

39.1 The provisions of Clauses 1, 4.1.3, 10, 11, 12.1.4, 17.2.2, 17.2.3, 19.1.1, 19.1.2, 19.1.5, 19.1.6, 19.2, 22, 24-28 (inclusive), 29.2, 29.3, 30-41 (inclusive), 43-49 (inclusive), 50, and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

#### **40 RIGHTS OF THIRD PARTIES**

- 40.1 Save that any member of the Authority Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 (“Third Party Act”), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it except an Existing Service Provider and its sub-contractors to the extent provided in Clause 14.10.
- 40.2 Notwithstanding Clause 40.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Authority Group.

#### **41 CONTRACT VARIATION**

- 41.1 Save where the Authority may require an amendment to the Services (in which case the Variation procedure set out in Schedule 9 (Form of Variation) shall apply), the Contract may only be varied or amended with the written agreement of both Parties. The details of any Variations or amendments shall be set out in such form as the Authority may dictate and which may be substantially in the form set out in Schedule 9 (Form of Variation) and shall not be binding upon the Parties unless completed in accordance with such form of variation.

#### **42 NOVATION**

- 42.1 The Authority may novate or otherwise transfer the Contract (in whole or in part).
- 42.2 Within 10 Business Days of a written request from the Authority, the Service Provider shall at its expense execute such agreement as the Authority may reasonably require to give effect to any such transfer of all or part of its rights and obligations under the Contract to one or more persons nominated by the Authority.
- 42.3 Subject to Clause 17, the Contract is personal to the Service Provider who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of the Authority.

#### **43 NON-WAIVER OF RIGHTS**

43.1 No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 45. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

#### **44 ILLEGALITY AND SEVERABILITY**

44.1 If any provision of the Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Contract, the Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

#### **45 NOTICES**

45.1 Any notice, demand or communication in connection with this Contract (including a Notice) will be in writing and may be delivered by hand, prepaid recorded delivery first class post or e-mail addressed to the recipient at its registered office or the address stated in Schedule 1 (Key Contract Information) or any other address notified to the other Party in writing in accordance with this Clause 45 as an address to which notices, invoices and other documents may be sent provided that any notice (or Notice) to be served pursuant to Clause 33 (Dispute Resolution) or Clause 34 (Breach and Termination of Contract) shall not be capable of being served by e-mail. The notice, demand or communication will be deemed to have been duly served:

45.1.1 if delivered by hand, at the time of delivery;

45.1.2 if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or

45.1.3 if e-mail is permitted for such notice, if sent by e-mail to that Party's e-mail address, at the time of sending (or, if sending is not on a Business Day or is after 5pm (at the location of the recipient) on a Business Day, at 9am on the next following Business Day), provided that a confirming copy is delivered by hand or sent by first class post to the other Party within 24 hours after sending the e-mail.

#### **46 ENTIRE AGREEMENT**

46.1 Subject to Clause 46.2:

46.1.1 the Contract and all documents referred to in the Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the Contract and such documents and supersedes and extinguishes any prior

drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into the Contract by a statement which the Contract does not contain; and

46.1.2 without prejudice to the Service Provider's obligations under the Contract, the Service Provider is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.

46.2 Nothing in this Clause 46 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

## **47 COUNTERPARTS**

47.1 This Contract may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

## **48 RELATIONSHIP OF THE PARTIES**

48.1 Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

## **49 FURTHER ASSURANCE**

49.1 The Service Provider shall provide Assurance to the Authority in accordance with the requirements of Schedule 14 (Assurance) in order to provide clarity and visibility to the Authority in relation to the Service Providers compliance with its obligations under this Contract.

49.2 Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

## **50 AUTHORITY EVENTS**

50.1 The Service Provider will give notice to the Authority as soon as reasonably practicable, but in all cases within two (2) Business Days of the Service Provider becoming aware that an Authority Event has arisen or is likely to arise. That notice must include:

50.1.1 details of that Authority Event (including the date of occurrence or likely occurrence, );

50.1.2 details of the delay (if any) to completion of Transition or the likely impact (if any) on performance of the relevant Services; and

50.1.3 a calculation of the increased costs (if any) that the Service Provider is likely to incur as a direct result of that Authority Event in completing Transition or performing the Services (as the case may be),

in each case in sufficient detail to enable the Authority to reasonably understand, consider and assess the same and the likely impact on the Service Provider's obligations under this Contract.

50.2 The Service Provider will promptly supply to the Authority such further information relating to any Authority Event and the rights claimed by the Service Provider under this Clause 50 as the Authority may reasonably request from time to time.

