per item or activity as set out in Schedule Three (Charges and Payment) for the relevant Service Delivery Target measure.
- 2.2. The following mechanism for calculating the cost of damages to the Authority caused by the under-performance of the Contractor is considered by both Parties to be both proportionate and a genuine pre-estimate of the liquidated value of such damages.
- 2.3. Where the Contractor fails to achieve the performance level required by the Service Delivery Target measure set out in Table 1 above the Authority shall be entitled to make a performance deduction equivalent to the value of 1% of the Charges applicable for the relevant activity during that Month for each percentage point (or part thereof) by which the Contractor's performance is below the level specified for the relevant Service Delivery Target measure in Table 1 above.
- 2.4. The Authority shall not be entitled to make Performance Deductions with respect to Service Delivery Target measures where the Contractor has failed to achieve the level of performance required either:
 - 2.4.1. as a result of a default on the part of the Authority; or
 - 2.4.2. as a result of any other factor outside of the Contractor's control (provided always that the Contractor has made all reasonable efforts to mitigate the effects of such).

- End of Schedule Two -

SCHEDULE THREE: CHARGES AND PAYMENT

1. The Charges

1.1. The Charges as set out in Annex A are for the provision of the Services as defined in Schedule One (Service Specification) and Schedule Twelve (Records Management Software Supply & Support).

2. Transparency

2.1. The Contractor shall, with respect to all sums paid to it by the Authority pursuant to the Contract, populate 'annual project accounts' following the 1st anniversary of the Commencement Date

2.1.1. The Contractor's 'annual project accounts' shall include all the costs incurred, or likely to be incurred, by the Contractor in performing the services including (but not limited to):

2.1.1.1. detailed labour costs; and

2.1.1.2. accommodation costs (if applicable); and

2.1.1.3. hardware and software costs; and

2.1.1.4. licensing costs; and

2.1.1.5. sub-contractor costs; and

2.1.1.6. depreciation costs; and

2.1.1.7. financing costs; and

2.1.1.8. other miscellaneous costs.

2.1.2. A detailed breakdown of the elements comprising the Charges including (but not limited to):

2.1.2.1. a summary of the costs broken down against each element of the Services; and

2.1.2.2. the profit margin included within the 'annual project accounts'; and

2.1.2.3. a breakdown of its pricing of risk (fully supported by quantified assumptions and a detailed risk matrix).

2.2. The Contractor shall, if requested by the Authority, provide (or procure the provision of) the above level of information in relation to the costs

and expenses to be incurred by any of its Sub-contractors or third party suppliers.

2.3. The Contractor shall, upon the provision of reasonable notice, provide the Authority with such other financial information as it may from time to time reasonably require with respect to all sums paid by the Authority to the Contractor pursuant to the Contract.

3. Variation of Charges

3.1. Any proposals to vary the Service Specification or the Charges for any Year will be subject to the Contract Variation Procedure as set out in Schedule Six (Contract Variation Procedure).

4. Indexation

4.1. The Charges shall be fixed for the first three (3) years of the Contract. Thereafter they shall be reviewed annually. The first review date shall be the third anniversary of the Commencement Date.

4.2. Subject to the provisions of Condition 22.2.1, at each such review date the Charges shall, for the following twelve months, be varied by a sum equivalent to the percentage change in RPIX immediately preceding the relevant anniversary of the Commencement Date.

5. Efficiency Reviews

5.1. Prior to each anniversary of the Commencement Date, the Contractor shall conduct a review of its service delivery processes and mechanisms, and shall (at each of the review dates set out in paragraph 4.2 of this Schedule Three) provide the Authority with proposals for generating efficiency driven cost reductions through continuous improvement and process transformation activities.

5.1.1. The Parties shall, by no later than the first anniversary of the Commencement Date, agree the mechanisms and measuring and assessing value for money for such proposals.

5.1.2. The Authority shall consider such proposals on a case by case basis.

5.1.3. Where the Authority agrees to the implementation of any such efficiency proposals the Parties shall (subject to the Contract Variation Procedure as set out in Schedule Six (Contract Variation Procedure)):

5.1.3.1. agree a process and timetable for the implementation of such efficiency proposals, and

5.1.3.2. identify the potential value of such efficiency savings.

5.2. At each review date (as set out in paragraph 4.2 of this Schedule Three) the Parties shall review the effectiveness of any efficiency proposals implemented (in accordance with the provisions of paragraph 5.1 above) during the preceding 12 month period.

5.2.1. Where the Parties agree that any such implemented efficiency proposal has generated a saving the Parties shall:

5.2.1.1. agree the value of the sum realised by that implemented efficiency proposal, and

5.2.1.2. operate a gainshare mechanism to share the benefit of such realised savings whereby the Authority realises 75% of the value of such efficiency savings, and the Contractor realises 25% of such efficiency savings. For the avoidance of doubt the gainshare mechanism shall only apply to savings realised during the first 12 months of the operation of any implemented efficiency proposal, and any savings identified/generated shall not be carried over into any subsequent financial year.

6. Performance Deductions

6.1. The Authority shall be entitled to make Performance Deductions from payments in respect of the Services subject to the provisions of Schedule Two (Service Delivery Targets).

6.2. Performance Deductions shall be calculated quarterly in arrears in accordance with the provisions of Schedule Two (Service Delivery Targets).

7. Invoicing

7.1. Invoices in respect of the Services shall be submitted to the Authority at Monthly intervals in arrears. Invoices should be submitted (in original copy) to:



7.2. The Parties shall, by no later than 20 Working Days prior to the Commencement Date, agree the content and format of the invoices to be submitted by the Contractor in respect of the Services. Such invoices must include:

7.2.1. the Authority's purchase order number which will be issued to the Contractor; and

7.2.2. the date of the invoice; and

7.2.3. all appropriate references; and

7.2.4. a detailed breakdown of the pertinent Services and the corresponding charges; and

7.2.5. any such other documentation as may reasonably be required by the Authority to substantiate the invoice.

7.3. The Contractor may be required to submit evidence acceptable to the Authority in order to verify an invoice submitted to the Authority for payment. Should the Contractor not comply with this requirement, the Authority shall be entitled to deduct the invoiced value of the element(s) not supported by acceptable evidence from any payment. Such deduction shall only be reinstated once the Authority, acting reasonably, has received the relevant evidence from the Contractor.

7.4. In the event that either the Authority or the Contractor determine that there is a discrepancy or an apparent discrepancy on the Contractor's invoice the Authority shall either:

7.4.1. disregard the discrepancy for initial payment purposes and request that Contractor issue a credit note for the Authority's use against a subsequent invoice (or invoices); or

7.4.2. request that the Contractor withdraw its payment application through the issue of a credit note, and resubmit with the discrepancy resolved.

7.5. Any credit notes issued by the Contractor shall be issued separately to any invoices or invoice documentation.

Annex A to Schedule Three

1. Table of Charges

- 1.1. The Charges are set out in the Table 1 to this Schedule and are the only charges payable for the Services and for the Contractors' compliance with its other obligations under this Contract.
- 1.2. The Contractor shall apply a unit price discount in accordance with the minimum and maximum unit thresholds as specified in Table 1 below throughout the Contract Term.
- 1.3. Any sequential numbers that are missing from the Charge Category column in Table 1 relate to potential services that were requested in the tender document and do not form part of this Contract unless stated otherwise.
- 1.4. The Authority shall at any time prior to the Operational Service Commencement Date have the Option to purchase line items 47(a) and line item 48(a) in Table 1 of this Schedule Three. In the event that such options are purchased by the Authority the Charges pertaining to line items 47 and 48 will no longer be applicable.
- 1.5. All Charges are shown are in Pounds Sterling and are exclusive of VAT.

