

DATED _____ **2015**

- (1) THE SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT
- (2) *[SUCCESSFUL TENDERER]*

SERVICE CONCESSION AGREEMENT

RELATING TO THE ADMINISTRATION

OF THE CUSTODIAL

TENANCY DEPOSIT SCHEME

- NEW BUSINESS

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	5
2.	CONDITIONS PRECEDENT	9
3.	TERM	10
4.	DUE DILIGENCE	11
5.	IMPLEMENTATION	12
6.	THE SERVICES	13
7.	SERVICE STANDARDS AND SERVICE LEVELS	14
8.	PERFORMANCE MANAGEMENT	16
9.	SECURITY	21
10.	GENERAL OBLIGATIONS OF THE SERVICE PROVIDER	21
11.	KEY PERSONNEL	21
12.	TRAINING AND QUALIFICATION	22
13.	DISCRIMINATION	23
14.	NON-SOLICITATION	26
15.	FINANCING OF THE SCHEME	27
16.	RIGHTS OF SET-OFF	31
17.	CONTRACT MANAGEMENT	31
18.	CHANGE MANAGEMENT	31
19.	DISPUTE RESOLUTION	31
20.	CONFIDENTIALITY	32
21.	DATA	37
22.	FREEDOM OF INFORMATION	43
23.	INTELLECTUAL PROPERTY	44
24.	GENERAL WARRANTIES	52
25.	GENERAL INDEMNITIES	55
26.	CONTROL OF CLAIMS COVERED BY AN INDEMNITY	55
27.	LIMITATION OF LIABILITY	57

28.	INSURANCE AND TREATMENT OF RISK	59
29.	TERMINATION	62
30.	EXIT MANAGEMENT	66
31.	EMPLOYEES.....	66
32.	FORCE MAJEURE	66
33.	RIGHTS OF AUDIT AND ACCESS AND RECORD KEEPING	69
34.	ASSIGNMENT NOVATION AND OTHER DISPOSALS	69
35.	APPROVAL OF SUB-CONTRACTORS	70
36.	CORRUPT GIFTS AND PAYMENTS OF COMMISSION	73
37.	CONFLICT OF INTEREST	75
38.	COMPLIANCE WITH LAW AND DATA STANDARDS	77
39.	CHANGES IN LAW AND DATA STANDARDS.....	77
40.	WAIVER.....	78
41.	REMEDIES	78
42.	THIRD PARTY RIGHTS	78
43.	ANNOUNCEMENTS AND PUBLICITY	78
44.	FURTHER ASSURANCE	79
45.	COSTS.....	80
46.	OFFICIAL SECRETS ACT	80
47.	ENTIRE AGREEMENT	80
48.	SEVERANCE.....	80
49.	NOTICES	81
50.	RELATIONSHIP OF THE PARTIES	82
51.	COUNTERPARTS	82
52.	VALIDITY OF DOCUMENTS	82
53.	GOVERNING LAW AND JURISDICTION.....	83
	SCHEDULE 1 - DEFINITIONS	84
	SCHEDULE 2 - CONDITIONS PRECEDENT	109

SCHEDULE 3 - THE SERVICES.....	113
SCHEDULE 4 - SERVICE PROVIDER METHOD STATEMENT	114
SCHEDULE 5 - AUDIT, ACCESS AND RECORDS.....	115
SCHEDULE 6 - CHANGE CONTROL PROCEDURE	126
SCHEDULE 7 - FINANCING OF THE SCHEME.....	137
SCHEDULE 8 - DISASTER RECOVERY	140
SCHEDULE 9 - EMPLOYEES.....	152
SCHEDULE 10 - EXIT PLAN.....	168
SCHEDULE 11 - CONTRACT MANAGEMENT	177
SCHEDULE 12 - KEY PERSONNEL.....	180
SCHEDULE 13 - PERFORMANCE MANAGEMENT	181
SCHEDULE 14 - SECURITY	194
SCHEDULE 15 - SUB-CONTRACTORS.....	201
SCHEDULE 16 - COMMERCIALLY SENSITIVE INFORMATION	202
SCHEDULE 17 - IMPLEMENTATION	203
SCHEDULE 18 - PERMITTED INVESTMENTS.....	212
SCHEDULE 19 - DISPUTE RESOLUTION	214
SCHEDULE 20 - PARENT COMPANY GUARANTEE.....	218
SCHEDULE 21 - BASE CASE.....	232

THIS AGREEMENT is made as a deed the day of 2015

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT ACTING THROUGH THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT** of 2 Marsham Street, London SW1P 4DF (the "**Authority**"); and
- (2) **[SUCCESSFUL TENDERER]** registered in England with company number **[INSERT COMPANY NUMBER]** and whose registered office is at **[INSERT REGISTERED ADDRESS]** (the "**Service Provider**").

RECITALS:

WHEREAS

- (A) On **[INSERT DATE]** the Authority published a contract notice in the Official Journal of the European Union in relation to its requirements for a custodial tenancy deposit scheme pursuant to the Housing Act 2004 (OJEU No. **[INSERT]**) and issued its Invitation to Tender (the "**ITT**") to potential service providers in the market.
- (B) Further to a competitive tendering process, the Authority has procured (in accordance with the Public Contracts Regulations 2006 (as amended)) the Service Provider for the provision of a range of Services on the basis of a concession arrangement and on the terms set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the terms and expressions set out in Schedule 1 (Definitions) shall have the meanings given therein unless the context otherwise requires.
- 1.2 In this Agreement:
 - 1.2.1 the Clause headings are included for convenience only and shall not affect the construction or interpretation of this Agreement;

- 1.2.2 the Clauses, Schedules, Annexes and Appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Clauses, Schedules, Annexes and Appendices;
- 1.2.3 any reference to a Recital, Clause, Paragraph, Schedule, Annex or Appendix is to the relevant Recital to, Clause of, Paragraph of, Schedule to, Annex to or Appendix to this Agreement (as the case may be);
- 1.2.4 use of the singular includes the plural and vice versa;
- 1.2.5 words importing a particular gender do not exclude other genders;
- 1.2.6 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement or any such other document;
- 1.2.7 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated, replaced or re-enacted;
- 1.2.8 any phrase introduced by the terms "including", "include", "includes", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms;
- 1.2.9 any reference to "persons" includes natural persons, firms, partnerships, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not having separate legal personality);
- 1.2.10 the words "in writing" and "written" shall be interpreted to include any document which is recorded in manuscript, typescript and any electronic communication (as defined in section 15 of the Electronic Communications Act 2000);

- 1.2.11 the words "day" and "month" mean calendar day and calendar month unless otherwise stated.
 - 1.2.12 all references to the Parties include their permitted successors and permitted assigns;
 - 1.2.13 any reference to a public organisation, body or representative shall be deemed to include reference to any successor(s) to such public organisation, body or representative or any organisation, body, entity, or representative which (whether in whole or part) has or (as appropriate) have taken over any of the functions, services or responsibilities of such public organisation, body or representative, either entirely or in part (including any other part of HM Government, any NDPB or private body);
 - 1.2.14 any obligation on the Service Provider to comply with standards, specifications or procedures shall be deemed also to include an obligation on the Service Provider to comply with the standards, specifications and procedures issued by the Authority or any other statutory, regulatory or other properly interested body with which the Service Provider is either legally required to comply or with which the Service Provider reasonably could be expected to comply in order to conform to Good Industry Standards;
 - 1.2.15 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
 - 1.2.16 subject to any express provisions of this Agreement to the contrary, the obligations of either Party are to be performed at the Party's own cost and expense.
- 1.3 Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Service Provider.

1.4 **Responsibility for Sub-Contractors**

Subject to the provisions of this Agreement, the Service Provider shall be responsible as against the Authority for the acts and omissions of all Sub-Contractors as if they were the acts and omissions of the Service Provider. The Service Provider shall, as between itself and the Authority, be responsible for the selection of and costs of any Sub-Contractors.

1.5 **Approval**

Unless expressed to the contrary neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same, shall unless otherwise expressly stated in this Agreement, relieve the Service Provider of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

Precedence of Documentation

1.6 In the case of and to the extent of any conflict, inconsistency or ambiguity between:

1.6.1 the body of this Agreement and Schedule 1 (Definitions); and

1.6.2 any other Schedules to this Agreement,

the body of this Agreement and Schedule 1 (Definitions) shall take precedence.

1.7 In the case of and to the extent of any conflict, inconsistency or ambiguity between:

1.7.1 Schedule 3 (The Services); and

1.7.2 Schedule 4 (Service Provider Method Statement),

Schedule 3 (The Services) shall take precedence.

1.8 In the case of and to the extent of any conflict, inconsistency or ambiguity between:

1.8.1 this Agreement; and

1.8.2 any documents referenced or referred to herein (other than those within the scope of Clause 1.2.7) or to be approved by the Authority in accordance with the terms of this Agreement (and which do not form part of the Agreement),

the provisions of this Agreement shall prevail.

2. **CONDITIONS PRECEDENT**

2.1 On or prior to the execution of this Agreement the Service Provider is to deliver to the Authority the documents referred to in Appendix (I) of Schedule 2 (Conditions Precedent) unless the requirement to deliver any such document is waived by written agreement between the Authority and the Service Provider.

2.2 Subject to Clause 2.3 (below), on or prior to the CP Longstop Date the Service Provider is to deliver to the Authority the documents referred to in Appendix (II) of Schedule 2 (Conditions Precedent) unless the requirement to deliver any such document is waived by written agreement between the Authority and the Service provider.

2.3 Except for Clauses 1 (Definitions and Interpretation), 2 (Conditions Precedent), 3.1 (Commencement), 4.1, 4.3, 5 (Implementation), 6.3 (Disaster Recovery Services), 6.4 (Non-Exclusivity), 9 (Security), 14 (Non-Solicitation); 19 (Dispute Resolution), 20 (Confidentiality), 21 (Data), 22 (Freedom of Information), 23 (Intellectual Property), 24 (General Warranties), 25 (General Indemnities), 26 (Control of Claims Covered by an Indemnity), 27 (Limitation of Liability), 28 (Insurance and Treatment of Risk), 34 (Assignment Novation and Other Disposals), 35 (Approval of Sub-Contractors), 37 (Conflict of Interest) 38 (Compliance with Law and Data Standards), 40 (Waiver), 41 (Remedies), 42 (Third Party Rights), 43 (Announcements and Publicity), 44 (Further Assurance), 45 (Costs), 46 (Official Secrets Act), 47 (Entire Agreement), 48 (Severance), 49 (Notices), 50 (Relationship of the Parties), 51 (Counterparts), 52 (Validity of Documents), 53 (Governing Law and Jurisdiction), Schedule 1

(Definitions), Schedule 2 (Conditions Precedent), Schedule 8 (Disaster Recovery), Paragraph 4.3 of Schedule 11 (Contract Management), Schedule 14 (Security), Schedule 15 (Sub-Contractors), Schedule 17 (Implementation) and Schedule 19 (Dispute Resolution) which shall be binding contractual obligations on the Parties from the Effective Date, the rights and obligations of the Authority and the Service Provider shall commence on the Service Commencement Date provided that on or prior to the CP Longstop Date the Conditions Precedent listed in Appendix (II) of Schedule 2 (Conditions Precedent) have been satisfied or waived in accordance with Clause 2.2 (above).

- 2.4 Subject to the provisions set out in Schedule 17 (Implementation) in respect of Delay to the Service Commencement Date, if the Conditions Precedent listed in Appendix (II) of Schedule 2 (Conditions Precedent) have not been satisfied or waived in accordance with Clause 2.2 (above) on or prior to the CP Longstop Date then this Agreement shall terminate at 23.59 hours on the CP Longstop Date and for the avoidance of doubt no compensation shall be payable by the Authority to the Service Provider as a result of such termination.

3. **TERM**

3.1 **Commencement**

This Agreement shall commence on the Effective Date and, subject to earlier termination in accordance with this Agreement, shall continue in force until the later of:

3.1.1 23:59 on the day preceding the fifth (5th) anniversary of the Service Commencement Date ("**Original Expiry Date**"); and

3.1.2 23:59 of the final day of any period or periods of extension in accordance with Clauses 3.2 and 3.3 below,

at which point it shall expire automatically without notice.

3.2 **Extension**

Where:

3.2.1 at the Assessment Date the Service Provider satisfies the Performance Threshold in accordance with the requirements of Schedule 13 (Performance Management); or

3.2.2 the Authority serves written notice on the Service Provider not less than twelve (12) months prior to the Original Expiry Date notifying the Service Provider that it wishes to extend this Agreement,

this Agreement shall be extended automatically for an additional period of two (2) years from the Original Expiry Date and shall continue in force until 23:59 on the day preceding the second (2nd) anniversary of the Original Expiry Date (the "**New Expiry Date**").

3.3 **Minor Extension**

In addition or as an alternative to its rights under Clause 3.2 (above) the Authority may by serving written notice on the Service Provider not less than three (3) months prior to the later of:

3.3.1 the Original Expiry Date; and

3.3.2 the New Expiry Date, if it applies,

extend this Agreement for, as applicable, a period of up to twelve (12) months beyond the Original Expiry Date or New Expiry Date (as relevant), the period of any such extension to run from and include, as applicable:

3.3.3 the Original Expiry Date; or

3.3.4 the New Expiry Date.

The period of extension set by the exercise of the option under this Clause 3.3 shall be the "**Minor Extension Period**". The Minor Extension Period may be brought to an end by not less than three (3) months written notice from the Authority to the Service Provider, such notice specifying the final day of the Minor Extension Period.

4. **DUE DILIGENCE**

4.1 The Service Provider acknowledges that it has carried out all due diligence that the Service Provider deems necessary and/or relevant for performance of

its obligations under this Agreement and consequently the Service Provider shall be deemed to have understood the nature and extent of the Services and that it has satisfied itself that it will be able to provide the Services in full compliance with its obligations under this Agreement.

4.2 Prior to sign-off by the Service Provider of any Change Control Notice the Service Provider shall ensure that it has obtained all such information necessary to ensure that the acknowledgements set out in this Clause 4 (Due Diligence) shall apply in relation to each Change Control Notice prior to its implementation.

4.3 No warranty or undertaking is given by the Authority as to the accuracy, completeness, adequacy or fitness for purpose of any information disclosed to or made available to the Service Provider (whether directly or indirectly) in the course of the procurement process and any due diligence in accordance with this Agreement, or that such information constitutes all of the information relevant or material to the Services. The Service Provider acknowledges that it has and (as the case may be) shall make its own enquiries to satisfy itself as to the accuracy of the information supplied to it in connection with this Agreement. The Parties therefore agree that all liability on the part of the Authority in connection with:

4.3.1 any information, documents or data provided to or made available to the Service Provider (whether directly or indirectly); and

4.3.2 any representations or statements made by or on behalf of the Authority,

in connection with such due diligence (except the extent of any fraudulent misrepresentation on the part of the Authority), is to the extent permitted by Law hereby excluded.

5. **IMPLEMENTATION**

5.1 During the Implementation Period, the Service Provider shall comply with:

5.1.1 its obligations in Schedule 17 (Implementation); and

5.1.2 all other provisions of this Agreement which are required to be performed during the Implementation Period.

6. THE SERVICES

6.1 With effect from the Service Commencement Date the Service Provider shall supply the Services to and for the benefit of the Authority in accordance with the terms and conditions of this Agreement and (subject to Clause 1 (Definitions and Interpretation)) the Service Provider Method Statement so as to operate the Scheme throughout the Term.

6.2 As may be directed by the Authority at any point throughout the Term, the Service Provider shall take on any Deposits and/or unclaimed Deposits transferring from any Alternative Scheme Provider and shall deliver the Services in respect of those Deposits and unclaimed Deposits in accordance with Clause 6.1 (above).

Disaster Recovery Services

6.3 The Service Provider shall provide the Disaster Recovery Services and implement and maintain a Business Continuity Plan and Disaster Recovery Plan in accordance with Schedule 8 (Disaster Recovery) throughout the Term.

Non-Exclusivity

6.4 The Service Provider acknowledges that in entering into this Agreement no form of exclusivity has been conferred on or granted by the Authority in relation to the provision of the Services by the Service Provider and that the Authority is at all times entitled to enter into other contracts and agreements with other service providers (including without limitation the Alternative Scheme Providers) for the provision of any or all services which are the same as or similar to the Services.

Environmental Requirements

6.5 The Service Provider shall comply in all material respects with all applicable environmental Laws and regulations in force from time to time in relation to this Agreement and with the Authority's environmental policies made available to the Service Provider from time to time.

6.6 In performing its obligations under this Agreement the Service Provider shall (to the extent applicable to this Agreement):

- 6.6.1 demonstrate low carbon resource efficiency, including minimising the use of energy, water, wood, paper and other resources;
 - 6.6.2 reduce waste;
 - 6.6.3 phase out the use of ozone depleting substances; and
 - 6.6.4 minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.
- 6.7 Without prejudice to the generality of the foregoing, the Service Provider shall promptly provide all such information regarding the environmental impact of this Agreement as may reasonably be requested by the Authority.
- 6.8 The Service Provider shall meet all reasonable requests by the Authority for information evidencing its compliance with the requirements of Clauses 6.5 to 6.7 (above) of this Agreement.

7. SERVICE STANDARDS AND SERVICE LEVELS

7.1 Service Standards

7.1.1 The Service Provider shall perform its obligations under this Agreement:

7.1.1.1 in accordance and in compliance with:

- (a) the terms of this Agreement;
- (b) Governmental policies which impact on the Services (as notified by the Authority to the Service Provider from time to time in accordance with Clause 18 (Change Management);
- (c) (subject to Clause 39 (Changes in Law / Data Standards)) any applicable Law; and
- (d) applicable Good Industry Standards;

7.1.1.2 allocating sufficient resources at all times to provide the Services in accordance with this Agreement;

7.1.1.3 having due regard to the Authority's requirement that the Service Provider uses all resources in an efficient and cost effective manner; and

7.1.1.4 ensuring that no act or omission of the Service Provider, Sub-Contractors, Service Provider Personnel or other persons used in connection with the Services brings or could bring the Authority into disrepute.

7.1.2 In the event of any conflict between any of the requirements referred to in Clause 7.1.1 (above) the Service Provider shall draw such conflict to the attention of the Authority and the Authority shall determine (in its sole discretion acting reasonably) which requirement shall have precedence.

7.1.3 The Service Provider shall procure, maintain and observe all Approvals required to provide the Services. Failure to procure, maintain and/or observe all such Approvals shall constitute a Deemed Material Default and shall entitle the Authority to terminate this Agreement in accordance with Clause 29 (Termination).

7.2 Performance and Service Levels

The Service Provider shall provide the Services to meet the Service Levels in accordance with the provisions of Schedule 13 (Performance Management).

7.3 Monitoring of Service Levels and Reporting Obligations

The Service Provider shall provide records of and reports summarising the performance of the Services achieved by the Service Provider against the Service Levels in accordance with the requirements of Schedule 13 (Performance Management). Such recording and monitoring shall be subject to rights of audit in accordance with the provisions of Schedule 5 (Audit, Access and Records) and other relevant terms of this Agreement.

7.4 Service Levels and Continuous Improvement

The Service Provider is committed to the process of continuous improvement of the Services and all Service Levels. Accordingly through processes including (but not limited to) initiatives to achieve Value for Money and the

introduction of improvements in the delivery of the Services (including through adoption of changes to or the introduction of new methodologies, tools and processes) the Service Provider shall keep all Services under review and where it is reasonable to conclude either that the Service Level for a Service should be increased to a more demanding level, or that a Service not currently subject to a Service Level should become so subject, the Service Level shall be increased, or a new Service Level introduced, as appropriate. Any proposed increased or new Service Levels shall be agreed in accordance with the Change Control Procedure.

8. PERFORMANCE MANAGEMENT

8.1 General

The Service Provider shall comply with the obligations of Schedule 13 (Performance Management) throughout the Term in connection with the operation and delivery of the Services.

8.2 Effect of failure to achieve Service Levels

If the Service Provider's performance of a Service fails to achieve the relevant Service Level due to the act or omission of the Service Provider, the provisions of Schedule 13 (Performance Management) shall apply.

8.3 Suspension of Services and Step-In Rights

8.3.1 Without prejudice to the provisions of Schedule 13 (Performance Management) or to any remedy that the Authority may have (whether under this Agreement or otherwise including the right of termination pursuant to Clause 29.1 (Termination of Agreement by the Authority "for cause" (including change of Control and/or insolvency of the Service Provider)), where a Step-in Trigger or an Authority Step-In Trigger occurs the Authority shall afford the Service Provider the opportunity to demonstrate to the Authority's reasonable satisfaction within ten (10) Business Days of written notice by the Authority that the Service Provider is still able to provide the Services in accordance with the terms of this Agreement and/or remedy the circumstances giving rise to the Step-In Right (as

defined in Clause 8.3.2 below) without the requirement for the Authority to take any action.

8.3.2 If the Authority is not satisfied with the Service Provider's demonstration pursuant to Clause 8.3.1 (above), the Authority may by giving such written notice to the Service Provider as the Authority considers reasonable in the circumstances that it intends to exercise its right under this Clause 8.3 (the "**Step-In Right**"), take such steps itself or engage others (each a "**Step-In Third Party**") to take such steps as it reasonably considers necessary to remedy the circumstances or anticipated circumstances giving rise to the Step-In Right and/or to provide the Services during the period of step-in to ensure continuity of the Services.

8.3.3 Prior to exercising its rights pursuant to Clause 8.3.2 (above), the Authority shall ensure that any Step-In Third Party enters into a confidentiality undertaking with the Authority and where applicable the Service Provider on equivalent terms to those set out in Clause 20 (Confidentiality).

8.3.4 In the event and to the extent that the Authority exercises its Step-In Rights in the circumstances specified in Clause 8.3.2 (above) the Service Provider shall:

8.3.4.1 co-operate fully with the Authority and any Step-In Third Party to facilitate the steps taken;

8.3.4.2 to the extent required by the Authority suspend performance of the Services subject to the Step-In Rights (the "**Step-In Services**") for the purposes of the Authority's exercise of Step-In Rights, provided always that the exercise of the Step-In Right shall not excuse the Service Provider from its obligation to provide the Services (excluding the Step-In Services for the period only of exercise of the Step-In Right) in accordance with this Agreement or be deemed to frustrate or waive performance of that obligation;

- 8.3.4.3 grant and procure that any Sub-Contractor or relevant third party grants the Authority such licences as are reasonably required (for itself or a Step-In Third Party) for the purposes of this Clause 8.3; and
 - 8.3.4.4 afford (and procure that its Sub-Contractors afford) to the Authority (and any Step-In Third Party) such co-operation and access to any of the Service Provider IP, the Service Provider Third Party IP, Service Provider Systems, systems, premises, equipment, documents, information and/or all other items as are reasonably required for the purposes of this Clause 8.3.
- 8.3.5 In the event and to the extent that the Authority exercises its Step-In Rights following a Step-In Trigger the Authority shall use all reasonable endeavours to mitigate any costs and expenses incurred as a result of the exercise by the Authority of its Step-In Rights and:
 - 8.3.5.1 the Service Provider shall pay to the Authority a proportion of the Accrued Interest for the period of the exercise of the Step-In Rights calculated by reference to the number of Deposits affected and by an amount reasonably attributable to the Step-In Services;
 - 8.3.5.2 the Service Provider shall indemnify the Authority against all costs and expenses (including overhead costs) incurred by the Authority in taking the steps or engaging Step-In Third Parties to take the steps referred to in this Clause 8.3 and in terminating any engagement of a Step-In Third Party save that the Authority may not recover any costs it would have incurred in any event had the Service Provider continued to provide the Services fully in accordance with this Agreement; and
 - 8.3.5.3 (where a Provisional Step-In Trigger is deemed to be a Step-In Trigger) any sum by which the Accrued Interest would have been payable to the Authority in

accordance with Clause 8.3.5.1 (above) shall be deducted from the Accrued Interest for the month in which the Step-In Rights were in effect and paid to the Authority.

- 8.3.6 In the event and to the extent that the Authority exercises its Step-In Rights following an Authority Step-In Trigger then the Service Provider shall be entitled to be reimbursed for the reasonable costs and expenses it directly incurs in taking the steps referred to in this Clause 8.3. The Authority may reimburse the Service Provider directly provided always that the Service Provider has provided full evidence of the costs and expenses incurred, save that where, following the exercise of Step-In Rights due to a Provisional Step-In Trigger, the Authority is able to reasonably demonstrate that the exercise of the Step-In Rights prevented a Service Provider Default, such Provisional Step-in Trigger shall be deemed to be a Step-In Trigger and Clause 8.3.5 (above) shall apply to the exercise of the Step-In Rights in such circumstances.
- 8.3.7 During any exercise of Step-In Rights following a Step-In Trigger, the Service Provider shall be required to put forward proposals to demonstrate to the Authority that it is able to perform its obligations under this Agreement in relation to the Step-In Services. If the Service Provider can at any time demonstrate to the Authority's reasonable satisfaction that it is able to and will remedy the circumstances giving rise to the Step-In Right or that the circumstances giving rise to the Step-In Right have been remedied, then the Authority acting reasonably shall in its absolute discretion determine whether or not to terminate the exercise of its Step-In Rights (in whole or in part) and remove the suspension of the Service Provider's performance of the relevant Services (or part thereof).
- 8.3.8 During any exercise of Step-In Rights following a Step-In Trigger, the Service Provider shall, in order to demonstrate to the Authority's reasonable satisfaction that it is able to and will remedy the circumstances giving rise to the Step-In Right or that the circumstances giving rise to the Step-In Right have been remedied,

develop for the Authority's approval a draft plan ("**Step-Out Plan**") relating to the resumption by the Service Provider of the Services, including any action the Service Provider proposes to take to ensure that the affected Services satisfy the requirements of this Agreement and that, in particular, the Service Provider can satisfy the Authority in accordance with Clause 8.3.7 (above).

8.3.9 Upon receipt of a Step-Out Plan and before ceasing to exercise its Step-In Rights under this Clause 8 (Performance Management) (in whole or in part) the Authority shall deliver a written notice to the Service Provider ("**Step-Out Notice**"), specifying the date on which the Authority plans to end the relevant Step-In Rights ("**Step-Out Date**") subject to the Authority being satisfied with the Service Provider's Step-Out Plan. In the event of a partial cessation of the exercise of Step-In Rights, the provisions of this Clause 8.3 shall continue to apply only to those Step-In Rights which are unaffected by the Step-Out Notice.

8.3.10 If the Authority has exercised Step-In Rights following a Step-In Trigger for a continuous period of twenty (20) Business Days (from and including the date of receipt of the notice referred to in Clause 8.3.28.3.1 (above) by the Service Provider) or more without issuing a Step-Out Notice, then this shall, unless the Authority notifies the Service Provider otherwise, constitute a Deemed Material Default.

8.3.11 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Service Provider of its reasons for not approving it. The Service Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not unreasonably withhold or delay its approval of the draft Step-Out Plan.

8.3.12 The Service Provider shall bear its own costs in connection with:

8.3.12.1 any exercise by the Authority of its Step-In Right under this Clause 8.3;

8.3.12.2 the development of any Step-Out Plan; and

- 8.3.12.3 any preparation for and resumption of performance by the Service Provider of any Services in relation to which a Step-In Right has been exercised by the Authority.

9. **SECURITY**

The Service Provider shall comply with the terms of Schedule 14 (Security) throughout the Term.

10. **GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

The Service Provider shall promptly warn the Authority whenever the Service Provider has reasonable grounds to believe that any failure on the part of the Authority or any third party to carry out its obligations and responsibilities under or associated with this Agreement or the manner in which they are carried out will have or threatens to have a detrimental effect on the quality of the Services or the efficiency or cost of their supply or the performance of any other obligations of the Service Provider under this Agreement.

11. **KEY PERSONNEL**

- 11.1 The persons named in Schedule 12 (Key Personnel) shall be appointed by the Service Provider as Key Personnel for the performance of the Services and shall carry out the specific functions indicated next to their names in Schedule 12 (Key Personnel).

- 11.2 The Key Personnel shall devote sufficient time and attention to the provision of the Services to ensure the proper performance of the Services in accordance with this Agreement and shall have full authority to act on behalf of the Service Provider in the provision of the Services. The Service Provider shall ensure that the Key Personnel remain suitably skilled and experienced to carry out their roles at all times throughout the Term.

Replacement of Key Personnel

- 11.3 The Service Provider shall not remove or replace (except in the case of death, ill health, retirement or termination of employment) any of the said Key Personnel or any of their properly appointed replacements without the prior written consent of the Authority, which consent shall not be unreasonably

withheld or delayed. The Service Provider shall consult with the Authority on any proposed new Key Personnel and promptly provide any information concerning the proposed new Key Personnel requested by the Authority.

- 11.4 The Authority may during any recruitment process for new Key Personnel meet any proposed new Key Personnel. If the Authority objects on reasonable grounds to the proposed new Key Personnel, the Service Provider shall not engage such person to fill the relevant position and shall propose to the Authority another proposed new Key Personnel.
- 11.5 The Authority may for reasons of incompetence, poor performance or misbehaviour of any Key Personnel and following consultation with the Service Provider, instruct the Service Provider to remove any Key Personnel and the Service Provider shall promptly comply. The Service Provider shall not be excused performance of any of its obligations under this Agreement as a result of compliance with any such instruction pursuant to this Clause 11 (Key Personnel). The Service Provider shall use all reasonable endeavours to replace any Key Personnel that have been removed in accordance with this Clause 11 (Key Personnel) within sixty (60) Business Days.

12. TRAINING AND QUALIFICATION

- 12.1 The Service Provider agrees that the Service Provider Personnel and Sub-Contractors shall at all times be appropriately and adequately qualified and have the skills necessary for the Services and be trained and suitable to perform the Services in accordance with this Agreement, and the Service Provider agrees to provide on request such information relating to the skills, qualifications, organisation, management and supervision of Service Provider Personnel and Sub-Contractors as the Authority may reasonably require.
- 12.2 In the event that the Authority reasonably considers that any Service Provider Personnel or Sub-Contractors are not appropriately and/or adequately qualified or do not have the skills or appropriate training to perform or support delivery of the Services, the Authority:
- 12.2.1 may request that the Service Provider ensures that such Service Provider Personnel and/or Sub-Contractors undertake such additional or further training as may be reasonably necessary; and

- 12.2.2 where (the Service Provider Personnel and/or Sub-Contractors (as relevant) having undertaken such training) the Authority's concerns as to the relevant Service Provider Personnel or Sub-Contractor remain the Authority reserves the right to require the Service Provider by notice in writing to cease using such personnel or Sub-Contractor to provide the Services and to implement such plan or make alternative arrangements to ensure that the Services continue to be provided (other than by such personnel) without any disruption or interruption to the administration of the Scheme.

13. **DISCRIMINATION**

- 13.1 The Service Provider (including its agents and employees) shall not, and shall procure that all Service Provider Personnel and Sub-Contractors shall not:

- 13.1.1 unlawfully discriminate directly or indirectly or by association (and in relation to disability for a reason related to disability or failure to make reasonable adjustments) or unlawfully discriminate by way of victimisation or harassment or carry out any other form of unlawful discrimination within the meaning of the Anti-Discrimination Legislation against any person or persons or groups of persons; and/or
- 13.1.2 unlawfully discriminate directly or indirectly or by association (and in relation to disability for a reason related to disability or failure to make reasonable adjustments) or unlawfully discriminate by way of victimisation or harassment or carry out any other form of unlawful discrimination against any person or persons or groups of persons on grounds of any of the Protected Characteristics or on the grounds of fixed-term status, part-time status, flexible working or any other prohibited actions contrary to the Anti-Discrimination Legislation;
- 13.1.3 otherwise contravene the Anti-Discrimination Legislation; and/or
- 13.1.4 treat one group of people less favourably than any other because of any of the Protected Characteristics under the Equality Act 2010 or on the grounds of fixed-term status or part-time status in relation to decisions to recruit, train or promote employees.

- 13.2 The Service Provider (including its agents and employees) shall, and shall procure that all Service Provider Personnel and Sub-Contractors shall:
- 13.2.1 for the purposes of ensuring compliance with Clause 13.1 (above), in relation to employees engaged in the provision of the Services, observe as far as possible the provisions of any codes of practice from time to time in force issued by the Equality and Human Rights Commission or by any other body with responsibility for ensuring good practice in equality matters, including but not limited to those provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy;
 - 13.2.2 in performing its or their obligations under this Agreement, have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups or sexes or persons with disabilities and to comply with all similar obligations under the Anti-Discrimination Legislation;
 - 13.2.3 notify the Authority Contract Manager in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider or any Service Provider Personnel or Sub-Contractors under any Anti-Discrimination Legislation; and
 - 13.2.4 assist the Authority with compliance with any equality scheme introduced or promoted by the Authority in respect of race, gender and/or disability as reasonably and expressly directed by the Authority.
- 13.3 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of its obligations under this Agreement being in possible contravention of the Anti-Discrimination Legislation, the Service Provider shall, and shall procure that any relevant Service Provider Personnel and Sub-Contractors shall, free of charge:
- 13.3.1 provide any information requested in the timescale allotted;

- 13.3.2 attend any meetings as required and require any relevant members of its staff to attend such meetings;
 - 13.3.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 13.3.4 appear as witness in any ensuing proceedings, and require relevant members of its staff to do so; and
 - 13.3.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 13.4 In the event of any finding of unlawful discrimination under the Anti-Discrimination Legislation being made against the Service Provider and/or against any Service Provider Personnel or Sub-Contractors during the Term, or of any adverse finding in any formal investigation in respect of equality matters by any Relevant Authority or Regulatory Body over the same period, the Service Provider shall:
- 13.4.1 promptly inform the Authority of its finding;
 - 13.4.2 take all appropriate steps (including those that may be required by the Authority) to the reasonable satisfaction of the Authority to prevent repetition of any unlawful discrimination; and
 - 13.4.3 indemnify the Authority against any damages, losses, liabilities, costs and expenses in connection with any investigation or proceedings, save to the extent that the Authority or the Outgoing Service Provider is found to be at fault in respect of the matters which are the subject of the relevant investigation or proceedings (unless the Service Provider is aware of such matters and has unreasonably failed to resolve them prior to the commencement of such investigation or proceedings).
- 13.5 The Service Provider shall on request provide the Authority with details of any steps taken under Clause 13.4 (above).
- 13.6 The Service Provider's equal opportunities policy shall be published to all staff and to all Service Provider Personnel and Sub-Contractor staff concerned with

management of staff (including but not limited to disciplinary matters, responsibility for recruitment, training and promotion), in relevant documentation available to its staff and others and in its recruitment advertisements and other relevant literature.

13.7 The Service Provider shall procure that all staff receive appropriate training in the application of the Anti-Discrimination Legislation and all relevant Guidance to the provision of the Services.

13.8 The Service Provider shall take such steps as the Authority may reasonably require to manage any disproportionate underrepresentation of members of particular groups within its workforce or the workforce of any Service Provider Personnel or Sub-Contractor.

13.9 The Service Provider shall have an equal opportunities policy or equivalent policy detailing:

13.9.1 its approach to eliminating unlawful discrimination against its employees, Service Provider Personnel, Sub-Contractors and End Users on the basis of any of the Protected Characteristics; and

13.9.2 the Service Provider's approach to promoting good relations between various groups covered by the Anti-Discrimination Legislation; and

13.9.3 its process for monitoring all forms of harassment, bullying or intimidation.

13.10 The Authority shall be entitled to monitor the Service Provider's compliance with the provisions of this Clause 13 (Discrimination). The Service Provider shall provide such information as the Authority may reasonably request for the purposes of assessing the Service Provider's and its Sub-Contractor's compliance with its obligations under this Clause 13 (Discrimination) including if requested examples of any instructions, recruitment advertisements or other literature and details of the monitoring of applicants and employees.

14. **NON-SOLICITATION**

14.1 The Service Provider shall not, and the Service Provider shall procure that any Sub-Contractor shall not:

14.1.1 during the Term; and

14.1.2 for a period of six (6) months following the termination or expiry of this Agreement,

either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the Authority, other than through genuine and general advertising in the course of recruitment, any person employed by the Authority who in the twelve (12) months prior to the date upon which the Service Provider directly or indirectly solicits or entices away (or seeks to attempt to solicit or entice away such employee) has been regularly involved with the Services.

