

DATED 28 SEPTEMBER 2015

- (1) THE SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT

- (2) COMPUTERSHARE INVESTOR SERVICES
PLC

SERVICE CONCESSION AGREEMENT

RELATING TO THE ADMINISTRATION

OF THE CUSTODIAL

TENANCY DEPOSIT SCHEME

- LEGACY POOL

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THIS AGREEMENT is made as a deed the 28th day of SEPTEMBER 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) COMPUTERSHARE INVESTOR SERVICES PLC registered in England with company number 03498808 and whose registered office is at The Pavilions, Bridgwater Road, Bristol BS13 8AE (the "Service Provider").

RECITALS:

WHEREAS

- (A) On 25 February 2015 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. 2015/S 043-074615) 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 8.3.2 (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;

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; and

27.1.2.4 the costs for the provision of the Services from an Alternative Scheme Provider in accordance with the

provision of Schedule 17 (Implementation) of this Agreement,

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 in each 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 Service 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;

- 28.4 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 to 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.

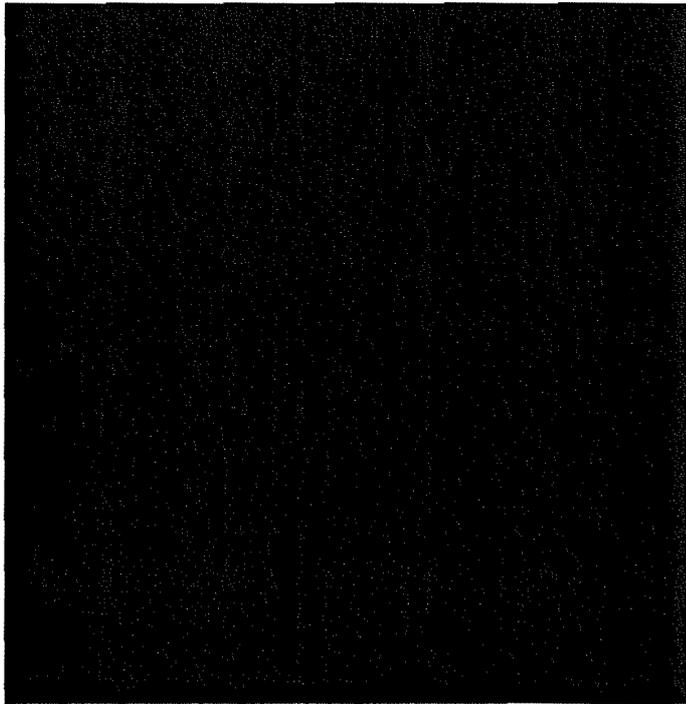
53.2 Without prejudice to Clause 19 (Dispute Resolution) each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

EXECUTED AND DELIVERED AS A DEED

Executed as a Deed by)

Secretary of State for)
Communities and Local
Government

acting by 



Witness Name

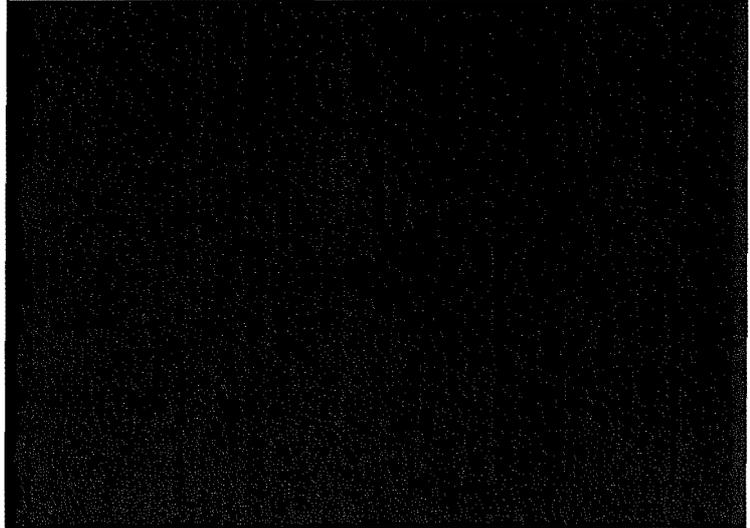
Address

Occupation

Executed as a Deed by)