Charge Category	Description	Chargeable Unit / Frequency	Min Unit over Contract Term	MaxThreshold Unit over Contract Term	Unit Price
01 - Storage	Storage of Records (approximate dimensions 24cm x 35cm) per linear metre of records stored	Monthly charge per linear metre of Records stored			

Charge Category	Description	Chargeable Unit / Frequency	Min Unit over Contract Term	MaxThreshold Unit over Contract Term	Unit Price
02 - Storage	Storage of boxes (approximate dimensions 38cm x 30cm x27cm) per linear metre of boxes stored	Monthly charge per linear metre of boxes stored			
03 - Handling	Receive and put-away a bar-coded Record	per Record			
04 - Handling	Receive and put-away a bar-coded box	per box			
05 - Handling	Receive, bar code and put away a non bar-coded Record	per Record			
06 - Handling	Receive, bar code and put away a non bar-coded box	per box			
07 - Handling	Retrieve a Record	per Record			

Charge Category	Description	Chargeable Unit / Frequency	Min Unit over Contract Term	MaxThreshold Unit over Contract Term	Unit Price
09 - Handling	Prepare Scan and QC Records	<i>Base charge per record (inclusive of the first 10 pages)</i>			
		<i>Charge for subsequent pages relating to a Record</i>			
10 - Destruction	Record Destruction inc. supply of proof of destruction documentation & system update	<i>per Record</i>			
11 - Destruction	Record Destruction inc. supply of proof of destruction documentation & system update	<i>per box</i>			
12 - Logistics	A. Transportation of records in boxes inc. delivery & collection to and from agreed points in Croydon from Beddington Cross (van)	<i>Charge per Delivery inclusive of driver and vehicle</i>			
	B. Transportation of records in boxes inc. delivery & collection to and from agreed points in Croydon from Beddington Cross (7.5 tonne lorry)	<i>Charge per Delivery inclusive of driver and vehicle</i>			

Charge Category	Description	Chargeable Unit / Frequency	Min Unit over Contract Term	MaxThreshold Unit over Contract Term	Unit Price
	C.Transportation of records in boxes inc. delivery & collection to and from agreed points in Croydon from Cody Road (van)	<i>Charge per Delivery inclusive of driver and vehicle</i>			
	D. Transportation of records in boxes inc. delivery & collection to and from agreed points in Croydon from Cody Road (7.5 tonne lorry)	<i>Charge per Delivery inclusive of driver and vehicle</i>			
13 - Logistics	Bulk Record transfer inc. delivery & collection to and from agreed points	<i>per pallet</i>			
14 - Supplies	Supply of flat packed type 1 box of dimensions [38cm x 30cm x27cm]	<i>per box</i>			
15 - Supplies	Supply of flat packed type 2 box of dimensions [44cm x 30cm x27cm].	<i>per box</i>			
16 - Supplies	Supply of bar code labels	<i>per 1,000 labels</i>			
18 - Managed Service	Roadshow services	<i>per roadshow</i>			

Charge Category	Description	Chargeable Unit / Frequency	Min Unit over Contract Term	MaxThreshold Unit over Contract Term	Unit Price
			■	■	■
19 - Managed Service	Enforcement enquiries and File Services Contract Team hotline	<i>Fixed charge per calendar month</i>	■	■	■
20 - Managed Service	Charge for the management and operation of the Authority's Beddington Cross site	<i>Fixed charge per calendar month</i>	■	■	■
21 - Managed Service	Charge for the management and operation of the Contractor's facilities	<i>Fixed charge per calendar month</i>	■	■	■
22 - Exit	Export and delivery (stored on appropriate media) of the electronic record management system data, including data attribute fields etc., in XML or other agreed format*	<i>Single fixed charge</i>	■	■	■
23 - Exit	Retrieval and preparation of Records, inc. provision of appropriate electronic and paper documentation, for collection by a new supplier inc. the boxing, palletisation and shrink wrapping of Records	<i>per pallet</i>	■	■	■
24 - Decant of Beddington Cross	Retrieval and preparation of Records, inc. provision of appropriate electronic and paper documentation, for collection and delivery to the new premises inc. the boxing, palletisation and shrink wrapping of Records	<i>per pallet</i>	■	■	■
25 - IT - RMS	Electronic record management system software license (Enterprise)	<i>Fixed charge per calendar month</i>	■	■	■

Charge Category	Description	Chargeable Unit / Frequency	Min Unit over Contract Term	MaxThreshold Unit over Contract Term	Unit Price
35 - IT - RMS	Electronic record management system application development	<i>Single fixed charge</i>	■	■	■■■■■
36 - IT - RMS	Electronic record management system application configuration	<i>Single fixed charge</i>	■	■	■■■■■
37 - IT - RMS	Electronic record management system data migration	<i>Single fixed charge</i>	■	■	■■■■■
38 - IT - RMS	Electronic record management system implementation	<i>Single fixed charge</i>	■	■	■■■■■
39 - IT - RMS	Electronic record management system software maintenance	<i>Fixed charge per calendar month</i>	■	■	■■■■■
40 - IT - RMS	Electronic record management system administration and help desk support. Baseline 5000 transactional users	<i>Fixed charge per calendar month</i>	■	■	■■■■■
43 - IT - RMS	Electronic record management system 'super-user' training	<i>per training event</i>	■	■	■■■■■
			■	■	■
			■	■	■
44 - IT - RMS	Electronic record management system administrator training	<i>per training event</i>	■	■	■■■■■
			■	■	■■
			■	■	■■
45 - IT - RMS	Electronic record management system information advisor classroom training (train the trainer)	<i>per training event</i>	■	■	■■■■■
			■	■	■

Charge Category	Description	Chargeable Unit / Frequency	Min Unit over Contract Term	MaxThreshold Unit over Contract Term	Unit Price
			■	■	■
46 - IT - RMS	Electronic record management system Development & creation of computer based training (e-learning)	<i>Single fixed charge</i>	■	■	■
47 - IT - RMS	Contractor to Authority Communications Links (Setup Cost) – 2 Links Option	<i>Single fixed charge</i>	■	■	■
47 (a)	Contractor to Authority Communications Links (Setup Cost) – 4 Links Option	<i>Single fixed charge</i>	■	■	■
48 - IT - RMS	Contractor to Authority Communications Links (Service Cost) – 2 Links Option	<i>Fixed charge per calendar month</i>	■	■	■
48 (a)	Contractor to Authority Communications Links (Service Cost) – 4 Links Option	<i>Fixed charge per calendar month</i>	■	■	■
49 - IT - RMS	Security Accreditation Cost	<i>Single fixed charge</i>	■	■	■
Time Based Charges are defined below					
55 - Support	Provision of training services (per day)*	<i>per Person per Day</i>	■	■	■
			■	■	■
			■	■	■
56 - Support	Provision of project management services (per day)*	<i>per Person per Day</i>	■	■	■
			■	■	■
			■	■	■
57 - Support	Provision of software development services*	<i>per Person per Day</i>	■	■	■
			■	■	■
			■	■	■

- End of Schedule Three -

SCHEDULE FOUR: CONTRACT MANAGEMENT

1. Requirement

- 1.1. Within one Month of the Commencement Date the Authority shall arrange a schedule of meetings with the Contractor to include:
 - 1.1.1. Monthly operational review meetings that shall be held at least once in each Month.
 - 1.1.1.1. The agenda of such meetings shall be set by the Authority's Contract Manager; and
 - 1.1.1.2. The content of such meetings (including any issues or recommendations) shall be reported in summary at each quarterly contract review meeting.
 - 1.1.2. Quarterly contract review meetings that shall be held at least once in each quarterly period, and shall as a minimum require the attendance of the Contract Managers of both Parties (or such deputies as shall be authorised to act on their behalf).
- 1.2. Subject to the agreement of both parties, additional meetings may be held, neither party shall unreasonably withhold consent to such meetings.

