

equal to the amount originally required by the Authority in respect of the original Performance Bond.

- 12.4.3 if the Service Provider fails to deliver such replacement bond by 10 Business Days prior to the expiry of the then current performance bond it shall constitute a material breach by the Service Provider of the terms of the Contract and the Authority shall be entitled to make demand under that performance bond for the full amount at that time.
- 12.5 The Service Provider will be regarded as being in material breach of this Contract in the event that any Parent Company Guarantee and/or Performance Bond (as the case may be) is or becomes invalid or otherwise unenforceable.
- 12.6 The Service Provider will give notice to the Authority within 10 Business Days where there is any change in the ownership of the guarantor of the parent company guarantee where such change relates to 50% or more of the issued share capital of the guarantor. The Authority will have the right to terminate this Agreement within sixty (60) calendar days of receipt of the required notice from the Service Provider, or in the event that the Service Provider fails to give the required notice, within sixty (60) calendar days of the Authority becoming aware of such event, unless the Service Provider has within such period provided a parent company guarantee or other appropriate security from a replacement guarantor having obtained the Authority's prior approval of the replacement guarantor (such approval not to be unreasonably withheld) and on terms that are reasonably acceptable to the Authority.

### **13 OPERATIONAL MANAGEMENT**

- 13.1 The Authority authorises the Contract Manager to act as the Authority's representative for the Contract
- 13.2 The Service Provider shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under the Contract.
- 13.3 The Service Provider shall appoint a service performance manager (the "**Service Provider Contract Manager**"). The Service Provider shall notify the Authority of the identity of the Service Provider Contract Manager on or before the Date of Contract.
- 13.4 Subject to Clause 13.5, the Service Provider shall ensure that the Service Provider Contract Manager shall:
- 13.4.1 act as the principal point of contact between the Parties on all matters relating to the performance of the Services;
- 13.4.2 be the interface with the Authority and act as the interface for the relationship with the systems integrators in relation to Service performance;
- 13.4.3 pro-actively pursue continuous service performance improvements to ensure that the Service Levels are met;
- 13.4.4 help to ensure that the obligations in the Services Schedules are met;
- 13.4.5 attend Service Review Meetings as set out in Schedule 8 (Service Management) and other meetings as otherwise requested by the Authority (acting reasonably); and

13.4.6 ensure delivery to the Authority of the reports required to be delivered to the Authority under this Contract, and, at the Authority's request, provide to the Authority at no additional cost to the Authority, such additional reports on the provision of the Services as the Authority may reasonably request.

13.5 The Service Provider shall appoint an incident manager (the "**Service Provider Incident Manager**"). The Service Provider shall notify the Authority of the identity of the Service Provider Incident Manager on or before the Date of Contract. The Service Provider Incident Manager may (but need not) be the same person as the Service Provider Contract Manager.

13.6 The Service Provider shall ensure that the Service Provider Incident Manager shall act as the principal point of contact between the Parties in connection with the management of Incidents arising in respect of the Services.

## **14 SERVICE PROVIDER PERSONNEL**

### **14.1 NOT USED**

14.2 For the purposes of this Clause 14 and Clause 37, unless the context indicates otherwise, the following expressions shall have the following meanings:

**"Actual Statutory Notice Costs"** means the actual statutory notice payment costs made in accordance with the Employment Rights Act 1996 (to the extent it was not reasonably practicable for notice to be worked) that are in fact incurred by the Service Provider in relation to Transferring Staff whose effective date of termination is within 90 days of the Applicable Transfer Date;

**"Actual Statutory Redundancy Costs"** means the actual statutory redundancy payment costs as calculated in accordance with the Employment Rights Act 1996 that are in fact incurred by the Service Provider in relation to Transferring Staff whose effective date of termination is within 90 days of the Applicable Transfer Date;

**"Applicable Transfer Date"** means the Contract Commencement Date except where the Services (or any of them) do not commence on the Contract Commencement Date in which case it means (as regards any person) the date on which the Services transfer to the Service Provider such as to effect a transfer of relevant Transferring Staff in accordance with TUPE). The detailed Transition planning to be undertaken in accordance with paragraph 3.2 of Schedule 3 (Transition) shall include the assessment and determination of the Applicable Transfer

<b>“Employment Costs”</b>	Date for each relevant person; means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);
<b>“Employment Liabilities”</b>	means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);
<b>“Final Staff List”</b>	has the meaning set out in Clause 37.4;
<b>“Further Transfer Date”</b>	means the date on which the Services (or any part of them) cease to be provided by the Service Provider and start to be performed by the Authority or any Successor Operator when the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Authority or any Successor Operator occurs;
<b>“Relevant Period”</b>	means the period starting on the earlier of: a) the date falling 6 calendar months before the date of expiry of the Contract; or b) if the Contract is terminated by either Party in accordance with Clause 34.3 or by the Authority in accordance with Clause 34.1, 34.2, 34.7 or 34.8, the date of the relevant termination notice; and ending on the Further Transfer Date;
<b>“Re-Transferring Personnel”</b>	means any Service Provider Personnel who are assigned (for the purposes of TUPE) to the relevant Services immediately before the Further Transfer Date and whose employment contract will transfer to the Authority or the Successor Operator pursuant to TUPE with effect from the Further Transfer Date;
<b>“Staff List”</b>	has the meaning set out in Clause 37.1;
<b>“Staffing Information”</b>	has the meaning set out in Clause 37.1;
<b>“Sub-Contractor”</b>	means any sub-contractor to the Existing Provider, the Service Provider or a

Successor Operator as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or part of them);

**“Transfer of Services”**

means the transfer of the provision of the Services from the Existing Service Provider and any Sub-Contractor to the Service Provider and any Sub-Contractor;

**“Transferring Staff”**

means such employees of the Existing Service Provider(s) (and any Sub-Contractors) as are assigned (for the purposes of TUPE) to the Services the names of whom as at the date of this Contract are listed in Appendix 1 to this Clause 14;and

**“TUPE”**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006

- 14.3 It is understood and acknowledged by the Parties that TUPE may apply to the Transfer of Service and accordingly, pursuant to TUPE, the contracts of employment between the Existing Service Provider (or any Sub-Contractor of the Existing Service Provider) and Transferring Staff will have effect from the Applicable Transfer Date as if originally made between the Service Provider and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be subject to the provisions of Clause 14.4).
- 14.4 The Service Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 and TUPE with effect from the Applicable Transfer Date.
- 14.5 The Parties agree that all Employment Costs in respect of the Transferring Staff will be allocated as follows:
- 14.5.1 the Existing Service Provider(s) will be responsible for any Employment Costs relating to the period up to the Applicable Transfer Date for the relevant Transferring Staff; and
- 14.5.2 the Service Provider will be responsible for any Employment Costs relation to the period on and after the Applicable Transfer Date,
- and Employment Costs will if necessary be apportioned on a time basis between the Existing Service Provider(s) and the Service Provider.
- 14.6 The Authority warrants to the Service Provider that none of the Authority's employees will transfer to the Service Provider under TUPE as a result of the Transfer of Service.
- 14.7 Subject to Clause 14.18, the Service Provider will indemnify and keep indemnified the Authority and the Existing Service Provider(s) (and its sub-