Computershare Investor)
Services PLC

acting by



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 Tenancy Deposit Solutions Limited (registered in England with company number 05861648) and The Dispute Service Limited (registered in England with company number 04851694) 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;
Approved Alternative Scheme Provider		means a scheme provider managing and administering a Scheme or insurance based scheme under the Housing Act 2004 (as amended) pursuant to a formal agreement with the Authority;
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:

<https://www.gov.uk/contracts-finder>;

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 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: <ul style="list-style-type: none"> (a) consent for such IP to be used by or on behalf of: <ul style="list-style-type: none"> (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



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: <ul style="list-style-type: none"> (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;

Legacy Custodial Deposit Pool means the pool of deposits managed and administered by the Scheme that is in existence at the Effective Date;

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	

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);
Prescribed Information	has the meaning given to it in paragraph 3.2 of this Schedule 3 (The Services);
Processing	has the meaning set out in section 1(1) of the DPA and "Process" and "Processes" shall be construed accordingly;
Prohibited Act	means: <ul style="list-style-type: none"> (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;

Single Claim means a claim made by a party for the repayment of all or part of the Deposit when the other party is uncontactable;

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, which at the Effective Date is administered by the Financial Services Compensation Scheme: <http://www.fscs.org.uk/>;

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: <ul style="list-style-type: none"> (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

1. DEFINITIONS

In this Schedule 3 (The Services), the following words and phrases shall have the meanings set out below:

Approved Alternative Scheme Provider	means a scheme provider managing and administering a Scheme or insurance based scheme under the Housing Act 2004 (as amended) pursuant to a formal agreement with the Authority;
Legacy Custodial Deposit Pool	means the pool of deposits managed and administered by the Scheme that is in existence at the Effective Date;
Prescribed Information	has the meaning given to it in paragraph 3.2 of this Schedule 3 (The Services);
Single Claim	means a claim made by a party for the repayment of all or part of the Deposit when the other party is uncontactable;

2. INTRODUCTION

- 2.1 The Authority is the central government department responsible for policy on housing, planning, local government, communities and neighbourhoods, regeneration and economic growth and the fire service.
- 2.2 The Scheme was introduced in the Housing Act 2004, which made it mandatory that where a deposit is taken it is appropriately safeguarded by way of tenancy deposit protection schemes and for the establishment of dispute resolution procedures to provide for quick access to justice. These arrangements apply to all assured shorthold tenancies.
- 2.3 At the Effective Date the Legacy Custodial Deposit Pool holds in excess of one (1) million deposits worth in excess of £900 million (nine hundred million pounds sterling). To ensure continuity, the Authority requires the Service Provider to

continue the management and future development of the Legacy Custodial Deposit Pool in accordance with this Schedule 3 (The Services).

2.4 This Schedule 3 (The Services) sets out what is required of the Service Provider to assume management and administration of the Legacy Custodial Deposit Pool. The Service Provider shall:

2.4.1 transition the existing Legacy Custodial Deposit Pool to its Scheme;

2.4.2 manage the Legacy Custodial Deposit Pool;

2.4.3 generate new business;

2.4.4 have in place a robust IT infrastructure capable of storing a large amount of data;

2.4.5 provide a secure and reliable method of holding Deposits; and

2.4.6 return Deposits to tenants at the end of their tenancy.

2.5 The Service Provider shall be required to provide an ADR service to settle disputes between tenants and Landlords and/or agents. The Service Provider shall generate enough interest on Deposits to cover its reasonable costs. The Service Provider is also expected to generate sufficient interest on Deposits to pay a level of interest to tenants.

3. BACKGROUND

3.1 The Government is committed to ensuring that where a tenant pays a deposit to their Landlord in good faith it will be returned at the end of the tenancy provided that the tenant has complied with the terms of the tenancy agreement.