2. Quarterly Contract Review Meetings

- 2.1. Quarterly contract review meetings shall be held on or after the sixth Working Day of the Month at least once during each Quarterly Period during the term of the Contract.
- 2.2. Both parties shall attend all scheduled quarterly contract review meetings (as well as such additional meetings as may be agreed from time to time).
- 2.3. Quarterly contract review meetings shall (unless agreed otherwise by the parties) be attended by the Contract Managers from both Parties.
- 2.4. The Authority and the Contractor shall agree the content of the agenda for such meetings, which shall include, but not be limited to, reviews of the Services delivered by the Contractor and shall include (but not be limited to) the consideration and review of:
 - management information; and
 - performance measurement data; and
 - performance deductions; and
 - operational reports; and

- operational issues (including any issues regarding security clearances) ; and
 - contractual issues; and
 - financial issues; and
 - significant successes and failures; and
 - significant opportunities or threats.
- 2.5. At each review meeting the Contractor shall provide the Authority with Management Information regarding the immediately preceding reporting periods in accordance with the provisions of Schedule Eight (Management Information).
- 2.6. The Contractor shall, within four (4) Working Days of each such meeting, provide the Authority with draft minutes (including action points) of each meeting for the Authority to approve (and if content, circulate).
- 2.7. Any material changes agreed at a meeting shall be implemented in accordance with the provisions of Schedule Six (Contract Variation Procedure).

3. Disputes

- 3.1. The Parties agree that they shall use their reasonable endeavours to resolve any dispute arising, and shall only make use of the disputes procedure set out in Schedule Seven (Dispute Resolution) where they have been unable to resolve the issue by other means.

- End of Schedule Four -

SCHEDULE FIVE: REPRESENTATIVES

1. Representatives

1.1. Both the Contractor and the Authority shall appoint (and notify the other of the identity of) a representative who will:

1.1.1. act as the principal liaison with the other party; and

1.1.2. manage the relationship with the other party in accordance with the Contract; and

1.1.3. have authority to act in the name of that party for the purposes of this Contract.

such person being the "Contract Manager".

1.2. As at the date of this Contract:

1.2.1. the Authority's Contract Manager shall be its Head of File Services; and

1.2.2. the Contractor's Contract Manager shall be the Corporate Contract Manager.

1.3. The Contractor shall comply with all reasonable requests made by the Authority's Contract Manager in respect of this Contract.

1.4. The representatives of both Parties shall manage the Contract in accordance with the provisions Schedule Four (Contract Management).

2. Contract Variations

2.1. All Changes to the Contract shall be made in accordance with the provisions of Schedule Six (Contract Variation Procedure).

3. Key Personnel

3.1. Where either Party removes or replaces its Contract Manager it shall notify the other Party in writing of such removal or replacement at the earliest practical opportunity to do so. The Authority shall have the right to approve (such approval not to be unreasonably withheld) any new Contract Manager that the Contractor may wish to appoint.

3.2. Where a Party's Contract Manager becomes unavailable for the performance of this Contract, that Party will, as soon as is reasonably practical, substitute a suitably qualified replacement.

- 3.3. Where the Contractor removes or replaces any of its senior operational managers it shall notify the other Party in writing of such removal or replacement at the earliest practical opportunity to do so. The Authority shall have the right to approve (such approval not to be unreasonably withheld) any new senior operational manager that the Contractor may wish to appoint.

- End of Schedule Five -

SCHEDULE SIX: CONTRACT VARIATION PROCEDURE

1. Change Processes

- 1.1. This Schedule describes the mechanism by which Changes may be made to this Contract and its schedules.
- 1.2. Saving the provisions of 1.3 below, any Changes to this Contract shall be made via the Contract Change Process set out in this Schedule Six.
- 1.3. Provided that the Parties agree to do so, changes to Schedule One (Service Specification) may be made via the Derogation Process set out in Annex C to this Schedule Six, provided always that any such Changes do not represent significant or fundamental Changes to the Services or the nature of the Services.
 - 1.3.1. Where such a Change to Schedule One (Service Specification) has a consequential impact upon specific elements of the table of charges set out at Annex A to Schedule Three (Charges and Payment), the Derogation Process may be used to vary such specific elements of that table, provided always that such Changes do not represent a significant or fundamental Change to the Charges.
 - 1.3.2. The Derogation Process shall not be used to amend, vary or otherwise make Changes to the table of charges set out at Annex A to Schedule Three (Charges and Payment) other than as a direct consequence of Changes made to Schedule One (Service Specification) via the Derogation Process set out in Annex C to this Schedule Six.
 - 1.3.3. The Derogation Process shall not be used to amend, vary or otherwise make Changes to any part of this Contract save those specified in 1.2 and 1.3.1 above.
- 1.4. The individuals empowered to authorise Changes to this Contract or its schedules are:
 - 1.4.1. in the case of Changes made via the Derogation Process, the Parties' Contract Managers (in accordance with the provisions of Annex C to this Schedule Six); and
 - 1.4.2. in the case of Changes made via the Contract Change Process, either the Parties' Contract Managers or, where a Party's internal governance processes require such, a senior manager from within the relevant Party's organisation with sufficient authority to bind that Party with respect to that Change (provided that that Party promptly notifies the other

Party of the identity and contact details of such senior manager).

CONTRACT CHANGE PROCESS

2. Change Initiation

- 2.1. Either Party may, at any time during the term of this Contract request a Change by issuing a Change Request (a template for which is provided at Annex A to this Schedule Six) setting out the details of the requested Change (including details of any changes to the Charges and/or any impact upon the Services) in accordance with the provisions of this Schedule Six.
- 2.2. Where the Authority has requested any Change the Contractor shall, within 10 Working Days (or such other period as the Parties may agree) of receiving such a request, provide the Authority with a written assessment of the impact of implementing the Change requested.
- 2.3. Where the Contractor has requested any Change it shall, in addition to the Change Request, provide the Authority with a written assessment of the impact of implementing the Change proposed.
- 2.4. Further to 1.4 above, the Contractor shall also provide such other details or clarification regarding the requested Change as the Authority may reasonably request in order to support its considerations.
- 2.5. Each party shall bear its own costs in relation to the assessment and agreement of any Change Requests, provided that such assessment does not require disproportionate or unreasonable expenditure on the part of either Party. Where such expenditure may be required the Parties shall review the requirement for such.
- 2.6. Any discussions, negotiations or other communications which may take place between the Authority and the Contractor with respect to any Change Request shall be without prejudice to each party's other rights under this Contract.

3. Changes to the Charges

- 3.1. The Contractor shall, either as part of its own Change Request or as part of its assessment of a Change requested by the Authority, provide a detailed analysis of the impact of the requested Change upon the Charges.
- 3.2. Any proposed Change to the Charges (whether an increase or a decrease) shall be proportionate to the increase or decrease in the

level of resources required for the provision of the Services as set out in the Change Request.

- 3.3. To the extent that it is possible, any amendment to the Charges proposed as the result of a Change Request shall (unless otherwise agreed between the Parties) be based upon, or calculated pro rata to, the Charges as set out in Schedule Three (Charges and Payment).

4. Change Request Response

- 4.1. Within 10 Working Days (or such other period as may be agreed by the Parties) of receiving a Change Request, the receiving Party shall either accept or reject the proposed Change and inform the other Party in writing of its decision.

- 4.2. In responding to a Change Request the receiving Party may:

- 4.2.1. agree to the Change requested; or
- 4.2.2. request or propose an amendment to the Change requested;
or
- 4.2.3. reject the Change requested.

Where the receiving Party has chosen to reject the Change requested, or to request or propose an amendment to the Change requested, it shall provide the other Party with a brief outline in writing of its reasons for doing so.