14.2 The Service Provider shall not, and the Service Provider shall procure that any Sub-Contractor shall not:

14.2.1 during the Term; and

14.2.2 for a period of six (6) months following the termination or expiry of this Agreement,

either directly or indirectly solicit or entice away any person employed by any professional advisor to the Authority who has been regularly involved in the Scheme.

15. **FINANCING OF THE SCHEME**

15.1 **Financial Distress**

15.1.1 The Service Provider shall, as soon as practicable, and in any event within five (5) Business Days of a Financial Distress Event occurring, notify the Authority of such Financial Distress Event in writing providing details of such Financial Distress Event.

15.1.2 In the event the Service Provider does not comply with the provisions of Clause 15.1.1 (above), then this shall be a Deemed Material Default and the provision of Clause 29 (Termination) of this Agreement shall apply.

15.2 **Open Book Accounting**

- 15.2.1 The Service Provider and the Authority agree that the Service Provider shall operate an open book procedure in respect of its obligations under this Agreement in accordance with the provisions of this Clause 15.2 and shall, if the Authority so requests at any time during the Term, provide such information as the Authority may reasonably request in order for the Authority and its authorised representatives to, without limit:
- 15.2.1.1 verify the accuracy of and omissions from any information given by the Service Provider in respect of the financing of the scheme;
 - 15.2.1.2 verify the costs of any goods and services used by the Service Provider in delivering the Services; and
 - 15.2.1.3 assist the Authority to determine any financial consequences of any proposed Change to the Services provided by the Service Provider (whether directly or using any Sub-contractors).
- 15.2.2 The provisions of this Clause 15.2 are in addition, and without prejudice, to the other provisions in this Agreement relating to access to information, including those set out in Clause 33 (Rights of Audit and Access and Record Keeping).
- 15.2.3 If the Authority requests that the Service Provider provides information to it on an open book basis, then without prejudice to the generality of Clause 15.2.1 (above), the Service Provider shall promptly provide to the Authority a certificate certified by the Service Provider's director of finance (or other senior member of finance personnel nominated by the director of finance), confirming the Service Provider's actual costs, expenses and profits in providing the Services during that Service Provider's accounting year ("**Open Book Certificate**"), including:
- 15.2.3.1 actual Capital Costs;

- 15.2.3.2 actual operating expenditure, analysing staff costs, consumables and any sub-contracted and bought in services;
 - 15.2.3.3 overheads (including a breakdown thereof);
 - 15.2.3.4 actual profit across the Services and broken down to show profit for each element of the Services; and
 - 15.2.3.5 all interest and other costs incurred in relation to this Agreement.
- 15.2.4 The Authority acknowledges that the information provided in the Open Book Certificate provided pursuant to Clause 15.2.3 (above) will not have been audited by the Service Provider's auditors. In the event and to the extent that any changes are made to such information in line with auditing of the Service Provider's accounts, the Service Provider shall as soon as practicable and in any event within four (4) weeks of the completion of the audit, supply an updated Open Book Certificate to the Authority together with any further information that the Authority may reasonably require in connection with the same.
- 15.2.5 Following receipt of the Open Book Certificate, the Service Provider shall provide the Authority with such additional information as the Authority may reasonably request in order for the Authority to verify the accuracy of the Open Book Certificate.
- 15.2.6 In order to produce Open Book Certificates, the Service Provider agrees that it shall at all times keep books and records of account in accordance with Good Industry Standards and Law.
- 15.2.7 The Service Provider shall permit the Authority, its auditors and any Regulatory Body to inspect and/or audit ("**Open Book Audit**") the books and records referred to in Clause 15.2.6 (above) upon reasonable notice in accordance with Clause 33 (Rights of Audit and Access and Record Keeping).
- 15.2.8 The Service Provider shall in respect of each Service Provider's accounting year during the Term, within twenty (20) Business Days

of the date on which the Service Provider should have filed their accounts at Companies House, provide to the Authority:

15.2.8.1 a copy of the Service Provider's audited accounts for that Service Provider's accounting year; and

15.2.8.2 a copy of the most recent published audited accounts of the Parent Company Guarantor.

15.2.9 In the event that the information in an Open Book Certificate and/or an Open Book Audit reveals omissions, inconsistencies or inaccuracies in the financial information then the Authority shall, having consulted with the Service Provider, issue a plan of action to the Service Provider within thirty (30) days of the provision of the Open Book Certificate/completion of the Open Book Audit, which shall, in the applicable circumstances, require the remedial processes specified in Clauses 15.2.10 and 15.2.11 below, the purpose of which shall be to ensure that appropriate remedial action is taken to correct the financial information and the associated documentation within the required timescales.

15.2.10 The Service Provider shall implement the relevant remedial process in accordance with the agreed timetable, shall confirm its completion by a notice in writing to the Authority and shall allow the Authority to conduct a further review. The process shall be repeated if the Authority is not satisfied that the identified problems have been dealt with in a satisfactory manner.

15.2.11 In the event that the Service Provider repeats the remedial process as specified in Clause 15.2.10 (above), and the Authority, acting reasonably, is still unsatisfied with the remedial actions taken by the Service Provider the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

15.3 **General**

The Parties shall comply with the terms and conditions of Schedule 7 (Financing of the Scheme).

16. **RIGHTS OF SET-OFF**

The Authority may set off any sum of money which is payable by the Service Provider to the Authority, recoverable from the Service Provider by the Authority or otherwise against any sum then due, or which at any later time may become due, to the Service Provider under or in relation to this Agreement or any other agreement with the Authority.

17. **CONTRACT MANAGEMENT**

The Parties shall comply with the provisions of Schedule 11 (Contract Management) in relation to the processes for management of this Agreement.

18. **CHANGE MANAGEMENT**

All Changes shall be dealt with in accordance with the relevant process set out in Schedule 6 (Change Control Procedure).

19. **DISPUTE RESOLUTION**

19.1 **Escalation Procedure**

Any question or difference which may arise concerning the construction, meaning or effect of this Agreement, or any matter arising out of or in connection with this Agreement unless otherwise expressly stated in this Agreement to be a matter which shall be resolved by the Authority (a “**Dispute**”), shall in the first instance be referred for resolution under the Escalation Procedure as set out in Schedule 19 (Dispute Resolution). Neither Party may initiate any legal action until the Escalation Procedure has been completed, unless such Party reasonably believes that it has reasonable cause to do so to avoid damage to its business or affairs (which shall, for the avoidance of doubt, include its reputation) or to the Scheme or to protect or preserve any right of action it may have.

19.2 **Exhaustion of Escalation Procedure**

If a Dispute is referred to the representatives at the most senior level of the Escalation Procedure in accordance with Paragraph 1 of Schedule 19 (Dispute Resolution) and those representatives fail to resolve the Dispute within the maximum period referred to in the Escalation Procedure, then the

Escalation Procedure shall be deemed exhausted in respect of the Dispute in question.

19.3 Expert Determination

In the event of exhaustion of the Escalation Procedure and where the Dispute is a matter of fact (as opposed to law or mixed fact and law) either Party may elect to apply the provisions at Paragraph 2 (Expert Determination) of Schedule 19 (Dispute Resolution).

19.4 Continuing Obligations

If any Dispute of any kind arises between the Parties in connection with or arising out of this Agreement, the Service Provider shall at the Authority's absolute discretion continue to perform all obligations under this Agreement in full pending settlement of the Dispute.

20. CONFIDENTIALITY

20.1 The Service Provider acknowledges that in respect of any Confidential Information obtained by the Service Provider from or relating to the Authority, the Crown or their respective servants or agents or any Crown Servant, including in the course of tendering for this Agreement, a duty of confidentiality is owed to the Authority and the Crown.

20.2 Each Party agrees, for itself and in the case of the Authority the Authority Personnel and, in the case of the Service Provider, the Service Provider Personnel to keep confidential and not to disclose to any person (save as hereinafter provided in this Clause 20 (Confidentiality) and Clause 22 (Freedom of Information)) and to safeguard any Confidential Information provided to it or arising or acquired by it in relation to the terms or performance of this Agreement.

20.3 The Service Provider shall not and shall procure that the Service Provider Personnel shall not disclose any Confidential Information to any third party without the prior written consent of the Authority.

20.4 The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Clause 20 (Confidentiality):

- 20.4.1 disclosure of Confidential Information by the Service Provider to any Sub-Contractor and Service Provider Personnel but only to the extent necessary to enable the Service Provider to perform (or to cause to be performed) or to enforce any of its rights or obligations under this Agreement;
- 20.4.2 disclosure of Confidential Information by either Party when required to do so by Law;
- 20.4.3 disclosure of Confidential Information by the Authority to its employees, officers, agents or representatives to the extent necessary to enable the Authority to perform (or to cause to be performed) or to enforce any of its rights or obligations under this Agreement;
- 20.4.4 disclosure to any consultant, sub-contractor or other person engaged by the Party in connection with this Agreement (including any New Service Provider), who needs to know the information, to the extent necessary to enable that Party to perform (or cause to be performed) or to enforce any of its rights under this Agreement, provided that that Party shall have first obtained from the consultant, sub-contractor or other person (as the case may be) obligations of confidentiality to protect disclosure of such information no less onerous to those set out in this Clause 20 (Confidentiality);
- 20.4.5 disclosure of Confidential Information by either Party where and to the extent that the Confidential Information has, except as a result of breach of confidentiality by or on behalf of that Party, become publicly available or generally known to the public at the time of such disclosure;
- 20.4.6 disclosure of Confidential Information by either Party where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
- 20.4.7 possession of Confidential Information by either Party where it has been acquired from a third party who is not in breach of Law or any obligation of confidence in providing that Confidential Information,

and in the case of the Authority only, any disclosure of Confidential Information in the following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Clause 20 (Confidentiality):

- 20.4.8 to the extent required for the purpose of the continued fulfilment of the Services in the event of the exercise of its Step-In Rights in accordance with Clause 8 (Performance Management) and/or in the event of termination of the Services (in whole or part) and/or termination of this Agreement;
 - 20.4.9 in relation to the procurement process for the Services as may be required to be published in the Official Journal of the European Union or under other procurement related requirements;
 - 20.4.10 to anybody to whom the Authority reasonably considers it necessary to disclose Confidential Information to fulfil its statutory and/or public functions, any NDPB, statutory corporation, other department, office or agency of the Government (including, for the avoidance of doubt, the National Audit Office, the Auditor General for Wales and the Wales Audit Office) or other Crown Body or entity and/or (in any such case) their servants or agents, where required for its proper departmental, parliamentary, governmental, statutory or judicial purposes and the Service Provider hereby permits further disclosure by such NDPBs, statutory corporations, other department, office or agency of the Government, Crown Bodies or entities to other Crown Bodies;
 - 20.4.11 as may be required in accordance with Clause 22 (Freedom of Information); and
 - 20.4.12 in connection with the exercise of the audit rights in accordance with Schedule 5 (Audit, Access and Records).
- 20.5 Save in the circumstances set out in Clauses 20.4.1, 20.4.3, 20.4.5, 20.4.6 20.4.7 (above), in relation to any disclosure of Confidential Information under this Agreement by the Service Provider, the Service Provider shall use its best endeavours to give the Authority prompt advance written notice of this disclosure and to consult and give the Authority reasonable opportunity to

comment on the nature and extent of disclosure and take account of any reasonable comment made by the Authority.

20.6 In relation to any disclosure of Confidential Information under this Agreement by the Authority, the Authority shall, wherever possible and/or appropriate, use its best endeavours to give the Service Provider advance written notice of this disclosure and, where relevant, to consult and give the Service Provider reasonable opportunity to comment on the nature and extent of disclosure and take account of any reasonable comment made by the Service Provider.

20.7 The Service Provider shall, with respect to any Confidential Information it receives from the Authority or in connection with the Services:

20.7.1 use and shall ensure that all Sub-Contractors and Service Provider Personnel use, the Confidential Information solely for the purposes of this Agreement;

20.7.2 take and shall ensure that all Sub-Contractors and Service Provider Personnel take, all necessary precautions to ensure that all Confidential Information is held in confidence;

20.7.3 comply and shall ensure that all Sub-Contractors and Service Provider Personnel comply with all instructions and/or guidelines produced by the Authority from time to time for the handling and storage of Confidential Information generally or for specific items;

20.7.4 obtain from all employees of the Service Provider (whether under the employees' standard terms and conditions or otherwise) obligations of non-disclosure on terms no less onerous than contained in this Clause 20 (Confidentiality); and

20.7.5 obtain from all Sub-Contractors, consultants or other parties to whom disclosure is permitted under this Clause 20 (Confidentiality) (other than employees to whom Clause 20.7.4 (above) shall apply) prior to their commencing work on the Services or receiving any Confidential Information, a signed non-disclosure undertaking providing obligations of confidentiality no less onerous than those contained in this Clause 20 (Confidentiality).

- 20.8 Without prejudice to any other rights and remedies that the other Party would have, the Parties agree that damages may not be an adequate remedy for any breach of this Clause 20 (Confidentiality) and that the other Party shall be entitled to seek the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Clause 20 (Confidentiality). For the avoidance of doubt, a Party shall be entitled to exercise its rights under this Clause 20 (Confidentiality) without first having to invoke the Dispute Resolution Procedure.
- 20.9 The Service Provider shall not, either itself or by any Service Provider Personnel, Sub-Contractor, consultant or other third party, use the Authority's Confidential Information other than for the purposes of this Agreement, including without limitation:
- 20.9.1 soliciting further business from the Authority, from any other part of the Crown or any Contracting Authority; or
- 20.9.2 seeking or obtaining any commercial or pecuniary advantage other than in connection with the performance of the Services.
- 20.10 The obligations with respect to Confidential Information disclosed under this Agreement shall survive termination or expiry of this Agreement and shall continue for a period of seven (7) years from the date of expiry or termination of this Agreement.
- 20.11 Save as specified in Clause 20.12 (below), upon the Authority's written request, and in any event on termination or expiry of this Agreement and/or the Services (in whole or in part), the Service Provider shall promptly return:
- 20.11.1 all or any specified part of the Authority Data and any Authority's Confidential Information which it received while providing the relevant Services;
- 20.11.2 all (or any specified part of any) physical and written records containing any Authority Data or Authority's Confidential Information related to the relevant Services; and
- 20.11.3 all (or any specified part of any) documentation relating to any other Confidential Information related to the relevant Services,

to the Authority or, if requested by the Authority, destroy or delete the same in a manner specified by the Authority and promptly certify to the Authority that it has done the same.

- 20.12 Clause 20.11 (above) shall not apply to any copies of Confidential Information necessary for the continued maintenance, operation and development work forming part of any Exit Assistance until its completion.
- 20.13 The Service Provider shall maintain a list in writing of the non-disclosure undertakings completed in accordance with Clause 20.7 (above). Where requested by the Authority in writing the Service Provider shall provide the Authority with a copy of the list and subsequently upon request by the Authority in writing copies of such of the listed non-disclosure undertakings as required by the Authority.

21. DATA

21.1 General provisions

- 21.1.1 Subject to Clause 21.1.4 (below), the Service Provider shall not acquire any right in (save as required to perform its obligations hereunder), or title to, any part of the Authority Data whether existing prior to the Effective Date or created after such date. Title in the Authority Data shall remain with the Authority at all times.
- 21.1.2 The Service Provider shall ensure that all Authority Data can be extracted from the Service Provider's systems and is transferable to and fully usable (including all underlying form and structure of databases) by the Authority and/or a New Service Provider whether alone or in conjunction with the licences and rights granted assigned or licensed pursuant to the provisions set out in Clause 23 (Intellectual Property).
- 21.1.3 The Service Provider shall not:
- 21.1.3.1 disclose use modify or adapt the Authority Data;
 - 21.1.3.2 merge or combine the Authority Data with other data;
 - 21.1.3.3 store copy disclose or use the Authority Data; or

21.1.3.4 reproduce the Authority Data in whole or in part in any form,

except as provided by Clause 21.1.4 (below) and as may be expressly required by or necessary for performance by the Service Provider of its obligations under this Agreement.

21.1.4 The Authority hereby grants to the Service Provider a revocable, non-exclusive, non-transferable licence to use Authority Data for the purposes of its business including without limitation management reporting, trend analysis and statistical purposes but excluding Authority Personal Data and always provided that such Authority Data is in an anonymised form and is not capable of constituting Personal Data in its own right or in conjunction with any other information in the possession of or likely to come into the possession of the Service Provider.

21.1.5 The Service Provider shall not remove any proprietary or copyright notices contained within or relating to any Authority Data.

21.1.6 The Service Provider shall be responsible for maintaining, in accordance with Good Industry Standards and all express requirements of this Agreement, secure and up-to-date backups of all Authority Data in the possession or control of the Service Provider and its Sub-Contractors. The Service Provider shall be responsible for preserving the integrity of Authority Data and preventing unauthorised disclosure, misuse, interception, theft, corruption or loss. Any such Authority Data that is lost, degraded or damaged shall where copies of such data exist (in any form) be reinstated and/or reconstituted by the Service Provider as soon as reasonably practicable at its own cost where the loss, degradation or damage is due to any Default of the Service Provider (including but not limited to any Default of Service Provider Personnel or Sub-Contractors). If the Service Provider fails to do so within two (2) Business Days from and including the date of loss, degradation or damage then the Authority may by itself or by appointment of a third party undertake the reinstatement and/or reconstitution of such Authority Data at the Service Provider's cost and the Service

Provider shall procure that the Service Provider Personnel and its Sub-Contractors co-operate fully in such process.

21.1.7 The Service Provider shall ensure that the backups of Authority Data held by the Service Provider, or on its behalf by any Sub-Contractors, are made available to the Authority at all reasonable times upon reasonable request.

21.1.8 If at any time the Service Provider suspects or has reason to believe that Authority Data has or may become corrupted in any way the Service Provider shall promptly take all necessary remedial action.

21.1.9 Save to the extent otherwise permitted by the Authority in writing (whether in this Agreement or otherwise) the Service Provider shall not (and shall ensure that the Service Provider Personnel and its Sub-Contractors shall not):

21.1.9.1 process or take any Authority Data outside the EEA (or cause or permit the same to happen);

21.1.9.2 (other than in allowing End Users web-based access to the Scheme) due to the manner in which it delivers (or requires to be delivered) the Services, cause or permit Authority Data to be accessed from outside the EEA; or

21.1.9.3 undertake (or cause to be undertaken) application development outside the EEA.

For the avoidance of doubt, where the Service Provider Method Statement clearly specifies that application development will be undertaken outside the EEA, such development shall be deemed permitted for the purposes of this Clause 21.1.9.

21.2 **Personal Data**

21.2.1 The Parties agree that the Authority is a Data Controller for Personal Data and the Authority hereby appoints the Service Provider as Data Processor in relation to the Personal Data which the Service Provider Processes in order to perform the Services

and, subject to Clause 35 (Approval of Sub-Contractors), authorises the Service Provider to appoint Sub-Contractors as further Data Processors on behalf of the Authority, provided that such further Data Processors are engaged on terms providing equivalent rights to the Authority against the further Data Processors and equivalent protections in relation to the Personal Data to those set out in this Agreement.

21.2.2 The Service Provider shall:

21.2.2.1 process the Personal Data only on behalf of the Authority in compliance with the Authority's instructions and this Agreement. If for whatever reason the Service Provider cannot provide such compliance, it agrees to inform the Authority promptly of its inability to comply, and the Authority is entitled to suspend the Service Provider's Processing of Personal Data;

21.2.2.2 without prejudice to the generality of Clause 12.1 (Training and Qualification), ensure that those of its employees who are used to Process Personal Data under this Agreement have first been trained in the law of data protection and in the care and handling of Personal Data and that no other personnel of the Data Processor are allowed access to the Personal Data;

21.2.2.3 process the Personal Data in accordance with the Law;

21.2.2.4 ensure that it sends or makes available to all Data Subjects the Data Protection Information and cooperates fully with the Authority in relation to the drafting, amendment and provision of the Data Protection Information;

21.2.2.5 promptly notify the Authority about:

- (a) any legally binding request for disclosure of the Personal Data by a law enforcement department

prior to any such disclosure unless otherwise prohibited; and

- (b) any accidental or unauthorised access which may affect the Personal Data as soon as reasonably possible after becoming aware of the same;

21.2.2.6 notify the Authority in such format and with such frequency as the Authority may reasonably direct of any Data Subject Requests received directly from Data Subjects;

21.2.2.7 respond to any such Data Subject Request in accordance with Clause 21.2.3 (below), unless it has been otherwise instructed not to do so by the Authority;

21.2.2.8 deal promptly and properly with all enquiries from the Authority and the Information Commissioner relating to the Service Provider's Processing of the Personal Data;

21.2.2.9 not disclose the Personal Data to a third party in any circumstances other than at the specific request of or as specifically permitted by the Authority in writing, or where obliged to do so under any Law as soon as reasonably possible after becoming aware of the same;

21.2.2.10 not transfer the Personal Data outside the EEA without the prior written consent of the Authority;

21.2.2.11 upon reasonable request from the Authority submit its data processing facilities procedures and documentation relating to Personal Data and those of its sub-processors to scrutiny by the Authority or the Audit Agents of the Authority in order to ascertain compliance with relevant Law and the terms of this Agreement; and

21.2.2.12 on request by the Authority promptly provide information which the Authority requires in order to comply with:

(a) Data Subject Requests; and

(b) requests from the Information Commissioner.

21.2.3 On receipt of a Data Subject Request directly or a request from the Authority to deal with a Data Subject Request that the Authority has received and passed onto the Service Provider, the Service Provider shall promptly and in any event within any applicable statutory response periods respond to such Data Subject Request on behalf of the Authority and in compliance with the DPA and shall then carry out any and all necessary subsequent correspondence whether with the Data Subject or otherwise in order to deal with such Data Subject Request on behalf of the Authority. The Service Provider shall keep records of all Data Subject Requests and responses and shall make these available to the Authority on request. The contents of any such Data Subject Request shall constitute the Authority's Confidential Information and any response thereto forms part of Authority Data. For the avoidance of doubt the Service Provider's obligation is limited to the Personal Data held by the Authority and any Personal Data held by the Authority should be provided by the Authority.

21.2.4 The Service Provider warrants that it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised or unlawful access loss destruction theft use or disclosure of the Personal Data.

21.3 The Service Provider shall indemnify and shall keep indemnified the Authority against all liabilities losses demands damages costs claims expenses and interest suffered by the Authority including payment of compensation to a third party and the Authority's expenses in settling such third party claim as a result of any failure by the Service Provider to comply with its obligations in accordance with any part of this Clause 21 (Data).

- 21.4 Notwithstanding the provisions of Clause 33.2 (Rights of Audit and Access and Record Keeping), Personal Data shall be retained only for as long as is necessary for the effective operation and delivery of the Scheme and regulatory compliance and subject always to Principle 5 of the DPA. The Service Provider shall ensure that its governance procedures for the operation of the Scheme specify its procedures and associated time periods for the retention of Personal Data.

22. **FREEDOM OF INFORMATION**

- 22.1 The Service Provider acknowledges that the Authority is subject to the requirements of 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.

- 22.2 The Service Provider shall and shall procure that its Sub-Contractors shall:

22.2.1 provide the Authority with a copy of all Information in its possession which the Authority itself does not hold or provide that Information in the form that the Authority requires within ten (10) Business Days or such other period as the Authority may specify from and including the date of the Authority's request at no charge to the Authority. In exceptional circumstances the Service Provider may request that the Authority grants it a longer period to provide the relevant information (including, for example, where hard copy Information is stored in off-site archive facilities) and any such requests shall be determined by the Authority in its absolute discretion and having regard to the statutory time periods for compliance; and

22.2.2 provide all assistance as may be reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in the FOIA or the Environmental Information Regulations (as the case may be).

- 22.3 The Authority shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations save that the Authority shall use reasonable endeavours to consult with the Service Provider as soon as

reasonably practicable regarding the disclosure and how such Commercially Sensitive Information should be disclosed. The Authority's decision as to whether such information shall be disclosed shall be final and binding save that the Authority shall have due regard to its obligations under FOIA in making its decision.

- 22.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 22.5 The Service Provider acknowledges that the Authority may be obliged to disclose Information without consulting or obtaining consent from the Service Provider or despite having taken the Service Providers' views into account.
- 22.6 The Service Provider acknowledges that all Information shall constitute records to be retained in accordance with Clause 33 (Rights of Audit and Access and Record Keeping). The Service Provider shall permit the Authority to inspect such records as requested from time to time.
- 22.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in Schedule 16 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with Clause 22.5 (above).
- 22.8 The Service Provider shall (and shall procure that all Service Provider Personnel and Sub-Contractors shall) transfer to the Authority any request for information received by the Service provider as soon as practicable and in any event within five (5) Business Days of receiving it.

23. INTELLECTUAL PROPERTY

23.1 General

23.1.1 The Authority wishes subject to the provisions of this Clause 23 (Intellectual Property) to take a licence to use all IP that is required:

23.1.1.1 by the Authority to operate and ensure the continued viability of the Scheme during the Term; and

23.1.1.2 by either the Authority or a New Service Provider to ensure a smooth transfer of the Authority Data to the

Authority and/or a New Service Provider following the end of the Term so as to ensure the continued operation of the Scheme during the Migration Period.

23.1.2 Where the Service Provider is required to grant and/or to secure and/or to procure the grant of a licence of any IPR to the Authority under this Agreement the Service Provider shall forthwith enter into such escrow arrangements to safeguard the Authority's rights as the Authority may reasonably require.

23.2 **End User Materials**

The Service Provider hereby assigns absolutely (and shall procure that any Sub-Contractor assigns absolutely) with full title guarantee to the Authority all present and future copyright and all other rights in the nature of copyright subsisting in the End User Materials (the "**Copyright**"). The Service Provider hereby irrevocably and unconditionally waives (and shall procure that any Sub-Contractor waives) any moral rights it may have now or at any time in the future in any End User Materials under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or otherwise.

23.3 **Bespoke IP**

The Service Provider hereby grants (and shall procure that any Sub-Contractor grants) to the Authority an Extended Licence for the Term and the Migration Period to use the Bespoke IP.

23.4 **Authority IP**

23.4.1 Subject to Clause 23.4.3 (below), if the Service Provider can reasonably demonstrate to the satisfaction of the Authority that it is necessary to the provision of the Services to be licensed to use any Authority IP, the Authority shall during the Term and the Migration Period grant the Service Provider a Licence to use the Authority IP for that limited purpose only.

23.4.2 Subject to Clause 23.4.1 (above) neither the Service Provider nor any of its Sub-Contractors or Service Provider Personnel shall acquire any rights, title or interest in or to any Authority IP.

- 23.4.3 The Service Provider shall not have any right to use any of the Authority's names, logos or trade marks on any of its products or services, without the Authority's prior written consent, and where permitted, use will be subject to such terms as the Authority may require.

23.5 Commercially Available Software

- 23.5.1 Where the Service Provider or any Sub-Contractor uses any third party Software in the provision of the Services, it shall use all reasonable endeavours to ensure that such third party Software is Commercially Available Software if the unavailability of such third party Software would prevent or impact on the continued operation and/or delivery of the Scheme after termination or expiry of this Agreement.
- 23.5.2 In respect of any Commercially Available Software used by the Service Provider or any Sub-Contractor, the Service Provider shall (at the Authority's option):
- 23.5.2.1 provide the Authority and/or a New Service Provider with all assistance reasonably required to procure licences to use the Commercial Available Software following termination or expiry of this Agreement; or
 - 23.5.2.2 assist the Authority and/or the New Service Provider in negotiating agreed terms governing use of the Commercially Available Software following expiry or termination with the Commercially Available Software licence owner in advance of such expiry or termination.

23.6 Service Provider IP and Service Provider Third Party IP

- 23.6.1 Subject to Clause 23.6.2 (below) and save as provided to the contrary elsewhere in this Agreement:
- 23.6.1.1 the Service Provider shall retain all rights, title and interest in and to all Service Provider IP; and

- 23.6.1.2 the relevant third party shall retain all rights, title and interest in and to all Service Provider Third Party IP.
- 23.6.2 The Service Provider:
 - 23.6.2.1 hereby grants to the Authority an Extended Licence for the Term and the Migration Period to use the Service Provider IP;
 - 23.6.2.2 shall procure from each relevant third party the grant to the Authority of an Extended Licence for the Term and the Migration Period to use the Service Provider Third Party IP.
- 23.6.3 Where the Authority or a New Service Provider wishes to use the Service Provider IP following the Migration Period to ensure the continuation of the Scheme, the Service Provider shall grant a licence to use the Service Provider IP to such person as the Authority may reasonably require. Such licence will as a minimum:
 - 23.6.3.1 grant rights that are wide enough to allow the licensee to fully and effectively operate the Scheme (as amended and updated);
 - 23.6.3.2 provide for the payment of a commercially reasonable licence fee to the Service Provider (which fee shall recognise any recovery of development costs associated with the Service Provider IP through the Charges during the Term);
 - 23.6.3.3 be on terms that would reasonably be regarded as industry standard terms.
- 23.6.4 Where the Authority or a New Service Provider wishes to use the Service Provider Third Party IP following the Migration Period to ensure the continuation of the Scheme, the Service Provider shall procure the grant of a licence from the relevant third party to use the Service Provider Third Party IP to such person as the Authority may reasonably require on the terms set out at Clause 23.6.3.

23.7 The Brand

- 23.7.1 The Service Provider acknowledges that the branding for the Scheme (the "**Brand**") and any goodwill accruing to or from such Brand shall belong to the Authority and the Service Provider shall upon request assign to the Authority absolutely all its right, title and interest (if any) in and to the Brand and the said goodwill, including the right to bring claims and actions in respect of any infringement of the same, whether occurring before on or after the date of the assignment. The final form of the Brand including any logo is subject to the prior written approval of the Authority.
- 23.7.2 The Service Provider is licensed by the Authority to use the Brand solely for the purposes of providing the Services and the Scheme during the Term and in accordance with any guidelines or written instructions issued by the Authority from time to time. Such licence granted to the Service Provider to use the Brand shall expire on the date of expiry or earlier termination of this Agreement.
- 23.7.3 On expiry or the earlier termination of this Agreement, the Authority may (in its absolute discretion) grant the Service Provider a new licence to continue to use the Brand subject always to such licence fee and conditions as may be determined by the Authority.
- 23.7.4 The Service Provider shall not be entitled to include its logos or branding on any literature associated with the Scheme without the prior written consent of the Authority and the Authority shall not unreasonably delay notification of its consent or refusal thereof.
- 23.7.5 The Service Provider shall provide at the Authority's cost and expense such assistance as the Authority may reasonably require should it wish at any time to register the Brand as a trade mark. Any such trade mark shall be registered in the name of the Secretary of State or such other person as the Authority shall specify.

23.8 Communication Channels

- 23.8.1 The Service Provider shall:

- 23.8.1.1 ensure that the URL of any website used in the provision of the Scheme ("**URL**") shall be registered in the name of the Secretary of State or such other person as the Authority shall specify. All rights in any URL shall vest in the Authority;
- 23.8.1.2 use its best endeavours to ensure that any telephone number utilised in the provision of the Scheme is transferred at cost to the Authority or a New Service Provider upon expiry or termination of this Agreement.
- 23.8.2 All costs associated with maintaining registration pursuant to Clause 23.8.1 (above) during the Term of this Agreement shall be met by the Service Provider.

23.9 **Intellectual Property Warranties**

- 23.9.1 The Service Provider warrants and represents for itself that:
 - 23.9.1.1 it owns or has the right to use or otherwise exploit all the necessary IPR to provide the Services;
 - 23.9.1.2 it shall not infringe the IPR of any third party in supplying the Services;
 - 23.9.1.3 it owns, or is licensed to use, or will (at the time when the IP in question is used by the Service Provider and/or any Sub-Contractor) be entitled to use, all the Service Provider IP and the Service Provider Third Party IP which the Service Provider requires or uses in order to perform its obligations under this Agreement;
 - 23.9.1.4 it is fully entitled to grant the licences referred to in this Agreement; and
 - 23.9.1.5 in performing its obligations under this Agreement, all Software used by or on behalf of the Service Provider shall:

- (a) be, unless agreed otherwise by the Parties, currently supported versions of that Software; and
- (b) perform in all material respects with its specification.

23.10 Intellectual Property Indemnities

23.10.1 The Service Provider hereby indemnifies the Authority and shall hold the Authority harmless against all liabilities, losses, demands, damages, costs, claims, expenses and interest suffered by the Authority as a result of:

23.10.1.1 any Bespoke IP, Service Provider IP or Service Provider Third Party IP either:

- (a) used by or on behalf of the Service Provider in the provision of the Services; and/or
- (b) used by the Authority or a New Service Provider, in either case in accordance with or pursuant to the terms of this Agreement,

infringing any IP of a third party;

23.10.1.2 any Authority IP used by the Service Provider or Service Provider Personnel or any Sub-Contractor in breach of the licence terms set out in or granted pursuant to this Agreement; and

23.10.1.3 any breach of any of the IP warranties set out in Clause 23.9 (Intellectual Property Warranties) (above).

23.11 Infringement of Intellectual Property

23.11.1 Without prejudice to the indemnities in Clause 23.10 (Intellectual Property Indemnities) the Service Provider shall at its own expense either:

- 23.11.1.1 replace or change any part or component of the Services (or how they are delivered) which infringes (or allegedly infringes) any IPR or which the Service Provider or the Authority considers may in the future be subject to any claim for infringement of IPR, so as to avoid infringement (or alleged infringement) of any IPR and to require the Authority to accept the replacement/change provided that it provides substantially similar functionality, performance and quality as that replaced or changed; or
 - 23.11.1.2 procure a licence to enable the Service Provider to deliver the Services lawfully without it or the Authority being liable for any infringement or alleged infringement by use of IP in connection with the Services.
- 23.11.2 Without prejudice to the indemnities in Clause 23.10 (Intellectual Property Indemnities) the Authority shall have the right to replace or change (or procure the replacement or change of) any part or component of the Services (or how they are delivered) which infringes (or allegedly infringes) any IPR, at its own expense, so as to avoid infringement (or alleged infringement) of any IPR, and to require the Service Provider to accept such replacement/change provided that it provides substantially similar functionality, performance and quality as that replaced or changed. The Authority shall not be liable for any of the Service Provider's costs or expenses in accepting and implementing a replacement/change pursuant to this Clause 23.11.2.
- 23.11.3 In the event that:
- 23.11.3.1 the Service Provider is in Default of any of its obligations under Clause 23.11.1 (above); and/or
 - 23.11.3.2 the options set out in Clause 23.11.1 (above) and if the Authority chooses to exercise such right Clause

23.11.2 (above) do not avoid the infringement of the IPR in question,

the infringement shall be classed as a Deemed Material Default.