3.2 The tenancy deposit protection provisions in the Housing Act 2004 (as amended by Section 184 of the Localism Act 2011) require that where a deposit is paid in connection with an assured shorthold tenancy it must be protected by the Landlord or agent in an authorised scheme. Certain information must be sent to the tenant within thirty (30) days of the deposit being received. This information is set out in the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (the "Prescribed Information"). Landlords and agents who fail to comply with the statutory requirements are liable for a mandatory financial penalty of between one (1) and three (3) times the amount of the deposit, payable to the tenant, on the

tenant bringing proceedings under section 214 of the Housing Act 2004 (as amended). Non-compliance also affects Landlords' ability to rely on Section 21 of the Housing Act 1981.

Financial Conduct Authority Regulation

- 3.3 Schemes are liable to be regulated by the Financial Conduct Authority. The Service Provider shall be responsible for determining whether its Scheme approach falls under the remit of the Financial Conduct Authority and, if so, to ensure that it is compliant with all Financial Conduct Authority requirements.

4. OBJECTIVES

- 4.1 The key objectives for the Authority to achieve through this Agreement are:

- 4.1.1 protection for tenants deposits – a tenant should be able to get their deposit back at the end of their tenancy if they comply with their tenancy agreement;
- 4.1.2 compliance with legislative instruments - the Housing Act 2004 (as amended); and
- 4.1.3 a seamless transition from the existing Scheme provision to the new Scheme under this Agreement.

5. SCOPE

- 5.1 The Service Provider shall provide a Scheme that meets all the statutory requirements as set out in the Housing Act 2004 (as amended).
- 5.2 The key elements of the Scheme include (without limitation):

Administration

- 5.2.1 The Service Provider's Scheme must handle the large amount of information that will be flowing in and out of the Scheme on a day-to-day basis. This includes the necessary IT infrastructure to securely record and store data and, in compliance with the DPA, the provision of customer services to deal with queries or complaints from users of the Scheme. It also includes the provision of a website and helpdesk to provide information and guidance to users.

Banking

- 5.2.2 The Service Provider's Scheme must offer a secure and reliable method of holding Deposits in a central bank facility (Schedule 18 (Permitted Investments) to this Agreement) to ensure the Deposit can be returned at the end of the tenancy. The Service Provider's banking arrangement must meet all statutory requirements and government policies in relation to, but not exclusive to, money laundering, deposit-taking and any other relevant Financial Conduct Authority regulation. The Service Provider's Scheme must generate interest which can be used to fund the Scheme administration and where possible to pay interest on Deposit amounts to tenants.

ADR service

- 5.2.3 The Service Provider's Scheme must offer an effective form of ADR to ease the handling of disputes at the end of a tenancy and offer a decent alternative to the courts. All new ADR cases starting from 1 April 2016 shall be handled by the Service Provider under this Agreement.

Pay interest to tenants

- 5.2.4 The Scheme is expected to offer tenants interest although this offer should only be after the Service Provider has deducted its reasonable costs for administrating the Scheme and a relevant contribution. The Service Provider shall only start payment of interest to tenants one (1) year after the Service Commencement Date (i.e. from 1st April 2017).
- 5.2.5 The Scheme shall not make the receipt of interest compulsory. If a tenant does not want to receive interest, they should be able to say so.
- 5.2.6 The Scheme must not appropriate the Deposit amounts for itself. Any unclaimed Deposits must remain in a designated account unless instructed otherwise by the Authority. The Scheme must provide for the Deposit Pool to be invested solely in the Permitted Investments.

Flexibility to move Deposits

- 5.2.7 The Service Provider must allow the flexibility for a Landlord or agent to move Deposits between the tenancy deposit protection schemes,

including the insurance based schemes and transfers to its own Scheme, during the life of the tenancy. Any Deposits moving from the Service Provider's Scheme must only be transferred to an Approved Alternative Scheme Provider and must never be transferred to the Landlord or tenant during the tenancy except where the transfer is to an insurance-based scheme (in accordance with the requirements at paragraph 6 (Key Requirements) below). If a Deposit is moved between custodial tenancy deposit protection schemes, then the level of interest generated by that Deposit shall be passed along with the Deposit to the relevant Alternative Scheme Provider so that at the end of the tenancy it can be given to the tenant along with any new interest generated or managed in accordance with the relevant Alternative Scheme Provider's provisions for unwanted interest. The Service Provider shall ensure that the Prescribed Information is provided to the Landlord each time such a move of Deposit(s) occurs.