- 4.3. Where the Contractor has proposed a Change that the Authority has rejected, the Contractor may:

- 4.3.1. let the proposal lapse and take no further action; or
- 4.3.2. invoke the Dispute Procedure.

- 4.4. Where the Authority has proposed a Change that the Contractor has rejected, the Authority may:

- 4.4.1. let the proposal lapse and take no further action; or
- 4.4.2. invoke the Dispute Procedure; or
- 4.4.3. require the Contractor to implement the Change with immediate effect (or within such timescale as the Authority may specify), setting such provisional change to the Charges as it considers fair and which will be effective until such time as the appropriate Charges for such Change(s) are determined in accordance with the provisions of Condition 62 (Dispute Resolution). Any Changes so determined shall be

incorporated into this Contract in accordance with the process set out at 4 below.

4.5. The Authority shall not require the Contractor to implement a Change (in accordance with 3.4.3 above) where:

4.5.1. doing so would materially or adversely affect the risks to the health and safety of any person; or

4.5.2. doing so would require the Services to be performed in a way that infringes any Law; or

4.5.3. the Change required is technically impossible to implement provided that:

4.5.3.1. the Contractor can demonstrate to the Authority's reasonable satisfaction that the proposed Change is impossible to implement; and

4.5.3.2. the Contractor did not make representations that it had the technical capacity and flexibility required to implement the proposed Change at any time during or after the negotiation process for this Contract.

4.6. Neither Party may reject a proposed Change to the extent that such a Change is necessary to comply with any Changes in Law.

4.6.1. For the avoidance of doubt:

4.6.1.1. The Authority shall require the Contractor to comply with any General Changes in Law and to bear any costs associated with such.

4.6.1.2. Where a Change in Law is a Specific Change in Law the Authority shall still require the successful bidder to comply with the requirements of any such Change(s) in Law, but will consider any Change Requests proposed by the Contractor (in accordance with the provisions of Schedule Six (Contract Variation Procedure)) to mitigate the impact of any such changes.

4.6.1.3. For the avoidance of doubt:

4.6.1.3.1. "Change in Law" means any change in Legislation which impacts on the Services which comes into force after the Date of Contract;

4.6.1.3.2. “Comparable Supply” means the supply of services to another customer of the Contractor that are the same or similar to the Services;

4.6.1.3.3. a “General Change in the Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply;

4.6.1.3.4. “Specific Change in the Law” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

5. Change Implementation

5.1. Unless expressly agreed otherwise in writing by the Authority, no Change Request shall be implemented until such time as a Contract Variation Notice has been issued and signed in accordance with 5.3 below, and the Contractor shall continue to supply the Services in accordance with the current Contract.

5.2. Where a Change (including any change to the Charges) has been agreed by both Parties, or where any Change (including any change to the Charges) has been determined by the Dispute Resolution process, or where the Authority requires that the Contractor implements a Change pursuant to paragraph 3.4.3 above, the Authority shall prepare a Contract Variation Notice (a template for which is provided at Annex B to this Schedule Six) in accordance with 4.3 below.

5.3. The Authority shall prepare two copies of a Contract Variation Notice which it shall deliver to the Contractor for its signature. Following the receipt of a Contract Variation Notice the Contractor shall sign both copies and return both to the Authority. The Authority shall then sign both copies and return one copy to the Contractor. On the Authority's signature, the Contract Variation Notice shall constitute a binding variation to the Agreement provided that the Contract Variation Notice is signed in accordance with the provisions of this Schedule Six.

5.4. Where required the Authority will be responsible for issuing updated and/or amended contract documentation (in some cases it may suffice to append a signed copy of an agreed Contract Variation Notice to this Contract).

6. Fast-Track Changes

- 6.1. The parties acknowledge that there may be circumstances where it is desirable to expedite the processes set out above. Accordingly, the parameters set out above may be revised by written agreement between the parties signed by their respective Contract Managers.

Annex A to Schedule Six Change Request Template

Change Request

Reference No.

Proposed by:

Date:

Title & Issue <i>Insert relevant title for the Change Request (including details of the subject and applicable date/period), a brief headline/outline description of the change proposed.</i>
Change Required <i>Please provide full details of the proposed change(s) or refer to an attached document.</i>
Cost Implications <i>Please provide full details of the resource and financial implications or refer to an attached document.</i>
Impact upon Targets <i>Please provide full details of the implications for the Service delivery Targets, or refer to an attached document.</i>
Expected Outcome <i>Please provide full details of the outcomes expected or refer to an attached document.</i>
Other Considerations <i>Please provide full details of any other factors that should be taken into consideration</i>

This Change Request is made by

Signed:

Name:

Position:

Date:

Annex B to Schedule Six

Contract Variation Notice Template

Contract Variation Notice

Title:

Reference No.

Date:

The [] Contract made between [] and [] is hereby varied as follows:

Approved by the Contractor

Signed:

Name:

Position:

Date:

Approved by the Authority

Signed:

Name:

Position:

Date:

Annex C to Schedule Six Derogation Process

1. Context

2. Initiation

- 2.1. Either Party may, at any time during the term of this Contract, request a Change to Schedule One (Service Specification) via this Derogation Process by contacting the other Party to discuss the details of the proposed derogation from Schedule One (Service Specification) together with any impact it believes such may have upon either the Services or the Charges.
- 2.2. As part of such discussions the Parties shall agree the period of time required to assess the impact of the proposed derogation.
- 2.3. Each party shall bear its own costs in relation to the assessment of any proposed derogation, provided that such assessment does not require disproportionate or unreasonable expenditure on the part of either Party. Where such expenditure may be required the Parties shall review the requirement for such.
- 2.4. Any discussions, negotiations or other communications which may take place between the Authority and the Contractor with respect to any proposed derogation shall be without prejudice to each party's other rights under this Contract.
- 2.5. At the end of the end of the assessment period the Parties shall discuss the proposed derogation and its impact upon both the Services and the Charges:
 - 2.5.1. Where such a derogation is deemed to have an effect upon any part of this Contract other than Schedule One (Service Specification) and/or the table of charges set out at Annex A to Schedule Three (Charges and Payment), then the proposed derogation may not be progressed further via this Derogation Process, and shall be referred to the Contract Change Process set out in this Schedule Six.
 - 2.5.2. Where the Parties are unable to reach an agreement with respect to a proposed derogation, then the proposed derogation may not be progressed further via this Derogation Process, and shall be referred to the either the Contract Change Process set out in this Schedule Six, or to the Disputes Procedure set out in Schedule Seven (Dispute Resolution).
 - 2.5.3. Where the Parties agree to implement a proposed derogation the Authority shall issue a Derogation Notice (a template for

which is provided at Annex D to this Schedule Six) for signature by both Parties in accordance with the provision of paragraph 4.4 below.

3. Changes to the Charges

- 3.1. Any proposed Change to the Charges (whether an increase or a decrease) shall be proportionate to the proposed increase or decrease in the level of resources required for the provision of the Services.
- 3.2. To the extent that it is possible, any proposed amendment to the Charges shall (unless otherwise agreed between the Parties) be based upon, or calculated pro rata to, the Charges as set out in Schedule Three (Charges and Payment).