24. GENERAL WARRANTIES

24.1 The Service Provider warrants and represents to the Authority for the benefit of the Authority that:

24.1.1 it has full capacity power and authority to enter into and perform its obligations under this Agreement and has no conflicting obligations to any third party (whether contractual or otherwise);

24.1.2 all Sub-Contractors have full capacity power and authority to perform their obligations in connection with this Agreement and have no conflicting obligations to any third party (whether contractual or otherwise);

24.1.3 this Agreement is executed by a duly authorised representative of the Service Provider;

24.1.4 it has not and will not (and shall procure that each Sub-Contractor has not and shall not) enter into any fixed or floating charge or other encumbrance which would take priority to the assignments or vesting of IP in the Authority referred to in Clause 23 (Intellectual Property);

24.1.5 there is no proceeding pending or to the knowledge of the Service Provider threatened which may have a material adverse effect on this Agreement or on the ability of the Service Provider to carry out its obligations under this Agreement;

24.1.6 the Service Provider and its Sub-Contractors have not and will not violate any applicable Laws or Data Standards;

24.1.7 all written statements and written representations in pre-contractual proposals in the Service Provider's response to the ITT when made by the Service Provider to the Authority were in the context they were given at the time true complete and accurate in all material

respects and that the Service Provider has advised the Authority of any fact matter or circumstance of which it has become aware since making such proposals which would render any such statement or representation false or misleading;

- 24.1.8 the Service Provider's information technology is and will continue to be able to allow the Service Provider to properly comply with its obligations hereunder and is appropriate to meet the Services; and
- 24.1.9 the Service Provider Method Statement complies with and shall comply with and meet the Services in full throughout the Term;
- 24.1.10 the Service Provider is not aware, after due enquiry, of anything which materially threatens the carrying out of the Services;
- 24.1.11 no petition has been filed, notice has been given, resolution passed, step taken or an order has been made for or in connection with the winding up of the Service Provider or for any step taken for a provisional liquidator to be appointed in respect of the Service Provider;
- 24.1.12 no petition has been filed, notice has been given, resolution passed or administration order has been made for or in connection with placing the Service Provider into administration, nor has any administrator been appointed in respect of the Service Provider, nor has any such notice to appoint an administrator been given, nor have any steps been taken by any person (including the Service Provider or its directors) to appoint any such administrator;
- 24.1.13 no person has appointed or threatened to appoint a receiver (including any administrative receiver) in respect of the Service Provider or any of its assets nor have any steps been taken by any person to appoint a receiver (including administrative receiver);
- 24.1.14 the Service Provider is not insolvent, nor unable to pay its debts within the meaning of section 123 Insolvency Act 1986, nor suspended or threatened to suspend payment of its debts;
- 24.1.15 the Service Provider has not commenced negotiations with all or any class of its creditors with a view to rescheduling any of its debts,

nor make a proposal for or entered into any compromise or arrangement with its creditors, nor any voluntary arrangement has been made for a composition of debts nor has a scheme of arrangement been proposed or approved under the Insolvency Act 1986 or the Companies Act 2006;

24.1.16 no circumstances have arisen (so far as the Service Provider is aware) which are likely to result in:

24.1.16.1 a contract or transaction to which the Service Provider is a party which has an impact on the Service Provider's ability to deliver the Services being set aside; or

24.1.16.2 a third party claim involving any asset owned or used by the Service Provider being made under sections 238 or 339 (transactions at an undervalue) or 239 or 340 (Preferences) Insolvency Act 1986;

24.1.17 all staff assigned to the carrying out of the Services possess and exercise such qualifications, skills and experience as are necessary for the proper carrying out of the Services or are appropriately supervised; and

24.1.18 the Service Provider warrants and undertakes to the Authority that it has and will throughout the duration of this Agreement have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Service Provider from bribing any person with the intention of obtaining or retaining business for the Service Provider or with the intention of obtaining or retaining an advantage in the conduct of business for the Service Provider.

Each of the above warranties shall be construed as a separate warranty and representation by the Service Provider and shall not be limited or restricted by reference to or inference from the terms of any other warranty or representation or any other terms of this Agreement.

- 24.2 Except as provided in this Agreement there are no express warranties, representations, undertakings or conditions (statutory or otherwise) made by either Party and all warranties, representations, undertakings and conditions (statutory or otherwise) implied to be made by either Party including implied warranties as to satisfactory quality and fitness for a particular purpose are hereby excluded to the maximum extent permitted by Law.

25. **GENERAL INDEMNITIES**

- 25.1 The Service Provider shall be responsible for, and shall release and indemnify the Authority, any Authority related party and their employees, agents and contractors on demand from and against, all liability for all liabilities, losses, demands, damages, costs, claims, expenses and interest suffered and arising from:

- 25.1.1 death or personal injury;
- 25.1.2 loss or damage to property (including property belonging to the Authority or for which it is responsible);
- 25.1.3 breach of statutory duty; and
- 25.1.4 actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) arising from third party claims,

which may arise out of or in consequence of, the provision of the Services or the performance or non-performance by the Service Provider of its obligations under this Agreement or the presence on the Authority property of the Service Provider or any Service Provider Personnel or Sub-Contractors, their employees or agents and any equipment or personnel of any of them.

26. **CONTROL OF CLAIMS COVERED BY AN INDEMNITY**

- 26.1 In the event of a matter that gives, or may give, rise to a claim under an indemnity provided by the Service Provider in this Agreement, the provisions of this Clause 26 (Control of Claims Covered by an Indemnity) shall apply.
- 26.2 If the Authority becomes aware of a matter which may give rise to a claim under an indemnity given by the Service Provider in this Agreement, the

Authority shall notify the Service Provider of the matter stating in reasonable detail the nature of the matter and if practicable the amount claimed and consult with the Service Provider with respect to the matter.

- 26.3 The Authority shall provide the Service Provider and its advisers reasonable access to premises and personnel and to all relevant assets documents and records that it possesses or controls for the purposes of investigating the matter and enabling the Service Provider to take the required steps in respect of the matter.
- 26.4 The Service Provider shall provide to the Authority reasonable access to information and personnel that it possesses or controls for the purposes of understanding the nature and status of any action being taken and shall consult with and take due account of the views of the Authority in relation to proposed actions to be taken prior to settlement or compromise of the claim. The Service Provider shall not use the Authority's name without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 26.5 The Service Provider (at its own cost) may take copies of the relevant documents or records and photograph the premises or assets as reasonably required, save for any documents or records in respect of which the Authority claims privilege.
- 26.6 Each Party shall and shall procure that its relevant employees and professional advisers shall use the documentation and information obtained pursuant to this Clause 26 (Control of Claims Covered by an Indemnity) solely for the purposes described and shall otherwise keep the documentation and information confidential in accordance with Clause 20 (Confidentiality) where such information constitutes Confidential Information.
- 26.7 When a claim subject to an indemnity is concluded all documentation provided by either Party to the other for the purposes of the claim shall be returned to the respective Party.
- 26.8 The Parties may agree that the Service Provider has the exclusive conduct of the proceedings and in this event the Service Provider indemnifies the Authority for all costs incurred as a result of a request or choice by the Service Provider to conduct such proceedings.

27. LIMITATION OF LIABILITY

27.1 Exclusion of certain categories of loss

27.1.1 Neither Party shall have any liability to the other for any claim to the extent that the same is or can be characterised as a claim for (or arising from):

27.1.1.1 loss of revenue or profits;

27.1.1.2 loss of goodwill;

27.1.1.3 loss of business opportunity; or

27.1.1.4 indirect, consequential or special loss,

regardless of the form of action whether in contract, strict liability or tort (including negligence) and regardless of whether the first named Party knew or had reason to know of the possibility of the loss, injury or damage in question.

27.1.2 The provisions of Clause 27.1.1 (above) shall not limit the Authority's right to recover from the Service Provider:

27.1.2.1 for additional administrative and operational costs (including the costs of procuring the Services from an Alternative Scheme Provider) and expenses incurred by the Authority resulting from the Default of the Service Provider;

27.1.2.2 for wasted expenditure or charges rendered unnecessary and incurred by the Authority arising from the Default of the Service Provider; and

27.1.2.3 the cost of the procurement process for and the additional costs of procurement of Replacement Services in respect of any unexpired period between the Effective Date and the Original Expiry Date,

provided that the Authority mitigates to the extent possible such recoverable costs, expenses and charges.

27.2 Cap on the Service Provider's liability

27.2.1 The Service Provider's aggregate liability to the Authority (including under indemnities but excluding claims to which Clause 27.3 (below) applies) in respect of all losses, damages, costs, claims or expenses suffered by the Authority arising out of or in connection with:

27.2.1.1 any and all Defaults by the Service Provider (including but not limited to claims arising in respect of a breach of warranty);

27.2.1.2 any and all torts or breaches of statutory duty committed by the Service Provider (or any Sub-Contractor or Service Provider Personnel) in connection with the performance or purported performance of the Service Provider's obligations under this Agreement; and

27.2.1.3 otherwise arising out of or in connection with this Agreement,

occurring in a Year (excluding claims to which Clause 27.3 (below) applies) will be limited and will in no circumstances whatsoever exceed:

27.2.1.4 in the Year from and including the Effective Date the sum of five million pounds (£5,000,000); and

27.2.1.5 in each subsequent Year the sum of fifteen million pounds (£15,000,000).

27.3 Claims and Remedies not subject to Limitation

27.3.1 Nothing contained in this Agreement shall restrict the Services Provider's liability for death or personal injury resulting from any act, omission or negligence of the Service Provider or its officers, agents, employees.

27.3.2 Nothing contained in this Clause 27 (Limitation of Liability) will limit the Service Provider's liability for:

27.3.2.1 fraud or fraudulent misrepresentation committed by the Service Provider, the Service Provider Personnel or any Sub-Contractor;

27.3.2.2 any claim under the indemnities in Clause 21.3 (Data), Clause 23.10 (Intellectual Property Indemnities) and/or Clause 26.8 (Control of Claims Covered by an Indemnity);

27.3.2.3 any claim under Schedule 9 (Employees);

27.3.2.4 losses in the Deposit Pool or of Deposits solely due to the Default or negligence of the Service Provider and/or any of its Sub-Contractors.

27.3.3 Nothing in this Clause 27 (Limitation of Liability) will affect the Authority's right to terminate this Agreement and/or any Services in accordance with this Agreement.

28. INSURANCE AND TREATMENT OF RISK

28.1 The Service Provider shall maintain for the duration of the Term (and in relation to professional errors and omission insurance for the duration of the Term and a period of five (5) years thereafter) the following policies of insurance with insurers of good repute acceptable to the Authority:

28.1.1 public liability insurance providing minimum cover of two million pounds (£2,000,000) for any one occurrence with the number of occurrences being unlimited;

28.1.2 professional errors and omissions insurance appropriate to the business undertaken by the Service Provider, providing minimum cover of ten million pounds (£10,000,000) for any one occurrence and in the aggregate per annum with cover to include claims made by reason of:

28.1.2.1 misappropriation of funds;

- 28.1.2.2 dishonesty of individual partners, directors, employees or self-employed persons contracted to and under the supervision of the Service Provider including any Sub-Contractors;
 - 28.1.3 crime (fidelity guarantee) insurance providing minimum cover of twenty million pounds (£20,000,000) per event or series of connected events in respect of fraudulent acts including internal and external collusion;
 - 28.1.4 employer's liability insurance providing minimum cover of five million pounds (£5 million) in respect of any one occurrence;
 - 28.1.5 insurances required to comply with all statutory insurance requirements; and
 - 28.1.6 computer "All Risks" insurance to include:
 - 28.1.6.1 "All Risks" of physical loss or damage to computer and/or ancillary equipment including reinstatement of data costs following loss of information on fixed discs;
 - 28.1.6.2 damage to computer records and reinstatement of data costs following loss of information on computer records;
 - 28.1.6.3 additional cost of working expenditure necessarily and reasonably incurred in order to prevent or minimise the interruption of the computer equipment; and
 - 28.1.6.4 cover to include loss or damage caused by breakdown.
- 28.2 All insurances set out at Clause 28.1 (above) must be in place and effective in each case not later than the Effective Date.
- 28.3 The insurances shall be maintained on terms no less favourable than those generally available to a prudent Service Provider operating to Good Industry Standards in respect of risk insured in the international insurance market from time to time.

- 28.4 The Service Provider shall promptly pay all premiums payable and other sums due in respect of the insurance policies referred to in Clause 28.1 (above) and not do anything which may cause the policies to be vitiated in whole or in part.
- 28.5 The insurance policies referred to in Clause 28.1 (above) shall extend to cover all employees, agents and representatives of the Service Provider where appropriate to the activities they undertake on behalf of the Service Provider. The Service Provider shall ensure that all Service Provider Personnel and Sub-Contractors are covered by insurance appropriate to the activities they undertake and which is otherwise in accordance with Good Industry Standards.
- 28.6 In respect of the insurance policies referred to in Clauses 28.1.1 and 28.1.6 (above) the Service Provider shall ensure that they contain:
- 28.6.1 a provision that the definition of "insured" under any insurance policy extends to the Authority and to parties to whom the Service Provider is obliged under contract to include as an insured under the policy; and
- 28.6.2 a clause waiving the insurers' subrogation rights against the Authority and Authority Personnel.
- 28.7 The Service Provider shall on the reasonable written request of the Authority from time to time produce relevant details of the policies to the Authority together with evidence of payment of all premiums due.
- 28.8 The Service Provider shall notify the Authority in writing no later than twenty (20) Business Days prior to the cancellation or non-renewal of any of the insurances listed in Clause 28.1 (above).
- 28.9 The Service Provider shall not do anything or fail to take any reasonable action or permit anything within its power to occur which would entitle any insurer to refuse to pay any claim under any of the policies referred to in Clause 28.1 (above).
- 28.10 The Service Provider shall notify the Authority in writing within twenty (20) Business Days after any claim in excess of twenty per cent (20%) on any of the insurance policies referred to in Clause 28.1 (above) accompanied by full details of the incident giving rise to the claim.

- 28.11 Neither failure to comply or full compliance with the insurance provisions of this Agreement shall relieve the Service Provider of its liabilities and obligations under this Agreement.

29. **TERMINATION**

29.1 **Termination of Agreement by the Authority "for cause" (including change of Control and/or insolvency of the Service Provider)**

This Agreement may be terminated by the Authority at any time by written notice (such notice to be effective on the date stated in that notice) if:

29.1.1 the Service Provider is in material or continuing or persistent or repeated Default in respect of its obligations under this Agreement and fails within twenty (20) Business Days of receipt of written notice (from and including the day on which notice is deemed to be received) of the Default from the Authority to remedy the Default (to the Authority's satisfaction) or the Default is not capable of being remedied (as determined by the Authority in its absolute discretion);

29.1.2 a Deemed Material Default occurs;

29.1.3 there is a change in the Control of the Service Provider or any of its holding companies (as defined in Companies Act 2006 (as may be amended from time to time)) which the Authority considers may:

29.1.3.1 have an adverse impact on the Services; and/or

29.1.3.2 adversely affect the Authority's reputation,

provided that such notice is given by the Authority to the Service Provider within six (6) months from and including the date on which the Authority is notified by the Service Provider of such change in Control. The Service Provider shall promptly notify the Authority in writing in the event of any change in Control to which this Clause 29.1.3 applies where such notification is not prohibited by Law;

29.1.4 any of the following events (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales) occurs in respect of the Service Provider or any of its holding

companies (as defined in Companies Act 2006 (as may be amended from time to time)):

- 29.1.4.1 a court makes an order that the Service Provider be wound up or a resolution for a voluntary winding-up of the Service Provider is passed and such order is not discharged pursuant to Insolvency Rules 1986 rule 7.47 within twenty-five (25) Business Days of such order;
 - 29.1.4.2 any receiver, administrative receiver, administrator (either pursuant to an administration order or an out of court appointment by way of notice of appointment or notice of intention to appoint an administrator as set out in the Insolvency Act 1986 Schedule B1) or receiver manager is appointed except if they are removed but not replaced within twenty-five (25) Business Days or possession is taken by or on behalf of any creditor of any property of the Service Provider that is the subject of a charge;
 - 29.1.4.3 any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 other than as a solvent reorganisation of the Service Provider;
 - 29.1.4.4 an administration order is made by any court,
- an ("**Insolvency Event**")
- 29.1.5 a breach by the Service Provider of its obligations under Clause 34 (Assignment Novation and Other Disposals) occurs;
 - 29.1.6 failure by the Service Provider to meet and maintain the insurance requirements and to take out and maintain insurances (as applicable) in accordance with Clause 28 (Insurances and Treatment of Risk);

- 29.1.7 the Service Provider, through any act or omission to act, (other than for the provision of the Services in accordance with the terms of this Agreement), in the reasonable opinion of the Authority, brings the reputation of the Authority into disrepute;
- 29.1.8 a breach by the Service Provider of the Law; and/or
- 29.1.9 the Service Provider is in Default and as a result the Authority incurs costs, losses or damages that exceed seventy five per cent (75%) of the aggregate value of the relevant liability cap set out in Clause 27.2.1 (Cap on the Service Provider's liability).

29.2 Termination of Services by the Authority "for cause"

If circumstances arise which entitle the Authority to terminate this Agreement pursuant to Clause 29.1 (above) the Authority may at its option (and without prejudice to any of its rights under Clause 29.1 (above) or otherwise) by serving written notice upon the Service Provider (to be effective on such date as the Authority shall specify) terminate any part of the Services to which the Default or Deemed Material Default relates.

29.3 Termination of Agreement without cause

The Authority shall be entitled to terminate this Agreement for convenience at any time by serving not less than six (6) months' written notice (from and including the date notice is served) to the Service Provider.

29.4 Termination of Services and/or this Agreement for continuing Force Majeure Event

The Authority may during the continuance of any Force Majeure Event terminate:

- 29.4.1 the relevant part(s) of the Services in accordance with Clause 32.2 (Effect of suspension of a Service); and/or
- 29.4.2 this Agreement by written notice to the Service Provider if a Force Majeure Event occurs which continues for more than ninety (90) Business Days from and including the date of the Force Majeure Event.

29.5 Consequences of expiry or termination

- 29.5.1 Notwithstanding the expiry or termination of this Agreement for any reason it shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination.
- 29.5.2 Termination of this Agreement and/or any part of the Services shall not affect the rights of either Party accruing or accrued prior to its termination.
- 29.5.3 The Service Provider shall not be entitled to any compensation from the Authority on expiry of the Term.
- 29.5.4 The provisions of Paragraph 6 (Shortfall on termination of the Agreement) of Schedule 7 (Financing of the Scheme) shall apply on termination or expiry of this Agreement howsoever arising.

29.6 Payment on Termination

- 29.6.1 The provisions of this Clause 29.6 (Payments on Termination) shall apply in the event of termination of this Agreement or the Services in accordance with Clause 29 (Termination) or otherwise where the Agreement is not extended beyond the Original Expiry Date.
- 29.6.2 If this Agreement is terminated under Clause 29.1 (Termination of the Agreement "for cause") or Clause 29.2 (Termination of Services by the Authority "for cause") then the Service Provider shall pay compensation to the Authority in an amount equal to the Service Provider Default Termination Sum in cleared funds on or prior to the last day of the Term or the last day of the provision of the Services for a termination under Clause 29.2 (Termination of Services by the Authority "for cause") and no compensation shall be payable by the Authority to the Service Provider.
- 29.6.3 If this Agreement or the Services are terminated under Clause 29.3 (Termination of Agreement without cause) or Clause 29.4 (Termination for continuing Force Majeure Event) then the Authority shall pay compensation to the Service Provider in an amount equal to the Authority Termination Sum in cleared funds on or prior to the

last day of the Term or the last day of the provision of the Services for a termination under Clause 29.2 (Termination of Services by the Authority "for cause").

30. EXIT MANAGEMENT

30.1 The provisions of Schedule 10 (Exit Plan) shall apply in respect of the exit arrangements to be implemented in contemplation of and to effect:

30.1.1 termination of any part of the Services under this Agreement; and

30.1.2 termination or expiry of this Agreement.

31. EMPLOYEES

The provisions of Schedule 9 (Employees) shall apply to govern the Parties' obligations in respect of Employees (as defined in Schedule 9 (Employees)).

32. FORCE MAJEURE

32.1 Effect of Force Majeure

32.1.1 Subject to the remaining provisions of this Clause 32 (Force Majeure), to the extent that either Party is prevented from performing its obligations under this Agreement due to a Force Majeure Event then that Party's duty to perform its obligations under this Agreement will (during the continuation of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level achievable in the circumstances of the Force Majeure Event and that Party shall be relieved from liability under this Agreement where and to the extent that by reason of the Force Majeure Event it is not able to perform its obligations under this Agreement.

32.2 Effect of suspension of a Service

To the extent that any Force Majeure Event results in the whole or any part of the Services being suspended (which includes the whole or any part of the Services being delivered to a level where it is of no practical benefit) then the Authority may at its sole discretion require the application of one of the

following options (and may change the option from time to time by written notice in accordance with the terms of this Clause 32.2):

- 32.2.1 the Service Provider shall procure the provision of the suspended services from an alternative supplier until cessation of the suspension or may procure the provision of the suspended services direct from an alternative supplier; or
- 32.2.2 the Service Provider shall provide such alternative services (during the period of the suspension) as will be calculated to minimise the disruption as a result of the suspension,

provided that:

- 32.2.3 if the Authority exercises its option under this Clause 32.2 and the period of suspension lasts for more than twenty-five (25) Business Days from and including the date of suspension the Authority shall be required at the end of such period to do one of the following:
 - 32.2.3.1 to select the other option; or
 - 32.2.3.2 to give written notice terminating the relevant suspended service upon which the relevant part of the Services shall terminate and the Authority shall have no liability to pay compensation in relation to a termination pursuant to this Clause 32.2; and
- 32.2.4 the Service Provider shall pay to the Authority a proportion of the Accrued Interest for the period of the suspension calculated by reference to the extent of the suspended service.

32.3 **Conditions on claiming Force Majeure**

The Party seeking relief from its obligations due to a Force Majeure Event (the "**Affected Party**") shall not be entitled to invoke the provisions of Clause 32.1 (above) unless it fully performs the following obligations:

- 32.3.1 on becoming aware of any Force Majeure Event which gives rise, or which is likely to give rise, to any failure in the performance of its obligations under this Agreement, it notifies the other Party as soon

as reasonably practicable after becoming aware of such event, giving details of the Force Majeure Event, the obligations on its part which are or are likely to be affected and its reasonable estimate of the period for which such failure will continue or is likely to take place; and

32.3.2 it provides written confirmation and reasonable evidence of such Force Majeure Event within three (3) Business Days of notification (from and including the day on which notice is received) under Clause 32.3.1 (above).

32.4 Mitigation and cessation of Force Majeure

32.4.1 As soon as reasonably practicable following notification under Clause 32.3 (above) the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Services. Without prejudice to Clause 32.1.1 (above) where the Service Provider is the Affected Party it shall take steps in accordance with Good Industry Standards to overcome or minimise the consequences of the Force Majeure Event.

32.4.2 The Affected Party shall notify the other Party as soon as reasonably practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event.

32.5 Termination of a Service and/or this Agreement for prolonged Force Majeure

The provisions of Clause 29.4 (Termination of Services and/or this Agreement for continuing Force Majeure Event) shall apply in relation to termination of the whole or part of the Services and/or this Agreement due to prolonged occurrence of a Force Majeure Event.

33. RIGHTS OF AUDIT AND ACCESS AND RECORD KEEPING

33.1 The Service Provider shall comply with the provisions of Schedule 5 (Audit, Access and Records) and Schedule 14 (Security).

33.2 Subject to Clause 21.4 (Personal Data) the Service Provider shall for a period of at least seven (7) years (or such lesser period as may be agreed in writing by the Parties) from and including whichever shall be the later date of:

33.2.1 the date of expiry or termination of this Agreement;

33.2.2 the date on which the Service Provider and any Sub-Contractors complete all required Exit Assistance to the reasonable satisfaction of the Authority; or

33.2.3 such longer period as may be required for the Service Provider to comply with its obligations under this Agreement,

maintain (and shall procure that for such period all Sub-Contractors maintain) the following items:

33.2.4 any Records or information required expressly or impliedly in connection with the rights granted to the Authority and/or any of its agents under the terms of Schedule 5 (Audit, Access and Records); and

33.2.5 such other records information and documentation as may be notified to it and required by the Authority from time to time in such format as may be reasonably determined by the Authority.

33.3 For the avoidance of doubt nothing in this Clause 33 (Rights of Audit and Access and Record Keeping) shall be construed as requiring the Service Provider to maintain paper records where an alternative format is available.

34. ASSIGNMENT NOVATION AND OTHER DISPOSALS

34.1 The Service Provider agrees that the Authority may assign, novate, sub-contract or otherwise dispose of and be released from any or all of its rights and/or obligations under this Agreement:

- 34.1.1 to any Contracting Authority (not being another Crown Body from whom the Authority is legally indivisible); or
- 34.1.2 to any successor to the Authority or to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority; or
- 34.1.3 any of the entities referred to or described in Clause 1.2.13 (Definitions and Interpretation); or
- 34.1.4 (only with the prior written consent of the Service Provider (which shall not be unreasonably withheld or delayed)) to any other person,

provided that the Authority's assignee or successor in title undertakes in writing to the Service Provider to be bound by the obligations of the Authority under this Agreement.

- 34.2 Subject to Clause 35 (Approval of Sub-Contractors) this Agreement is personal to the Service Provider. The Service Provider shall not assign novate or otherwise transfer or dispose of any of its rights obligations or liabilities under this Agreement and any attempt by the Service Provider to assign novate or otherwise transfer or dispose of its rights or obligations in violation of this Clause 34.2 shall be null and void as between the parties.

35. **APPROVAL OF SUB-CONTRACTORS**

- 35.1 The Service Provider shall not subcontract any of its obligations in this Agreement to any Sub-Contractor without the prior written approval of the Authority which shall not be unreasonably withheld or delayed. Where the Authority has failed to notify the Service Provider that:

- 35.1.1 the proposed Sub-Contractor is approved;
- 35.1.2 the proposed Sub-Contractor is not approved; or
- 35.1.3 the Authority requires further information or time in order to consider its approval;

within twenty (20) Business Days from and including the date of receipt of the Service Provider's request for approval the proposed Sub-Contractor shall be deemed approved. For the avoidance of doubt, the Sub-Contractors named in

Schedule 15 (Sub Contractors) shall be deemed to have been approved by the Authority as at the Effective Date.

35.2 The Authority may withhold or delay its approval where it considers that:

35.2.1 the appointment of a proposed Sub-Contractor may bring the Authority into disrepute or otherwise to affect adversely the reputation or commercial standing of the Authority, any Crown Body or any Contracting Authority; and/or

35.2.2 the appointment of a proposed Sub-Contractor may be a threat to the health, safety and/or security of any of the bodies referred to in Clause 35.2.1 (above) or any of their personnel; and/or

35.2.3 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority; and/or

35.2.4 the proposed Sub-Contractor is considered by the Authority (in its absolute discretion) to be unreliable and/or has not provided reasonable services to its other customers.

35.3 In making a request for approval pursuant to Clause 35.1 (above) the Service Provider shall provide the Authority with the following information about the proposed Sub-Contractor:

35.3.1 its name and address;

35.3.2 a copy of the proposed sub-contract;

35.3.3 (to the extent that it is not apparent from the proposed sub-contract or the proposed sub-contract is not available or finalised) the purposes for which the proposed Sub-Contractor will be employed including the scope of any Services to be provided by the proposed Sub-Contractor;

35.3.4 where the proposed Sub-Contractor is a member of the same group of companies as the Service Provider or under common control, evidence that demonstrates to the reasonable satisfaction of the

Authority that the proposed sub-contract has been agreed on "arms-length" terms; and

35.3.5 any further information reasonably requested by the Authority.

35.4 The Service Provider shall ensure that the terms of this Agreement (as relevant) are fully reflected in the terms of any contract with each Sub-Contractor and that each Sub-Contractor shall at all times be bound by the obligations of the Service Provider under this Agreement. The Service Provider shall ensure that its Sub-Contractors perform the obligations of the Service Provider delegated to them in all respects as if they were a party to this Agreement owing to the Authority all those obligations and duties of the Authority as provided in this Agreement. The Service Provider shall procure that all Sub-Contractors procure maintain and observe all Approvals required to perform any obligations of the Service Provider under this Agreement sub-contracted to it by the Service Provider.

35.5 The Service Provider shall ensure that its arrangements with Sub-Contractors do not contain:

35.5.1 payment terms that will unfairly prejudice the Authority in relation to payments on termination (for example, by back-loading payment terms); and

35.5.2 a prohibition or restriction on the Sub-Contractor entering into any contract directly with the Authority.

35.6 The Service Provider shall ensure that all arrangements with Sub-Contractors contain a provision:

35.6.1 requiring the Service Provider to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and

35.6.2 a right for the Authority to publish the Service Provider's compliance with its obligation to pay undisputed invoices within the specified payment period.

35.7 The Service Provider shall:

- 35.7.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
- 35.7.2 include within any report(s) produced by it pursuant this Agreement a summary of its compliance with Clause 35.7.1 (above) such data to be certified by the Service Provider Contract Manager as being accurate and not misleading.
- 35.8 Notwithstanding any provision of Clause 20 (Confidentiality) and 43 (Announcements and Publicity), if the Service Provider notifies the Authority that the Service Provider has failed to pay a Sub-Contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 35.9 The Service Provider shall procure that each Sub-Contractor shall impose obligations on their sub-contractors engaged in connection with the Services and this Agreement in the same terms as those imposed on it pursuant to Clauses 35.6 and 35.7 (above) and shall procure that each Sub-Contractor complies with such terms.
- 35.10 The Service Provider acknowledges and agrees that the sub-contracting of all or any of its obligations under this Agreement shall not to any extent relieve the Service Provider of any of its liabilities under this Agreement and the actions and omissions of Sub-Contractors (including those of their officers, employees and/or agents and their agents' officers and employees) shall be deemed to be the actions and omissions of the Service Provider.
- 35.11 The Service Provider shall notify the Authority of any change affecting a Sub-Contractor which may have a material impact on the provision of the Services together with all reasonable information to enable the Authority to consider the likely impact of the change and the Parties shall discuss and seek to agree ways in which any adverse impact may be minimised.

36. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 36.1 The Service Provider shall notify the Authority immediately upon becoming aware that any Prohibited Act addressed in this Clause 36 (Corrupt Gifts and Payments of Commission) has or may have been committed.

- 36.2 Subject to Clause 36.3 (below) if the Service Provider, any Service Provider Personnel or anyone otherwise employed by the Service Provider commits any Prohibited Act then it shall be a Deemed Material Default for which the Authority may terminate this Agreement and/or any Services in accordance with Clause 29 (Termination) provided always 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.
- 36.3 If a Prohibited Act is committed by an employee of the Service Provider acting independently of the Service Provider then the Authority may give notice to the Service Provider of termination and this Agreement and/or any part of the Services (as specified in the notice of termination) will terminate, unless within twenty (20) Business Days from and including the date of receipt of such notice the Service Provider terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
- 36.4 If a Prohibited Act is committed by a Sub-Contractor or by an employee of a Sub-Contractor not acting independently of the Sub-Contractor then it shall be a Deemed Material Default and the Authority may give notice to the Service Provider of termination and this Agreement and/or any part of the Services (as specified in the notice of termination) will terminate, unless within twenty (20) Business Days from and including the date of receipt of such notice the Service Provider terminates the relevant sub-contract and procures the performance of such part of the Services by another person which other person shall for the avoidance of doubt be subject to approval by the Authority in accordance with the Clause 35 (Approval of Sub-Contractors).
- 36.5 If a Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor then it shall be a Deemed Material Default and the Authority may give notice to the Service Provider of termination and this Agreement and/or any part of the Services (as specified in the notice of termination) will terminate, unless within twenty (20) Business Days from and including the date of receipt of such notice the Service Provider procures that the employee of the Sub-Contractor is removed permanently from performance of any of the Services or duties connected with this Agreement and procures the performance of such part of the Services by another person.

36.6 If a Prohibited Act is committed at the direct or indirect instigation (as determined by the Authority in its absolute discretion) of the Service Provider by any other person not specified in Clause 36.2 (above) or referred to in Clauses 36.3 to 36.5 (above) then it shall be a Deemed Material Default and the Authority may give notice to the Service Provider of termination and this Agreement and/or any part of the Services (as specified in the notice of termination) will terminate unless within twenty (20) Business Days from and including the date of receipt of such notice the Service Provider procures that such person is removed permanently from the performance of any of the Services or duties connected with this Agreement and procures the performance of such part of the Services by another person.

36.7 Any notice of termination under this Clause 36 (Corrupt Gifts and Payments of Commission) shall specify:

36.7.1 the nature of the Prohibited Act;

36.7.2 the identity of the person whom the Authority believes has committed the Prohibited Act (if known); and

36.7.3 whether the Authority wishes to terminate this Agreement and/or any part(s) of the Services.

36.8 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:

36.8.1 the interpretation of this Clause 36 (Corrupt Gifts and Payments of Commission); and

36.8.2 the rights of the Authority under this Clause 36 (Corrupt Gifts and Payments of Commission) to terminate this Agreement and/or any part(s) of the Services.

37. CONFLICT OF INTEREST

37.1 In providing the Services the Service Provider 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 Service Provider or which may be likely to prejudice its independence and objectivity in providing the Services. The Service Provider shall not accept bribes improper

commissions or other improper financial inducements from any suppliers or Sub-Contractors in relation to the Services.

- 37.2 Where the provision or planning of Services involves the selection of (or advice upon the selection of) alternative courses of action (including refraining from a particular course of action) or the acquisition or advice upon the acquisition of goods services and rights, the Service Provider shall make such selection or acquisition or give such advice in an impartial independent and unbiased manner and in the best interests of the Authority.
- 37.3 In the event of the Service Provider becoming aware of any conflict of interest (whether such existed on or before the Effective Date or has come to exist thereafter) it shall immediately notify the Authority of such in writing providing full particulars of the conflict of interest together with any additional information which the Authority may require in connection with the conflict of interest.
- 37.4 If the Authority considers that the conflict of interest notified to it under Clause 37.3 (above) is capable of being avoided or removed the Authority may require the Service Provider to take such steps as the Authority may determine as are necessary to avoid or (as the case may be) remove such conflict of interest.
- 37.5 In the event that:
- 37.5.1 the Service Provider fails to avoid or remove such conflict as required in Clause 37.4 (above) or such conflict cannot in the view of the Authority be avoided or removed; or
- 37.5.2 the Authority considers that a conflict of interest existed at or prior to the Effective Date which could have been discovered by the Service Provider's due diligence and which should have been disclosed in writing by the Service Provider prior to the Effective Date,
- such matter shall be deemed to constitute a Deemed Material Default.
- 37.6 Any dispute in respect of this Clause 37 (Conflict of Interest) shall be determined through the Dispute Resolution Procedure.

38. **COMPLIANCE WITH LAW AND DATA STANDARDS**

38.1 Subject to Clause 39 (Changes in Law and Data Standards), the Service Provider shall perform its obligations under this Agreement in a manner that complies with all applicable Laws and Data Standards in relation to or otherwise relevant to its obligations under this Agreement and shall promptly notify the Authority if it receives any oral or written allegation of non-compliance with any Law and/or Data Standard.

38.2 The Service Provider shall use all reasonable endeavours to mitigate the effects of any Authority Specific Change in Law and any Authority Specific Change in Data Standards and to reduce any cost increases it may incur as a result of any Authority Specific Change in Law and/or Authority Specific Change in Data Standards.

39. **CHANGES IN LAW AND DATA STANDARDS**

39.1 The Service Provider shall bear the cost of ensuring that the Services and this Agreement comply with:

39.1.1 all changes in Law; and

39.1.2 all changes in Data Standards,

except for any Authority Specific Change in Law and any Authority Specific Change in Data Standards.

39.2 In the case of any Authority Specific Change in Law and/or any Authority Specific Change in Data Standards the Service Provider shall be entitled to recover any agreed additional costs of performing the Services from the Authority. Any such costs shall be adjusted to take into account the obligation of the Service Provider under Clause 38.2 (above) to mitigate the effects of such Authority Specific Change in Law or Authority Specific Change in Data Standards (as the case may be) and shall be further reduced by any savings in costs achieved by the Service Provider as a result of the Authority Specific Change in Law or Authority Specific Change in Data Standards (as the case may be).

40. **WAIVER**

40.1 The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party to the other nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing and signed by both Parties. The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

41. **REMEDIES**

41.1 The rights and remedies provided by this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy and unless otherwise provided in this Agreement are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Agreement.

42. **THIRD PARTY RIGHTS**

Save for the right provided to a New Service Provider at Paragraph 10.1 of Schedule 9 (Employees), a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

43. **ANNOUNCEMENTS AND PUBLICITY**

43.1 Save as specified in this Clause 43 (Announcements and Publicity) or with the prior written consent of the other Party, neither Party shall make any public announcement or otherwise publicise the existence of or disclose to any person the terms of this Agreement in any way.

43.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause 43 (Announcements and Publicity) by all their employees, agents, consultants and sub-contractors.