Transition of Legacy Custodial Deposit Pool

5.2.8 The Service Provider shall work with the Authority to transfer all the necessary information and money associated with the existing deposits as at the Effective Date during the Implementation Period. The Service Provider shall respond to queries from Landlords and tenants about the new service provision ahead of the Service Commencement Date.

5.3 The Service Provider should be aware that housing is a devolved issue and that while the current intention is for the legislation to be consistent in England and Wales it is possible that in the future the administrations will choose to operate differently. The Service Provider shall ensure that the Scheme can operate successfully in both England and Wales.

6. KEY REQUIREMENTS

6.1 The Service Provider shall ensure that its Scheme meets the requirements detailed in Table 1 below.

6.2 Whilst the legislation is primarily aimed at Landlords and tenants, it is recognised that many Landlords use a letting agent. The Service Provider shall ensure that its approach in meeting the requirements of the Scheme is appropriately tailored to

take account of the respective party with which it is dealing with (a Landlord only, someone acting on behalf of a Landlord, or both).

Table 1

1	The Service Provider shall deliver all the elements of the Scheme, including banking, administration and information management, IT systems and data storage and ADR services. The Scheme must be self-sustaining.
2	The Scheme shall be accessible to all Landlords of properties in England and Wales.
3	The Service Provider shall work with the Authority to ensure a seamless transition to the Scheme to be provided under this Agreement for all deposits in the Legacy Custodial Deposit Pool. The Service Provider shall ensure that all transition and implementation activities are undertaken to allow the Scheme to be fully operational at the Service Commencement Date.
4	<p>The Scheme shall enable Landlords to register with the Scheme prior to taking any Deposits and shall collect and maintain appropriate data on each Deposit that it safeguards. The Scheme shall establish robust processes, in compliance with the DPA, to enable the following information to be gathered from Landlords at the point of Deposit protection, including through paper-based processes if necessary:</p> <ul style="list-style-type: none"> (a) names of all tenants party to the tenancy agreement; (b) contact details of tenant(s); (c) name and address of Landlord; (d) property address to which the Deposit relates; (e) total value of the Deposit paid; and (f) date on which the Deposit is paid to the Landlord and date on which tenancy begins (if different). <p>The Scheme may collect such other information as it sees fit provided that it is necessary for the purposes of the Scheme or at the request of the Authority.</p>

5	<p>The Scheme shall adopt safe, secure and reliable systems and methods for receiving Deposits from Landlords and for transferring such Deposits to the Scheme's designated account. The Scheme shall at least enable this mechanism to include cheques and electronic bank transfers. The Service Provider shall put measures and compliance checks in place to prevent money laundering.</p> <p>The Scheme shall make the payment process as accessible as possible for Landlords and it must be free of charge.</p>
6	<p>The Scheme shall provide for changes to the names of the parties to a tenancy agreement which may take place throughout the life of a tenancy agreement. This includes changing the names of any tenant(s) and Landlord(s) (for example in the case of sub-letting, assignment or sale of the property whereby the Deposit remains protected).</p>
7	<p>The Scheme shall provide information to Landlords to enable them to comply with the Prescribed Information requirements within thirty (30) days of taking a Deposit. This information is divided into two (2) types: tenancy-specific and generic. The Scheme shall provide Landlords with the generic information. This includes:</p> <ul style="list-style-type: none"> a) name, address and contact details of the Service Provider; b) name, address and contact details of the ADR service offered by the Scheme; c) information on the procedures applying for the release of the Deposit, including in the event of a dispute; d) standard information leaflet explaining how the Deposit is protected by the Housing Act 2004 (as amended); e) procedures that apply when making a Single Claim; and f) data protection notice explaining the use and ownership of the data. <p>The Scheme shall have appropriate mechanisms in place to provide the required Prescribed Information to Landlords.</p>
8	<p>The Scheme shall not appropriate the Deposit amounts for itself. Any unclaimed Deposits must remain in a designated account unless instructed otherwise by the Authority. The Scheme must provide for the Deposit Pool</p>