4. Implementation

- 4.1. Unless expressly agreed otherwise in writing by the Authority, no proposed derogation shall be implemented and no Change shall be made to either Schedule One (Service Specification) or the table of charges set out at Annex A to Schedule Three (Charges and Payment) until such time as a Derogation Notice (a template for which is provided at Annex D to this Schedule Six) has been issued and signed by both Parties in accordance with 4.4 below.
- 4.2. Until such time as a Derogation Notice has been issued and signed by both Parties in accordance with 4.4 below the Contractor shall continue to supply the Services in accordance with the current Contract.
- 4.3. Where a derogation (including any change to the Charges) has been agreed by both Parties the Authority shall prepare a Derogation Notice in accordance with 4.4 below.
- 4.4. The Authority shall prepare two copies of a Derogation Notice which it shall deliver to the Contractor for its signature. Following the receipt of a Derogation Notice the Contractor shall sign both copies and return both to the Authority for signature. The Authority shall then sign both copies and return one copy to the Contractor.
- 4.5. On the Authority's signature, the Derogation Notice shall constitute a binding variation to the Agreement provided that the Contract Variation Notice is signed in accordance with the provisions of this Schedule Six.
- 4.6. Where required the Authority will be responsible for issuing updated and/or amended contract documentation (in some cases it may suffice to append a signed copy of an agreed Contract Variation Notice to this Contract).

**Annex D to Schedule Six
Derogation Notice Template**

Derogation Notice

Title:	
Reference No.	Date:

The following changes to Schedule One (Service Specification) of the [] Contract made between [] and [] are hereby agreed:

As a consequence of the changes detailed above, the following changes to the table of charges set out at Annex A to Schedule Three (Charges and Payment) are hereby agreed:

This Derogation Notice does not in any way constitute or represent an amendment, variation or any other form of change to any part of this Contract or its schedules save Schedule One (Service Specification) and the table of charges set out at Annex A to Schedule Three (Charges and Payment).

Approved by the Contractor Signed: Name: Position: Date:	Approved by the Authority Signed: Name: Position: Date:
---------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------

- End of Schedule Six -

SCHEDULE SEVEN: DISPUTE RESOLUTION

1. Dispute Procedure

- 1.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute (including any failure to agree a matter that the parties need to agree) between them arising out of, or in connection with, the Contract.
- 1.2. Where the Parties have been unable to resolve such a dispute, either Party may invoke the Dispute Procedure by notifying the other in writing. Upon issue of such notification the Parties will initiate the Escalation Process within 10 Working Days.
- 1.3. The performance of the Services shall not cease by reason of the reference to Dispute Procedure and/or the Escalation Process, and (unless the Parties agree otherwise in writing with the express intent of facilitating, and pending the outcome of, the Escalation Process) both Parties shall continue to comply fully with the requirements of the Contract at all times.

2. Dispute Report

- 2.1. If a dispute is escalated, a notice (the "Dispute Report") shall be prepared by the party seeking the escalation setting out:
 - name of the originator;
 - date the issue was first raised;
 - description of the issue (including any history of similar problems);
 - the implications of the issue, its severity and the degree of urgency; and
 - an estimate of the current and potential cost of the issue.
- 2.2. The Dispute Report shall be shared with the other party who may add any additional comments to it.

3. Escalation Process

- 3.1. The levels of the Escalation Process are:
 - Level 1: the Contract Managers,
 - Level 2: the Contract Manager's line managers,
 - Level 3: the Commercial Director of UKBA and the Contractor's Director of Public Sector,

Level 4: the Chief Executive of UKBA and the Contractor's Senior Vice President for the UK.

- 3.2. Where an issue is first raised at an Escalation Process level higher than level 1 the process shall commence at that level and not revert to an Escalation Process level lower than that at which it was initiated.
- 3.3. Where an issue cannot be resolved at a particular level within the Escalation Process within 20 Working Days it shall be referred to the next level.

4. Mediation

- 4.1. Where a dispute cannot be resolved by the Parties via the Escalation Process, either party may refer the dispute to mediation by a neutral advisor or mediator ("the Mediator") who shall be accredited by the Centre for Dispute Resolution ("CEDR") or otherwise appropriately qualified.
- 4.2. The performance of the Services shall not cease by reason of the reference to mediation and (subject to the provisions of 1.3 above) both Parties shall continue to comply fully with the requirements of the Contract at all times.
- 4.3. The procedure for mediation and the consequential provisions relating to mediation are as follows:
 - 4.3.1. The Mediator shall be chosen by agreement of the Parties, or if they are unable to agree on a Mediator within 14 Days of a request from one Party to the other or if the agreed Mediator is unable or unwilling to act, either Party may apply to CEDR to appoint a Mediator.
 - 4.3.2. Within 14 Days of the Mediator's being appointed, the Parties shall seek guidance from the Mediator on a programme for the exchange of information and the structure to be adopted for negotiations. Either Party may request a preliminary meeting with the Mediator for this purpose which shall be attended by both Parties.
 - 4.3.3. Unless otherwise agreed, all negotiations concerning the dispute shall be conducted in confidence and shall be without prejudice to the rights of the parties in any future proceedings.
 - 4.3.4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

- 4.3.5. Failing agreement, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 4.4. If the Parties fail to reach agreement in the structured negotiations conducted in accordance with the Mediation process set out above within 60 Days of the Mediator's being appointed (or such longer period as may be agreed by the Parties), then any dispute may be referred to the courts.
- 4.5. For the avoidance of doubt, the rights and responsibilities of the parties shall not cease due to any dispute.

- End of Schedule Seven -

SCHEDULE EIGHT: MANAGEMENT INFORMATION

1. Requirement

- 1.1. The Contractor shall submit Management Information Reports to the Authority at the intervals specified in Tables 1 and 2 of Annex A to this Schedule Eight and in the format(s) requested by the Authority.
- 1.2. Such reports shall contain the information as set out in Annex A (Table 2) to this Schedule Eight (Management Information).
- 1.3. In addition to the reports set out in this Schedule the Contractor shall supply the Authority with such further information as it may reasonably request in order to enable it to assess the Contractor's performance against the Service Delivery Targets set out in Schedule Two (Service Delivery Targets).
- 1.4. The Contractor shall comply with any reasonable request by the Authority for any other information with respect to the Services that the Authority may require from time to time.

2. Confidentiality and Security

- 2.1. The Contractor shall, and shall procure that any of its Staff making use of Management Information shall, comply with the requirements set out in the following provisions of this paragraph 2.
- 2.2. The Contractor shall ensure that only those of its Staff that it has specifically authorised to have such shall have access to the Management Information, and shall:
 - 2.2.1. notify the Authority immediately if it becomes aware of any unauthorised access to, and/or any breach or attempted breach of the security of, the Management Information; and
 - 2.2.2. use its best endeavours to prevent unauthorised person(s) from accessing and/or using the Management Information.
- 2.3. The Contractor shall not:
 - 2.3.1. give third parties access to the Management Information and/or enable third parties to give such access; or
 - 2.3.2. copy, download, disseminate, reproduce, publish, transmit, use or modify the Management Information except in connection with the proper performance of the Services under this Contract; or

- 2.3.3. remove, alter or obscure any product or service identification, trade marks, copyright or other notices contained in data in the Management Information.

3. Accuracy

- 3.1. The Contractor shall remain solely responsible for the accuracy of any Management Information or data provided by the Contractor and/or its Staff.
- 3.2. The Authority shall be entitled to use any Management Information or data provided by the Contractor in such way as it chooses provided that it shall not in any way misrepresent the data or Management Information received from the Contractor.

Annex A to Schedule Eight Management Information Requirement

1. Management Information Reporting

- 1.1. The Contractor shall ensure that Management Information shall be made available to the Authority in accordance with the frequencies set out in Table 2 below.
- 1.2. Table 1 below sets out the Parties understanding of the frequencies referred to in Table 2 below.
- 1.3. For the purposes of Tables 1 and 2 below only, "Daily" means each Working Day.
- 1.4. The Parties shall agree the format, frequency and contents of Table 2 below by no later than 20 Working Days prior to the Commencement Date.

Table 1

Report Frequency	Report to be provided to the Authority:
Daily	By midday on the next Working Day.
Weekly	By the close of business on the next Working Day following the last day of the relevant week.
Monthly	Within three Working Days of the end of the relevant Month.
Quarterly	Within five Working Days of the end of the relevant Quarterly period.