- 43.3 The Authority shall be entitled to publicise this Agreement:
- 43.3.1 in accordance with any legal obligation upon the Authority, including any examination of this Agreement by the National Audit Office;
 - 43.3.2 in the circumstances specified in Clauses 20 (Confidentiality) and 22 (Freedom of Information); and
 - 43.3.3 in accordance with proper parliamentary or governmental procedures or practice (including but not limited to publication on Contracts Finder and obligations to report to Parliament and in accordance with Parliamentary orders).
- 43.4 Where reasonably possible the Authority shall give the Service Provider prior written notice of any publication pursuant to this Clause 43 (Announcements and Publicity).
- 43.5 The Parties acknowledge that current governmental guidance requires the Authority to publish this Agreement on Contracts Finder and the National Audit Office has the right to publish details of this Agreement (including details subject to Clause 20.6 (Confidentiality) and any Commercially Sensitive Information) in its reports produced pursuant to the National Audit Act 1983 (as may be amended) whether to Parliament or otherwise.
- 43.6 The Service Provider shall not make any public announcements or publicise the Scheme or the Services in a manner which expresses or may be perceived to express a political bias, including lobbying, without the Authority's prior consent.

44. FURTHER ASSURANCE

- 44.1 Each Party shall at its own cost and expense do or procure to be done all such further acts and things and execute or procure the execution of all such documents as may from time to time be necessary for the purpose of giving effect to the provisions of and the benefits and rights granted pursuant to this Agreement.

45. **COSTS**

- 45.1 Each Party shall pay its own costs and expenses relating to the negotiation, preparation, execution and implementation of this Agreement and of each document referred to in it unless this Agreement expressly provides otherwise.

46. **OFFICIAL SECRETS ACT**

The Service Provider acknowledges that the Official Secrets Act 1911 to 1989 and section 182 of the Finance Act 1989 apply throughout the Term and shall continue to apply after the expiry or earlier termination of this Agreement. The Service Provider shall, and shall procure that all Sub-Contractors shall, take all reasonable steps to ensure that the Service Provider, Sub-Contractors and Service Provider Personnel are aware of the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989 and understand that these provisions apply throughout the Term and shall continue to apply after the expiry or earlier termination of this Agreement.

47. **ENTIRE AGREEMENT**

- 47.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the Services and all matters dealt with in this Agreement and supersedes any previous agreement between the Parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination or expiry.
- 47.2 The Service Provider irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind this Agreement because of breach of any warranty not contained in this Agreement or any misrepresentation whether or not contained in this Agreement, save for any fraudulent misrepresentation.

48. **SEVERANCE**

- 48.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force without affecting the remaining provisions of this Agreement.

48.2 If any provision of this Agreement is held to any extent invalid or unenforceable the Parties agree to immediately commence negotiations in good faith in order to remedy such invalidity or unenforceability and substitute a valid and enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

49. **NOTICES**

49.1 Any notice given under or in relation to this Agreement shall be in writing and signed by or on behalf of the Party giving it and be served by hand, pre-paid first class post, recorded delivery, registered post or email on:

The Authority:	Authority Contract Manager
The Service Provider:	Service Provider Contract Manager

and such addresses as may be notified by either Party to the other in writing in respect of the Authority Contract Manager and Service Provider Contract Manager (as applicable).

49.2 A notice shall be deemed to have been received:

49.2.1 if delivered personally, at the time of delivery; or

49.2.2 in the case of pre-paid first class post, recorded delivery or registered post two (2) Business Days from and including the date of posting if from and to an address in the United Kingdom and five (5) Business Days from and including the date of posting if from or to an address elsewhere in the World unless such notice is returned as undelivered; or

49.2.3 in the case of email at the time the email enters the recipient's designated information system provided that no error message indicating failure to deliver has been received by the sender and provided further that a confirmation copy of the email is on the same

day that the email is sent, sent by pre-paid first class in the manner provided in this Clause 49 (Notices),

provided always that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 4pm on a Business Day or on a day which is not a Business Day the notice shall be deemed to have been received at 9am on the next Business Day.

50. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement is intended to create a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of the Service Provider shall be deemed to be or have become an employee of the Authority. Neither Party shall have authority to make representations, act in the name of or on behalf of or otherwise bind the other Party and accordingly nothing in this Agreement shall impose any liability on the Authority in respect of any liability incurred by the Service Provider to any third party.

51. COUNTERPARTS

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

52. VALIDITY OF DOCUMENTS

52.1 The Service Provider undertakes to take usual and proper precautions in accordance with applicable Good Industry Standards for the purpose of ascertaining the validity of any document (including any form of approved electronic media) presented in connection with its obligations under this Agreement.

52.2 Without prejudice to and subject to any requirements of Law it is agreed that the Service Provider shall not be under any duty to verify the validity of the execution of any document unless the particular circumstances of a case are such as reasonably to put the Service Provider on enquiry as to the possible invalidity of such document. The Service Provider shall in the absence of manifest error be entitled to act upon instructions given to it by any Landlord or

tenant in accordance with the terms of this Agreement. For the avoidance of doubt the Authority shall have no liability to the Service Provider for any losses, damages, costs, claims or expenses arising from the invalidity of any document relied upon by the Service Provider in the operation and delivery of the Services.

53. GOVERNING LAW AND JURISDICTION

- 53.1 This Agreement and any dispute arising out of or in connection with it shall be subject to the laws of England and Wales save that in relation to any matter on which the laws of England and Wales conflict it shall be governed by the laws of England only.
- 53.2 Without prejudice to Clause 19 (Dispute Resolution) each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

EXECUTED AND DELIVERED AS A DEED

[EXECUTION BLOCKS FOR THE PARTIES TO BE INSERTED AT CONTRACT AWARD]

SCHEDULE 1 - DEFINITIONS

Accrued Interest	has the meaning given to it in Schedule 7 (Financing the Scheme);
Achieve or Achieved	has the meaning given to it in Schedule 17 (Implementation);
ADR	means the alternative dispute resolution procedure developed and used by the Service Provider for the resolution of disputes between Landlords and tenants arising in connection with the Scheme;
Affected Services	has the meaning given to it in Schedule 9 (Employees);
Agreement	means the body of this document together with its Recitals, Schedules, Annexes and Appendices;
Alternative Scheme Provider	means [TO BE COMPLETED AT CONTRACT AWARD] or such other provider as the Authority shall notify to the Service Provider throughout the Term;
Anticipated Assigned Employees	has the meaning given to it in Schedule 9 (Employees);
Anti-Discrimination Legislation	means the Human Rights Act 1998, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002, the Flexible Working (Procedural Requirements) Regulations 2002, and any relevant Treaty, Directive, Regulation or Recommendation of the European Union and for the avoidance of doubt includes any statutory modification or re-enactment;

Approvals	means regulatory and governmental licences, consents, clearances, approvals, authorisations and permissions necessary for provision of the Services;
Assessment Date	has the meaning given to it in Schedule 13 (Performance Management);
Assessment Period	has the meaning given to it in Schedule 13 (Performance Management);
Assigned Employees	has the meaning given to it in Schedule 9 (Employees);
Associated Company	means any subsidiary or holding company of a Party or a Sub-Contractor, or a subsidiary or a holding company of any such holding company;
Audit	has the meaning given to it in Schedule 5 (Audit, Access and Reports);
Audit Agents	has the meaning given to it in Schedule 5 (Audit, Access and Reports);
Audit Remedial Plan	has the meaning given to it in Schedule 5 (Audit, Access and Reports);
Audit Report	has the meaning given to it in Schedule 5 (Audit, Access and Records);
Authority Contract Manager	means the person appointed by the Authority in accordance with Paragraph 4 of Schedule 11 (Contract Management);
Authority Data	means any information in whatever form which concerns End-Users or relates to the Scheme and which is held by or on, entered into, generated or processed by or retrievable from the systems (or any part thereof) established by or on behalf of the Service Provider to administer the Scheme

with or without modification;

Authority IP

means IP which is wholly owned by the Authority;

Authority Personnel

means employees, officers, consultants, contractors, agents and representatives of the Authority;

Authority RFC

has the meaning given to it in Schedule 6 (Change Control Procedure);

Authority Specific Change In Data Standards

means a Change in Data Standards which exclusively relates to or exclusively affects the Authority and the Services and which was not foreseeable as at the Effective Date;

Authority Specific Change In Law

means a Change in Law which exclusively relates to or exclusively affects the Authority and the Services and which was not foreseeable as at the Effective Date;

Authority Step-In Triggers

means either:

- (a) where the Authority reasonably believes that the Service Provider is about to commit a Default which will materially prevent or materially delay the performance of the Services or any part of the Services and/or which will prevent the Services being provided in accordance with the Service Levels and/or which will have an adverse material impact on the business of the Authority or on the running of the Scheme (this limb being known as the "**Provisional Step-In Trigger**");
- (b) where the Authority considers it necessary in order to carry out any of its statutory obligations, functions or other duties as a Contracting Authority and in respect of which the Service Provider has been or will be unable to perform such obligations, functions

or other duties; or

(c) the occurrence of a Force Majeure Event;

Authority Termination Sum	means the provable costs committed to by the Service Provider prior to termination or incurred by the Service Provider as a result of such termination provided that, from the date of notice of such termination, the Service Provider shall not commit itself to any further unnecessary costs other than those genuinely incurred in order to fulfil its remaining obligations under this Agreement or the relevant Services under this Agreement if terminated under Clause 29.2 (Termination of Service by the Authority "for cause") (as applicable) and in all other respects shall otherwise mitigate any losses, liabilities, costs and expenses;
Base Case	means the financial model set out at Schedule 21 (Base Case) of this Agreement;
Bespoke IP	means IP created by the Service Provider (or a Sub-Contractor or any third party on behalf of the Service Provider) pursuant to or in relation to this Agreement including delivering, establishing and running the Scheme and in any updates, modifications, enhancements and new releases but excluding any Copyright in End User Materials;
Business As Usual Notice	has the meaning given to it in Schedule 8 (Disaster Recovery);
Business Continuity Plan	has the meaning given to it in Schedule 8 (Disaster Recovery);
Business Day	means a day (other than a Saturday or Sunday) on which banks are ordinarily open for business in the City of London;
Capital Costs	mean those costs which would be treated as capital costs according to generally accepted accounting principles within

the UK which shall include any cost actually incurred by the Service Provider in respect of assets used in the provision of the Services (to the extent that risk and title in any asset is not held by the Service Provider);

CCN has the meaning given to it in Schedule 6 (Change Control Procedure);

Change has the meaning given to it in Schedule 6 (Change Control Procedure);

Change Control Procedure means the processes for changing the Services and/or this Agreement which are set out in Schedule 6 (Change Control Procedure);

Change Implementation Plan has the meaning given to it in Schedule 6 (Change Control Procedure);

Change Response has the meaning given to it in Schedule 6 (Change Control Procedure);

Commercially Available Software means Software which is generally available for licensing to any person on terms (including price) that would reasonably be regarded by the Authority as industry standard terms;

Commercially Sensitive Information means the information listed in Schedule 16 (Commercially Sensitive Information), comprising information of a commercially sensitive nature relating to the Service Provider, Service Provider IP or its business which, if disclosed, would cause the Service Provider significant commercial disadvantage or material financial loss;

Conditions Precedent means the matters listed in Schedule 2 (Conditions Precedent);

Confidential Information means all information in any form (including without limitation all Personal Data) which is confidential in nature or

which may reasonably be regarded as such:

- (a) whether or not that information is marked or designated as confidential or proprietary;
- (b) whether or not disclosed by one Party to the other Party;
- (c) whether arising prior to this Agreement or during the Term; and
- (d) whether commercial, financial, technical or otherwise,

including all trade secrets, processes, plans, intentions, product information, financial and other books, records, accounts, forecasts, and analyses, technical data, know how, models, reports, drawings, designs, specifications and schedules whether or not relating to the Services together with all developments, modifications, additions, alterations and amendments thereto, information relating to market opportunities, transactions, business undertaken or to be undertaken by the disclosing Party, information concerning that Party's customers, clients, suppliers, holding companies and/or subsidiaries, made by either Party in the course of performance of this Agreement together with the terms of this Agreement and the content of the procurement process which preceded the entering into of this Agreement;

Contract Year

means a period of twelve (12) months from and including the Service Commencement Date or any anniversary thereof;

Contracting Authority

means a contracting authority as defined in Regulation 3(1) of the Public Contracts Regulations 2006 (as amended);

Contracts Finder

means the web-based procurement portal provided by or on behalf of the Cabinet Office and available at:

Control

means:

- (a) the acquisition of fifty per cent (50%) or more of the share capital in the Parent Company Guarantor or Sub-Contractor (as applicable);
- (b) the acquisition of shares in the Parent Company Guarantor or Sub-Contractor (as applicable) having the right to cast fifty per cent (50%) or more of the votes capable of being cast in general meetings of the Parent Company Guarantor or Sub-Contractor (as the case may be);
- (c) the ability to determine the composition of the majority of the board of directors (or like body) of the Parent Company Guarantor or Sub-Contractor (as applicable); or
- (d) control (as defined in section 1124 of the Corporation Tax Act 2010) of the Parent Company Guarantor or Sub-Contractor (as applicable),

and “**Controls**” and “**Controlled**” shall be construed accordingly;

Convictions

has the meaning given to it in Schedule 9 (Employees);

Copyright

has the meaning given to it in Clause 23.2 (Intellectual Property);

Correction Plan

has the meaning given to it in Schedule 17 (Implementation);

CP Longstop Date

means 31 March 2016;

Crown Body

means any department, office or agency of the Crown;

Crown Servant	has the meaning set out in section 12 of the Official Secrets Act 1989;
Data Controller	has the meaning set out in section 1(1) of the DPA;
Data Processor	has the meaning set out section 1(1) of the DPA;
Data Protection Information	means the information to be provided to Data Subjects by the Service Provider on behalf of the Authority as specified by the Authority from time to time;
Data Standards	means data standards complying with the UK Government "Open Standards Principles" available at: https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles ;
Data Subject	has the meaning set out in section 1(1) of the DPA;
Data Subject Request	means a Subject Access Request or other request or objection received from a Data Subject under the DPA;
DBS	means the Disclosure and Barring Service sponsored by the Home Office;
Deemed Material Default	means a Default so designated in this Agreement which entitles the Authority to terminate this Agreement or any part(s) of the Services in accordance with Clause 29 (Termination) including at: (a) Clauses 7.1.3, 8.3.10, 15.1.2, 23.11, 36 and 37; (b) Paragraph 11 of Schedule 8 (Disaster Recovery); and (c) Clause 8 (Performance Management) and Schedule 13 (Performance Management); and

(d) Schedule 5 (Audit, Access and Records);

Default	means any breach of a Party's obligations under this Agreement or any act or omission, negligence or statement of either Party, its employees, agents or sub-contractors or its sub-contractors' employees or agents in connection with or in relation to this Agreement and in respect of which such Party is liable to the other;
Delay	has the meaning given to it in Schedule 17 (Implementation);
Deposit	means each deposit relating to a property received by the Service Provider from a Landlord (or a Landlord's authorised representative) pursuant to the Scheme;
Deposit Holder	means the meaning given to it in Schedule 7 (Financing of the Scheme);
Deposit Pool	has the meaning given to it in Schedule 7 (Financing of the Scheme);
Directive	means the Acquired Rights Directive (Council Directive 2001/23/EC);
Disaster	has the meaning given to it in Schedule 8 (Disaster Recovery);
Disaster Recovery Plan	has the meaning given to it in Schedule 8 (Disaster Recovery);
Disaster Recovery Services	means the group of services to be provided by the Service Provider in accordance with the Disaster Recovery Plan and Schedule 8 (Disaster Recovery) which may involve the provision of relevant Services by alternative means and any other services required to restore the Services to normal

running;

Dispute		has the meaning given to it in Clause 19.1 (Dispute Resolution);
Dispute Resolution Procedure	Resolution	means the escalation and dispute resolution procedure set out in Clause 19 (Dispute Resolution) and Schedule 19 (Dispute Resolution);
DPA		means the Data Protection Act 1998;
EEA		means the European Economic Area;
Effective Date		means the date of this Agreement;
Emergency Audit		has the meaning given to it in Schedule 5 (Audit, Access and Records);
Employees		has the meaning given to it in Schedule 9 (Employees);
Employee Liability Information		has the meaning given to it in Schedule 9 (Employees);
End User		means a user of the Scheme including Landlords, tenants and authorised representatives thereof;
End User Materials		means those forms, notes, scripts and other written information that are provided to or made available (including electronically) to End Users of the Scheme by the Service Provider;
Environmental Information Regulations		means the Environmental Information Regulations 2004 (as amended);
Escalation Procedure		means the escalation process set out in Schedule 19 (Dispute Resolution);

Exit Assistance	means the relevant services to be provided by the Service Provider under Schedule 10 (Exit Plan);
Exit Assistance Commencement Date	means the date(s) from and including which the Service Provider shall be required to provide the Exit Assistance as determined in accordance with Paragraph 5 of Schedule 10 (Exit Plan);
Exit Management Plan	has the meaning given to it in Schedule 10 (Exit Plan);
Exit Period	has the meaning given to it in Paragraph 5.2 of Schedule 10 (Exit Plan);
Exiting Employees	has the meaning given to it in Schedule 10 (Exit Plan);
Expert	has the meaning given to it in Paragraph 2.1 of Schedule 19 (Dispute Resolution);
Extended Licence	means in relation to the IP, a licence on the following terms: (a) consent for such IP to be used by or on behalf of: (i) the Authority; and (ii) any third party appointed to operate a Scheme, including the New Service Provider for the sole purpose of operating a Scheme (or any subsequent version thereof); and (iii) any Crown Body; (b) royalty-free; (c) fully paid-up; (d) non-exclusive; (e) irrevocable;

	(f) worldwide, for and in relation to the delivery of a Scheme (as updated and improved from time to time) and to allow a smooth transition of the Authority Data to the Authority and/or a New Service Provider;
Final Retendering Information	has the meaning given to it in Schedule 9 (Employees);
Financial Distress Event	means where the value of the Deposit Pool falls below the minimum size identified by the Service Provider for the Scheme to remain viable, being [TO BE INSERTED AT CONTRACT AWARD]; [Note to Tenderers: This will be identified from the successful Tenderer's Tender.]
Financial Proposal	has the meaning given to it in Schedule 6 (Change Control Procedure);
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;
Force Majeure Event	means the occurrence after the Effective Date of: (a) war, civil war, armed conflict or terrorism; (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of the actions of or breach of the obligations under this Agreement by the Service Provider; (c) pressure waves caused by devices travelling at supersonic speeds; or (c) epidemic and/or pandemic,

which directly causes the Service Provider and/or the Authority to be unable to comply with all or a material part of its respective obligations under this Agreement;

Good Industry Standards means using standards, practices, methods and procedures conforming to the requirements of the Law and exercising that degree of skill and care, diligence, efficiency, prudence and foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person within the services industry worldwide for equivalent or comparable services (including without limitation data handling and processing);

Guidance means any applicable guidance, code of practice or directions issued by a Relevant Authority or a Regulatory Body which the Service Provider is bound to comply pursuant to the requirements of any Law;

Impact Assessment has the meaning given to it in Schedule 6 (Change Control Procedure);

Implementation Period means the period between the Effective Date and the Service Commencement Date;

Implementation Plan has the meaning given to it in Schedule 17 (Implementation);

Information means all Authority Data held or controlled by the Service Provider or its Sub-Contractors that falls within the definition of information set out in section 84 of FOIA;

Initial Retendering Information has the meaning given to it in Schedule 9 (Employees);

Insolvency Event means the occurrence of any of the events specified in Clause 29.1.4;

Intellectual Property or IP	means intellectual property of whatever nature (including patents, trademarks, trade names, service marks, domain names, design rights, topography rights, database rights, present and future copyright, moral rights, know-how and any similar or analogous rights) existing anywhere in the world (whether registered or unregistered);
Intellectual Property Rights or IPR	means any right, title and/or interest in IP and, where the context so admits, includes applications for such rights;
ITT	means the Invitation to Tender document issued by the Authority during its procurement process for the Services;
Key Personnel	means those people listed Schedule 12 (Key Personnel);
Landlord	has the meaning given to it in section 212(9)(a) of the Housing Act 2004;
Law	means: (a) any statute, enactment, order, regulation and other similar instrument, by-law, obligation of the European Union, ordinance or subordinate legislation in force from time to time; (b) the common law and the law of equity; (c) any binding court order, judgment, decree or requirement; (d) any applicable industry code, policy or standard enforceable by law; or (e) any applicable direction, guidance, policy, rule or order that is binding on a Party and that is made or given by any regulatory body (including without limitation the Financial Conduct Authority and the Prudential Regulation Authority) having jurisdiction

over a Party or any of that Party's assets, resources or business, including but not limited to any local or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the National Assembly of Wales,

in England and Wales and any other jurisdiction that is applicable to this Agreement;

Licence

means in relation to the IP, a licence on the following terms (save as provided to the contrary elsewhere in this Agreement):

- (a) royalty free;
- (b) non-exclusive;
- (c) non-transferable;
- (d) a right to grant sub-licences during the Term to Sub-Contractors (provided the Sub-Contractor has entered into an appropriate confidentiality undertaking in accordance with Clause 20.7.5 where the relevant information constitutes Confidential Information); and
- (e) the right to use such IP solely for the purpose of fulfilling the Service Provider's obligations under this Agreement and only to the extent necessary for that purpose;

Malicious Software

means:

- (a) any programme code, programming instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programmes, data files, equipment or operations; or

- (b) any other code typically designated to be a virus, worm, time or logic bomb, disabling code or routine, backdoor or similar;

Migration Period	means the period (of not less than six (6) months duration) following the end of the Term during which the Scheme will be migrated to the Authority or a New Service Provider;
Milestone	has the meaning given to it in Schedule 17 (Implementation);
Milestone Achievement Certificate	has the meaning given to it in Schedule 17 (Implementation);
Milestone Confirmation	has the meaning given to it in Schedule 17 (Implementation);
Milestone Date	has the meaning given to it in Schedule 17 (Implementation);
Milestone Output	has the meaning given to it in Schedule 17 (Implementation);
Minor Extension Period	has the meaning given to it in Clause 3.3 (Minor Extension);
Monthly Finance Statement	has the meaning given to it in Schedule 7 (Financing of the Scheme);
Monthly Service Statement	has the meaning given to it in Schedule 13 (Performance Management);
NDPB	means Non-Departmental Public Body;
New Expiry Date	has the meaning given to it in Clause 3.2;
New Service Provider	means any replacement service provider that the Authority appoints for any reason to undertake services the same or

	similar to any of the Services (or any part of them) when they are no longer to be provided under the terms of this Agreement;
Open Book Audit	has the meaning given to it in Clause 15.2.7 (Open Book Accounting);
Open Book Certificate	has the meaning given to it in Clause 15.2.3 (Open Book Accounting);
Operational Change	has the meaning given to it in Schedule 6 (Change Control Procedure);
Operational Phase	has the meaning given to it in Schedule 17 (Implementation);
Original Expiry Date	has the meaning given to it in Clause 3.1.1;
Outgoing Service Provider	means Computershare Investor Services plc or any of its sub-contractors as appropriate;
Parent Company Guarantee	means a parent company guarantee in the form set out in Schedule 20 (Parent Company Guarantee) executed by the Parent Company Guarantor;
Parent Company Guarantor	means [TO BE COMPLETED AT CONTRACT AWARD TENDERERS SHOULD BE AWARE THAT THIS WILL BE THE ULTIMATE PARENT] ;
Parties	means the parties to this Agreement which as at the Effective Date shall mean the Authority and the Service Provider;
Performance Point	has the meaning given to it in Schedule 13 (Performance Management);

Performance Threshold	has the meaning given to it in Schedule 13 (Performance Management);
Permitted Charges	means the charges which the Service Provider can pass on to tenants and/or Landlords as set out in Schedule 7 (Financing of the Scheme);
Permitted Investments	means investments meeting all conditions set out in Schedule 18 (Permitted Investments);
Personal Data	means Authority Data which is personal data that falls within the definition of "data" in section 1(1) of the DPA;
Post-Disaster Review	has the meaning given to it in Schedule 8 (Disaster Recovery);
Pre-Operational Services	has the meaning given to it in Schedule 17 (Implementation);
Processing	has the meaning set out in section 1(1) of the DPA and " Process " and " Processes " shall be construed accordingly;
Prohibited Act	means: (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Crown; or (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Crown; or (b) entering into this Agreement or any other contract

with the Crown in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, to or for the direct or indirect benefit of any servant of the Crown unless, before the relevant contract is entered into the particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Authority; or

(c) committing any offence:

- (i) under the Bribery Act 2010 in relation to this Agreement or any other agreement with the Authority or other government department;
- (ii) under Laws creating offences in respect of fraudulent acts that have an impact on the provision of the Services; or

(d) defrauding or attempting to defraud or conspiring to defraud the Crown or any Contracting Authority;

Project Board

means any board appointed by the Authority under Paragraph 3 of Schedule 11 (Contract Management);

Protected Characteristics

means the "protected characteristics" set out from time to time in the Equality Act 2010;

Provisional Step-In Trigger

means where the Authority reasonably believes that the Service Provider is about to commit a Default which will materially prevent or materially delay the performance of the Services or any part of the Services and/or which will prevent the Services being provided in accordance with the Service Levels and/or which will have an adverse material impact on the business of the Authority or on the running of the Scheme;

Records	has the meaning given in Schedule 5 (Audit, Access and Records);
Regulatory Body	means those government departments and regulatory, statutory and other entities, communities, ombudsmen 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 Agreement or any other affairs of the Authority or the Service Provider as applicable;
Relevant Authority	means any court with the relevant jurisdiction and any local, national or supra-national agency, local authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Employees	has the meaning given to it in Schedule 9 (Employees);
Relevant Transfer	has the meaning given to it in Schedule 9 (Employees);
Relevant Transfer Date	has the meaning given to it in Schedule 9 (Employees);
Remediation Plan	has the meaning given to it in Schedule 13 (Performance Management)
Replacement Services	means services provided by the Authority and/or a New Service Provider which replace all or part of the Services upon expiry or termination of this Agreement and/or termination of any part(s) of the Services;
Request for Information	means a request for information or an apparent request for information under FOIA and/or the Environmental Information Regulations;
Response Deadline	has the meaning given to it in Schedule 6 (Change Control

	Procedure);
Retendering Information	has the meaning given to it in Schedule 9 (Employees);
Revised Milestone Date	has the meaning given to it in Schedule 17 (Implementation);
RFC	means a request for a Change served by either Party in accordance with Schedule 6 (Change Control Procedure);
RFOC	has the meaning given to it in Schedule 6 (Change Control Procedure);
Scheme	means a "tenancy deposit scheme" which is a "custodial scheme" each as defined in section 212 of the Housing Act 2004 and as implemented by the Authority in accordance with that Act;
Security Test Plan	has the meaning given to it in Paragraph 4.1 of Schedule 14 (Security);
Service Commencement Date	means 1 April 2016;
Service Levels	means the service levels required by the Authority and agreed by the Service Provider as set out in Schedule 13 (Performance Management) or as otherwise agreed in accordance with the Change Control Procedure;
Service Provider Contract Manager	means the person appointed by the Service Provider in accordance with Paragraph 4 of Schedule 11 (Contract Management);
Service Provider Default Termination Sum	means the costs the Authority incurs in procuring an Alternative Scheme Provider plus the costs the Authority incurs in paying an existing Alternative Scheme Provider to deliver the Services until a new Alternative Scheme

Provider is put in place;

Service Provider IP	means IP which is owned or controlled by the Service Provider and/or any Associated Company of the Service Provider not being Bespoke IP, Copyright or Commercially Available Software;
Service Provider Method Statement	means the method statement prepared by the Service Provider and set out at Schedule 4 (Service Provider Method Statement);
Service Provider Personnel	means employees, officers, consultants, contractors and agents of the Service Provider and of its Sub-Contractors assigned to deliver the Services (or any part thereof);
Service Provider RFC	has the meaning given to it in Schedule 6 (Change Control Procedure);
Service Provider Scheme Manager	means the person nominated by the Service Provider in accordance with Paragraph 4 of Schedule 11 (Contract Management);
Service Provider Systems	means all Software, hardware, plant, machinery, media, cabling and other equipment which is used by the Service Provider or its Sub-Contractors in providing the Services and/or in connection with this Agreement;
Service Provider Third Party IP	means IP owned by a third party or a Sub-Contractor (excluding Commercially Available Software, Bespoke IP and Copyright) that is licensed to the Service Provider, a Sub-Contractor and/or any Associated Company of the Service Provider or any Sub-Contractor and used to provide the Services;
Service Rectification Plan	has the meaning given to it in Schedule 13 (Performance Management);

Service Transfer Date	has the meaning given to it in Schedule 10 (Exit Plan);
Services	means the services to be provided by the Service Provider to meet the Authority's requirements as described in Schedule 3 (The Services) and elsewhere in this Agreement, as the same may evolve or be updated, supplemented, replaced and amended from time to time in accordance with this Agreement;
Software	means any computer programme (including source code and object code), programme interfaces and any tools or object libraries embedded in that software, used in the provision of the Services;
Sovereign Guarantee	means a guarantee by the government that all obligations will be satisfied when and if the primary obliger goes into default;
Step-In Right	has the meaning given to it in Clause 8.3.2;
Step-In Services	has the meaning given to it in Clause 8.3.4.2;
Step-In Third Party	has the meaning given to it in Clause 8.3.2;
Step-In Trigger	means: (a) where there is a Default by the Service Provider which is materially preventing or materially delaying the performance of the Services or any part of the Services and/or which is preventing the Services being provided in accordance with the Service Levels and/or which has an adverse material impact on the business of the Authority or on the running of the Scheme; (b) where the Authority is entitled to terminate this Agreement or any Service in accordance with

Clauses 29.1 (Termination of Agreement by the Authority "for cause") or 29.2 (Termination of Services by the Authority "for cause");

- (c) on the occurrence of an Insolvency Event in respect of the Service Provider;
- (d) a Provisional Step-In Trigger where it is deemed to be a Step-In Trigger pursuant to Clause 8.3.6; and/or
- (e) a failure by the Service Provider to implement a Service Rectification Plan in accordance with the provisions of Paragraph 6.5 of Schedule 13 (Performance Management);

Step-Out Date has the meaning given to it in Clause 8.3.9;

Step-Out Notice has the meaning given to it in Clause 8.3.9;

Step-Out Plan has the meaning given to it in Clause 8.3.8;

Sub-Contractor means a third party directly or indirectly contracted to the Service Provider whose services and/or goods are used by the Service Provider for the purposes of the Services and/or this Agreement;

Subject Access Request means a request by a Data Subject under section 7 of the DPA;

Term means the period from the Effective Date to the date on which this Agreement (as such may be extended) expires or terminates for any reason;

Test or Testing has the meaning given to it in Schedule 17 (Implementation);

Test Issue	has the meaning given to it in Schedule 17 (Implementation);
Test Success Criteria	has the meaning given to it in Schedule 17 (Implementation);
Testing Procedures	has the meaning given to it in Schedule 17 (Implementation);
Transferring Employee	has the meaning given to it in Schedule 9 (Employees);
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 2001/23/EC) into English law;
Value for Money	means the optimum whole life cost, quality, efficiency and economy in relation to delivery of the Services to be measured in accordance with the processes (including continuous improvement and cost savings) set out in this Agreement and market testing; and
Year	means a period of twelve (12) months from and including the Effective Date or any anniversary thereof.

SCHEDULE 2 - CONDITIONS PRECEDENT

Conditions Precedent to be satisfied by the Service Provider

Unless an original document is specifically referred to in this Schedule 2 (Conditions Precedent), a copy (certified by an officer of the Service Provider as being a true copy) of each of the documents in Appendix (I) and Appendix (II) to this Schedule 2 (Conditions Precedent) is to be delivered by the Service Provider to the Authority (in a form that is satisfactory to the Authority, acting reasonably) in accordance with Clause 2 (Conditions Precedent) of this Agreement.

The items listed below shall only be considered to be satisfied when the Authority has confirmed in writing that the documents delivered are in a form satisfactory to it or, where no document needs to be delivered, that the relevant condition precedent has in the Authority's opinion been satisfied.

Appendix (I)

Conditions Precedent to be satisfied by the Service Provider on or prior to the Effective Date

1. Extracts from the minutes of the board of directors of the Service Provider and the Parent Company Guarantor (certified as true and accurate by the secretary or a director of the Service Provider or the Parent Company Guarantor (as applicable)), at which resolutions were passed approving the execution, delivery and performance of this Agreement and each other document referred to in this Appendix (I) and in each case authorising a named person or persons or class of persons to execute and deliver each such document and any other documents to be delivered by it pursuant to them.
2. The Service Provider's Certificate of Incorporation and change of name (if applicable).
3. The Service Provider's Memorandum and Articles of Association.
4. An original duly executed Parent Company Guarantee.
5. A copy of the most recent audited financial statements of:
 - 5.1. the Service Provider; and
 - 5.2. the Parent Company Guarantor.
6. The Implementation Plan.
7. Evidence that the Service Provider has adequate procedures in place (in accordance with the guidance published by the Secretary of State under section 9 of the Bribery Act 2010) to ensure that it and any of its "Associated Persons" (as set out in the Bribery Act 2010) do not undertake any conduct which would result in a breach of the requirements of the Bribery Act 2010.
8. Evidence of registration of the Service Provider and all relevant Sub-Contractors set out in Schedule 15 (Sub-Contractors) with the Information Commissioner as a data processor in accordance with the DPA.
9. Evidence of the insurance requirements.
10. The Business Continuity Plan and the Disaster Recovery Plan.

11. An original Regulation 23(1) (Mandatory grounds for rejection) declaration duly executed by the Service Provider.
12. An original Regulation 23(4) (Discretionary grounds for rejection) declaration duly executed by the Service Provider.

Appendix (II)

Conditions Precedent to be satisfied by the Service Provider on or before the CP Longstop Date

1. Evidence that the Service Provider has met the requirements under Schedule 17 (Implementation) and all implementation and transition activities have been completed in full.

SCHEDULE 3 - THE SERVICES

[NOTE TO TENDERERS: THE SPECIFICATION ISSUED IN THE INVITATION TO TENDER WILL BE CONFORMED INTO CONTRACTUAL DRAFTING AT CONTRACT AWARD AND INSERTED INTO THIS SCHEDULE 3 (THE SERVICES)].

SCHEDULE 4 - SERVICE PROVIDER METHOD STATEMENT

[NOTE TO TENDERERS: TO BE BID BACK AT THE ITT STAGE AND INSERTED AT CONTRACT AWARD.]

SCHEDULE 5 - AUDIT, ACCESS AND RECORDS

1. DEFINITIONS

- 1.1. In this Schedule 5 (Audit, Access and Records), the following words and phrases shall have the meanings set out below:

Audit means an audit carried out by the Authority and/or its Audit Agents in accordance with this Schedule 5 (Audit, Access and Records);

Audit Agents has the meaning given to it in Paragraph 4 of this Schedule 5 (Audit, Access and Records);

Audit Remedial Plan has the meaning given to it in Paragraph 9.5 of this Schedule 5 (Audit, Access and Records);

Audit Report has the meaning given to it in Paragraph 9.2 of this Schedule 5 (Audit, Access and Records);

Emergency Audit means an Audit carried out in the circumstances specified in Paragraph 8.3 of this Schedule 5 (Audit, Access and Records); and

Records has the meaning given to it in Paragraph 5.1 of this Schedule 5 (Audit, Access and Records).

2. GENERAL PRINCIPLES

- 2.1. This Schedule 5 (Audit, Access and Records) describes the record keeping requirements and audit access rights which pursuant to Clause 33 (Rights of Audit and Access and Record Keeping) of this Agreement are applicable to the Service Provider, including the Service Provider Personnel and the Sub-Contractors.
- 2.2. The Service Provider shall (and shall procure that the Service Provider Personnel and its Sub-Contractors shall) comply with the provisions of this Schedule 5 (Audit, Access and Records). In particular, the Service Provider shall ensure that any and

all of its Sub-Contractors keep Records in such a way and to such an extent that is consistent with the Service Provider's obligations under Clause 33 (Rights of Audit and Access and Record Keeping) and this Schedule 5 (Audit, Access and Records). All rights of audit and access to such Records granted to the Authority's Audit Agents under this Agreement shall apply equally to Records held by any and all Service Provider Personnel and Sub-Contractors.