50.3 If the Service Provider does not provide any information required to be provided under Clauses 50.1 or 50.2 on the date when it should be provided then the Service Provider's rights to be relieved from performance of its obligations and/or to be reimbursed for additional costs incurred by it pursuant to this Clause 50 will not apply to the extent relief would not have been required or costs incurred had the information been provided within the required timescale.

50.4 Subject to Clauses 50.1, 50.2, 50.5, 50.6, and 50.7, if an Authority Event occurs then if that Authority Event directly:

50.4.1 results in a delay to any Transition Milestone being achieved, or to the Service Commencement Date or to the completion of Transition beyond the SCD Long Stop Date or the Transition Long Stop Date (as the case may be), the relevant Transition Milestone Date, and/or the SCD Long Stop Date and/or the Transition Long Stop Date (as the case may be) will be postponed to such future date as is reasonable given the nature and extent of the relevant Authority Event;

50.4.2 following the Service Commencement Date, affects performance of, or results in a delay to, performance of the Services (or part of them) then the Service Provider's obligation to perform the affected Services (including its obligation to meet Service Levels (and reduce the Charges by way of crediting Service Credits (where appropriate)) will be deemed to be amended, or delayed (as appropriate), to the extent reasonable to reflect the relevant Authority Event provided that nothing in this Clause 50.4.2 will extend the Term; or

50.4.3 causes the Service Provider to incur additional costs, the Service Provider will (subject to Clause 50.5.3) be able to recover such reasonable additional costs from the Authority that directly flow from the relevant Authority Event in accordance with the principles set out in Clause 50.6. For the avoidance of doubt, and subject always to Clause 50.5, such additional costs may include costs associated with reducing the number of personnel engaged by the Service Provider in the provision of the Services where the requirement to do so flows directly from the failure by the Authority to meet the Service Dependency described in paragraph 1.2 of Appendix 1 (Service Dependencies and materials) to Schedule 2 (Overview of the Contract).

50.5 The Service Provider will only be entitled to the rights contained in Clause 50.4 if:

- 50.5.1 the Service Provider has at all times acted in accordance with good industry practice and used all reasonable endeavours to:
- 50.5.1.1 mitigate the effects of the relevant Authority Event;
  - 50.5.1.2 continue to perform all of its obligations under this Contract in accordance with its terms; and
  - 50.5.1.3 minimise any additional costs incurred by or on behalf of the Service Provider as a result of the relevant Authority Event;
- 50.5.2 the Service Provider has complied in full with all of the provisions of this Clause 50; and
- 50.5.3 in respect of the ability to recover additional costs pursuant to Clause 50.4.3, the additional costs which the Service Provider would be entitled to recover in respect of the relevant Authority Event exceed £500 (“the Threshold”) provided that:-
- 50.5.3.1 for the purpose of determining whether the Threshold is exceeded, each act, omission, incident or circumstance which constitutes an Authority Event shall be considered individually and there will be no aggregation of such acts, omissions incidents or circumstances; but subject to that,
  - 50.5.3.2 if the Threshold is exceeded for any individual act, omission, incident or circumstance which constitutes an Authority Event, the Service Provider shall be entitled to recover the whole amount and not just the excess.
- 50.6 The additional costs that the Service Provider can recover pursuant to Clause 50.4.3 will be calculated in accordance with the principles in paragraph 7 (Value for Money) of Schedule 9 (Form of Variation), as if the relevant Authority Event had been a Variation, and shall take into account any savings made by the Service Provider in connection with the Authority Event.
- 50.7 The Service Provider will verify and justify such costs by reference to its accounting records and the Authority will be granted full access to any relevant records in accordance with Clause 24 (Records, Audit and Inspection).
- 50.8 The Service Provider will give notice to the Authority of all amounts which it believes are due to it pursuant to Clause 50.4.3 not less than 20 Business Days prior to the date on which the Authority is proposed to be invoiced for the same and will provide details of all relevant calculations.
- 50.9 If the Parties do not agree upon:-
- 50.10 any amounts invoiced (or proposed to be invoiced) by the Service Provider to the Authority pursuant to this Clause 50, either Party may refer the dispute to the Dispute Resolution Procedure and pending resolution the amounts in dispute will not be payable by the Authority. Any sums due to the Service Provider following resolution of such dispute will be added to the instalment of the Charges due next following such resolution and, if no such Charges are due, as a debt due within 20 Business Days of the resolution of the dispute.
- 50.11 The Service Provider will have no rights pursuant to Clause 50.4 unless and until the extent of the Service Provider’s entitlement to relief from performance of, or right to delay performance of the Services or complete Transition (as