Table 2

Reporting Area	Measure	Frequency	Notes
1.00 Beddington Cross: Storage			
1.01 Total Records volume	number of Records	Monthly	
1.02 Total Records volume	total by linear metre	Monthly	
1.03 Total Records volume	type by number	Monthly	
1.04 Total Records volume	type by linear metre	Monthly	
1.05 Total Records volume	linear metres used	Monthly	
1.06 Total Records volume	linear metres available	Monthly	
2.00 Beddington Cross: BAU Activity			
2.01 Record retrieval	number of Records	Monthly	
2.02 Record retrieval	number by record type	Monthly	
2.03 Record retrieval	number by cost centre	Monthly	
2.04 Record retrieval	number achieved within target	Monthly	
2.05 Record retrieval	number achieved outwith target	Monthly	
2.06 Record retrieval	number of requests where record not available	Monthly	
2.07 Bulk order retrieval	total number of bulk orders	Monthly	
2.08 Bulk order retrieval	number by cost centre	Monthly	
2.09 Bulk order retrieval	number achieved within target	Monthly	
2.10 Bulk order retrieval	number achieved outwith target	Monthly	
2.11 Bulk order retrieval	number of requests where record not available	Monthly	
2.12 Record put-away	number of Records	Monthly	
2.13 Record put-away	number by record type	Monthly	
2.14 Record put-away	number by cost centre	Monthly	
2.15 Record put-away	number achieved within target	Monthly	
2.16 Record put-away	number achieved outwith target	Monthly	
2.17 New RMS records created	number of Records	Monthly	
2.18 New RMS records created	number by record type	Monthly	
2.19 Enforcement Enquiries & FSCT Hotline	total number of calls	Monthly	
2.20 Enforcement Enquiries & FSCT Hotline	number of calls by cost centre	Monthly	
2.21 Enforcement Enquiries & FSCT Hotline	total length of calls	Monthly	
2.22 Enforcement Enquiries & FSCT Hotline	average length of calls	Monthly	
2.23 Enforcement Enquiries & FSCT Hotline	number achieved within target	Monthly	
2.24 Enforcement Enquiries & FSCT Hotline	number achieved outwith target	Monthly	
2.25 Non-compliant Records	total number received	Monthly	
2.26 Non-compliant Records	total number returned to FSCT	Monthly	
2.27 Non-compliant Records	total number returned to business unit	Monthly	
2.28 Non-compliant Records	number returned by cost centre	Monthly	
2.29 Image on Demand	total number of requests	Monthly	
2.30 Image on Demand	number of requests where record not available	Monthly	
2.31 Image on Demand	total number of sheets scanned	Monthly	
2.32 Image on Demand	average number of sheets scanned	Monthly	
2.33 Image on Demand	number of completed requests by cost centre	Monthly	
2.34 Image on Demand	number achieved within target	Monthly	
2.35 Image on Demand	number achieved outwith target	Monthly	
3.00 Contractor's Storage Facility: Storage			Note 1
3.01 Total Records volume	number of Records	Monthly	
3.02 Total Records volume	total number by linear metre	Monthly	
3.03 Total Records volume	type by number	Monthly	
3.04 Total Records volume	type by linear metre	Monthly	
4.00 Contractor's Storage Facility: BAU Activity			Note 1
4.01 Record retrieval	number of Records	Monthly	
4.02 Record retrieval	number by cost centre	Monthly	
4.03 Record retrieval	number by record type	Monthly	
4.04 Record retrieval	number achieved within target	Monthly	
4.05 Record retrieval	number achieved outwith target	Monthly	
4.06 Record retrieval	number of requests where record not available	Monthly	

Reporting Area	Measure	Frequency	Notes
4.07 Bulk retrieval	total number of bulk orders	Monthly	
4.08 Bulk retrieval	number by cost centre	Monthly	
4.09 Bulk retrieval	number achieved within target	Monthly	
4.10 Bulk retrieval	number achieved outwith target	Monthly	
4.11 Bulk retrieval	number of requests where record not available	Monthly	
4.12 New RMS records created	number of Records	Monthly	
4.13 New RMS records created	number by record type	Monthly	
4.14 Enforcement Enquiries & FSCT Hotline	total number of calls	Monthly	
4.15 Enforcement Enquiries & FSCT Hotline	total length of calls	Monthly	
4.16 Enforcement Enquiries & FSCT Hotline	average length of calls	Monthly	
4.17 Enforcement Enquiries & FSCT Hotline	number by cost centre	Monthly	
4.18 Enforcement Enquiries & FSCT Hotline	number achieved within target	Monthly	
4.19 Enforcement Enquiries & FSCT Hotline	number achieved outwith target	Monthly	
4.20 Non-compliant files	number received and retained	Monthly	
4.21 Non-compliant files	number returned to FSCT	Monthly	
4.22 Non-compliant files	number returned to business unit	Monthly	
4.23 Non-compliant files	number returned by cost centre	Monthly	
4.24 Image on Demand	total number of requests	Monthly	
4.25 Image on Demand	total number of requests where record not available	Monthly	
4.26 Image on Demand	total number of sheets scanned	Monthly	
4.27 Image on Demand	average number of sheets scanned	Monthly	
4.28 Image on Demand	number of completed requests by cost centre	Monthly	
4.29 Image on Demand	number achieved within target	Monthly	
4.30 Image on Demand	number achieved outwith target	Monthly	
5.00 Transfer & Destruction Services			
5.01	<i>Deliberately Blank</i>		
5.02			
5.03			
5.04			
5.05			
5.06			
5.07			
5.08 Record destruction	total number of Records destroyed	Monthly	
5.09 Record destruction	number achieved within target	Monthly	
5.10 Record destruction	number achieved outwith target	Monthly	
5.11 Transfer from Beddington Cross	total linear metres of records transferred		Note 2
5.12 Transfer from Beddington Cross	total number of pallets		Note 2
5.13 Transfer from Beddington Cross	total number of boxes		Note 2
5.14 Transfer from Beddington Cross	total number of damaged files		Note 2
5.15 Transfer from Beddington Cross	total number of missing files		Note 2
5.16 Transfer from Beddington Cross	number put away within target		Note 2
5.17 Transfer from Beddington Cross	number put away outwith target		Note 2
6.00 Additional information			
6.01 Emergency access requests	number of requests	Monthly	
6.02 Project Manager's Reports	Project-based activity agreed		Note 3
6.03 Risk register		Monthly	
6.04 Issues log		Monthly	
6.05 Training (Sched 01 - 14.3.1)	number of individuals trained for first time	Monthly	
6.06 Training (Sched 01 - 14.3.1)	number of individuals given refresher training	Monthly	
6.07 Damaged beyond reasonable use	total number of records	Monthly	
6.08 Damaged beyond reasonable use	number of records by type	Monthly	
6.09 Other information (Sched 01 - 17.3)			Note 3

Notes to Table 1:

1. Details required for each site.
2. Daily & weekly reporting required (in accordance with the transfer protocol agreed).
3. As agreed per request

- End of Schedule Eight -

SCHEDULE NINE: APPROVED SUB-CONTRACTORS

1. Approved Sub-Contractors

1.1. The Authority has approved and consents to the Contractor's use of the following sub-contractors in the performance and delivery of the Services:

There are no subcontractors identified at the Effective Date.

- End of Schedule Nine -

SCHEDULE TEN: TUPE INFORMATION

1. The information, as set out in this Schedule, will be anonymised by the Contractor until such time as the Contractor receives notification from the Authority as to the identity of the Successor Contractor.