3. COSTS

- 3.1. The Service Provider shall bear all costs of complying with the provisions of this Schedule 5 (Audit, Access and Records).

4. AUTHORITY'S AUDIT AGENTS

- 4.1. For the purpose of this Schedule 5 (Audit, Access and Records), the persons who shall have a right of access for the purpose of exercising the Audit rights under this Agreement shall be:

- 4.1.1. any internal and external auditors of the Authority;
 - 4.1.2. statutory or regulatory auditors of the Authority;
 - 4.1.3. the Comptroller and Auditor General, his staff and/or any appointed representatives of the National Audit Office;
 - 4.1.4. the Auditor General for Wales, his staff and/or any appointed representatives of the Wales Audit Office; and
 - 4.1.5. authorised successors to any of the above,
- together the ("**Audit Agents**").

5. RECORD KEEPING

- 5.1. The records to be maintained and made available to the Authority by the Service Provider, the Service Provider Personnel and the Sub-Contractors pursuant to the Service Provider's obligations in this Schedule 5 (Audit, Access and Records) for the time period set out in Clause 33.2 (Rights of Audit and Access and Record Keeping) shall be full and accurate records, including (but not limited to) those relating to the matters set out in Paragraph 5.2 (below), sufficient for the Service Provider to

comply with its obligations under Clause 33 (Rights of Audit and Access and Record Keeping) and this Schedule 5 (Audit, Access and Records) (the "**Records**").

5.2. Without limitation to the generality of Paragraph 5.1 (above), the Records shall include documentation, papers, information and records in respect of the following matters (and as otherwise specifically requested in writing by the Authority):

- 5.2.1. all financial entries in line with general accounting principles to allow assessment and verification of the Deposit Pool and the interest accrued and paid thereon;
- 5.2.2. the Disaster Recovery Services;
- 5.2.3. usage by the Service Provider, Service Provider Personnel and Sub-Contractors of data or assets owned or licensed by the Authority;
- 5.2.4. any matter in respect of which the Change Control Procedure has been or is being invoked;
- 5.2.5. any controls or protections implemented by the Service Provider and its Sub-Contractors in respect of IT systems used in the delivery of the Services;
- 5.2.6. compliance by the Service Provider and its Sub-Contractors with relevant Data Standards and Laws in the delivery of the Services;
- 5.2.7. risk management by the Service Provider and its Sub-Contractors including reviewing risk management databases or registers, risk mitigation plans and the Disaster Recovery Plan maintained by the Service Provider in accordance with this Agreement and relating to the delivery of the Services;
- 5.2.8. verification of compliance by the Service Provider and its Sub-Contractors with processes regarding Confidential Information as set out in Clause 20 (Confidentiality) of this Agreement;
- 5.2.9. certification of accounts and other financial records;
- 5.2.10. general health and safety controls and security practices and procedures implemented specifically for the delivery of the Services by the Service

- Provider and its Sub-Contractors (including security arrangements associated with access by third parties to Authority IP);
- 5.2.11. the efficient use of expenditure by the Service Provider and the Sub-Contractors in performing the Services;
 - 5.2.12. the Service Provider and Sub-Contractor (if relevant) premises;
 - 5.2.13. performance against the Service Levels, including performance metrics, supporting information and calculations, measurement and monitoring tools and procedures implemented in accordance with Schedule 13 (Performance Management);
 - 5.2.14. all disputes referred under the Scheme to ADR and/or resolved through ADR;
 - 5.2.15. the processes and procedures implemented by the Service Provider and its Sub-Contractors in relation to the integrity, security and confidentiality of the Authority Data and Personal Data; and
 - 5.2.16. such other records, information and documentation as may be notified to the Service Provider and required by the Authority from time to time.
- 5.3. The Records and audit trail maintained by the Service Provider, the Service Provider Personnel and the Sub-Contractors shall be comprehensive and shall accurately reflect the processes and activities that have taken place in relation to the subject matter of the Record. The standard of documents and papers included in the audit trail, their method of storage and the timeframe in which they can be retrieved shall be such as to readily facilitate easy and effective access for verification.
- 5.4. Without prejudice to the rights of Audit provided in this Schedule 5 (Audit, Access and Records), the Service Provider shall have all Records available for inspection by the Authority upon reasonable notice and shall present a copy and/or report of them (at no cost) to the Authority as and when requested for its use and distribution with any third parties subject always to compliance with the DPA and Clause 20 (Confidentiality) of this Agreement.
- 5.5. The Service Provider shall (and shall procure that its Sub-Contractors shall) review a sample of all Records periodically and no less than annually for completeness and accuracy.

- 5.6. The Service Provider shall (and shall procure that its Sub-Contractors shall) ensure that all reasonable and appropriate corrective action for any incomplete and/or inaccurate Records is carried out in a timely manner.
- 5.7. The Service Provider shall (and shall provide that its Sub-Contractors shall) permit the Authority and/or the Audit Agents to perform Audits of the Records from time to time to assess the Service Provider's (and Sub-Contractors as relevant) due diligence with regard to record keeping.

6. AUDIT ACCESS

- 6.1. For the purposes of this Schedule 5 (Audit, Access and Records) access by the Authority and/or the Audit Agents for the conduct of Audits shall:

6.1.1. be exercised in a manner that is relevant and proportional to the Services provided; and

6.1.2. include the grant of the following to the Authority and/or the Audit Agents (as relevant) when reasonably required by the Authority and/or the Audit Agents (as relevant):

6.1.2.1. access upon reasonable notice, without charge or payment, to all Service Provider (and Sub-Contractor if relevant) premises from which the Services are delivered;

6.1.2.2. access to and reasonable use of any facilities at the Service Provider (and Sub-Contractor if relevant) premises from which the Services are delivered;

6.1.2.3. access to hard and (if available) soft copies of all Records;

6.1.2.4. access to information in respect of the Services and/or the Service Levels (in electronic or hard copy format or otherwise);

6.1.2.5. access to and the reasonable co-operation of all Service Provider Personnel;

6.1.2.6. access to and/or use of any Software (including embedded tools and security software) used in connection with the Services, Service Provider Systems, Service Provider IP

and/or the Service Provider Third Party IP insofar as it relates to the provision of the Services and only where such access does not contravene the Service Provider's information technology security procedures or data protection obligations to third parties or other applicable regulations;

6.1.2.7. the right to install and run audit software on the Service Provider (and Sub-Contractor if relevant) premises for use in conjunction with any Software and/or Service Provider Systems (subject to prior notification and compliance with the Service Provider's (and Sub-Contractor if relevant) information technology security procedures notified to the Audit Agent prior to the relevant Audit);

6.1.2.8. the right to take and remove from the Service Provider (and Sub-Contractor if relevant) premises copies of all Records applicable to the Services and/or the Service Levels; and

6.1.2.9. access to all other data relevant to the Service Provider's (and Sub-Contractor's if relevant) provision of the Services.

6.2. The purpose of the access rights granted to the Authority and the Audit Agents shall be to allow an Audit to be carried out in order to review and verify the Records and to inspect any assets belonging to or leased or licensed to or by the Authority in the possession or control of the Service Provider and/or any Sub-Contractor for the purposes of ensuring that the Authority's assets are protected in accordance with the provisions of this Agreement.

6.3. The Authority shall use its reasonable endeavours to ensure that the exercise of any of the Audit rights under this Agreement shall be conducted so as not to interfere unreasonably with the Service Provider's (and Sub-Contractor's if relevant) business and its ability to perform its obligations under this Agreement or other agreements for the provision of services to third parties.

6.4. The Service Provider shall (and shall procure that the Service Provider Personnel and the Sub-Contractors shall) provide reasonable assistance during normal business hours on any Business Day during the period specified for retention of Records in Clause 33 (Rights of Audit and Access and Record Keeping) for the

purposes of permitting the exercise of the rights granted under this Schedule 5 (Audit, Access and Records) and to allow the Authority to obtain such information as is necessary to fulfill the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes.

- 6.5. The Service Provider shall (and shall procure that the Service Provider Personnel and the Sub-Contractors shall) provide the Authority and the Audit Agents with all reasonable assistance including temporary on-site accommodation, photocopying facilities and telecommunications for the purposes of carrying out any Audit and/or exercising any Audit rights exercisable under this Agreement.
- 6.6. The Authority and the Audit Agents shall, whilst on the Service Provider (and Sub-Contractor if relevant) premises, comply with such of the Service Provider's (and Sub-Contractor's if relevant) reasonable site, health, safety and security requirements as the Service Provider (and Sub-Contractor if relevant) may notify to the Authority and the Audit Agents directly on notification of or during the course of an Audit.

7. AUDIT STANDARDS

- 7.1. Without prejudice or limit to the Authority's general rights to audit, Audits by the Authority and/or the Audit Agents shall be conducted from time to time in accordance with all appropriate Government audit standards (as such may be updated, amended, extended, consolidated or replaced from time to time).
- 7.2. Notwithstanding the provisions of Paragraph 7.1 (above), the Comptroller and Auditor General shall be permitted to conduct audits in accordance with the auditing standards of the Financial Reporting Council.

8. NOTIFICATION OF AUDIT

- 8.1. Save in the case of an Emergency Audit, the Authority shall provide at least twenty (20) Business Days notice from and including the date of notice of any Audit it intends to carry out.
- 8.2. On notification of an Audit from the Authority, the Service Provider shall (and shall procure that its Sub-Contractors shall) on or before the date of expiry of such notification provide the Authority and/or the Audit Agents (as relevant) with reasonable access to conduct the Audit.

8.3. The Service Provider shall (and shall procure that its Sub-Contractors shall) provide immediate access to the Authority and/or the Audit Agents (as relevant) in the following circumstances:

8.3.1. if an Audit is required by the Authority for reasons of actual or suspected impropriety or fraud by the Service Provider, including the Service Provider Personnel and any Sub-Contractors;

8.3.2. if the Authority has reasonable grounds to suspect that the Service Provider may be in material breach of its obligations under this Agreement;

8.3.3. if the Authority has reasonable grounds to suspect that a security breach has occurred which is detrimental to the provision of the Services under this Agreement;

8.3.4. if the Authority wishes to carry out occasional unannounced security testing to establish compliance with the provisions of Clause 9 (Security) and Schedule 14 (Security); and/or

8.3.5. if other circumstances have arisen, or are believed to have arisen, which would give the Authority the right to terminate this Agreement and/or any part(s) of the Services,

an ("**Emergency Audit**").

8.4. Insofar as it is reasonably able and is practicable in the circumstances, the Authority shall provide the Service Provider with details of the grounds upon which an Emergency Audit is being conducted.

8.5. In the event of an Emergency Audit or any investigation into suspected fraudulent activity or other impropriety by the Service Provider, any third party in connection with this Agreement and/or the Authority's own employees, the Authority reserves for itself and the Audit Agents the right of immediate access to the Records and/or any Service Provider Personnel and Sub-Contractors. The Service Provider agrees and shall procure that the Sub-Contractors shall agree) to render all necessary assistance to the conduct of any Emergency Audit or other such investigation at all times during the Term of this Agreement and for a reasonable time after its expiry or termination.

- 8.6. The Service Provider shall ensure that all those Service Provider Personnel and/or Sub-Contractors involved in such Emergency Audits or investigations treat the Emergency Audit or investigation and all information disclosed in connection with the Emergency Audit or investigation as Confidential Information (subject always to the provisions of Clause 20 (Confidentiality) which allow for disclosure of Confidential Information in certain specified circumstances).
- 8.7. All Confidential Information of the Service Provider and/or the Sub-Contractors which is provided to the Authority and/or the Audit Agents during the course of any Audit shall be protected as Confidential Information in accordance with the Authority's obligations pursuant to Clause 20 (Confidentiality) (subject always to the provisions of Clause 20 (Confidentiality) which allow for disclosure of Confidential Information in certain specified circumstances).
- 8.8. Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and Auditor General and Auditor General for Wales and their representatives from carrying out an audit, examination or investigation of the Service Provider or any Sub-Contractors.

9. RESPONSE TO AUDITS

- 9.1. As a result of any Audits, the Authority and/or the Audit Agents (as relevant) may produce reports to the Authority indicating areas of non-compliance with this Agreement or any other reports they deem appropriate. The Authority and/or the Audit Agents (as relevant) may also make recommendations for changes or improvements.
- 9.2. Following each Audit the Authority shall provide to the Service Provider, within a reasonable time, extracts of the report prepared by the Authority and/or the Audit Agents ("**Audit Report**") indicating:
- 9.2.1. any areas of non-compliance with this Agreement which the Service Provider is required to rectify; and
- 9.2.2. any Audit recommendation which the Authority requires the Service Provider to implement in order to comply with the terms of this Agreement.
- 9.3. The Authority shall give the Service Provider a reasonable period (being no less than twenty (20) Business Days from and including the date of receipt of the Audit

Report by the Service Provider) to review the factual issues which are raised by the Audit Report and to comment upon the recommendations.

- 9.4. If the Service Provider disputes the findings of any Audit or Audit Report, the Service Provider shall provide details of the basis for any such disputes together with such documentation as is necessary to support the Service Provider's conclusions. Any such disputes shall be treated as a Dispute and the matter shall be dealt with in accordance with the Escalation Procedure involving (by agreement of both Parties) such bodies or groups as may be involved in development and/or regulation of the standards in question.
- 9.5. The Parties shall use all reasonable endeavours to agree a plan (an "**Audit Remedial Plan**") in respect of recommendations and the areas of non-compliance referred to in Paragraph 9.2 (above). If agreement cannot be reached on the Audit Remedial Plan then the matter shall be treated as a Dispute. The Service Provider shall implement the terms of such Audit Remedial Plan at the Service Provider's own expense.
- 9.6. The Service Provider shall provide updates at agreed intervals to the Authority on the implementation and/or operation of any actions from recommendations made in any Audit Report(s) and progress in implementing any relevant Audit Remedial Plan.
- 9.7. The Service Provider shall provide, in accordance with the timescales agreed in any Audit Remedial Plan for any changes or improvements arising from an Audit, evidence, either documentary or demonstrative, of the implementation and/or operation of changes required by the Authority in accordance with Paragraphs 9.5 and 9.6 (above) and shall if required and at the expense of the Service Provider provide access to the Authority and/or the Audit Agents (as relevant) to permit the Authority and/or the Audit Agents (as relevant) to monitor and confirm the implementation and/or operation of such changes.
- 9.8. Failure to implement an Audit Remedial Plan without reasonable cause in accordance with its terms and this Agreement shall be a Deemed Material Default.
- 9.9. In considering whether to exercise its rights of review and/or termination of this Agreement and/or any part(s) of the Services pursuant to Clause 29 (Termination), the Authority may take account of any Audit Reports and the implementation and/or operation of any changes, improvements or recommendations made or to be made by the Service Provider as a result of any Audit(s).

10. GENERAL

- 10.1. For the avoidance of doubt, any examination or inspection by the Authority and/or the Audit Agents pursuant to this Schedule 5 (Audit, Access and Reports) shall not constitute a waiver or exclusion of any of the Service Provider's obligations or the Authority's rights under this Agreement.

SCHEDULE 6 - CHANGE CONTROL PROCEDURE

1. DEFINITIONS USED IN THIS SCHEDULE

In this Schedule 6 (Change Control Procedure), the following words and phrases shall have the meanings set out below:

Authority RFC	means a RFC issued by the Authority;
CCN	means a change control notice issued by the Authority to the Service Provider confirming acceptance of the Change Response or the Service Provider's RFC (as modified) as the case may be;
Change	means a change to the Services (whether or not requiring a change to this Agreement) or a change to this Agreement;
Change Implementation Plan	means a plan for the implementation of a Change produced in accordance with Paragraph 7.3 below;
Change Response	means the Service Provider's response to an Authority RFC prepared in accordance with Paragraph 7.1 below;
Financial Proposal	means a proposal detailing the financial impact of the proposed Change produced in accordance with Paragraph 7.4 below;
Impact Assessment	means an assessment carried out by the Service Provider of the impact on the Services and produced in accordance with Paragraph 7.2 (below) following the submission of a RFC in accordance with the Change Control Procedure;

Operational Change means any change in the Service Provider's operational procedures which in all respects, when implemented:

- (a) will not adversely affect the Service Provider's costs of performing the Service and will not result in any other costs to the Authority; and
- (b) may, but not to a material extent, change the way in which the Service is delivered but will not deleteriously affect the output of the Service or increase the risks in performing the Service; and
- (c) will not require a change to the Agreement;

Response Deadline has the meaning given to it in Paragraph 5.2.2 of this Schedule 6 (Change Control Procedure); and

RFOC has the meaning given to it in Paragraph 8.3 of this Schedule 6 (Change Control Procedure).

Service Provider RFC means a RFC issued by the Service Provider;

2. PURPOSE

This Schedule sets out the procedures to be used by the Parties in connection with proposed Changes.

3. PRINCIPLES

3.1. Implementation of changes for which there is an agreed mechanism (excluding this Change Control Procedure) set out or referred to in this Agreement shall not constitute Changes to which this Change Control Procedure applies.

3.2. The Parties shall conduct discussions relating to proposed Changes in good faith.

- 3.3. Until such time as a CCN has been signed by the Authority Contract Manager and the Service Provider Scheme Manager (or their nominated representative), the Service Provider shall continue to supply the Services in accordance with the Agreement.
- 3.4. Any work or services undertaken by the Service Provider, its sub-contractors or agents which has not been authorised in advance by the Authority and which has not been otherwise agreed in accordance with this Change Control Procedure shall be undertaken entirely at the expense and liability of the Service Provider.
- 3.5. Any discussions, negotiations or other communications which may take place between the Parties prior to the issue of a CCN (including the submission of any written communications) shall be without prejudice to the rights of either Party.

4. REQUESTS FOR CHANGE (RFC)

- 4.1. The Authority shall be entitled to:
- 4.1.1. request any Change to the Services and/or this Agreement; and
 - 4.1.2. require a Change to the Services from time to time to reflect any Change in Law.
- 4.2. The Service Provider shall be entitled to require a Change to the Services and/or this Agreement from time to time to reflect any Change in Law that directly impacts upon the Service Provider's provision of the Services or which, if it becomes necessary, is required to identify or eliminate fraud by Landlords, tenants or third parties against the Scheme.
- 4.3. The Service Provider shall be entitled to request a Change to the Services and/or this Agreement only if such Change:
- 4.3.1. enhances the Service Provider's operational effectiveness in providing the Services or takes advantage of technological developments so as to improve the provision of the Services; or
 - 4.3.2. would, in the Service Provider's reasonable opinion, improve the provision of the Services; or
 - 4.3.3. improves operational efficiency in providing the Services so as to reduce the cost of providing the Services and/or operating the Scheme; and

- 4.3.4. will not have a detrimental effect on the overall quality of the Services.
- 4.4. Subject to the provisions of Paragraph 4.5, the Authority may reject any request for a Change to the Services or to the Service Provider's Method Statement proposed by the Service Provider.
- 4.5. The Authority shall not be entitled to reject a Change required pursuant to Paragraph 4.2 and any such Change will be implemented by the Parties in accordance with provisions of Clause 39 (Changes in Law and Data Standards).

5. AUTHORITY RFC

- 5.1. If the Authority wishes to request or requires a Change, it must serve an Authority RFC on the Service Provider.
- 5.2. The Authority RFC shall:
 - 5.2.1. set out the Change required in sufficient detail to enable the Service Provider to provide the Change Response; and
 - 5.2.2. specify the deadline by which the Service Provider shall provide to the Authority a Change Response (being not less than twenty (20) Business Days from and including the date of receipt of the Authority RFC) ("**Response Deadline**").
- 5.3. As soon as practicable, and in any event by the Response Deadline, the Service Provider shall deliver to the Authority the Change Response.
- 5.4. As soon as practicable after the Authority receives the Change Response, the Parties shall discuss and agree the issues set out in the Change Response. In such discussions:
 - 5.4.1. the Authority may modify the Authority RFC, in which case the Service Provider shall, as soon as practicable and in any event within ten (10) Business Days from and including the date of receipt of such modification, notify the Authority of any consequential changes to the Change Response; and
 - 5.4.2. where the Authority requests it, the Service Provider shall provide such additional information as the Authority requests in order to evaluate the Change Response fully.

- 5.5. The Service Provider shall not refuse an Authority RFC unless such Change:
- 5.5.1. would materially and adversely affect the risks to health and safety of any person;
 - 5.5.2. would require the Services to be performed in any way that infringes a Law or an Approval; and/or
 - 5.5.3. is demonstrated by the Service Provider to:
 - 5.5.3.1. be technically impossible to implement; or
 - 5.5.3.2. represent a material risk to the Services; or
 - 5.5.3.3. be such that the Service Provider would no longer be able to provide the Services in a technically or financially viable manner; and/or
 - 5.5.4. is predicted to have a material impact on the ability of the Service Provider to meet any Service Level where as a result of the Change the Service Level is not modified accordingly.
- 5.6. If the Parties cannot agree on the contents of the Change Response then the Authority shall either:
- 5.6.1. withdraw the Authority RFC; or
 - 5.6.2. refer the dispute to be determined in accordance with the Dispute Resolution Procedure.
- 5.7. As soon as practicable after the contents of the Change Response have been agreed or otherwise determined pursuant to the Dispute Resolution Procedure, the Authority shall either:
- 5.7.1. issue a CCN; or
 - 5.7.2. withdraw the Authority RFC.
- 5.8. If the Authority does not issue a CCN within twenty (20) Business Days from and including the date of the contents of the Change Response having been agreed or determined, then the Authority RFC shall be deemed to have been withdrawn.

- 5.9. In the event that the Authority issues a CCN then:
- 5.9.1. the Service Provider shall implement the Change in accordance with the Change Implementation Plan; and
 - 5.9.2. the Parties shall enter into any documents necessary to amend this Agreement or any relevant related document which are necessary to give effect to the Change.

6. SERVICE PROVIDER RFC

- 6.1. If the Service Provider wishes to request a Change, it must serve a Service Provider RFC on the Authority.
- 6.2. The Service Provider RFC must:
- 6.2.1. set out the proposed Change in sufficient detail to enable the Authority to evaluate it in full;
 - 6.2.2. specify the Service Provider's reasons for proposing the change in the Services and/or this Agreement;
 - 6.2.3. include an Impact Assessment, an Implementation Plan and a Financial Proposal; and
 - 6.2.4. indicate if there are any dates by which a decision by the Authority is critical.
- 6.3. The Authority shall evaluate the Service Provider's proposed change in the Services and/or this Agreement taking into account all relevant issues, including whether:
- 6.3.1. there would be a change to the financial arrangements;
 - 6.3.2. the change affects the quality of the Services or the likelihood of successful delivery of the Services;
 - 6.3.3. the change will interfere with the relationship of the Authority or the Service Provider with third parties;
 - 6.3.4. the financial strength of the Service Provider is insufficient to perform the changed Services; or

- 6.3.5. the change materially affects the risks or costs to which the Authority or the Service Provider are exposed; or
- 6.3.6. the change would, if implemented, result in a change in the nature of the Services.
- 6.4. As soon as practicable after receiving the Service Provider RFC, the Parties shall meet and discuss the matters referred to in it. During their discussions the Authority may propose modifications or accept or (save where the Service Provider RFC is pursuant to Paragraph 4.2 (above)) reject the Service Provider RFC.
- 6.5. If the Authority accepts the Service Provider RFC (with or without modification), the Authority shall issue a CCN.
- 6.6. In the event that the Authority issues a CCN then:
 - 6.6.1. the Service Provider shall implement the Change in accordance with the Change Implementation Plan; and
 - 6.6.2. the Parties shall enter into any documents necessary to amend this Agreement or any relevant related document which are necessary to give effect to the Change.

7. CONTENT OF DOCUMENTS

7.1. Change Response

The Change Response shall consist of:

- 7.1.1. the Impact Assessment;
- 7.1.2. the Implementation Plan; and
- 7.1.3. the Financial Proposal.

7.2. Impact Assessment

The Impact Assessment shall include details of:

- 7.2.1. any impact on the provision of the Services;
- 7.2.2. any impact on the Service Provider's ability to meet its obligations under this Agreement;

- 7.2.3. any amendment required to this Agreement and/or any related document as a result of the Change;
- 7.2.4. details (where known) of the potential impact on any third parties;
- 7.2.5. any impact on the matters set out in Paragraph 7 (Change Control) to Schedule 14 (Security);
- 7.2.6. details of how the proposed Change will ensure compliance with any applicable Change in Law; and
- 7.2.7. such other information as the Authority may reasonably request in (or in response to) a RFC.

7.3. Change Implementation Plan

The Change Implementation Plan shall include details of:

- 7.3.1. the activities necessary to implement the proposed Change;
- 7.3.2. project plan including timelines and key dates, milestones, deadlines and any testing that may be required;
- 7.3.3. the activities required to address issues identified in the Impact Assessment; and
- 7.3.4. the activities required to implement the Financial Proposal.

7.4. Financial Proposal

The Financial Proposal shall include details of:-

- 7.4.1. the estimated capital expenditure (if any), including any capital replacement costs, arising from or required to implement the Change or any capital expenditure that is no longer required as a result of the Change;
- 7.4.2. the estimated increase or decrease in operating expenditure relating to the provision of the Services, with an analysis showing the costs of staff, consumables, sub-contracted and bought-in services, after the Change is implemented;

- 7.4.3. any interest, expenses or other third party financing costs to be incurred as a result of implementing the Change;
- 7.4.4. details of any estimated overhead recoveries and long term cost savings that are anticipated after the Change is implemented;
- 7.4.5. evidence that the Service Provider has used reasonable endeavours (including (where reasonable) the use of competitive tenders) to minimise any increase in costs and maximise any reduction in costs and (where applicable) revenue; and
- 7.4.6. the profit which the Service Provider seeks to achieve in the provision of the additional parts of the Services.

8. OPERATIONAL CHANGES

- 8.1. Operational Changes shall be processed in accordance with this Paragraph 8. If either party is in doubt whether a change falls within the definition of an Operational Change, then it will be processed as a Change.
- 8.2. Any Operational Changes identified by the Service Provider or the Authority to improve operational efficiency of the Services may be implemented by the Service Provider without following the Change Control Procedure provided they do not:
 - 8.2.1. have an impact on the Authority; and/or
 - 8.2.2. have a material impact on the use or provision of the Services.
- 8.3. The Authority or the Service Provider may request an Operational Change by submitting a written request for an Operational Change ("**RFOC**") to the other party.
- 8.4. The party making the RFOC shall inform the other party of any impact on the Services that may arise from the proposed Operational Change.
- 8.5. The Service Provider shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC and shall promptly notify the Authority when the Operational Change is completed.

Appendix 1

Template Change Control Note

Change Control Note		CCN Number:	
Part A: Request for Change			
Title:			
Originator:		Contact Number:	
Details of Proposed Change			
To include reason for change and appropriate details/specifications. Attach the Impact Assessment, the Change Implementation Plan and the Financial Proposal.			
Initiated []	by	Date:	
Name:			
Signature:			
Received []	by	Date:	
Name:			
Signature:			

SCHEDULE 7 - FINANCING OF THE SCHEME

1. DEFINITIONS

- 1.1. In this Schedule 7 (Financing of the Scheme), the following words and phrases shall have the meanings set out below:

Accrued Interest means the total interest accruing on the Deposit Pool held by the Deposit Holder;

Deposit Holder has the meaning given to it in Paragraph 2.1 of this Schedule 7 (Financing of the Scheme);

Deposit Pool has the meaning given to it in Paragraph 2.1 of this Schedule 7 (Financing of the Scheme); and

Monthly Finance Statement means a statement prepared by the Service Provider for any given month which shall include the information detailed below or such other information as may be agreed by the Authority and the Service Provider:

(a) all Deposits moved in/out of the Deposit Pool;

(b) all Accrued Interest earned on the Deposit Pool; and

(c) a schedule of the Permitted Investments and the amounts invested in each.

2. GENERAL PRINCIPLES

- 2.1. The Service Provider shall have responsibility for collecting Deposits from Landlords and for ensuring that such Deposits are paid into an eligible bank account as set out in Schedule 18 (Permitted Investments). All such collection of bank accounts taken together shall comprise a pool of all Deposits and shall be held by a third party (the "**Deposit Pool**" and the "**Deposit Holder**"). The Deposit Holder shall be responsible for investing the Deposit Pool in the Permitted Investments notified to it

from time to time by the Service Provider. The Deposit Holder shall grant specific rights of access to the account to the Service Provider, namely the right to direct that amounts representing individual Deposits be paid to persons receiving the Deposit at the end of a relevant assured shorthold tenancy and the right to withdraw the Accrued Interest. For the avoidance of doubt the Service Provider may, in its sole discretion, for regulatory and reconciliation purposes operate two separate bank accounts with the Deposit Holder designated respectively for receiving Deposits submitted by cheque, BACS, credit card and unallocated collections and for holding Accrued Interest provided that such accounts shall for the purposes of this Agreement be deemed to be one Deposit Pool.

- 2.2. The Service Provider holds sums comprising part of the Deposit Pool on trust. Accordingly, a Landlord or tenant who is entitled to payment of all or any part of such a sum in accordance with paragraph 4, 4A, 4B or 4C of Schedule 10 to the Housing Act 2004 is beneficially entitled to the amount so payable.
- 2.3. The Service Provider shall be entitled to withdraw the Accrued Interest at any time.
- 2.4. At no point may the Service Provider withdraw any part of the Deposit Pool other than in order to move such amounts to a different Permitted Investment, to pay such Deposit to the person receiving the Deposit at the end of the relevant assured shorthold tenancy or to transfer amounts to an Alternative Scheme Provider or the Authority under the terms of this Agreement.
- 2.5. The Service Provider shall carry the risk that the Accrued Interest shall be insufficient to meet its costs of providing the Services. The Authority shall not be responsible for paying the Service Provider any costs for the provision of the Services or the Scheme.

3. MONTHLY FINANCE STATEMENT

- 3.1. The Service Provider shall submit a Monthly Finance Statement to the Authority in respect of each calendar month of this Agreement, not more than fifteen (15) Business Days from and including the date of the relevant month end.

4. PERMITTED CHARGES

- 4.1. The following are the Permitted Charges:

4.1.1. Normal charges that are incurred by the Service Provider for receipt of deposits and other monies other than by cash, cheque or electronic transfers. These may include, for example, charges for credit card deposit payments and bounced cheques.

4.1.2. Normal bank charges that are incurred by the Service Provider for all transactions other than the standard 3-day transfer of monies within the United Kingdom. These may, for example, include charges for overseas SWIFT remittances and same-day CHAPS transfers.

5. UNCLAIMED DEPOSITS

5.1. In the event that a Deposit is unclaimed following the end of the relevant tenancy or after ADR, the Service Provider shall leave the monies within the Deposit Pool for the duration of the Term.

5.2. The Parties agree that any such unclaimed Deposits may continue to be invested in the Permitted Investments, and the proceeds of such investments shall form part of the Accrued Interest.

5.3. Upon expiry or earlier termination of the Agreement, the Service Provider shall comply with such direction as the Authority (in its discretion) may make in relation to any unclaimed Deposit amounts held by the Service Provider.

6. SHORTFALL ON TERMINATION OF THE AGREEMENT

6.1. The Service Provider shall be entitled to retain the Accrued Interest in accordance with the terms of Schedule 7 (Financing of the Scheme) at the end of the Term.

6.2. The Service Provider shall transfer a fully funded Deposit Pool (including any unclaimed Deposits) to the New Service Provider, any Alternative Scheme Provider(s) or the Authority at the end of the Term in accordance with the Authority's directions. In the event the Deposit Pool does not include all tenancy Deposits and all unclaimed Deposits, the Service Provider shall pay to the New Service Provider, Alternative Scheme Provider(s) or the Authority (as directed by the Authority) on demand an amount equivalent to any such shortfall.

SCHEDULE 8 - DISASTER RECOVERY

1. DEFINITIONS

- 1.1. In this Schedule, the following words and phrases shall have the meanings set out below:

Business Continuity Plan has the meaning given to it in Paragraph 4 of this Schedule 8 (Disaster Recovery);

Business As Usual Notice has the meaning given to it in Paragraph 9.2 of this Schedule 8 (Disaster Recovery);

Disaster means an event having a serious impact on the provision of the Services and/or the Scheme and which is identified as such in the Disaster Recovery Plan;

Disaster Recovery Plan means the plan prepared by the Service Provider and accepted by the Authority in accordance with Paragraph 5 of this Schedule 8 (Disaster Recovery); and

Post-Disaster Review has the meaning given to it in Paragraph 10.1 of this Schedule 8 (Disaster Recovery).

2. PURPOSE

The purpose of this Schedule 8 (Disaster Recovery) is to set out the obligations of the Service Provider in relation to business continuity and disaster recovery.

3. PRINCIPLES

- 3.1. The Service Provider shall develop and maintain a Business Continuity Plan and a Disaster Recovery Plan in respect of the Services and the Scheme at all times throughout the Term.

- 3.2. The Service Provider shall be responsible for providing Disaster Recovery Services in accordance with this Schedule 8 (Disaster Recovery), the Business Continuity Plan and the Disaster Recovery Plan.

4. BUSINESS CONTINUITY PLAN

- 4.1. The Service Provider shall develop a plan which describes the arrangements required to:

4.1.1. ensure continuity of the Services and the Scheme; and

4.1.2. minimise the adverse impact of a Disaster on the Authority and/or the End Users and/or the Scheme (including the matters set out in Paragraph 5.1.4 (below)),

a ("**Business Continuity Plan**").

- 4.2. The Service Provider's Business Continuity Plan as at the Effective Date is provided at Appendix 1 (Business Continuity Plan) to this Schedule 8 (Disaster Recovery). The Service Provider shall review and update (as necessary) the form of Business Continuity Plan at Appendix 1 (Business Continuity Plan) and submit a finalised Business Continuity Plan to the Authority for approval during the Implementation Period and in any event no later than twenty (20) Business Days before the Service Commencement Date.
- 4.3. The Service Provider shall review, develop and maintain the Business Continuity Plan throughout the Term and shall ensure that the Business Continuity Plan is aligned with and takes full account of all applicable Good Industry Standards.
- 4.4. The Service Provider shall promptly provide a copy of any updated Business Continuity Plan (as may be developed by the Service Provider from time to time) to the Authority.
- 4.5. Without prejudice to Paragraph 4.4 (above), the Authority may at any time throughout the Term request (in writing) the Service Provider to provide a copy of its Business Continuity Plan in place as at the date of the request and the Service Provider shall submit its Business Continuity Plan to the Authority at no cost and no later than ten (10) Business Days following a written request by the Authority.
- 4.6. The Authority may provide representations and/or comments on the Business Continuity Plan at any time throughout the Term. The Service Provider shall take

reasonable account of all comments and/or representations made by the Authority and shall where necessary update the Business Continuity Plan accordingly.

5. DISASTER RECOVERY PLAN

5.1. The Service Provider shall develop a Disaster Recovery Plan which clearly defines:

- 5.1.1. the type of event to which the plan applies;
- 5.1.2. a risk and impact assessment for each potential type of Disaster situation relevant to the provision of the Services;
- 5.1.3. detailed technical processes and action plans for managing each potential type of Disaster situation relevant to the provision of the Services and for enabling system and data recovery as well as subsequent re-instatement of business processes;
- 5.1.4. provision and maintenance of a Disaster recovery site equipped with sufficient hardware, software and services required to provide the Services in accordance with the Service Levels specified in Schedule 13 (Performance Management), it being agreed between the Parties that the Business Continuity Plan shall for the purposes of enabling a phased implementation of the Disaster Recovery Plan indicate which of the Service Levels are necessary to be operationally functional: (i) within twenty-four (24) hours; (ii) within forty-eight (48) hours; and (iii) within seventy-two (72) hours of the Business Continuity Plan being implemented;
- 5.1.5. actions required and timeframes for the reinstatement of full normal Services in accordance with Paragraph 9.1 of this Schedule 8 (Disaster Recovery);
- 5.1.6. details of the human resources required to implement the Disaster Recovery Services including identification of the skills and experience of the relevant Service Provider Personnel relevant to the provision of the Services;
- 5.1.7. identification of the key roles, responsibilities and decision-making authority limits including the names and contact details of relevant individuals and the nominated points of contact for the Service Provider

and the Authority in accordance with Paragraph 8.1.3 of this Schedule 8 (Disaster Recovery);

- 5.1.8. identification of third parties who will need to be informed (and kept informed) and the events that will trigger such contact;
- 5.1.9. identification of third parties (including Sub-Contractors) whose services will be required or impacted in the event of each potential type of Disaster relevant to the Services;
- 5.1.10. definition of time-related triggers and checkpoint events including the timeframes for the Service Provider to investigate the likely scope and duration of the Disaster and begin to migrate the provision of the Services to the Disaster Recovery Services infrastructure;
- 5.1.11. escalation and decision-making events;
- 5.1.12. provision for conducting testing in accordance with Paragraph 12 of this Schedule 8 (Disaster Recovery);
- 5.1.13. provision for periodic review of the Disaster Recovery Plan as required by Paragraph 13.1.1 of this Schedule 8 (Disaster Recovery);
- 5.1.14. all other services to be provided by the Service Provider in respect of a Disaster; and
- 5.1.15. the process for demonstrating that the provisions of this Schedule 8 (Disaster Recovery) are fully met,

the ("**Disaster Recovery Plan**").