	to be invested solely in the Permitted Investments.
9	<p>The Scheme is expected to offer tenants interest although this shall only be after the Service Provider has deducted its reasonable costs for administering the Scheme and a relevant contribution. The Service Provider shall only start payment of interest to tenants one (1) year after the Service Commencement Date (i.e. from 1st April 2017).</p> <p>The Scheme shall not make receipt of interest on the Deposit compulsory and shall enable a facility for tenants to opt-out of receiving such interest. Where relevant, the Service Provider shall be required to explain the procedures that will be adopted for deducting lower rate tax from interest paid to tenants on returned Deposits, including any proposals for paying interest without deducting tax (where HM Revenue and Customs Form R85 has been completed), and for issuing Section 352 Income and Corporation Taxes Act 1998 certificates of tax deducted. The Authority understands that tax should only be deducted when the interest is paid or credited to the account.</p>
10	The Service Provider is encouraged to demonstrate how it would promote better standards in the private rented sector (PRS).
11	<p>The Scheme shall provide confirmation of receipt of Deposit and responses to queries regarding the status of their Deposit protection to tenant(s). This includes responding to queries from all joint tenants in a household who are party to the tenancy agreement. The Scheme shall ensure that adequate security is in place to correctly identify any query from a tenant in relation to their Deposit protection.</p> <p>The Housing Act 2004 (as amended) requires the Scheme to respond to any such queries "as soon as is practicable". The Service Provider shall identify realistically achievable timescales to provide such a response.</p>
12	<p>The Scheme shall return the Deposit to the relevant party or parties at the end of the tenancy either where the Scheme receives agreement from both the tenant and landlord or where one (1) party notifies the Scheme of a court decision in his favour. The Scheme shall have appropriate mechanisms in place to receive such notifications.</p> <p>The Scheme shall return the Deposit amount(s) to the appropriate parties</p>

	<p>within ten (10) days of receiving notification in accordance with paragraph 4(3) of Schedule 10 of the Housing Act 2004 (as amended). This timescale is the statutory maximum, and the Service Provider shall consider ways to return Deposit amounts more quickly. In households with multiple tenants, as a minimum, the Scheme may return the relevant Deposit amount to one (1) tenant in one (1) lump sum provided that consent has been given by all tenants at the point of the Deposit return or at the outset of the tenancy.</p> <p>The Scheme shall also ensure that the correct proportion of the deposit is paid to the correct party. The Scheme shall make every effort to find people where cheques are uncashed after six (6) months or the Deposit remains otherwise unclaimed. The Scheme shall also have robust measures in place to prevent the fraudulent or inappropriate repayment of Deposits.</p>
13	<p>The Scheme shall provide a customer service centre to deal with day-to-day enquiries from Landlords and tenants and any other interested parties that might arise in connection with its Scheme. In addition the Service Provider shall provide details of its membership database to a third party, as designated by the Authority, to create a central database allowing tenants and Landlords to check in real time which tenancy deposit protection scheme holds their deposit without having to check with each tenancy deposit protection scheme individually. Full data protection and fraud prevention must be maintained during this process.</p> <p>The Service Provider should be aware that the Scheme may be required to respond to Welsh official requests around terminology in guidance and the Service Provider shall respond to such requests in a timely and correct manner.</p>
14	<p>The Scheme shall make available a robust complaints procedure for all End Users of the Scheme (i.e. tenants, Landlords, agents), any authorised representatives such as solicitors and anyone acting on a tenant and/or Landlord's behalf.</p>
15	<p>The Scheme shall provide an ADR facility to all End Users to be available for enabling disputes relating to Deposits to be resolved without recourse to the courts. Use of ADR must never be made compulsory in the event of a dispute (Schedule 10 of the Housing Act 2004). The ADR service shall be an impartial procedure for the resolution of disputes with an evidence-based</p>