2. Initial Staff Information

2.1. Initial Staff Information refers to the following:

- a) number of Staff providing the Services;
- b) age and gender of each member of Staff;
- c) whether registered disabled;
- d) job description;
- e) conditioned hours of work;
- f) date continuous employment commenced and (if different) the commencement date;
- g) annual salary and rates of pay band/grade;
- h) tax code;
- i) shifts, unsociable hours or other premium rates of pay;
- j) allowances;
- k) leave entitlement;
- l) any factors affecting redundancy entitlement;
- m) whether currently on maternity leave or other long term leave of absence;
- n) details of all dismissals or terminations of employment of anyone previously employed or engaged in connection with the provision of the Services;
- o) details of all agreements or arrangements (whether or not legally binding) entered into in relation to the staff with any trade union or organisation or body representing employees or any employee representatives;
- p) details of all trade disputes and industrial action occurring at any time during the contract period (including any extension of the original contract period) to which any member of staff was a party.

3. Prescribed Particulars

3.1. Prescribed Particulars refers to the following information:

- a) Personal (Miscellaneous)
 - (i) Full Name;
 - (ii) Gender;
 - (iii) Date of Birth;
 - (iv) Home Address and Phone Number;
 - (v) Whether known to be disabled for the purposes of the Disability Discrimination Act 1995;

- (vi) Current Marital Status.
- b) Next of Kin
 - (i) Name/Title;
 - (ii) Address;
 - (iii) Work and Home Telephone Numbers.
- c) Current Employment and Salary Details
 - (i) Title;
 - (ii) Staff Number;
 - (iii) Job Description;
 - (iv) Work Location;
 - (v) Conditioned hours of work per week;
 - (vi) Date of commencement of continuous employment and (if different) commencement date;
 - (vii) Relevant Personnel Documentation;
 - (viii) Notice Periods (for employer and employee);
 - (ix) Annual salary and rates of pay band/grade including pending salary increases;
 - (x) Shifts, unsociable hours or other premium rates of pay;
 - (xi) Overtime entitlement and details of last twelve months' overtime;
 - (xii) Allowance and bonus details over the last twelve months including date, type, amount and pending allowances/bonuses;
 - (xiii) Provisional details about standing loans/advances on salary or debts;
 - (xiv) Existing and future training or sponsorship commitments;
 - (xv) Leave entitlement and details of leave taken during the previous 12 months and accrued holiday entitlement;
 - (xvi) Annual leave reckonable service date;
 - (xvii) Additional employment benefits;
 - (xviii) Other payments;
 - (xix) Copies of pay slip data for immediately preceding five months;
 - (xx) Provisional details of Cumulative Pay (for tax and pension purposes) and cumulative tax paid;
 - (xxi) Tax Code;
 - (xxii) Voluntary deductions from pay.
- d) National Insurance (NI)
 - (i) National Insurance Number;
 - (ii) NI Contributions rate;
 - (iii) NI benefit start date.
- e) Appraisals / Performance Assessments

- (i) Last two appraisal report markings and/or performance assessment details and dates thereof.

f) Absence

- (i) Sickness and absence records for two years immediately preceding;
- (ii) Maternity or other long term leave of absence records.

g) Active Disciplinary / Inadequate Performance Records

- (i) Paper record of active disciplinary and/or inefficiency or grievance proceedings and of any other outstanding disputes or any circumstances likely to give rise to a dispute or claim in the future including all proceedings before any Employment Tribunal.

h) Warnings

- (i) Warning reason;
- (ii) Warning date;
- (iii) Warning status;

i) Method of Payment

- (i) Instrument of payment;
- (ii) Bank/building society account details for payroll purposes.

j) Pensions

- (i) For pension purposes, the notional reckonable service date;
- (ii) Pensionable pay history for preceding 3 years;
- (iii) Percentage of any pay currently contributed under additional voluntary contribution arrangements;
- (iv) Percentage of pay currently contributed under any added years arrangements.

4. Relevant Personnel Documentation

4.1. Relevant Personnel Documentation refers to the following documents:

a) General Practices and Policies

- (i) Maternity, paternity and parental leave (including names of those on long-term leave or maternity leave);
 - (ii) Special leave and career breaks;
 - (iii) Sick leave and pay;
 - (iv) Disciplinary and grievance policies and procedures;
 - (v) Equal Opportunities policy;
 - (vi) All documents relevant to terms and conditions of employment, including manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements);
 - (vii) Any other letters or documents or collective agreements affecting terms and conditions of employment
- b) Redundancy
- (i) Full details of any practice, policy or procedure which the Contractor has in relation to redundancy and copies of relevant documents.

- End of Schedule Ten -

SCHEDULE ELEVEN: EXIT MANAGEMENT

1. Purpose

- 1.1. This Schedule Eleven specifies the arrangements that shall be made by the Contractor to ensure an effective and efficient transition of responsibility for the provision of the Services from the Contractor to the Authority or other provider, in the event of the termination, partial termination or expiry of the Contract.

2. Exit Management Plan

- 2.1. The Contractor shall submit an draft exit management plan (the "Exit Management Plan") to the Authority for its approval no later than 6 months after the Commencement Date. All subsequent amendments or updates to the Exit Management Plan shall be submitted to the Authority for its approval.
- 2.2. The Contractor shall ensure that the Exit Management Plan comprehensively covers all activities and the associated liaison and assistance which should be provided by the Contractor for the successful transfer of the Services to the Authority or other provider.
- 2.3. The Contractor shall ensure that the following information is included within the Exit Management Plan (to the extent that such information is required to enable the Authority or other provider to provide the Services):
 - 2.3.1. a detailed description of the activities to be undertaken and tasks to be performed in order to achieve an orderly transfer of the Services;
 - 2.3.2. detailed estimates of the Contractor resources required to perform such tasks together with an indication of any Authority resources that may be required;
 - 2.3.3. detailed estimates of the timescales necessary for the orderly execution of the Exit Management Plan;
 - 2.3.4. a comprehensive project plan showing milestones, task and activity dependencies (i.e. which tasks or activities are dependant upon the completion of any other tasks or activities) and a critical path analysis;
 - 2.3.5. a process for disclosure of agreed documentation used by the Contractor, its personnel and any Sub-Contractors in support of provision of the Services (including designs,

specifications, operations manuals, user-related documentation);

- 2.3.6. a process for disclosure of details of all processes and procedures used in respect of the Services, including all underlying processes necessary to effect the Services or an equivalent service;
- 2.3.7. a process for disclosure of details of any training materials used in connection with the performance and delivery of the Services;
- 2.3.8. a process for disclosure of full details of the information relating to Contractor's staff required under Schedule Ten (TUPE Information);
- 2.3.9. a process for disclosure of full details of any third party contracts entered into by the Contractor which relate to the Contractor's provision of the Services (indicating which of these are third party contracts relating exclusively to the Services);
- 2.3.10. a process for disclosure of full details of any relevant Intellectual Property used by the Contractor in the provision of the Services, detailing ownership of the relevant rights and any restrictions or conditions applying to their use;
- 2.3.11. proposals for knowledge transfer to the Authority or other provider in connection with the continuation of the provision of the Services following the termination, partial termination or expiry of the Contract;
- 2.3.12. a process for disclosure of an inventory of any Authority Data that is under the control of the Contractor and details of the data structures in which the Authority Data is stored;
- 2.3.13. proposals for the transfer of any Authority Data then in the Contractor's possession from the Contractor to either the Authority or other provider including:
 - a) proposed data transfer methods, both physical and electronic (wherever possible); and
 - b) proposed methods for ensuring the integrity of the Authority Data on transfer;
- 2.3.14. proposals for the assignment or novation (where applicable) of any third party contracts which the Parties agree are to be so transferred from the Contractor to the Authority or other provider; and

- 2.3.15. proposals for the supply of any other information or assistance reasonably required by the Authority or other provider in order to effect an orderly hand over of the provision of the Services. This shall include resources to support any due diligence activities required as part of any future procurement undertaken by the Authority.