- 5.2. The Service Provider's Disaster Recovery Plan as at the Effective Date is provided at Appendix 2 (Disaster Recovery Plan) to this Schedule 8 (Disaster Recovery). The Service Provider shall review and update (as necessary) the form of Disaster Recovery Plan at Appendix 2 (Business Continuity Plan) and submit a finalised Disaster Recovery Plan to the Authority for approval during the Implementation Period and in any event no later than twenty (20) Business Days before the Service Commencement Date.

- 5.3. The Service Provider shall review, develop and maintain the Disaster Recovery Plan throughout the Term and shall ensure that the Disaster Recovery Plan is aligned with and takes full account of all applicable Good Industry Standards.
- 5.4. The Service Provider shall promptly provide a copy of any updated Disaster Recovery Plan (as may be developed by the Service Provider from time to time) to the Authority.
- 5.5. Without prejudice to Paragraph 5.4 (above), the Authority may at any time throughout the Term request (in writing) the Service Provider to provide a copy of its Disaster Recovery Plan in place as at the date of the request and the Service Provider shall submit its Business Continuity Plan to the Authority at no cost and no later than ten (10) Business Days following a written request by the Authority.
- 5.6. The Authority may provide representations and/or comments on the Disaster Recovery Plan at any time throughout the Term. The Service Provider shall take reasonable account of all comments and/or representations made by the Authority and shall where necessary update the Disaster Recovery Plan accordingly.

6. DISASTER RECOVERY SERVICES

- 6.1. The Service Provider shall use its best endeavours to minimise the impact of any Disaster on the Scheme.
- 6.2. The Service Provider shall ensure that the Services are available as set out in the Disaster Recovery Plan following the declaration of a Disaster made in accordance with Paragraph 7 of this Schedule 8 (Disaster Recovery) within those timescales specified in the Business Continuity Plan and/or the Disaster Recovery Plan or, where no timescale is specified for the relevant Services or part thereof within forty eight (48) hours or such other period of time as agreed between the Parties in the circumstances.
- 6.3. The Service Provider shall provide and maintain (at appropriate levels of standby readiness) such infrastructure, equipment, hardware, software (including appropriate licences), documents, personnel and any other goods and services as may be necessary to fulfil its obligations under this Schedule 8 (Disaster Recovery) and provide the Disaster Recovery Services (including, for the avoidance of doubt, to ensure it is able to comply with its obligations in the Disaster Recovery Plan in the event of a Disaster).

- 6.4. In the event of any Change to the Disaster Recovery Plan, the Service Provider shall ensure that it implements such changes as may be necessary to ensure it continues to comply with the requirement in Paragraph 6.3 (above).
- 6.5. The Service Provider shall ensure that any third parties whose services would be required in the event of a Disaster are approved by the Authority as Sub-Contractors in accordance with Clause 35 (Approval of Sub-Contractors) and, unless otherwise agreed by the Authority, are contracted to provide the relevant services (if required) throughout the Term of this Agreement.

7. DECLARATION OF A DISASTER

Where a Party becomes aware that a Disaster has occurred or that its occurrence can reasonably be expected to take place imminently, that Party shall declare a Disaster by informing (by the most rapid method of communication reasonably practicable) the other Party and the Service Provider shall formally declare a Disaster and invoke the relevant Disaster Recovery Plan.

8. OCCURRENCE OF A DISASTER

- 8.1. In the event of a Disaster being declared the Service Provider shall:
- 8.1.1. carry out the activities and procedures described in the Disaster Recovery Plan and otherwise comply with all obligations in the Disaster Recovery Plan in order to restore provision of the Services and minimise impact on End Users and the Scheme;
 - 8.1.2. ensure that all relevant disaster recovery reference material is made available to the appropriate personnel;
 - 8.1.3. ensure that a nominated Service Provider point of contact is provided as required in the Disaster Recovery Plan during the period until acceptance of a Business As Usual Notice (served in accordance with Paragraph 8 (below)) in respect of the relevant Disaster;
 - 8.1.4. ensure that the Authority Contract Manager receives regular and routine communication regarding the Disaster, actions taken, recovery status and recovery times through communications channels as agreed in the Disaster Recovery Plan;

- 8.1.5. provide reasonable input and assistance in the event that press releases are to be issued in relation to the Disaster or its consequences;
- 8.1.6. with the assistance of the Authority, use reasonable endeavours to resolve any Disaster related issues not adequately provided for in the Disaster Recovery Plan or which are not resolved by the implementation of those plans and use reasonable endeavours to achieve the Authority's objectives in relation to mitigation of the Disaster and the effects of the Disaster and to ensure Service recovery;
- 8.1.7. take such further steps as may reasonably be expected of the Service Provider acting in accordance with Good Industry Standards (including mitigation of and risk minimisation in respect of all impacts of the Disaster and alerting the Authority in respect of any related issues or concerns which should reasonably be brought to the Authority's attention); and
- 8.1.8. be relieved from the accrual of Performance Points in the event it fails to achieve a Service Level (other than a Service Level applicable to the Disaster Recovery Services), to the extent that:
 - 8.1.8.1. the Service Provider has not caused or contributed to the Disaster;
 - 8.1.8.2. the Service Provider can demonstrate to the Authority that the Disaster directly caused the failure to meet the relevant Service Level;
 - 8.1.8.3. such failure to achieve the relevant Service Level is not in breach of the Disaster Recovery Plan; and
 - 8.1.8.4. such failure takes place during the period that the Service Provider is required to implement the Disaster Recovery Plan in accordance with this Agreement.

9. RETURN TO BUSINESS AS USUAL

- 9.1. The Service Provider shall ensure that all Services are reinstated to normal operation in accordance with the Disaster Recovery Plan but, in any event, as soon as is reasonably practicable in the circumstances.

9.2. Once all Services affected by the Disaster have returned to normal operation in that the Services are:

9.2.1. operating in line with the applicable Services Levels (or in the absence of Service Levels for the particular components of the Services to the standard otherwise required under the terms of this Agreement presuming the absence of any Disaster); and

9.2.2. being provided to the same standard as the relevant Services were being provided on the Business Day prior to the declaration of the Disaster,

the Service Provider shall issue to the Authority a notice indicating that the Services have returned to normal operation (a "**Business As Usual Notice**").

10. POST-DISASTER REVIEW

10.1. Within a reasonable period (and no later than twenty (20) Business Days) after a Business As Usual Notice has been issued in accordance with Paragraph 9.2 (above), the Service Provider shall carry out a review (a "**Post-Disaster Review**") of the causes of the Disaster, the operation and effectiveness of the Disaster Recovery Plan and any necessary modifications to the Disaster Recovery Plan. The Service Provider shall provide the Authority with a draft copy of its Post-Disaster Review findings and shall provide the Authority the opportunity to provide its comments on the findings and any recommendations. The Service Provider shall have due regard to the Authority's comments and shall issue a Post-Disaster Review report to the Authority. The Service Provider shall update the Disaster Recovery Plan by incorporating such modifications within twenty (20) Business Days from and including the date of the issue of such Post-Disaster Review report for acceptance by the Authority.

10.2. In the event of long term continuing Disaster the Authority may require that an initial review takes place no later than twenty (20) Business Days from and including the date of the occurrence of the Disaster with a further Post-Disaster Review taking place within a reasonable period (and no later than twenty (20) Business Days) after the Business As Usual Notice has been issued in accordance with Paragraph 9.2 (above).

11. FAILURE TO IMPLEMENT THE DISASTER RECOVERY PLAN

- 11.1. In the event that the Service Provider fails to implement the Disaster Recovery Plan such failure shall constitute a Deemed Material Default for which the Authority may terminate this Agreement and/or part of the Services in accordance with Clause 29 (Termination) provided always 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.

12. DISASTER RECOVERY TESTING

- 12.1. The Service Provider shall execute a Disaster recovery test as soon as reasonably practical within nine (9) months of the Effective Date and annually thereafter to assess and demonstrate the proper operation and effectiveness of the Disaster Recovery Plan and the Disaster Recovery Services through such combination of desk reviews, simulation and live testing as set out in the Disaster Recovery Plan.
- 12.2. The Authority shall be entitled to witness and attend such testing and the Service Provider shall give the Authority all relevant information relating to the tests in order to assist the Authority to arrange attendance by Authority Personnel.
- 12.3. The Service Provider shall provide a report on the results of the Disaster recovery testing conducted in accordance with this Paragraph 12 (Disaster Recovery Testing) within five (5) Business Days from and including the date of completion of any such testing.
- 12.4. The Service Provider shall update the Disaster Recovery Plan to incorporate any modifications demonstrated to be necessary by the Disaster recovery testing within twenty (20) Business Days of the completion of Disaster recovery testing for acceptance by the Authority.

13. CHANGES TO THE BUSINESS CONTINUITY PLAN AND/OR DISASTER RECOVERY PLAN

- 13.1. The Service Provider shall review the Business Continuity Plan and Disaster Recovery Plan:
- 13.1.1. on a periodic basis as set out in the relevant plan; and
- 13.1.2. as required by Paragraph 13.2 (below).
- 13.2. In the event that changes are made or proposed to be made:

- 13.2.1. to the Business Continuity Plan or the Disaster Recovery Plan (as the case may be); and/or
- 13.2.2. to this Agreement and/or to the Services (including a Change agreed or to be agreed in accordance with the Change Control Procedure) that relate to the Business Continuity Plan and/or the Disaster Recovery Plan;

the Service Provider shall as soon as reasonably practicable and in any event within twenty (20) Business Days following such notification issue an updated Disaster Recovery Plan and/or Business Continuity Plan (as relevant) to the Authority and the Service Provider shall take reasonable account of all comments and/or representations made by the Authority and shall where necessary update the Disaster Recovery Plan and/or Business Continuity Plan.

Appendix 1

Business Continuity Plan

[NOTE TO TENDERERS: TO BE BID BACK AT THE ITT STAGE - SUCCESSFUL TENDERER'S BUSINESS CONTINUITY PLAN TO BE INSERTED AT CONTRACT AWARD.]

Appendix 2

Disaster Recovery Plan

[NOTE TO TENDERERS: TO BE BID BACK AT THE ITT STAGE - SUCCESSFUL TENDERER'S DISASTER RECOVERY PLAN TO BE INSERTED AT CONTRACT AWARD.]

SCHEDULE 9 - EMPLOYEES

1. DEFINITIONS

In this Schedule, the following words and phrases shall have the meanings set out below:

Affected Services	has the meaning given to it in Paragraph 8.8;
Anticipated Assigned Employees	has the meaning given to it in Paragraph 8.2.1;
ASBO	means an antisocial behaviour order;
Assigned Employees	has the meaning given to it in Paragraph 8.1;
Convictions	means, other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);
Directive	means Council Directive 23/2001/EEC;
Employee Liability Information	means the employee liability information to be provided pursuant to Regulation II of TUPE;
Employees	means all those employees of the Service Provider (and any sub-contractor appointed by the Service Provider) wholly or mainly engaged immediately prior to the relevant Service Commencement Date in providing the relevant Services or any service similar to one or more of the relevant Services;

Final Information	Retendering	has the meaning given to it in Paragraph 8.3.2;
Initial Information	Retendering	has the meaning given to it in Paragraph 8.2.8;
Outgoing Provider	Service	means Computershare Investor Services plc or any of its sub-contractors as appropriate;
Relevant Authority		means any court with the relevant jurisdiction and any local, national or supra-national agency, local authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Employees		means any employees who are the subject of a Relevant Transfer;
Relevant Transfer		means a relevant transfer of an undertaking for the purposes of TUPE;
Relevant Transfer Date		means in respect of any of the Services the date on which the Service Provider ceases to provide that Service or those Services whether upon expiry or earlier termination of this Agreement or pursuant to any notice served by the Authority or for any other reason;
Retendering Information		has the meaning given to it in Paragraph 8.5;
Transferring Employee		means any employee of the Outgoing Service Provider or any of its sub-contractors (excluding, without limitation, any person engaged by the Outgoing Service Provider or any of its sub-contractors as an independent contractor) whose

contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between the Authority and the Service Provider, a contract of employment with the Service Provider or any of its Sub-Contractors.

TUPE

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 2001/23/EC) into English law;

2. EMPLOYEE PROVISIONS ON COMMENCEMENT

- 2.1. The Parties agree that the commencement of the provision of the Services by the Service Provider may be a Relevant Transfer and that if it is a Relevant Transfer the contracts of employment (together with any collective agreement) of or relating to any employees of the Outgoing Service Provider assigned to the provision of services to the Authority immediately prior to the Service Commencement Date which services are equivalent to the Services shall have effect (subject to Regulation 4 (7) of TUPE) thereafter as if originally made between those employees and the Service Provider or a Sub-Contractor as appropriate except insofar as such contracts relate to any benefits for old age, invalidity or survivors under any occupational pension scheme (save as required under sections 257 and 258 of the Pensions Act 2004).
- 2.2. The Service Provider shall and shall procure that any affected Sub-Contractor shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Agreement and shall indemnify the Authority against any losses, damages, costs, claims or expenses sustained as a result of any breach of this Paragraph by the Service Provider and any relevant Sub-Contractor.
- 2.3. The Service Provider shall be responsible and shall procure that any relevant Sub-Contractor shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of any Transferring Employees and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all

wages, holiday pay, bonuses, commission, payment of paye, national insurance contributions, pension contributions and otherwise, from and including the Service Commencement Date.

- 2.4. The Authority gives and shall give no warranty as to the accuracy or completeness of any Employee Liability Information (as defined by TUPE) or any other information supplied by the Authority or the Outgoing Service Provider or any of its sub-contractors to the Service Provider in relation to any employees of the Outgoing Service Provider or any of its sub-contractors.
- 2.5. The Service Provider shall, and shall procure that each and every Sub-Contractor shall, take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Agreement takes place smoothly with the least possible disruption to the provision of the Services and to the employees who transfer.

3. **UNION RECOGNITION**

- 3.1. The Authority shall use reasonable endeavours to procure that the Outgoing Service Provider Contractor shall supply to the Service Provider no later than five (5) Business Days prior to the Service Commencement Date true copies of any union recognition agreement(s) relating to any employees assigned by the Outgoing Service Provider or any of its sub-contractors to the provision of services equivalent to the Services and the Service Provider shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor) after the transfer to the same extent as they were recognised by the Outgoing Service Provider or its sub-contractors before the Service Commencement Date.
- 3.2. The Service Provider shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Agreement, the new Sub-Contractor shall (if relevant in accordance with TUPE) recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of any of the Services.
- 3.3. The Service Provider shall and shall procure that any Sub-Contractor shall not adversely amend any terms and conditions of employment of any employee engaged in the provision of any of the Services where the amendment of such terms

and conditions is governed by any collective agreement applicable to the relevant employees' employment, in which case any such adverse amendment of terms and conditions shall take place in accordance with the terms of the applicable collective agreement. This Paragraph 3.3 shall not apply in the case of amendments to terms and conditions required to comply with Law.

4. AUTHORITY INDEMNITY

4.1. Subject to the provisions of Paragraphs 4.2 and 4.3 (below), the Authority shall indemnify the Service Provider and any relevant Sub-Contractor against any claims, demands and proceedings brought against the Service Provider or any relevant Sub-Contractor against any costs, liabilities and expenses (including reasonable legal fees) arising out of or in connection with:

4.1.1. any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Outgoing Service Provider or any of its sub-contractors in respect of any Transferring Employee on or before the Service Commencement Date;

4.1.2. all emoluments and other benefits of the Transferring Employees arising in respect of the period prior to the Service Commencement Date regardless of when they fall due for payment; and

4.1.3. any act or omission of the Outgoing Service Provider or any of its sub-contractors up to and including the Service Commencement Date in respect of the employment of the Transferring Employees.

4.2. Where any liability in relation to any Transferring Employee, in respect of his or her employment by the Outgoing Service Provider or any of its sub-contractors, or the termination of such employment, which transfers in whole or part in accordance with TUPE and/or the Directive, arises partly as a result of any act or omission occurring on or before the Service Commencement Date and partly as a result of any act or omission occurring after the Service Commencement Date, the Authority shall

indemnify and keep indemnified in full the Service Provider or the relevant Sub-Contractor against only such part of the damages, losses, liabilities, costs or expenses sustained by the Service Provider or any Sub-Contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Service Commencement Date.

- 4.3. The indemnity contained in Paragraph 4 shall apply to the extent that the Authority recovers any sum in respect of the subject matter of those indemnities from the Outgoing Service Provider under any indemnity or other legal entitlement it has against the Outgoing Service Provider. The Authority shall use all reasonable endeavours to recover any such sums under any such entitlement as is mentioned in this Paragraph 4.3.

5. SERVICE PROVIDER INDEMNITIES

- 5.1. The Service Provider shall indemnify the Authority and any New Service Provider against any claims, demands and proceedings brought against the Authority or the New Service Provider against any costs, liabilities and expenses (including reasonable legal fees) arising out of or in connection with:

- 5.1.1. any claim or demand by any Relevant Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, sexual orientation, religion or religious belief, age, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Service Provider or any Sub-Contractor in respect of any Relevant Employee on or after the Service Commencement Date;
- 5.1.2. all emoluments and other benefits of the Relevant Employees arising in respect of the period on or after the Service Commencement Date regardless of when they fall due for payment;
- 5.1.3. any act or omission of the Service Provider or a Sub-Contractor on or after the Service Commencement Date in respect of the employment of the Relevant Employees; and

- 5.1.4. any claim by any person other than a Relevant Employee relating to that person's employment or its termination by the Service Provider or a Sub-Contractor whether before, on or after the Service Commencement Date.
- 5.2. The Service Provider shall indemnify and keep indemnified in full the Authority and any New Service Provider against all damages, losses, liabilities, costs and expenses incurred by the Authority in connection with or as a result of:
- 5.2.1. any claim by any Relevant Employee that any proposed or actual substantial change by the Service Provider or any Sub-Contractor to the Relevant Employee's working conditions or any proposed measures of the Service Provider or the relevant Sub-Contractor are to that employee's detriment whether such claim arises before or after the Service Commencement Date; and
- 5.2.2. any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Service Provider or any Sub-Contractor to the Relevant Employees or their representatives whether before on or after the Service Commencement Date and whether liability for any such claim arises before on or after the Service Commencement Date.
- 5.3. The indemnities in Paragraphs 5.1 and 5.2 (above) shall not apply in respect of any sum for which the Authority is to indemnify the Service Provider or a relevant Sub-Contractor pursuant to Paragraph 4 (Authority Indemnity) (above) or to the extent that the claim arises from a wrongful act or omission of the Authority or any New Service Provider.

6. PROVISION OF DETAILS AND INDEMNITY

- 6.1. The Service Provider shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Authority provide to the Authority details of any measures which the Service Provider or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Authority and any new Service Provider against all damages, losses, liabilities, costs and expenses resulting from any failure by the Service Provider to comply with this obligation.

7. **EMPLOYMENT PROVISIONS APPLYING DURING THE PROVISION OF THE SERVICES**

7.1. The Service Provider shall during the Term of this Agreement be entirely responsible for the employment and conditions of service of all employees engaged in the provision of the Services and shall procure that all Sub-Contractors are likewise responsible for their staff.

7.2. The Service Provider shall procure that:

7.2.1. there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for the Services; and

7.2.2. all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Agreement.

7.3. The Service Provider shall procure that there are set up and maintained and applied by it and by all Sub-Contractors involved in the provision of the Services, appropriate personnel policies and procedures covering all relevant matters, including but not limited to:

7.3.1. equal opportunities and the avoidance of unlawful discrimination, harassment and victimisation;

7.3.2. confidentiality;

7.3.3. discipline, grievance and performance management;

7.3.4. health and safety; and

7.3.5. the avoidance of bribery and corruption.

The Service Provider shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Standards and that they are published in written form.

- 7.4. All persons engaged in the provision of the Services shall be appropriately experienced, qualified, trained and security cleared and shall undertake the Services with reasonable skill, care and diligence in accordance with this Agreement and Good Industry Standards and to the reasonable satisfaction of the Authority.
- 7.5. The Service Provider shall supervise and manage the Service Provider Personnel appropriately.
- 7.6. The Service Provider shall ensure that all employees engaged in the provision of the Services from time to time (whether employed or engaged by the Service Provider or any Sub-Contractor) are in possession of valid work permits or other appropriate evidence of a right to work in the United Kingdom.
- 7.7. The Service Provider shall procure that before any person begins to provide the Services or any part(s) of the Services:
- 7.7.1. they are questioned (to the extent permitted by Law) as to whether they have any Convictions or ASBOs;
 - 7.7.2. the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service ("**DBS**") in respect of that person; and
 - 7.7.3. to the extent permitted by Law and Guidance (and subject to the Service Provider procuring that each such person consents to the Service Provider informing the Authority that the results of any such check are satisfactory), the Service Provider shall confirm to the Authority that the results of any such checks are satisfactory.
- 7.8. The Service Provider shall procure that no person who discloses any Convictions or ASBOs, or who is found to have any Convictions following the results of a DBS check, or who refuses to consent to having a DBS check carried out, shall be employed or engaged in the provision of any of the Services without the Authority's prior written consent.
- 7.9. The Service Provider shall procure that the Authority is kept advised at all times of any person engaged in the provision of the Services (whether by the Service Provider or any Sub-Contractor) who, subsequent to his/her assignment to the provision of the Services, receives a Conviction or ASBO or whose previous Conviction(s) or ASBO(s) become known to the Service Provider. The duty to keep

the Authority advised as described in this Paragraph 7.9 shall arise as soon as the Service Provider becomes aware of, or ought reasonably to have become aware of, such Conviction(s) or ASBO(s). The Authority reserves the right to require the Service Provider with immediate effect to redeploy any such person such that they are not engaged in the provision of the Services.

- 7.10. The Authority (acting reasonably) may where the Authority has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the provision of any or all of the Services.
- 7.11. Where the Authority reasonably requires (by notice to the Service Provider) that any person is not to become involved in or is to be removed from involvement in the Services, the Service Provider shall take all reasonable steps to comply with such notice. The Service Provider shall replace any such person with someone with equivalent experience, qualifications, training and security clearance.
- 7.12. Any decision by the Authority as to whether any person is not to become involved in or is to be removed from involvement in the Services shall be final and conclusive.
- 7.13. The Service Provider (including its agents and employees) shall and shall procure that all Service Provider Personnel and Sub-Contractors shall comply with the provisions of Clause 13 (Discrimination) at all times throughout the Term of this Agreement.

8. **EMPLOYEE PROVISIONS ON EXPIRY/TERMINATION**

- 8.1. The Parties agree that where the Services or any part of the Services ceases to be provided by the Service Provider for any reason and/or where the Services or any part of the Services are to be provided by the Authority or by a New Service Provider, the Service Provider and the Authority or the New Service Provider as appropriate may be bound by and (if so) shall observe the application of TUPE in relation to those employees wholly or mainly engaged by the Service Provider or a Sub-Contractor in the Services or that part of the Services which shall cease to be provided by the Service Provider immediately before the Relevant Transfer Date ("**Assigned Employees**").
- 8.2. The Service Provider shall within twenty (20) Business Days of receipt of a written request by the Authority (provided that the Authority shall only be entitled to make

one (1) such request in any six (6) month period) and not later than six (6) months prior to the expiry of this Agreement (or, if earlier, within twenty (20) Business Days from and including the date of notice being given of termination of this Agreement), provide the Authority (at no cost to the Authority) with the following initial retendering information:

- 8.2.1. a list of people anticipated to be Assigned Employees ("**Anticipated Assigned Employees**"), including details of their job titles, age, length of continuous service, current remuneration, benefits and notice, but not identifying the Anticipated Assigned Employees by name;
- 8.2.2. a list of agency workers, agents and independent contractors engaged by the Service Provider and any Sub-Contractor;
- 8.2.3. the total payroll bill of the Anticipated Assigned Employees;
- 8.2.4. the terms and conditions of employment of the Anticipated Assigned Employees;
- 8.2.5. details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings in respect of the Anticipated Assigned Employees;
- 8.2.6. details of any claims, current or threatened, brought by the Anticipated Assigned Employees or their representatives;
- 8.2.7. details of all death, disability benefit or permanent health insurance schemes and other similar arrangements with or in respect of the Anticipated Assigned Employees including the identities of any such employees in receipt of benefits under any such scheme; and
- 8.2.8. details of all collective agreements relating to or affecting the Anticipated Assigned Employees, with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes or claims for recognition by any trade union,

the ("**Initial Retendering Information**").

- 8.3. The Service Provider shall and shall procure that all Sub-Contractors shall:

- 8.3.1. notify the Authority and (at the request of the Authority) the New Service Provider) forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 8.3.2. provide to the Authority within five (5) Business Days after the date Relevant Transfer Date information, which was correct as at the Relevant Transfer Date, in respect of the Assigned Employees on all the same matters as should be provided in respect of the Retendering Information. This is the "**Final Retendering Information**"; and
 - 8.3.3. comply with its obligations under TUPE in relation to the provision of Employee Liability Information to the New Service Provider.
- 8.4. The Authority shall keep such information confidential and shall use it for the sole purpose of a tender exercise for the provision of services equivalent to the Services following the expiry or termination of this Agreement, in which case the information may, with the consent of the Service Provider (which consent shall not be unreasonably withheld or delayed) be disclosed by the Authority:
- 8.4.1. to any organisation proposing to submit a tender for the provision of such services, in a form which does not breach any provisions of the DPA; and/or
 - 8.4.2. to a New Service Provider.
- 8.5. The Service Provider shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any New Service Provider against all damages, losses, liabilities, costs and expenses arising from any claim by any person as a result of the Service Provider or any Sub-Contractor failing to provide or promptly to provide the Authority and/or any New Service Provider where requested by the Authority with any **Retendering Information** (which expression shall include the Initial Retendering Information, all material changes to the Initial Retendering Information which the Service Provider is obliged to provide under Paragraph 8.3 (above) and the Final Retendering Information) and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply to the extent that such information was originally provided

to the Service Provider by the Authority and was materially inaccurate or incomplete when originally provided.

- 8.6. The Service Provider shall and shall procure that any Sub-Contractor shall maintain current adequate and suitable records regarding the service of each of the Relevant Employees including without limitation details of terms of employment, payments of statutory sick pay and statutory and non-statutory maternity pay, disciplinary grievance and health and safety matters, income tax and social security contributions and any enhanced redundancy entitlement in excess of statutory redundancy pay and (save to the extent prohibited by Law) shall transfer the same or a complete copy of the same to the Authority or any New Service Provider within ten (10) Business Days from and including the date of the transfer by operation of TUPE of each Relevant Employee to whom the records refer.
- 8.7. The Service Provider shall co-operate in seeking to ensure the orderly transfer of the Relevant Employees to the Authority and/or the New Service Provider.
- 8.8. The Service Provider undertakes to the Authority that, with effect from the Exit Assistance Commencement Date and in respect of the Services which will expire or terminate at the Relevant Transfer Date (the "**Affected Services**"), the Service Provider shall not and shall procure that Sub-Contractors shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
 - 8.8.1. amend or vary (or purport or promise to amend or vary the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Anticipated Assigned Employee other than a wage/salary award in line with those offered generally for similar status individuals, as required by Law or necessary to give effect to a pre-existing contractual entitlement;
 - 8.8.2. terminate or give notice to terminate the employment or engagement of any Anticipated Assigned Employee (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 8.8.3. transfer away, remove, reduce or vary the involvement of any Anticipated Assigned Employee from or in the provision of the Affected Services; and/or

- 8.8.4. recruit or bring in any new or additional individuals to provide the Affected Services who are not already involved in providing the Affected Services.
- 8.9. The Service Provider shall or shall procure that all wages, salaries and other benefits of the Relevant Employees and other employees or former employees of the Service Provider or the Sub-Contractors who had been engaged in the provision of the Services before the Relevant Transfer Date and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Relevant Employees and such other employees or former employees of the Service Provider or Sub-Contractors up to the Relevant Transfer Date are satisfied and the Service Provider shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any New Service Provider against all damages, losses, liabilities, costs and expenses arising from any breach of the Service Provider's obligations under this Paragraph 8.9.
- 8.10. Without prejudice to Paragraph 8.9 (above), the Service Provider shall:
- 8.10.1. remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Service Provider's or the Sub-Contractor's employees (other than the Relevant Employees) on or after the Relevant Transfer Date and shall indemnify the Authority and any New Service Provider against all damages, losses, liabilities, costs and expenses incurred by the Authority or any New Service Provider resulting from any claim whatsoever whether arising before on or after the Relevant Transfer Date by or on behalf of any of the Service Provider's or Sub-Contractor's current or former employees who are not Relevant Employees; and
- 8.10.2. in respect of those employees who are Relevant Employees, the Service Provider shall indemnify the Authority and any New Service Provider against all damages, losses, liabilities, costs and expenses incurred by the Authority or any New Service Provider resulting from any claim whatsoever by or on behalf of any of such Relevant Employees arising out of or in respect of the period on or after the Service Commencement Date but on or before the Relevant Transfer Date (whether any such claim, attributable to the period up to and on the Relevant Transfer Date, arises before, on or after the Relevant Transfer Date) where such claim arises out of any act, fault or omission of the Service Provider and/or any Sub-Contractor including but not limited to any failure by the Service

Provider or any Sub-Contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any New Service Provider.

8.11. The Service Provider shall discharge all of its obligations arising under TUPE in respect of or in connection with its ceasing to provide any of the Services for any reason (and in particular under Regulations 11, 13 and 14 of TUPE and/or Article 6 of the Directive) and acknowledges that the indemnities it gives in Paragraph 8.10 (above) shall be without prejudice to:

8.11.1. any remedies available to the Authority or any New Service Provider in respect of any alleged failure by the Service Provider to discharge such obligations (and in particular under Regulation 12 of TUPE); or

8.11.2. any arguments which the Authority may wish to advance in defence of any claims made by employees or their representatives in respect of any alleged breaches of Regulations 13 and 14 of TUPE and/or Article 6 of the Directive.

8.12. The Service Provider shall comply, and procure that Sub-Contractors shall comply, with its or their obligations under Regulations 11, 13 and 14 of TUPE in relation to any transfer as contemplated in Paragraph 8.1 (above) and shall indemnify the Authority and the New Service Provider against any failure by it to so comply except where such failure is occasioned by the default of the Authority or the New Service Provider.

8.13. The Authority may in its discretion assign the benefit of the indemnities set out in this Schedule 9 (Employees) to the New Service Provider.

9. SUB-CONTRACTORS

9.1. In the event that the Service Provider enters into any sub-contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Schedule 9 (Employees) and shall procure that each Sub-Contractor complies with such terms.

9.2. The Service Provider shall also procure that each Sub-Contractor shall impose obligations on any sub-contractors in the same terms as those imposed on it

pursuant to this Schedule 9 (Employees) and shall procure that each sub-contractor complies with such terms.

- 9.3. The Service Provider shall indemnify and keep the Authority indemnified in full against all damages, losses, liabilities, costs and expenses incurred by the Authority or any New Service Provider as a result of or in connection with any failure on the part of the Service Provider to comply with Paragraphs 9.1 or 9.2 (above) and/or any Sub-Contractor's failure to comply with such terms.

10. **RIGHTS OF NEW SERVICE PROVIDER**

- 10.1. Notwithstanding anything to the contrary provided in any other Clause or Schedule of this Agreement, it is agreed that any New Service Provider has the benefit of and may enforce the terms of any of the indemnities given by the Service Provider to the Authority in this Schedule 9 (Employees) subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

SCHEDULE 10 - EXIT PLAN

1. DEFINITIONS

- 1.1. In this Schedule 10 (Exit Plan), the following words and phrases shall have the meanings set out below:

Exiting Employees means such of the Service Provider Personnel whose contracts of employment transfer under TUPE to the Authority and/or any New Service Provider as at any Service Transfer Date;

Exit Management Plan means the plan to be agreed between the Authority and the Service Provider detailing the nature and extent of the Service Provider's obligations to provide Exit Assistance;

Exit Period has the meaning given to it in Paragraph 5.2 of this Schedule 10 (Exit Plan); and

Service Transfer Date means the date on which, as agreed by the Authority and the Service Provider, any Service is to be transferred to the Authority and/or any New Service Provider (as applicable).

2. PURPOSE

- 2.1. This Schedule 10 (Exit Plan) specifies the arrangements that shall be made by the Service Provider to ensure an effective and efficient transition of responsibility for the provision of the Services from the Service Provider to the Authority or to a New Service Provider in the event of the termination or expiry of this Agreement or termination of any part(s) of the Services.

3. EXIT MANAGEMENT STRATEGY

- 3.1. Within sixty (60) Business Days from and including the Service Commencement Date the Service Provider shall deliver to the Authority a draft Exit Management Plan. The Authority shall respond with comments on the draft Exit Management Plan within ten (10) Business Days from and including the date of its receipt by the

Authority from the Service Provider. The Service Provider shall produce a revised draft of the Exit Management Plan for approval within ten (10) Business Days from and including the date of its receipt of comments from the Authority. Failure to agree the Exit Management Plan shall be dealt with in accordance with the Dispute Resolution Procedure.

3.2. Within twenty (20) Business Days from and including the date of each anniversary of the Service Commencement Date the Service Provider shall review and update the Exit Management Plan to take account of any agreed changes to the Services in place at the relevant time. For the avoidance of doubt, the draft updated Exit Management Plan shall include all details required to be included in an Exit Management Plan. The Authority shall respond with comments on the draft updated Exit Management Plan within ten (10) Business Days from and including the date of its receipt by the Authority from the Service Provider. The Service Provider shall produce a revised draft of the updated Exit Management Plan for approval within ten (10) Business Days from and including the date of its receipt of comments from the Authority. Failure to agree the updated Exit Management Plan shall be dealt with in accordance with the Dispute Resolution Procedure.

3.3. At least six (6) months prior to the expiry of this Agreement or no later than ten (10) Business Days after receipt of a notice pursuant to Clause 29 (Termination) of this Agreement or any part(s) of the Services, the Service Provider shall review and update the Exit Management Plan to take account of any agreed changes to the Services provided to the Authority in place at the relevant time. For the avoidance of doubt, the draft updated Exit Management Plan shall include all details required to be included in an Exit Management Plan. The Authority shall respond with comments on the updated draft Exit Management Plan within ten (10) Business Days from and including the date of its receipt by the Authority from the Service Provider. The Service Provider shall produce a revised draft of the Exit Management Plan for approval within ten (10) Business Days from and including the date of its receipt of comments from the Authority. Failure to agree the updated draft Exit Management Plan shall be dealt with in accordance with the Dispute Resolution Procedure.

4. **EXIT MANAGEMENT PLAN**

4.1. The Service Provider shall ensure that the Exit Management Plan comprehensively covers all activities and the associated liaison and assistance which should be

provided by the Service Provider for the successful transfer of the Services to the Authority and/or a New Service Provider.