	<p>decision making process. The ADR service shall be proportionate to the relatively small sums of money which are likely to be in dispute. Use of the ADR service must be free to all End Users.</p> <p>The provision of an ADR service is designed to offer a simpler and speedier redress to tenants and Landlords than the courts.</p>
<p>16</p>	<p>Landlords and tenants shall be given the option where there is a dispute at the end of the tenancy to decide to use the ADR service or pursue the dispute through the courts. Where both parties agree to use the ADR service they shall also have agreed to be bound by the decision the ADR service makes.</p> <p>The ADR service should only deal with genuine disputes as far as possible. The Scheme shall employ appropriate methods to try to dissuade frivolous claims from being pursued. The Authority has a preference that these measures are non-financial, such as providing a free mediation service. The Service Provider may consider alternative (financial) approaches, provided that it can demonstrate how it will mitigate the impact of such approaches on those parties with low incomes.</p> <p>The ADR service should provide for a private and confidential service, subject to any anonymised statistical and other returns that the Authority may require.</p> <p>The Scheme shall inform tenants and Landlords about the ADR service (including that the ADR decision is binding), and provide a clear process by which it receives agreement from parties to go to ADR. In households with multiple tenants, the Scheme may accept consent to use ADR from one (1) tenant, provided that consent to that tenant acting on behalf of all others has been given by all tenants at the point of the dispute or at the outset of the tenancy. Schemes are not expected to deal with more than one (1) ADR dispute per tenancy agreement.</p> <p>The Scheme shall as a minimum collect and maintain the following data for each dispute:</p> <ul style="list-style-type: none"> a) name and contact details of tenant(s); b) property address to which the Deposit relates; c) name and address of the Landlord;

	<p>d) total value of the Deposit;</p> <p>e) total value of the Deposit in dispute;</p> <p>f) nature of the dispute; and</p> <p>g) outcome of the dispute.</p> <p>The Scheme may collect such other information as it sees fit provided that it is necessary for the purposes of the ADR service or at the discretion of the Authority.</p> <p>The Service Provider shall consider appropriate timescales for providing this information and the most appropriate cost-effective methods of obtaining and recording the information.</p>
17	<p>The ADR service must be able to identify and exchange information with other elements of the Scheme, including the provision of, notification of, or verification of, outcomes arising from use of the ADR service to other elements of the Scheme so as to facilitate proper release of the Deposit.</p>
18	<p>The Scheme shall promptly inform the appropriate parties of a final decision of the ADR service including providing a record of the outcome to the parties.</p> <p>The ADR service shall maintain appropriate records of all disputes and other records of all transactions for seven (7) years. The Service Provider shall store this data securely and ensure that it can be safely removed once the specified time period has ended.</p>
19	<p>The Scheme shall utilise a technical solution that is capable of providing the services required by the Scheme, including handling the volumes of Deposits and enquiries required by the Scheme's activities.</p>
20	<p>The Scheme's technical solution must remain capable of providing the Scheme throughout the Term to the standards that are set out in this Agreement.</p>
21	<p>The Scheme shall ensure that all data gathered is used only for the purposes required to deliver the Services or for use as agreed with the Authority and is securely held and is not lost or degraded in any way. The Service Provider shall inform Landlords that their data may be used by</p>