3. Exit Management Plan Reviews

- 3.1. Within 3 months of the second anniversary of the Commencement Date, and every second year thereafter (or at such other frequencies as the Parties may from time to time agree) during the Contract term, the Parties shall undertake a comprehensive review of the Exit Management Plan.

4. The Exit Period

- 4.1. The effective date from which the Contractor shall provide the services detailed within the Exit Management Plan (the "Exit Management Services") shall be (as applicable):
 - 4.1.1. the date of any valid notice to terminate the Contract; or
 - 4.1.2. from the date specified in the Exit Management Plan; or
 - 4.1.3. from such a date prior to the scheduled Expiry Date of the Contract as the Parties may agree; or
 - 4.1.4. the date of any notice to terminate any part of the Services (in which case the contents of this Schedule shall only apply to those Services which are terminated).
- 4.2. Subject to the provisions of Condition 12, the Contractor shall provide the Exit Management Services until and including the Expiry Date.
- 4.3. Upon commencement of the Exit Management Services the Contractor shall appoint a representative to oversee the implementation of its Exit Management Services during the Exit Period.
- 4.4. The Contractor shall ensure that provision of the Exit Management Services does not have any adverse effect upon provision of the Services during the Exit Period.
- 4.5. The Contractor shall ensure that it maintains current information regarding the Services (or such elements of the Services which are to be terminated or expire) and the processes it uses to provide those Services for the full duration of the Exit Period.

- 4.6. In providing the Exit Management Services the Contractor shall co-operate fully and in good faith with the Authority (and as applicable any other provider or providers nominated by the Authority). In doing so the Contractor shall:
- 4.6.1. respond promptly to all reasonable requests for information submitted by the Authority (or other provider or providers as nominated by the Authority); and
 - 4.6.2. provide all information, details and lists for which a process for disclosure is set out in the Exit Management Plan at the earliest possible date, but in any event within one Month of the Authority's request for such (or within such other period as the Parties may agree);
 - 4.6.3. inform the Authority as soon as is possible of any material change(s) to such information, details and lists as may already have been provided to the Authority; and
 - 4.6.4. use its reasonable endeavours to meet any reasonable requests from the Authority (or other provider or providers as nominated by the Authority) for clarification regarding any matter or issue relevant to the Services.
- 4.7. Upon the appointment of any other provider or providers by the Authority, the Contractor and such other provider or providers shall review the Exit Management Plan and (subject always to the Authority's approval) agree any changes to such required in order to transfer responsibility for the Services to such provider or providers (having regard to the methods, processes and strategies of such other provider or providers).
- 4.8. The Contractor shall ensure that all Exit Management Services are provided in accordance with any agreed timetable(s) set out in the Exit Management Plan and otherwise in accordance with this Schedule Eleven.
- 4.9. During the Exit Period the Contractor shall (at such intervals and frequencies as shall be agreed with the Authority) provide detailed progress reports to the Authority setting out its progress in delivering the Exit Management Services against the Exit Management Plan.
- 4.10. Within ten Working Days of the commencement of the Exit Period the Contractor shall provide the Authority with a list of those of its personnel whose input, co-operation and assistance it considers necessary to effect the successful delivery of the Exit Management Services. The Contractor shall endeavour to allow the Authority (or

other provider or providers as nominated by the Authority) reasonable access to such personnel.

4.11. Nothing in this Contract shall prevent or restrict the Authority from disclosing to a new provider any data, information and/or documentation received from the Contractor pursuant to its obligations to provide Exit Management Services, provided always that:

4.11.1. such new provider(s) have given appropriate confidentiality undertakings to both the Authority and the Contractor to protect any Confidential Information; and/or

4.11.2. such new provider(s) have agreed to only use such data, information and/or documentation for the purposes of evaluating and/or providing replacement services; and/or

4.12. Provided that any new provider (or providers) have given such undertakings or agreement as set out in 4.11 above, the Authority may direct that any such data, information and/or documentation shall be provided by the Contractor directly to such other provider(s).

4.13. Upon the commencement of the Exit Period the Contractor shall review all outstanding Changes initiated in accordance with Schedule Six (Contract Variation Procedure) and identify the current status and costs incurred for each Change. The Authority and the Contractor shall review each outstanding Change, and determine in each case:

4.13.1. if the Change should be completed by the Contractor, in which case the provisions of Schedule Six (Contract Variation Procedure) shall apply; or

4.13.2. that no further work should be undertaken by the Contractor with respect to the Change, in which case the Authority shall not be required to pay to the Contractor any Charges or costs in relation to that Change. In the event that the termination occurs in accordance with Condition 48 (Break) the Contractor shall be entitled to recover all reasonable Charges in respect of such Changes up to the date of service of the notice of termination.

5. Intended Procurement Activity

5.1. Where the Authority decides, at any time during the term of the Contract, to seek tenders for a replacement service provider the Contractor shall, upon request, provide the Authority with such of the information, details or lists as is set out at 2.3 above as it may reasonably require.

6. Transition

6.1. Where practical during the Exit Period, and without disrupting either the Services or Exit Management Services, but in any event before the relevant termination, partial termination or expiry date, the Contractor, upon the Authority's request (and at no cost to the Authority), shall:

- 6.1.1. transfer to the Authority (or its nominated replacement provider or providers) all or any Equipment paid for in full by the Authority under the Charges, or Equipment owned by the Authority but used by the Contractor; and
- 6.1.2. transfer to the Authority (or its nominated replacement provider or providers), or at the written request of the Authority (but not otherwise) destroy, all Authority Data (or data relating to the Authority) in its possession; and
- 6.1.3. take such actions as are necessary to ensure that it is compliant with the transfer and exit provisions of Schedule Twelve (Records Management Software Supply & Support).

Where such data or assets are required for the purposes of providing either the Services or the Exit Management Services, the Contractor shall make arrangements to transfer such data or assets to the Authority (or its nominated replacement provider or providers) on the termination or expiry date.

6.2. Each Party shall return to the other (or at the other Party's written request destroy) all Confidential Information belonging to the other Party, and shall warrant that it has not retained any such information excepting that which is required for the purposes of providing or receiving either the Services or the Exit Management Services during the Exit Period.

6.3. The Authority (or its nominated replacement provider or providers) may (at its own discretion, but without any obligation to do so) acquire any of the Contractor's assets (including properties) which, at the date of the notice of termination, are necessary for the effective provision of the Services provided that such assets are not used to provide services to other customers or clients of the Contractor:

- 6.3.1. at net book value for any assets owned by the Contractor; or
- 6.3.2. in the case of any assets leased by the Contractor, at lease book value.

- 6.4. At the written request of the Authority (but not otherwise), the Contractor shall use its reasonable endeavours to obtain such assignments, novations or licences as are necessary for the Authority (or its nominated replacement provider or providers) to make effective use of any third party contracts (including without limitation, equipment leases, maintenance and support agreements or software and hardware maintenance agreements used by the Contractor in the provision of the Services) required to be transferred by the Authority (at its sole discretion). Pending such assignment, licence or novation (even following the Transfer Date) the Contractor shall hold the benefit thereof as trustee for the Authority, provided that the Authority performs the Contractor's obligations thereunder.
- 6.5. At the written request of the Authority (but not otherwise) the Contractor shall make such arrangements as may be required to provide training and knowledge transfer services relating to the delivery of the Services to the Authority (or its nominated replacement provider or providers).
- 6.6. On, or immediately prior to, the termination, partial termination or expiry date, the Contractor shall provide the Authority (or its nominated replacement provider or providers) with all IPR licensed to the Authority.

- End of Schedule Eleven -

[DN: Due to formatting issues Schedule 12 has been inserted as a separate document. For the purposes of version control Schedule 12 is 07 – RSC Sch12 v.2.1]