4.2. The Exit Management Plan shall include (but not be limited to) the Service Provider providing:

- 4.2.1. a detailed description of the tasks to be performed in order to achieve an orderly transfer of the Services;
- 4.2.2. detailed estimates of the Service Provider resources required to perform the tasks and an indication of any Authority resources that may be required;
- 4.2.3. detailed estimates of the timescales necessary for the orderly execution of the Exit Management Plan;
- 4.2.4. a comprehensive chart showing which tasks are dependent on the completion of any other task or tasks;
- 4.2.5. disclosure of agreed documentation used by the Service Provider, the Service Provider Personnel and any Sub-Contractors in support of provision of the Services (including designs, specifications, operations manuals, user-related documentation);
- 4.2.6. disclosure of full details of all data relating to the Scheme;
- 4.2.7. 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;
- 4.2.8. disclosure of details of any training materials used in connection with the performance and delivery of the Services;
- 4.2.9. disclosure of details of the roles of Service Provider Personnel who are involved, on a full or part-time basis, in the provision of the Services and the proportion of their time and length of time of their involvement;
- 4.2.10. disclosure, subject to relevant provisions of the DPA governing the use, disclosure or processing of personal data, of the following details for those Service Provider Personnel who may reasonably be anticipated by the Authority to be entitled to claim under TUPE:

- 4.2.10.1. their terms and conditions of employment;
- 4.2.10.2. their current remuneration and benefits;
- 4.2.10.3. their age, date of commencement of employment and length of continuous service;
- 4.2.10.4. any contractual period(s) of notice; and
- 4.2.10.5. any outstanding or known claims or potential liabilities;
- 4.2.11. disclosure of full details of any third party contracts entered into by the Service Provider which relate to the Service Provider's provision of the Services (indicating which of these are third party contracts relating exclusively to the Services);
- 4.2.12. disclosure of full details of any relevant Intellectual Property used by the Service Provider in the provision of the Services, detailing ownership of the relevant rights and any restrictions or conditions applying to their use;
- 4.2.13. knowledge transfer to the Authority and/or the New Service Provider's personnel in connection with the continuation of the provision of the Services following the expiry or termination of this Agreement or termination of any part(s) of the Services;
- 4.2.14. disclosure of an inventory of any Authority Data that is under the control of the Service Provider and details of the data structures in which the Authority Data is stored;
- 4.2.15. proposals for the transfer of any Authority Data then in the Service Provider's possession from the Service Provider to either the Authority or to the New Service Provider, including:
 - 4.2.15.1. proposed data transfer methods, both physical and electronic (wherever possible); and
 - 4.2.15.2. proposed methods for ensuring the integrity of the Authority Data on transfer;

- 4.2.16. proposals for the assignment or novation, where applicable, of any third party contracts which the Parties agree are to be so transferred from the Service Provider to the Authority and/or a New Service Provider; and
 - 4.2.17. proposals for the supply of any other information or assistance reasonably required by the Authority or a New Service 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.
- 4.3. For the avoidance of doubt nothing in Paragraph 4.2 (above) shall be construed as requiring the Service Provider to provide any Commercially Sensitive Information belonging to the Service Provider to the extent that it is not necessary (as determined by the Authority in its absolute discretion) for the due and proper performance of the Services by the Authority or a New Service Provider.
5. **ASSISTANCE DURING THE EXIT PERIOD**
- 5.1. The date(s) from which the Service Provider shall provide Exit Assistance (the "**Exit Assistance Commencement Date**") shall be:
- 5.1.1. the date of any valid notice to terminate this Agreement;
 - 5.1.2. the date which is six (6) months prior to the expiry of this Agreement; and
 - 5.1.3. the date of any notice to terminate any part(s) of the Services.
- 5.2. The periods during which the relevant Exit Assistance shall be provided (the "**Exit Period**") shall be as follows:
- 5.2.1. in the event of termination of this Agreement or any part(s) of the Services by the Authority in the circumstances specified in Clauses 29.1 or 29.2 (Termination), such Exit Period as specified in writing by the Authority being no longer than six (6) months from and including the date that notice of termination is given to the Service Provider;
 - 5.2.2. in the event of termination of this Agreement or any part(s) of the Services in accordance with Clauses 29.3 or 29.4 (Termination), the Exit Period shall be from the date that notice of termination is given to the Service Provider until the date specified in the notice for expiry of the Exit Period

or if no such date is stated, the date of expiry of the relevant notice of termination, or such longer period as the Parties may agree; and

- 5.2.3. in the event of expiry of this Agreement the period of six (6) months prior to the date of expiry shall be the Exit Period.
- 5.3. At the commencement of each Exit Period the Service Provider shall appoint a representative to oversee the implementation of the Exit Assistance.
- 5.4. The Service Provider shall bear all its costs and expenses incurred in developing and implementing the Exit Management Plan.
- 5.5. The Service Provider shall ensure that provision of Exit Assistance shall not have any adverse effect on the provision of the Services and/or the Service Levels during the relevant Exit Period.
- 5.6. During each Exit Period the Service Provider shall maintain up to date information about the Services which are to expire or be terminated and the processes used by the Service Provider to provide the Services to ensure it complies with the terms of this Schedule 10 (Exit Plan).
- 5.7. During each Exit Period the Service Provider shall co-operate fully and in good faith with the Authority (and as applicable any New Service Provider or prospective New Service Provider) and provide all reasonable Exit Assistance. The Service Provider shall promptly and fully answer in a reasonable timescale and within no later than ten (10) Business Days (and, where applicable, in accordance with timescales prescribed in the Exit Management Plan) all reasonable questions about the Services which may be asked by the Authority or any New Service Provider or prospective New Service Provider regarding the successful provision of Replacement Services both before and for twelve (12) months from and including the date of termination of any parts(s) of the Services or this Agreement or expiry of this Agreement.
- 5.8. During each Exit Period, all information, details documentation and lists referred to in Paragraph 4.2 (above) for which disclosure is provided in the Exit Management Plan shall be provided by the Service Provider as soon as possible but in any event within one (1) month of the date of the Service Provider's receipt of the Authority's request or a later date if agreed in writing by the Parties. Any updates shall be provided by the Service Provider within one (1) month of any further request from

the Authority or later as may be agreed in writing by the Parties. Where any such information, details, documentation and lists have been provided, the Service Provider shall:

- 5.8.1. inform the Authority of any material change to such information, details, documentation and lists immediately on becoming aware of any such change; and
 - 5.8.2. promptly and within no later than five (5) Business Days clarify any matter or issue on which clarification is reasonably requested by the Authority and/or any New Service Provider.
- 5.9. Upon the appointment of any New Service Provider the Authority, the Service Provider and such New Service Provider shall review the Exit Management Plan and agree any required changes to such, having regard to the methods, processes and strategy to be used by the New Service Provider for transfer of responsibility of the relevant Services.
- 5.10. The Service Provider shall ensure that all Exit Assistance is provided in accordance with any agreed timetable(s) set out in the Exit Management Plan and otherwise in accordance with this Schedule 10 (Exit Plan).
- 5.11. During each Exit Period, the Service Provider shall provide progress reports to the Authority (at frequencies agreed and set out in the Exit Management Plan) detailing progress (or any lack of progress) towards completion of all required Exit Assistance obligations by reference to any agreed timescales and/or milestones.
- 5.12. Within ten (10) Business Days from and including the relevant Exit Assistance Commencement Date (or such other period agreed by the Authority in writing) the Service Provider shall identify those personnel whose co-operation and assistance will be essential to the successful provision of Exit Assistance and shall facilitate the Authority's (and any New Service Provider's) access to and the co-operation of such persons provided that such co-operation is reasonable and not onerous (in the Authority's absolute opinion).
- 5.13. Nothing in this Agreement shall prevent or restrict the Authority from disclosing to any New Service Provider any data, information and/or documentation received from the Service Provider pursuant to its obligations to provide Exit Assistance or otherwise pursuant to this Agreement.

5.14. Immediately following any notice of termination of this Agreement or a Service, and at least six (6) months prior to expiry of this Agreement the Service Provider must review all outstanding Changes initiated in accordance with the Change Control Procedure and identify the current status and costs incurred for each Change. The Authority and the Service Provider shall review each outstanding Change, and determine for each one whether:

5.14.1. the Change should be completed by the Service Provider, in which case the provisions of the Change Control Procedure shall apply; or

5.14.2. no further work should be undertaken by the Service Provider in respect of the Change, in which case the Authority shall not be required to pay to the Service Provider any costs in relation to the aborted Change. In the event that the termination occurs in accordance with Clauses 29.3 or 29.4 the Service Provider shall be entitled to recover all reasonable costs in respect of such Changes up to the date of service of the notice of termination in accordance with the provisions of the Charges and Invoicing Schedule.

6. INFORMATION PROVISION IN CONNECTION WITH INTENDED PROCUREMENTS

6.1. In the event that the Authority decides, at any time during or at the end of the Term, to commence a procurement or otherwise seek tenders for a New Service Provider, the Service Provider shall provide, at the request of the Authority and at its own cost, to such New Service Provider or prospective New Service Provider (as the case may be), such of the information, details and lists as specified in Paragraph 4.2 of this Schedule 10 (Exit Plan).

7. TRANSITION TO THE AUTHORITY OR A NEW SERVICE PROVIDER

7.1. On or prior to the Service Transfer Date, the Service Provider shall cease to use the Authority Data and shall transfer:

7.1.1. all Authority Data;

7.1.2. all information, data and documentation relating to the Relevant Employees; and

- 7.1.3. all IP owned and/or licenced to the Authority pursuant to this Agreement including rights to the underlying form and structure of any databases, to the Authority and or the New Service Provider (as the case may be).

SCHEDULE 11 - CONTRACT MANAGEMENT

1. PARTNERSHIP WORKING

- 1.1. The Authority and the Service Provider acknowledge the benefits accruing to each of them if this Agreement is performed in a spirit of co-operation and partnership. Accordingly, the Authority and the Service Provider shall each seek to work closely together in a spirit of trust and co-operation to facilitate effective performance by the Service Provider of the provision of the Services.

2. CO-OPERATION AND LIAISON

- 2.1. The Service Provider acknowledges that the successful provision of the Services requires the Service Provider to co-operate and liaise with other partners and stakeholders.
- 2.2. The Service Provider shall be under a general obligation to facilitate the development of the Scheme by co-operating with the Authority, its partners and stakeholders, including (without limitation):
- 2.2.1. attending liaison meetings where appropriate; and
 - 2.2.2. providing to other partners and stakeholders relevant information regarding the Services provided that such information is not Commercially Sensitive Information.

3. PROJECT BOARD

- 3.1. The Authority may implement a Project Board as a forum for communication and discussion between the parties at a senior level of strategic and other fundamental issues relating to the provision of the Services and this Agreement generally. Where implemented, the Project Board shall meet at the Authority's premises (unless otherwise agreed) at a frequency to be determined by the Authority. The Service Provider Scheme Manager shall attend meetings of the Project Board. In the event that the Service Provider Scheme Manager is unavailable, the Service Provider may nominate, with the consent of the Authority an alternative appropriate person (who shall be a relevant senior manager of the Service Provider) to attend meetings of the Project Board.

4. CONTRACT MANAGEMENT

- 4.1. The Service Provider shall appoint a contract manager who shall be responsible for the day-to-day delivery of the Services (the "**Service Provider Contract Manager**"). The Service Provider shall ensure that the Service Provider Contract Manager has the authority to take all day-to-day operational decisions in relation to the provision of the Services. The Service Provider Contract Manager shall not have the authority to make or agree amendments to this Agreement.
- 4.2. The Service Provider shall nominate a Scheme Manager who shall have overall responsibility for delivery of the Services to the Authority (the "**Service Provider Scheme Manager**"). The Service Provider shall ensure that the Service Provider Scheme Manager has the authority to take all strategic decisions in relation to this Agreement. The Service Provider Scheme Manager shall have the authority to make or agree amendments to this Agreement, such amendments to be made in accordance with the Change Control Procedure.
- 4.3. As at the Effective Date, the Service Provider Contract Manager shall be **[Note to Tenderers: To be taken from the Service Provider's Key Personnel.]** and the Service Provider's Scheme Manager shall be **[Note to Tenderers: To be taken from the Service Provider's Key Personnel.]**. The Service Provider shall not remove or replace the Service Provider Contract Manager or the Service Provider Scheme Manager unless:
- 4.3.1. requested to do so by the Authority;
 - 4.3.2. the Service Provider Contract Manager or Service Provider Scheme Manager (as relevant) resigns or is dismissed; or
 - 4.3.3. the Authority agrees to such removal or replacement (such agreement not to be unreasonably withheld or delayed).
- 4.4. Any replacement of the Service Provider Contract Manager or Service Provider Scheme Manager (as relevant) shall require the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).
- 4.5. The Authority shall appoint a contract manager who shall have overall responsibility for managing all issues arising out of the provision of the Services or otherwise arising out of this Agreement (the "**Authority Contract Manager**"). The identity of the Authority Contract Manager and his/her replacement from time to time shall be notified to the Service Provider in writing.

- 4.6. The Authority Contract Manager and Service Provider Contract Manager shall meet not less than once per quarter and during the period up to and including the first anniversary of the Service Commencement Date not less than once per month (unless otherwise notified by the Authority). The venue for the meeting shall, unless otherwise agreed, be at the Authority's premises. Either Party may request more frequent meetings with a view to:
- 4.6.1. ensuring that the other Party is fully briefed on relevant information material to this Agreement and to the provision of the Services;
 - 4.6.2. ensuring the successful and efficient operation of this Agreement and provision of the Services;
 - 4.6.3. considering operational issues with a view to improving the provision of the Services;
 - 4.6.4. settling at an early stage any potential areas of dispute without the need of a formal referral to the Dispute Resolution Procedure; and
 - 4.6.5. escalating areas of dispute within the Dispute Resolution Procedure.
- 4.7. No later than twenty (20) Business Days after each anniversary of the Service Commencement Date, the Authority and the Service Provider shall review the overall operation of the Agreement to assess:
- 4.7.1. the Service Provider's performance under the Agreement;
 - 4.7.2. whether the Services continue to meet the Authority's requirements; and
 - 4.7.3. whether the parties are working effectively together and to identify areas for improvement. Any changes to the Services that the parties agree to make as a result of such review shall be implemented in accordance with the Change Control Procedure set out in Schedule 6 (Change Control Procedure).

SCHEDULE 12 - KEY PERSONNEL

The Key Personnel for this Agreement are those named in the table below, subject to any replacement of Key Personnel during the Term in accordance with Clause 11 (Key Personnel):

Role	Skills and Experience	Key Personnel
[INSERT]	[INSERT]	[INSERT]

[NOTE TO TENDERERS: THIS SCHEDULE WILL BE POPULATED AT CONTRACT AWARD BASED ON THE INFORMATION IN THE SUCCESSFUL TENDERER'S TENDER SUBMISSION.]

SCHEDULE 13 - PERFORMANCE MANAGEMENT

DEFINITIONS

In this Schedule, the following words and phrases shall have the meanings set out below:

Assessment Date means the fourth (4th) anniversary of the Service Commencement Date;

Assessment Period means the period between the Service Commencement Date and the Assessment Date;

Monthly Service Statement means the statement produced in accordance with paragraph 4.2 of this Schedule 13 (Performance Management);

Performance Point means a performance point incurred by the Service Provider in accordance with Appendix 1 of this Schedule 13 (Performance Management);

Performance Threshold means the level of Service Provider performance required to trigger an extension of this Agreement as set out in Paragraph 8 below;

Remediation Plan means a brief summary prepared by the Service Provider and included in the Monthly Service Statement setting out (in respect of each failure to meet a Service Level in the relevant month):

- (a) the scale of the problem;
- (b) an outline of the steps that the Service Provider proposes to take

(or has taken) to rectify or improve its performance in respect of that Service Level; and

- (c) a statement as to the timescales within which the steps set out in (b) will be implemented; and

Service Rectification Plan has the meaning given to it in Paragraph 6.2 (below).

1. PURPOSE

- 1.1. This Schedule describes the performance management regime which is to be adopted by the Parties in relation to this Agreement. The performance management regime is to be used to measure the Service Provider's compliance with its obligations under this Agreement, including in the delivery of the Services.
- 1.2. In addition to the measurements set out in this Schedule 13, other processes shall be used by the Authority for measuring the Service Provider's performance including exercise of audit rights in accordance with Clause 33 and Schedule 5 (Audit, Access and Records).

2. COMPLIANCE WITH SERVICE LEVELS

- 2.1. During the Term, the Service Provider shall meet or exceed the Service Levels set out in Appendix 1 and take corrective action in the event of any failure to meet the Service Levels.
- 2.2. Where the Service Provider fails to meet a Service Level, the Service Provider shall accrue Performance Points in accordance with the Appendix 1 to this Schedule 13 (Performance Management). The Service Provider's failure to meet a Service Level shall not incur Performance Points where and to the extent that the Service Provider can reasonably demonstrate to the Authority that such failure:-
 - 2.2.1. was caused by a Force Majeure Event; or
 - 2.2.2. was caused by an Authority Default.

3. RE-PERFORMANCE

- 3.1. If any part of the Services is not performed in accordance with this Agreement then the Service Provider shall promptly re-perform or replace (where appropriate) the relevant part of the Services without additional charge to the Authority.

4. **REPORTING OBLIGATIONS**

- 4.1. The Service Provider shall ensure that it has appropriate systems and procedures in place to capture and report on compliance with Service Levels as required by this Schedule.
- 4.2. The Service Provider shall deliver a monthly performance management report to the Authority within five (5) Business Days from and including the first day of each month in respect of the previous month detailing performance in respect of each Service Level and against the Performance Threshold ("**Monthly Service Statement**"). Each such report shall identify any failures to meet the particular Service Level during the relevant month. The format of the monthly performance management report shall be agreed between the Parties during the Implementation Period.
- 4.3. Within five (5) Business Days of the Assessment Date, the Service Provider shall provide a report to the Authority (in such form and providing such information as the Authority may reasonably require) detailing performance against the Performance Threshold over the previous four (4) Contract Years to enable the Authority to determine whether or not the Performance Threshold has been met.

5. **BREACH OF INDIVIDUAL SERVICE LEVELS**

- 5.1. Where the Service Provider accrues Performance Points in respect of any Service Level in any month, the Service Provider shall, upon written request from the Authority, provide a Remediation Plan with the Monthly Service Statement.
- 5.2. The Authority may provide representations and/or comments on the Remediation Plan. The Service Provider shall take reasonable account of all comments and/or representations made by the Authority.
- 5.3. The Service Provider shall fully implement the Remediation Plan in accordance with its terms (including the timescales set out in the Remediation Plan).

6. **DEFAULT NOTICES AND REPEATED BREACHES OF SERVICE LEVELS**

6.1. Without prejudice to the generality of Paragraph 3 above, where the Service Provider is, in the reasonable opinion of the Authority, in material breach of its obligations under this Agreement or that the overall level of performance is materially deficient then, without prejudice to any other remedy available to the Authority, the Authority may serve upon the Service Provider a notice ("Default Notice") and the provisions of this Paragraph shall apply.

6.2. Where:

6.2.1. the Authority serves a Default Notice; or

6.2.2. the aggregate number of Performance Points accrued in a month exceeds fifty two (52); or

6.2.3. the mean average number of Performance Points accrued each month over any six (6) consecutive month period exceeds twenty four (24),

the Service Provider shall, unless notified otherwise by the Authority, prepare a written rectification plan ("**Service Rectification Plan**"). The Service Rectification Plan shall be issued to the Authority by the Service Provider's Scheme Manager and shall provide the following information:

6.2.4. identification of the scale of the problem; and

6.2.5. the steps that the Service Provider proposes to take to rectify or improve its performance including all failures to meet Service Levels; and

6.2.6. a statement as to how success in implementing the Service Rectification Plan will be measured; and

6.2.7. a statement as to the timescales within which the Service Rectification Plan will be implemented; and

6.2.8. such other information as may be reasonably required by the Authority.

The Service Rectification Plan shall be submitted by **5pm on the fifth (5th) Business Day** following but excluding the day of submission of the Monthly Service Statement in which the Performance Points are accrued to reach the thresholds set out above or by **5pm on the tenth (10th) Business Day** following the day of receipt of the Default Notice by the Service Provider. The Service Provider shall make such

amendments to the Service Rectification Plan as may reasonably be requested by the Authority.

6.3. The Authority shall approve the Service Rectification Plan as soon as reasonably practicable but in any event within ten (10) Business Days from and including the date of its submission to the Authority.

6.4. As soon as the Authority has approved the Service Rectification Plan, the Service Provider shall fully implement the Service Rectification Plan in accordance with its terms (including the timescales set out in the Service Rectification Plan).

6.5. If the Service Provider fails fully to implement the Service Rectification Plan in accordance with its terms (including timescales) then without prejudice to any other remedy available to the Authority, the Authority may:

6.5.1. implement the provisions of Clause 8 (Performance Management) of this Agreement with such failure being a Step-In Trigger; or

6.5.2. treat such failure as a Deemed Material Default.

7. SERIOUS UNDERPERFORMANCE

7.1. Should the Service Provider:

7.1.1. incur aggregate Performance Points each month in excess of fifty six (56) for three (3) or more consecutive months or for more than six (6) months in any Contract Year; or

7.1.2. be issued with two (2) or more Default Notices in any period of twelve consecutive months,

then this shall constitute a Deemed Material Default and the provisions of Clause 29 (Termination) shall apply.

8. PERFORMANCE THRESHOLD

8.1. The Performance Threshold shall be deemed to be satisfied if the total number of Performance Points accrued by the Service Provider during the Assessment Period does not exceed one thousand two hundred (1200).

9. CUSTOMER SATISFACTION SURVEYS

- 9.1. The Authority may from time to time request through the Change Control Procedure that the Service Provider undertake an agreed programme of customer satisfaction surveys.

10. **PROVISION OF STATISTICAL DATA**

- 10.1. The Service Provider shall deliver a bi-annual statistical data report to the Authority within five (5) Business Days of the date falling every six (6) months throughout the Term from the Service Commencement Date detailing the following (the "**Statistical Data Report**"):

- 10.1.1. The total number of Deposits in the Scheme at the end of the previous six (6) month period;
- 10.1.2. The total value of all Deposits in the Scheme at the end of the previous six (6) month period;
- 10.1.3. The total number of disputes between the Tenants and the Landlords resolved from the Service Commencement Date to the end of the previous six (6) month period;
- 10.1.4. The total number of complaints against the Scheme received from the Service Commencement Date to the end of the previous six (6) month period; and
- 10.1.5. Details of which category the complaints falling under Paragraph 10.1.4 (above) fall into, from the following categories:
 - 10.1.5.1. Quality of the service provision under the Scheme;
 - 10.1.5.2. Quality of guidance (including website) provided in relation to the Scheme;
 - 10.1.5.3. Quality (including independence) of the complaints system for the Scheme; and
 - 10.1.5.4. Complaints related to the ADR process.

Appendix 1

Service Levels

No.	KPI Description	Target	Actual Service Level (monthly)	Severity (Low/ Medium/ High/ Critical)	Performance Point Value	Remediation Plan Required?	Reporting Format (monthly)
1	Initial response to helpline calls by a customer service representative within the defined hours of operation.	60 Seconds	< = 60 Seconds		0	N	- Figure for average response time during period. - Breakdown of all individual calls.
			60 seconds < x < 75 Seconds	L	1		
			75 seconds < = x < 90 Seconds	M	2		
			> 90 seconds	C	4	Y	
2	Substantive response	5 Business	< 5 Business		-1	N/A	- Figure for average

	to written, email or web-based complaints.	Days	Days				resolution time during the period. - Breakdown of all individual enquiries.
			5 Business Days		0	N	
			5 Working Days < x < 6 Business Days	L	1		
			6 Business Days < = x < 7 Business Days	M	2		
			>7 Business Days	C	4	Y	
3	Response to written, email or web-based enquiries.	1 Business Day	< = 1 Business Day		0	N	- Figure for average resolution time during period. - Breakdown of all individual enquiries.
			1 Business Day < = x < 2 Business Days	L	1		

			2 Business Days $\leq x < 3$ Business Days	M	2		
			> 3 Business Days	C	4	Y	
4	24 hours a day, 7 days a week availability of web access to the system for End Users, exclusive of scheduled downtime.	99% availability	> 99% availability		-2	N/A	Figure on the percentage of:
			99% availability	L	0		
			98% $< 2 = x < 99\%$ availability	M	2		
			98% $8 < = x < 97\%$ availability	H	4		
			<97% availability	C	8	Y	
						N	- System Availability - Scheduled Downtime - Unscheduled Downtime
5	Resolution of	28 Days	< 28 days		-2	N/A	- Figure for average number

	disputes by the ADR. Measured from notification of dispute following agreement by both Landlord and tenant to use the ADR service.		28 days	L	0		of days between initial notification of dispute and resolution. - Unit breakdown for time to resolve each dispute.
			35 days $\geq x > 28$ days	M	2	N	
			42 days $\geq x > 35$ days	H	4		
			>42 days	C	8	Y	
6	Notification dispatched to Landlord and Tenant(s) of a final ADR decision. Measured from the day following Service Provider receipt of such notification from the ADR service.	2 days	< 2 days		-2	N/A	- Figure for average number of days between initial notification of resolution and despatch of notification to tenant. - Unit breakdown for time to dispatch notification of ADR decision for each dispute.
			2 days	L	0		
			3 days $\geq x > 2$ days	M	2	N	
			4 days $\geq x > 3$ days	H	4		
			>4 days	C	8	Y	
7	Scheduled reports,	As per	≥ 1 Business		-2	N/A	- Figure for the number of

	fully compliant, and provided to the Authority by the time specified in the Agreement. Measured from due date.	agreed reporting schedule	Day early				Business Days late.
			On time	L	0	N	
			Due date + 1 Business Day	M	2		
			Due Date + 2 Business Days	H	4		
			Due date + > 2 Business Days	C	8	Y	
8	Provisions of the Statistical Data Report under Paragraph 10 of this Schedule 13 (Performance Management).	As per agreed timescale under Paragraph 10 of this Schedule 13 (Performance	> = 1 Business Day early		-2	N/A	- Figure for the number of Business Days late.
			On time	L	0	N	
			Due date + 1 Business Day	M	2		
		ce	Due Date + 2 Business Days	H	4		

		Managem nt).	Due date + > 2 Business Days	C	8	Y	
9	Confirmation dispatched to Landlord of deposit protection and provision of required tenancy. Measured from the Business Day on which the tenancy is placed on protection with the Scheme.	3 Business Days	< 3 Business Days		-4	N/A	- Figure for average number of Business Days between the Deposit being protected and required information being sent to the Landlord. - Unit breakdown for time for each confirmation response.
			3 Business Days	L	0	N	
			4 Business Days > = x > 3 Business Days	M	4		
			5 Business Days > = x > 4 Business Days	H	6		
			> 5 Business Days	C	10	Y	
10	Return of disputed Deposits. Measured	5 Business Days	< 5 Business Days		-4	N/A	- Figure for average number of Business days between receipt

	from the Business Day the Service Provider receives receipt of confirmation of its release.		5 Business Days	L	0	N	of confirmation and return of the Deposit. - Unit breakdown for time for each Deposit return.
			6 Business Days $\geq x > 5$ Business Days	M	4		
			7 Business Days $\geq x > 6$ Business Days	H	6		
			7 Business Days	C	10	Y	

SCHEDULE 14 - SECURITY

1. PRINCIPLES

- 1.1. The Service Provider shall be responsible for ensuring the physical and technological security of:

1.1.1. the Service Provider Systems;

1.1.2. Authority Data; and

1.1.3. the Services,

and shall implement all appropriate security measures, investigate all actual or suspected security weaknesses, breaches and/or incidents and take any remedial action found to be necessary in connection with the Service Provider Systems, Authority Data and/or the Services.

2. SECURITY STANDARDS

- 2.1. Throughout the Term and in relation to all security issues, the Service Provider shall (and shall procure that all Sub-Contractors shall) have due regard to the principles and practices of BS 7799 for Information Security Management Systems and guidance in initiating, implementing or maintaining security within an organisation, it being acknowledged and agreed by the Parties that nothing in this Schedule 13 (Security) shall require the Service Provider to obtain certification by an external agency in relation to its practices under this Paragraph 2.1. The Service Provider shall in its sole discretion manage and control those aspects of the standard that it or its Sub-Contractors are required to comply with in a manner which is appropriate to the Services and its obligations under this Agreement. The Service Provider undertakes that it (and shall procure that its Sub-Contractors) do not apply a standard that is less onerous in relation to this Agreement than it applies to the remainder of its business as a financial services provider.
- 2.2. Upon request by the Authority at any time during the Term, the Service Provider shall demonstrate to the Authority that appropriate technical and non-technical security controls have been implemented and are operating effectively in accordance with this Agreement.

- 2.3. The Authority shall retain the right to inspect and examine at any time the design of security measures proposed or put in place by the Service Provider and, at the Authority's absolute discretion, to require the Service Provider to amend, suspend or remove any such security measures.
- 2.4. In all matters of security, the Service Provider shall provide the Authority with full details of any products, systems or processes proposed by the Service Provider in connection with its provision of the Services.

3. **SECURITY MANAGEMENT**

- 3.1. The Service Provider shall operate a security management function in relation to the Service Provider Systems. This shall include having:
- 3.1.1. a single named point of contact within the Service Provider organisation for security management;
 - 3.1.2. board-level responsibility for security within the Service Provider;
 - 3.1.3. an appropriate process within the Service Provider for escalation and resolution of security issues;
 - 3.1.4. security specialists with the necessary skills and experience (including risk assessment, technical design, security testing, vulnerability assessment and contingency planning) to fulfil the requirements of this Agreement;
 - 3.1.5. administrators with the necessary skills and experience to perform required security administration activities including setting up new users, Malicious Software clean-up, data back-up, system monitoring, the investigation of security incidents; and
 - 3.1.6. a person or team responsible for assessing the security implications of new technology or evaluating the opportunities presented by new security products and services.
- 3.2. The Service Provider shall implement and maintain a detailed security management process for the Service Provider Systems, which shall be agreed with the Authority during the Implementation Period for all environments (other than the Disaster recovery environment).

- 3.3. The Authority may, on the provision of notice which is reasonable in the circumstances (in the Authority's absolute opinion), convene such meetings as it considers necessary to deal with any security-related issues. The Service Provider shall ensure that the Service Provider Personnel nominated by the Authority are available to attend any such meeting.
- 3.4. Without prejudice to any obligations of the Service Provider under this Agreement, the Service Provider shall provide the Service Provider Personnel with appropriate training on security functions and procedures.
4. **SECURITY TEST PLANS AND THEIR IMPLEMENTATION**
- 4.1. During the Implementation Period for all environments (other than the Disaster recovery environment), the Service Provider shall produce a security testing strategy and plan in relation to the Scheme and the Services ("**Security Test Plan**").
- 4.2. The Security Test Plan shall also include:
- 4.2.1. the testing and acceptance process and proposals for the test/reference systems;
 - 4.2.2. responsibilities for security testing;
 - 4.2.3. categories of hosted system, security components and the types of testing (including functional testing, configuration vulnerability analysis, penetration testing) that shall be applied to each category;
 - 4.2.4. success criteria for each type of test; and
 - 4.2.5. pro-forma test plan(s).
- 4.3. The Service Provider shall ensure during the Term that an updated Security Test Plan is prepared where necessary following a Change to the Services and/or the Scheme. The Service Provider shall submit a copy of the updated Security Test Plan to the Authority on request.
- 4.4. The Service Provider shall be responsible for building and integrating the security controls to be provided as part of the Services. The security controls shall be tested under the security testing procedure set out in the Security Test Plan.

- 4.5. Upon request by the Authority, the Service Provider shall document the findings of any security testing and provide a security test report to the Authority.
- 4.6. New elements of the Services shall not be implemented until the relevant security testing has been conducted and, if a security test report has been requested, the security test report has been submitted to the Authority.
- 4.7. The Service Provider shall not use live Authority Data for test purposes (unless otherwise agreed in writing by the Authority).

5. ACCOUNTING AND AUDIT

- 5.1. The Service Provider shall implement, operate and maintain audit logs and trails for the Services throughout the Term.
- 5.2. The Service Provider shall review all audit logs and deal with any activity identified by those logs and trails in a timely manner.
- 5.3. The Service Provider shall ensure that the recording by audit controls is correct, consistent and effective by testing the logs and trails in accordance with its standard practices. Testing of the logs and trails should include testing those logs and trails which correspond to the timing of penetration testing activities arranged by the Authority.
- 5.4. The Service Provider shall document the findings of audit control testing to confirm the effectiveness of the security controls and provide an audit control security test report for acceptance by the Authority.

6. MONITORING AND SECURITY INCIDENT MANAGEMENT

- 6.1. The Service Provider shall ensure that all data, logs, documents and other relevant information relating to any security incident are kept securely. Such data, logs, documents and information shall not be destroyed unless the Service Provider has first obtained the written approval of the Authority.
- 6.2. The Service Provider shall produce, maintain and implement an agreed strategy for protection against, detection of and removal of Malicious Software.
- 6.3. During the Implementation Period for all environments (other than the Disaster recovery environment), the Service Provider shall document:

- 6.3.1. the timescales for undertaking the following activities:
 - 6.3.1.1. security administration activities including providing emergency access and taking back-ups off-site;
 - 6.3.1.2. responses to Malicious Software and provision of a clean-up service;
 - 6.3.1.3. provision of reports on security incidents and information as to the response to such security incident and prevention of other security incidents; and
- 6.3.2. a scheme for classifying security incidents (in terms of their severity) and the timescales within which the Service Provider shall be required to respond.

6.4. The Service Provider shall report all material security incidents:

- 6.4.1. impacting on the Services and/or the Scheme; or
 - 6.4.2. potentially impacting on the Services and/or the Scheme
- to the Authority's Contract Manager.

6.5. The Service Provider shall have in place appropriate monitoring systems to detect security-related issues.

7. **CHANGE CONTROL**

7.1. Each Impact Assessment conducted in accordance with the Change Control Procedure shall also include details of the impact of any proposed Change upon security including an assessment of the impact of the change on:

- 7.1.1. existing technical security arrangements;
- 7.1.2. the then current versions of the security policies and documentation referred to in this Security Schedule; and
- 7.1.3. any physical, administrative and personnel security arrangements required.

- 7.2. The Service Provider shall ensure that no Change is implemented unless a security risk assessment has been performed.

8. **LEGAL AND REGULATORY**

- 8.1. The provisions of this Paragraph 8 (Legal and Regulatory) are without prejudice to the requirements elsewhere in this Agreement for the Service Provider to comply with all applicable Laws and Data Standards in providing the Services.
- 8.2. The Service Provider shall maintain adequate records throughout the Term to enable verification by the Authority and its agents of compliance by the Service Provider with Laws and Data Standards and the policies and guidelines referred to at Paragraph 2.1 (Security Standards) of this Schedule 14 (Security). These records shall be made available to the Authority on request in accordance with Clause 33 (Rights of Audit and Access and Record Keeping) and Schedule 5 (Audit, Access and Records).

9. **DOCUMENTATION**

Technical security design documentation

- 9.1. The Service Provider's technical security design documentation shall be prepared by the date specified in the Implementation Plan and shall include all necessary security aspects related to the Services to be provided. The documentation shall be provided to the Authority on request and the Service Provider shall take reasonable account of any comments or representations made by the Authority following review of the documentation.

Other security documentation

- 9.2. The Service Provider shall maintain security documentation including:
- 9.2.1. an overall security strategy (defining the Service Provider's approach to maintaining a secure environment); and
 - 9.2.2. the technical security strategy (outlining the technical measures implemented by the Service Provider to maintain a secure hosting environment).
- 9.3. In respect of the documents described in Paragraph 9.2 (above), the Service Provider shall implement and maintain a document management and version control

system which enables clear identification of each document's history and revision trail.

- 9.4. The Service Provider shall comply with its established security operating procedures and ensure that those security-operating procedures are distributed to all relevant Service Provider Personnel.

SCHEDULE 15 - SUB-CONTRACTORS

[NOTE TO TENDERERS: TO BE BID BACK AT THE ITT STAGE - SCHEDULE TO BE POPULATED AT CONTRACT AWARD]

The approved Sub-Contractors as at the Effective Date are:

[INSERT FULL NAME, REGISTERED ADDRESS AND COMPANY NUMBER OF ALL SUB-CONTRACTORS.]

SCHEDULE 16 - COMMERCIALLY SENSITIVE INFORMATION

[NOTE TO TENDERERS: TO BE POPULATED AT CONTRACT AWARD IN ACCORDANCE WITH THE SUCCESSFUL TENDERER'S TENDER SUBMISSION.]

Commercially Sensitive Information	Duration of Commercial Sensitivity
[INSERT]	[INSERT]

SCHEDULE 17 - IMPLEMENTATION

1. DEFINITIONS

1.1. In this Schedule:

Achieve	means in respect of a Test, to successfully pass a Test without any Test Issues and in respect of a Milestone means completion of the event or task represented by the Milestone and " Achieved " shall be construed accordingly;
Correction Plan	means the Service Provider's plan for the remediation of any Delay;
Delay	means the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;
Implementation Plan	means the plan for the implementation of the Services (covering all implementation, migration and transition matters) set out in Appendix 1 (Implementation Plan) to this Schedule 17 (Implementation);
Milestone	means an event or task described in the Implementation Plan which (if applicable) must be completed by the relevant Milestone Date;
Milestone Achievement Certificate	means a document issued by the Service Provider certifying that a Milestone has been achieved and containing all the information prescribed in Paragraph 6.4 of this Schedule 17 (Implementation);
Milestone Confirmation	means a document issued by the Service Provider confirming a Milestone with no Milestone Outputs has been completed and

containing all the information prescribed in Paragraph 5.1 of this Schedule 17 (Implementation);

Milestone Date	means the date set against the relevant Milestone in the Implementation Plan;
Milestone Output	means any Milestone or output related to a particular Milestone that requires Testing;
Operational Phase	means the phase in which the Service Provider shall deliver the Services and commencing from the Service Commencement Date;
Pre-Operational Services	means the Services to be performed during the Implementation Period as set out in the Implementation Plan and including the Testing Procedures;
Revised Milestone Date	means any revised date which is set by the Authority Contract Manager to Achieve a Milestone;
Test	any test required to be carried out under this Schedule 17 (Implementation) and " Testing " shall be construed accordingly;
Test Issue	means any issue that arises during a Test whereby the Test is not completed successfully;
Test Success Criteria	means the criteria which once successfully met results in a Test being successfully completed; and
Testing Procedures	means the testing procedures specified by the Service Provider in respect of each Milestone Output, the successful culmination of which results in the Test Success Criteria being met.

2. PRINCIPLES

- 2.1. This Schedule 17 (Implementation) sets out the implementation and testing activities to be undertaken by the Service Provider to allow the Services and the Scheme to be fully operational at Service Commencement Date.
- 2.2. The Service Provider shall be responsible for Testing but the Authority reserves the right to monitor Testing or conduct its own tests.
- 2.3. Notwithstanding the provisions of this Schedule 17 (Implementation), the Service Provider shall remain solely responsible for ensuring that the Service Provider Method Statement, the Service Provider's information technology and the Service Provider's processes and systems allow the Service Provider to provide the Services in accordance with this Agreement and that the Service Levels are achieved during the Operational Phase.
- 2.4. Where the Service Provider is required to implement a Change through the Change Control Procedure such implementation of the Change shall be conducted in accordance with the principles and provisions relating to Tests, Testing, Delays and Milestones set out in this Schedule 17 (Implementation).

3. PRE-OPERATIONAL SERVICES

- 3.1. The Service Provider shall provide the Pre-Operational Services in accordance with the Implementation Plan.
- 3.2. The Service Provider shall provide weekly updates to the Authority throughout the Implementation Period on:
 - 3.2.1. the Service Provider's progress with the delivery of the Implementation Plan and the Pre-Operational Services; and
 - 3.2.2. notwithstanding Paragraph 7 (Implementation Delays) (below), any risks or issues that may or will impact on or result in a Delay and/or the Service Commencement Date not being met.
- 3.3. The Service Provider shall provide to the Authority by the earlier of:
 - 3.3.1. not less than fifteen (15) Business Days prior to a Milestone Date; or

- 3.3.2. not less than five (5) Business Days prior to commencing Tests on a particular Milestone Output,

a document clearly setting out the Testing Procedures and relevant Test Success Criteria. The Authority may provide representations and/or comments on the Testing Procedures and/or the Test Success Criteria. The Service Provider shall take reasonable account of all comments and/or representations made by the Authority and shall where necessary update the Testing Procedures and/or the Test Success Criteria before commencing the relevant Test(s).

4. MILESTONES

- 4.1. The Service Provider shall use its best endeavours to complete each Milestone by the relevant Milestone Date.
- 4.2. Failure to complete a Milestone by the relevant Milestone Date (including where a Milestone Output fails to satisfactorily pass the relevant Test(s)) shall be governed by Paragraphs 7 to 8 (inclusive) below.
- 4.3. When the Service Provider has completed the Pre-Operational Services in respect of a Milestone it shall:
- 4.3.1. where there is one (1) or more Milestone Output in respect of that Milestone, submit any Milestone Output for Testing utilising the Testing Procedures and Paragraph 6 (below) shall apply; or otherwise
- 4.3.2. issue the Authority with a Milestone Confirmation.

5. MILESTONE CONFIRMATION

- 5.1. The Milestone Confirmation shall:
- 5.1.1. detail the Pre-Operational Services carried out by the Service Provider in respect of the relevant Milestone; and
- 5.1.2. confirm and certify that all Pre-Operational Services in respect of the relevant Milestone have been satisfactorily completed; and
- 5.1.3. be signed by the Service Provider Scheme Manager on behalf of the Service Provider.

6. MILESTONE OUTPUTS

- 6.1. Each Milestone Output shall be submitted to Testing by the Service Provider prior to the relevant Milestone Date.
- 6.2. Where all Milestone Outputs for the relevant Milestone successfully pass the requisite Tests the Service Provider shall issue a Milestone Achievement Certificate to the Authority.
- 6.3. Where any or all of the Milestone Outputs for the relevant Milestone fail to pass the requisite Tests:

- 6.3.1. the Service Provider shall re-perform the relevant Pre-Operational Services; and

- 6.3.2. re-submit the Milestone Outputs to the relevant Tests,

and upon all Milestone Outputs successfully passing the relevant Tests, Paragraph 6.2 (above) shall apply.

Where any or all of the Milestone Outputs for the relevant Milestone fail to pass the requisite Tests by the Milestone Date even after the re-performance of the Pre-Operational Services and the re-submission of the Milestone Outputs to the relevant Tests, the that Milestone shall not be completed by the Milestone Date and Paragraphs 7 (Implementation Delays) and 8 (Delays to Milestones due to Authority Default) (below) shall apply.

- 6.4. The Milestone Achievement Certificate shall:

- 6.4.1. detail the Pre-Operational Services carried out by the Service Provider in respect of the relevant Milestone;

- 6.4.2. confirm that all Pre-Operational Services in respect of the relevant Milestone have been satisfactorily completed;

- 6.4.3. confirm that all relevant Tests have been undertaken;

- 6.4.4. certify that all relevant Tests have been successfully completed; and

- 6.4.5. be signed by the Service Provider Scheme Manager on behalf of the Service Provider.

7. IMPLEMENTATION DELAYS

- 7.1. If at any time the Service Provider becomes aware that it will not (or is unlikely to) Achieve any Milestone by the relevant Milestone Date it shall immediately notify the Authority of the fact of the Delay and summarise the reasons for it.
- 7.2. The Service Provider shall, as soon as possible and in any event not later than five (5) Business Days from and including the date of the initial notification under Paragraph 7.1 (above), provide to the Authority:
 - 7.2.1. full details in writing of:
 - 7.2.1.1. the reasons for the Delay;
 - 7.2.1.2. the duration of the Delay;
 - 7.2.1.3. the consequences of the Delay including confirmation on whether the Delay will result in the Service Provider being unable to deliver the Services on the Service Commencement Date; and
 - 7.2.1.4. if the Service Provider claims that the Delay is due to an Authority Default, the reason for making that claim; and
 - 7.2.2. a draft Correction Plan.
- 7.3. The draft Correction Plan shall identify the issues arising out of the Delay and the steps that the Service Provider proposes to take to Achieve the Milestone in accordance with this Agreement. The Authority may provide representations and/or comments on the draft Correction Plan. The Service Provider shall take reasonable account of all comments and/or representations made by the Authority and shall where necessary update the Correction Plan. The Service Provider shall comply with its Correction Plan once finalised.
- 7.4. The Authority Contract Manager shall:
 - 7.4.1. consider the duration of the Delay, the nature and the effect of the Delay on the Service Provider's ability to comply with the Implementation Plan and the draft Correction Plan;
 - 7.4.2. consult with the Service Provider Contract Manager in determining the effect of the Delay and finalising the Correction Plan;

- 7.4.3. fix a Revised Milestone Date; and
- 7.4.4. if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan.
- 7.5. If the Service Provider's analysis of the effect of the Delay in accordance with Paragraph 7.2 (above) permits a number of options, the Authority shall have the right to select which option shall apply.
- 7.6. The Authority shall not delay unreasonably when considering and determining the effect of a Delay or in agreeing a Change pursuant to the Change Control Procedure.
- 7.7. In all circumstances the Service Provider shall deploy all additional resources and take all reasonable steps to eliminate or mitigate the consequences of the Delay.
- 7.8. If, during the Implementation Period, a Delay occurs and the Authority considers, acting reasonably, that the Implementation Plan cannot be implemented by the Service Provider then the Authority shall be entitled to terminate this Agreement with immediate effect. No compensation shall be payable by the Authority to the Service Provider as a result of such termination and the provisions of Clause 29.5 (Consequences of expiry or termination) shall apply.
- 7.9. Any Change that is required to the Implementation Plan shall be implemented in accordance with the Change Control Procedure.
- 7.10. Any disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties shall continue to work to resolve the causes of and mitigate the effects of the Delay.

8. DELAYS TO MILESTONES DUE TO AUTHORITY DEFAULT

- 8.1. Where:
 - 8.1.1. the Service Provider considers that a Delay is being caused or contributed to by an Authority Default and has not been caused or contributed to by the Service Provider or as the result of any act or omission by the Authority to which the Service Provider has given its prior consent; and
 - 8.1.2. the Service Provider would have been able to Achieve the Milestone by its Milestone Date but has failed to do so as a result of an Authority Default,

the Service Provider shall have the rights and relief set out in this Paragraph 8 (Delays to Milestones Due to Authority Cause), subject always to the Service Provider fulfilling its obligations in Paragraph 7.1 and 7.2 (above).

8.2. The Service Provider shall:

8.2.1. be allowed an extension of time equal to the Delay caused by the Authority Default. The Service Provider shall provide the Authority with any information the Authority may require in order to assess the validity of the Service Provider's claim for an extension of time; and

8.2.2. not be in breach of this Agreement as a result of the failure to Achieve the relevant Milestone by its Milestone Date and the provisions of Paragraph 7.8 (above) will not apply to that Delay.

Appendix 1

Implementation Plan

**[NOTE TO TENDERERS: SUCCESSFUL TENDERER'S IMPLEMENTATION PLAN TO BE
INSERTED AT CONTRACT AWARD]**

SCHEDULE 18 - PERMITTED INVESTMENTS

All investments in accordance with this Schedule 18 (Permitted Investments) shall be deemed to be Permitted Investments:

1. All investment shall be in Sterling cash deposits in a bank or building society with an external rating of Single A (or equivalent) or better. If any bank or building society has a rating below Single A (or equivalent) from Standard & Poor, Moody's Investors Services Limited or Fitch Ratings Ltd that bank or building society shall not be eligible.
2. All Sterling cash deposits shall be backed at all times throughout the Term by a Sovereign Guarantee. If a bank or building society is backed by a Sovereign Guarantee but has a rating below Single A (or equivalent) from Standard & Poor, Moody's Investors Services Limited or Fitch Ratings Ltd that bank or building society shall not be eligible.
3. All investments shall (unless prohibited by regulatory provisions under sections 138A-O or 139A-B of the Financial Services and Markets Act 2000 (as amended)) be held as client money regulated by the Financial Conduct Authority and/or the Prudential Regulation Authority (as relevant) and be held on trust so as to ring-fence and maintain the segregation of such investments from the Service Provider's assets.
4. All investments shall automatically mature or be able to be withdrawn at the date of expiry of this Agreement or such earlier date on which this Agreement is terminated.
5. If a bank or building society ceases to meet the rating criteria in Paragraph 1 or 2 of this Schedule 18 (Permitted Investments) (above) during the term of an investment deposit, the investment deposit shall continue to be a Permitted Investment until it matures or until the next break period, whichever comes first, and provided that at maturity or at the next break period, whichever comes first, the Service Provider shall transfer the investment deposit into a Permitted Investment.
6. The Service Provider may invest:
 - 6.1. up to twenty-five per cent (25%) of the Deposit Pool in Permitted Investments for fixed periods (without break clauses which enable termination at no cost) greater than one (1) year but not exceeding five (5) years; and

- 6.2. the remainder of the Deposit Pool in Permitted Investments for fixed periods (without break clauses which enable termination at no cost) less than or equal to one (1) year provided:
- 6.2.1. any fixed period does not extend beyond the latest of the Original Expiry Date, any New Expiry Date or the date of expiry of any Minor Extension Period set in accordance with this Agreement (as applicable); and
- 6.2.2. the investment is assignable in accordance with Paragraph 8 (below) of this Schedule 18 (below) at no cost to the Authority.
7. The Service Provider shall be responsible for ensuring sufficient liquidity to enable repayment of the Deposits within the specified time period.
8. All investments shall be assignable to the Authority (or to a New Service Provider nominated by the Authority) on termination of this Agreement or termination of any part(s) of the Services (howsoever occurring) at no cost to the Authority.
9. Any investment continuing beyond the date of expiry or termination of this Agreement or the date of termination of any part(s) of the Services (as may be relevant) shall be capable of termination with immediate notice at no cost to the Authority at any time on or after the date of expiry or termination of this Agreement or the date of termination of any part(s) of the Services (as may be relevant).
10. The Service Provider shall provide to the Authority any details which the Authority may reasonably require relating to investments continuing beyond the date of expiry or termination of this Agreement or the date of termination of any part(s) of the Services (as may be relevant).
11. For the avoidance of doubt the Service Provider may enter into derivative contracts in its own name only for the purpose of hedging all or part of its exposure (or potential exposure) under this Agreement provided always that it does so at its own cost and at its own risk.

SCHEDULE 19 - DISPUTE RESOLUTION

1. ESCALATION PROCEDURE

- 1.1. The procedure in this Paragraph 1 (Escalation Procedure) shall apply to any Dispute (the "**Escalation Procedure**"). A Party may not invoke the procedure set out at Paragraph 2 (Expert Determination) (below) or initiate legal proceedings save for injunction relief unless this Escalation Procedure has been properly exhausted.
- 1.2. Disputes arising between the Parties shall be handled in the following manner:
 - 1.2.1. a Dispute shall, in the first instance be referred to the Level 1 representatives set out in the table at Paragraph 1.4 (below) for resolution at a meeting to be arranged as soon as practicable after the Dispute arises, but in any event within two (2) Business Days from and including the date of referral;
 - 1.2.2. if the Dispute cannot be resolved by the Level 1 representatives within three (3) Business Days from and including the date of such referral under Paragraph 1.2.1 (above), or within any other period agreed by the Parties after it has been referred to them, the Dispute shall be referred to the Level 2 representatives set out in the table at Paragraph 1.4 (below) for resolution, who shall meet within two (2) Business Days from and including the date of such referral or such other period as the Parties may agree in order to attempt to resolve the Dispute;
 - 1.2.3. if the Dispute cannot be resolved by the Level 2 representatives within three (3) Business Days from and including the date of such referral under Paragraph 1.2.2 (above), or within any other period agreed by the Parties after it has been referred to them, the Dispute shall be referred to the Level 3 representatives set out in the table at Paragraph 1.4 (below) for resolution, who shall meet within two (2) Business Days from and including the date of such referral or such other period as the Parties may agree in order to attempt to resolve the Dispute;
 - 1.2.4. if, after referral to the Level 3 representatives, the Dispute is not resolved by agreement in writing between the Parties within five (5) Business Days from and including the date of such referral under Paragraph 1.2.3

(above), or within any other period agreed by the Parties, either Party may request expert determination and/or be free to issue legal proceedings.

- 1.3. At any level of the Escalation Procedure set out above, if the Parties agree that the Dispute is a matter materially affecting any aspect of this Agreement or the relationship between the Parties, the Parties may elect immediately to escalate the Dispute to the next level and upon such election the Dispute shall be escalated to the next level in accordance with Paragraph 1.2 (above).
- 1.4. If any of the representatives of a Party named in the table below is unable to attend a meeting, the Party in question will ensure that a substitute with appropriate authority attends.

	Authority	Service Provider
Level 1	Authority's Contract Manager	Service Provider's Contract Manager
Level 2	Deputy Director for Housing Strategy and Support Directorate	[NOTE TO TENDERERS: THIS WILL BE INSERTED FROM YOUR KEY PERSONNEL AT CONTRACT AWARD.]
Level 3	Director for Housing Strategy and Support Directorate	[NOTE TO TENDERERS: THIS WILL BE INSERTED FROM YOUR KEY PERSONNEL AT CONTRACT AWARD.]

2. EXPERT DETERMINATION

- 2.1. Subject to Paragraph 2.3 (below), where in this Agreement a matter of fact (as opposed to law or mixed fact and law) is to be agreed and/or is disputed, either Party may request to the other that a single expert ("**Expert**") be appointed to determine or decide on the matter who shall be deemed to act as expert and not as arbitrator on the basis set out below.

- 2.2. If the matter of a Dispute is not a matter of fact, then Expert determination shall not apply.
- 2.3. No Dispute shall be referred to Expert determination under this Dispute Resolution Procedure until the Escalation Procedure has been exhausted, provided that the Parties shall be free to seek injunctive relief without reference of the Dispute to the Dispute Resolution Procedure.
- 2.4. The Expert shall be selected by the mutual agreement of the Parties or, failing agreement, within fifteen (15) Business Days after a request by either Party to the other, shall be chosen at the request of either Party by the President or other duly authorised officer for the time being of the Law Society of England and Wales who shall be requested to choose an impartial, suitably qualified and experienced Expert for the Dispute in question.
- 2.5. No later than fifteen (15) Business Days after the Expert has accepted the appointment, the Parties shall submit a written report on the Dispute to the Expert and to each other and five (5) Business Days thereafter shall submit any written replies they wish to make to the Expert and to each other.
- 2.6. Both Parties shall then afford the Expert all necessary assistance which the Expert requires to consider the Dispute including, but not limited to, full access to any documentation or correspondence relating to the Services.
- 2.7. The Expert shall be instructed to deliver his determination to the Parties within fifteen (15) Business Days after the submission of written reports pursuant to Paragraph 2.5 (above), or such other period as he may request and the Parties agree to.
- 2.8. Decisions of the Expert shall be final and binding and not subject to appeal, save in the case of manifest error or fraud.
- 2.9. The Expert shall have the same powers to require any Party to produce any documents or information to him and the other Party as an arbitrator and each Party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on disclosure in arbitration proceedings.
- 2.10. Each Party shall bear its own costs of the Expert determination save that the fees of the Expert shall be borne by the Parties in the proportion as shall be determined by

the Expert having regard (amongst other things) to the outcome of the determination and the conduct of the Parties.

SCHEDULE 20 - PARENT COMPANY GUARANTEE

[NOTE TO TENDERERS: THE PARENT COMPANY GUARANTEE WILL BE REQUIRED FROM THE ULTIMATE PARENT OF THE SERVICE PROVIDER.]

DATED

PARENT COMPANY GUARANTEE

in favour of

**THE SECURITY OF STATE FOR COMMUNITIES AND
LOCAL GOVERNMENT**

on account of

[INSERT NAME OF SERVICE PROVIDER]

THIS PARENT COMPANY GUARANTEE (the "**Guarantee**") is made by:-

- (1) [INSERT FULL NAME OF GUARANTOR] with company [INSERT COMPANY NUMBER] number whose registered office is at [INSERT REGISTERED ADDRESS] (the "**Guarantor**")

in favour of:

- (2) **THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT** of [INSERT ADDRESS] (the "**Beneficiary**").

WHEREAS:

- (A) [INSERT NAME, REGISTERED ADDRESS AND COMPANY NUMBER OF SERVICE PROVIDER] (the "**Company**") and the Beneficiary are parties to the Agreement (as defined below) pursuant to which the Company agrees to provide the Services (as more particularly described therein).
- (B) It is a condition precedent to the Beneficiary's performance under the Agreement that the Guarantor guarantees the obligations of the Company to the Beneficiary under the Agreement.
- (C) The Company is a direct subsidiary of the Guarantor and the Guarantor will derive substantial indirect and direct benefits from the Company's performance under the Agreement (which benefits are hereby acknowledged by the Guarantor).
- (D) Accordingly, to induce the Beneficiary to perform under the Agreement and in consideration thereof, the Guarantor hereby agrees as follows:-

1. INTERPRETATION

- 1.1. In this Guarantee, the following words and phrases shall have the meanings set out below:

"Agreement"	means a service concession agreement entered into between the Company and the Beneficiary relating to the implementation and administration of a custodial tenancy deposit scheme pursuant to the Housing Act 2004 and dated on or around
--------------------	---

[INSERT DATE];

"Dissolution"	of a person includes (without limitation) the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership, administration, voluntary arrangement, informal compromise with creditors or dissolution of that person and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction;
"Group"	the Guarantor and all its subsidiaries including, inter alia, the Company;
"Guarantor Documents"	this Guarantee and any and all other certificates, documents, agreements and instruments to be delivered by the Guarantor to the Beneficiary under or in connection with this Guarantee or the Agreement; and
"Guaranteed Obligations"	the meaning given to it in Clause 2 of this Guarantee (Guarantee and Indemnity) of this Guarantee.

1.2. All capitalised terms used in this Guarantee (including the recitals hereto) and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

1.3. In this Guarantee:

1.3.1. the Clause headings are included for convenience only and will not affect the construction or interpretation of this Guarantee;

1.3.2. any reference to a Recital or Clause is to the relevant recital to or Clause of this Guarantee (as the case may be);

1.3.3. use of the singular includes the plural and vice versa;

1.3.4. words importing a particular gender do not exclude other genders;

- 1.3.5. any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted;
- 1.3.6. any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms;
- 1.3.7. any reference to "persons" includes natural persons, firms, partnerships, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not having separate legal personality);
- 1.3.8. the words "in writing" and "written" shall be interpreted to include any document which is recorded in manuscript, typescript and any electronic communication (as defined in section 15 of the Electronic Communications Act 2000);
- 1.3.9. the words "day" and "month" mean calendar day and calendar month unless otherwise stated;
- 1.3.10. all references to the Parties include their permitted successors and permitted assigns.

2. **GUARANTEE AND INDEMNITY**

2.1. The Guarantor irrevocably and unconditionally:

- 2.1.1. guarantees to the Beneficiary the due and punctual payment of all sums validly due from the Company to the Beneficiary under the Agreement and the due and punctual performance by the Company of all the Company's obligations, services, liabilities, duties and undertakings of the Company to the Beneficiary under or in connection with the Agreement (the "**Guaranteed Obligations**");
- 2.1.2. undertakes with the Beneficiary that whenever the Company does not perform any of its obligations under the Agreement or does not pay any amount when validly due under or in connection with the Agreement or as

a result of any breach thereof, the Guarantor shall immediately on demand perform such obligations and/or pay such amounts as if it was the principal obligor; and

2.1.3. indemnifies the Beneficiary immediately on demand against any cost, loss, liability, damage or expense suffered or incurred by the Beneficiary arising out of or in connection with:

2.1.3.1. any failure of the Company to pay, perform or discharge any of the Guaranteed Obligations; or

2.1.3.2. any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter,

provided that the Guarantor's liability under this indemnity shall be no greater than the Company's liability under the Agreement was (or would have been had the relevant obligation been fully enforceable).

3. **LIABILITY OF THE GUARANTOR**

This Guarantee is a continuing Guarantee and shall continue in effect, be binding upon the Guarantor and extend to all obligations of the Company pursuant to the Agreement until performance in full of the Guaranteed Obligations, regardless of any intermediate payment or discharge in whole or in part, and is in addition to and not in substitution for any other security which the Beneficiary may at any time hold for the performance of such obligations.

4. **RELEASES AND RETENTION OF SECURITY**

4.1. Any release, settlement, discharge or arrangement between the Beneficiary and the Guarantor (a "**Release**") shall be subject to the condition that if any payment or satisfaction made or security or guarantee given in relation to the Guaranteed Liabilities by a person other than the Guarantor (a "**Relevant Transaction**") shall be avoided, reduced or invalidated by virtue of any applicable law or for any other reason whatsoever, then such Release shall be void and of no effect, and the Beneficiary may recover immediately the value or amount, or (as the case may be) the reduction in value or amount, thereof from the Guarantor as if such Release had not occurred.

- 4.2. Following a Relevant Transaction and notwithstanding any Release, the Beneficiary may retain any security from the Guarantor held by the Beneficiary in respect of the obligations of the Guarantor under this Deed ("**Relevant Security**") until the expiry of the Retention Period in respect of that Relevant Transaction. If at any time before the expiry of that Retention Period the dissolution of the person who has made or given the Relevant Transaction shall have commenced, the Beneficiary may continue to retain the Relevant Security as security for the obligations of the Guarantor under this Guarantee for such further period as the Beneficiary may determine.
- 4.3. For the purpose of Clause 4.2, "**Retention Period**" means, in relation to any Relevant Transaction, the period which commences on the date when that Relevant Transaction was made or given, and which ends on the date falling one month after the expiration of the maximum period within which that Relevant Transaction can be avoided, reduced or invalidated by virtue of any applicable law or for any other reason whatsoever.

5. **WAIVER OF DEFENCES**

The obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or the Beneficiary) including:

- 5.1. any time, waiver, consent, release or indulgence granted to, or composition with, the Company or other person;
- 5.2. the release of the Company, the Guarantor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- 5.3. the existence or non-existence, validity or invalidity taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, or remedy against the Company or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- 5.4. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Company, the Guarantor or any other person;
- 5.5. any amendment (however fundamental) or replacement of the Agreement or any other document or security;
- 5.6. any irregularity, unenforceability, illegality or invalidity of any obligation of any person under the Agreement or any other document or security;
- 5.7. the Dissolution of the Company, the Guarantor or any other person;
- 5.8. any change in the status, function, control or ownership of the Company, the Guarantor or other person;
- 5.9. any change in the constitution of the Company;
- 5.10. the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Company, the Beneficiary or any other person, or which the Company may have at any time against the Beneficiary, whether in connection with the Agreement or otherwise;
- 5.11. the granting by the Beneficiary to the Company of any other financial accommodation or the withdrawal or restriction by the Company of any financial accommodation, or the absence of any notice to the Guarantor of any such granting, withdrawal or restriction;
- 5.12. any change in the relationship between the Company and the Guarantor; and/or
- 5.13. any other thing done or omitted or neglected to be done by the Beneficiary or any other person or any other dealing, fact, matter or thing (including, but without limitation, any circumstances whatsoever affecting or preventing recovery of amounts under the Agreement) which, but for this provision, might operate to exonerate or discharge the Guarantor from, or otherwise prejudice or affect, any of the Guarantor's obligations under this Guarantee.

6. **CONSENTS OF THE GUARANTOR**

- 6.1. The Guarantor hereby unconditionally consents and agrees that, without notice to or further assent from the Guarantor, the time for the Company's performance of or compliance with any term, covenant or agreement on its part to be performed or

observed under the Agreement may be extended, or such performance or compliance consented to, all in such manner and upon such terms as the Beneficiary may deem proper.

- 6.2. The Guarantor hereby authorises the Company and the Beneficiary to make any addendum or variation to the Agreement, the due and punctual performance of which addendum or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee. The obligations of the Guarantor hereby shall in no way be affected by any variation or addendum to the Agreement.

7. **APPROPRIATIONS**

Any amount received by the Beneficiary in respect of all amounts which may be or become payable by the Company under or in connection with the Agreement shall first be applied in satisfaction of such amounts provided that nothing contained in this Clause 7 shall affect the continued obligations and liabilities of the Guarantor pursuant to this Guarantee until the termination of the Company's commitments under the Agreement and performance in full of all Guaranteed Obligations.

8. **SET-OFF AND TAXES**

- 8.1. All sums payable under this Guarantee shall be paid in full without set-off or counterclaim and free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties and/or other charges. A certificate or determination by the Beneficiary of any amount owing hereunder shall, in the absence of manifest error, be conclusive evidence thereof.
- 8.2. All payments to be made under this Guarantee shall be made in the currency in which the Guaranteed Obligations were expressed to be payable by the Company, and strictly in accordance with the terms of the Agreement.
- 8.3. If, under any applicable law, whether pursuant to a judgment against the Guarantor or the Dissolution of the Guarantor or for any other reason, any payment under or in connection with this Guarantee is made or falls to be satisfied in a currency (the "**Other Currency**") other than the currency in which the relevant payment is expressed to be payable (the "**Required Currency**"), then, to the extent that the payment actually received by the Beneficiary (when converted into the Required Currency at the rate of exchange on the date of payment or, if it is not practicable for the Beneficiary to make the conversion on that date, at the rate of exchange as soon

afterwards as it is practicable for the Beneficiary to do so or, in the case of a Dissolution, at the rate of exchange on the latest date permitted by applicable law for the determination of liabilities in such Dissolution) falls short of the amount expressed to be due or payable under or in connection with this Guarantee, the Guarantor shall, as an original and independent obligation under this Guarantee, indemnify and hold the Beneficiary harmless against the amount of such shortfall. For the purpose of this Clause, "**rate of exchange**" means the rate at which the Beneficiary is able on the relevant date to purchase the Required Currency with the Other Currency and shall take into account any commission, premium and other costs of exchange and taxes payable in connection with such purchase.

9. DEFERRAL OF GUARANTOR'S RIGHTS

Until all amounts which may be or become validly payable by the Company under or in connection with the Agreement have been irrevocably paid in full and unless the Beneficiary otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of the Company's obligations under the Agreement:

- 9.1. to claim or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Company;
- 9.2. to claim any set-off or counterclaim against the Company;
- 9.3. to prove in connection with the Beneficiary to claim or have the benefit of any security which the Beneficiary holds or may hold for any moneys or liabilities due or incurred by the Company to the Beneficiary;
- 9.4. to claim any contribution from any other guarantor of the Company's obligations under the Agreement; and/or
- 9.5. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Agreement or of any other guarantee or security taken pursuant to, or in connection with the Agreement by the Beneficiary.

10. ADDITIONAL SECURITY

This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Beneficiary provided that

should there have been performance in full of all Guaranteed Obligations by a third party pursuant to any other guarantee or security so held by the Beneficiary, then the Beneficiary shall not be entitled to enforce the obligations of the Guarantor pursuant to this Guarantee.

11. SUSPENSE ACCOUNTS

For the purpose of enabling the Beneficiary to sue the Company, the Guarantor or any other surety or prove in the dissolution of the Company, the Guarantor or any other surety for the whole of the Guaranteed Liabilities, or to preserve intact the liability of any other party, the Beneficiary may, for as long as the Guaranteed Liabilities have not been discharged and satisfied in full, at its sole discretion, place and retain on a suspense account, for as long as it considers fit, any moneys received, recovered or realised under or in connection with this Guarantee or under any other guarantee and/or indemnity or any security without any obligation on the part of the Beneficiary to apply the same in or towards the discharge of the Guaranteed Liabilities and without any right on the part of the Guarantor to sue the Company, the Guarantor or any other surety or to prove in the dissolution of the Company, the Guarantor or any other surety in competition with or so as to diminish any dividend or other advantage that would or might come to the Beneficiary or to treat the liability of the Company, the Guarantor or any other surety as diminished.

12. REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants to the Beneficiary that:-

- 12.1. each of the Guarantor and the Company is a corporation or partnership duly organised or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation, is qualified to do business and has all requisite power and authority to own its assets and carry on its business and, with respect to the Guarantor, to execute, deliver and perform its obligations under the Guarantor Documents;
- 12.2. the execution, delivery and performance by the Guarantor of this Guarantee and any other Guarantor Documents have been duly authorised by all necessary corporate action of the Guarantor, and do not and will not:
 - 12.2.1. contravene the terms of the certificate or articles, as the case may be, of incorporation or constitutional documents and the bylaws of the Guarantor

or result in a breach of or constitute a default under any indenture or Guaranteed Obligation or any other agreement, lease or instrument to which the Guarantor is a party or by which it or its properties may be bound or affected; or

12.2.2. violate any provision of any law, rule, regulation, order, writ, judgement, injunction, decree or the like binding on or affecting the Guarantor.

12.3. this Guarantee and the other Guarantor Documents constitute the legal, valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their respective terms; and

12.4. no authorisation, approval, license, exemption of, or filing or registration with, any governmental authority, or approval or consent of any other person, is required for the due execution, delivery or performance by the Guarantor of Guarantor Documents.

13. **NOTICES**

13.1. All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including by facsimile) and shall be mailed, sent or delivered:

13.1.1. if to the Beneficiary, at or to either its address or facsimile number below or to its address and facsimile number specified for notices to the Beneficiary under the Agreement; and

13.1.2. if to the Guarantor, at or to its address or facsimile number set forth below, or at or to such other address or facsimile number as such party shall have designated in a written notice to the other party.

13.2. All such notices and communications shall be effective:

13.2.1. if delivered by hand, upon delivery;

13.2.2. if sent by mail, upon the earlier of the date of receipt or ten (10) Business Days after deposit in the mail, first class, postage prepaid; and

13.2.3. if sent by facsimile, when sent.

13.3. The address and facsimile number of the Beneficiary are:

Address:

Fax

No:

FAO:

Copy to:

13.4. The address and facsimile number of the Guarantor are:

Address:

Fax

No:

FAO:

Copy to:

14. **BENEFITS OF GUARANTEE**

This Guarantee is entered into for the sole protection and benefit of the Beneficiary and its successors and assigns, and no other person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Guarantee.

15. **BINDING EFFECT AND ASSIGNMENT**

15.1. This Guarantee shall be binding upon the Guarantor and its successors and assigns, and inure to the benefit of and be enforceable by the Beneficiary and its successors, endorsees, transferees and assigns.

15.2. The Guarantor shall not have the right to assign or transfer its rights and obligations hereunder or under any other Guarantor Documents.

16. **GOVERNING LAW**

This Guarantee shall be governed by, and construed in accordance with, the law of England and Wales and the Guarantor hereby consents and submits itself to the

jurisdiction of the courts of England and Wales in any actions arising out of or connected with this Guarantee.

17. ENTIRE AGREEMENT, AMENDMENTS AND WAIVERS

17.1. This Guarantee and other Guarantor Documents constitute the entire agreement of the Guarantor with respect to the matters set forth herein and supersede any prior agreement, commitments, drafts, communications, discussions and understandings, oral or written, with respect thereto. There are no conditions to the full effectiveness of this Guarantee.

17.2. This Guarantee and the other Guarantor Documents may not be amended except by a writing signed by the Guarantor and the Beneficiary. No waiver of any rights of the Beneficiary under any provision of this Guarantee or consent to any departure by the Guarantor therefrom shall be effective unless in writing and signed by the Beneficiary. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

18. SEVERABILITY

Whenever possible, each provision of this Guarantee and the other Guarantor Documents shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Guarantee or any other Guarantor Document shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Guarantee or such Guarantor Document, as the case may be, or the validity or effectiveness of such provision in any other jurisdiction.

EXECUTED AND DELIVERED AS A DEED

[EXECUTION BLOCK TO BE INSERTED]

SCHEDULE 21 - BASE CASE

**[NOTE TO TENDERERS: THIS WILL BE THE FINANCIAL MODEL FOR THE SERVICES -
TAKEN FROM THE ITT SUBMISSION AND WILL BE INSERTED AT CONTRACT
AWARD]**