	Government to improve the private rented sector (PRS). The Service Provider shall inform Landlords of their rights to opt out if they do not want their data to be used in this way and to only provide data from Landlords who have given their consent.
22	The Scheme shall provide to the Authority, or provide the Authority with access to the Service Provider's systems to allow the Authority to retrieve, statistical data in order to enable the Authority to monitor the operation of the Scheme.
23	The Service Provider shall ensure that all data held in relation to the Scheme, including records of disputes, is securely held and is not lost or degraded in any way and is held subject to requirements under the DPA. Personal Data shall be retained for so long as is necessary for the effective operation of the Scheme and regulatory compliance and always subject to principle 5 of the DPA. Data other than Personal Data must be retained in accordance with Clause 33 (Rights of Audit and Access and Record Keeping) of this Agreement.
24	The Scheme shall ensure the security of personal and financial information held by the Scheme in whatever format and by whichever party involved in the Scheme.
25	The Scheme shall have and implement appropriate internal controls to minimise the scope for fraud. This shall include appropriate audit procedures (both internal and external) and management review.
26	The Scheme shall promote itself to all potential End Users of the Scheme, including Landlords and tenants and any other authorised representatives of such parties.
27	The Scheme shall ensure that all written information relating to Scheme registration, Deposit registration, information for tenants, the ADR service and general enquiries is able to meet the requirements of the Equality Act 2010 and give appropriate consideration to any minority rights issues which may apply.
28	The Scheme shall allow for access to financial records and other supporting documentation by the Authority's finance function, audit function

	(Government Internal Audit Agency) and the National Audit Office (NAO) as considered necessary. This will include open book accounting.
29	<p>The Scheme shall ensure that Landlords who decide to move their tenant's Deposit to a new tenancy deposit protection scheme mid-tenancy can do so. This includes transfers of Deposits from and to the Service Provider's Scheme.</p> <p>The Service Provider shall accept any mid-tenancy transfer of a Deposit to its Scheme from an Approved Alternative Scheme Provider.</p> <p>Any Deposits moving from the Service Provider's Scheme must only be transferred to an Approved Alternative Scheme Provider.</p> <p>If a Landlord is moving a Deposit to another Scheme then the Deposit and any interest due shall be passed directly between the Service Provider's Scheme and the new Scheme so that the relevant Scheme can pay the tenant at the end of the tenancy or manage the interest in accordance with the relevant Scheme's provisions for unwanted interest.</p> <p>If the Landlord is moving a Deposit from an insurance-based scheme to the Service Provider's Scheme then the Landlord will be required to pass the Deposit to the Service Provider as part of joining its Scheme.</p> <p>If a Landlord is moving a Deposit from the Service Provider's Scheme to an insurance-based scheme then the Service Provider shall require the Landlord to inform the Service Provider which insurance-based scheme it has joined and from what date. At that point the Service Provider shall pay the Deposit to the Landlord and any interest generated to the tenant.</p> <p>The Service Provider shall ensure that the Prescribed Information is provided to the Landlord each time such a move of Deposit(s) occurs.</p> <p>In the event that an Alternative Scheme Provider ceases to operate an alternative Scheme for any reason, the Service Provider shall work with the Authority and the Alternative Scheme Provider to take on its deposits.</p>

General Aspects of the Scheme

- 6.3 The Scheme shall be structured in such a way as to be compliant with all relevant legislative and regulatory requirements including, but without limitation:

- 6.3.1 the tenancy deposit provisions in the Housing Act 2004 (as amended) and the secondary legislation made under that Act;
- 6.3.2 data protection legislation, specifically with regard to ensuring and maintaining the security and integrity of data and information collected;
- 6.3.3 Freedom of Information Act 2000;
- 6.3.4 legislation concerning money laundering and other requirements (for example, in respect of deposit taking requirements) and the regulatory requirements of the Financial Conduct Authority;
- 6.3.5 Arbitration Act 1996;
- 6.3.6 all relevant discrimination and equalities legislation and to the extent not encompassed by this description the Human Rights Act 1998; and
- 6.3.7 Renting Homes (Wales) Bill.

Encouraging a Savings Culture

- 6.4 Many renters struggle to save and debt can be a real problem in the private rented sector. Encouraging tenants to save more could help tenants cope with unplanned future expenditure and it is in Landlords' interest to promote savings as this will further prevent the temptation for tenants to dip into rent money in times of stress. While the Authority is clear that the security deposit is not a savings vehicle, the Service Provider is encouraged to promote a savings culture. This could include working closely with banks or credit unions to promote the opportunities that already exist. The Service Provider shall protect the good name of tenancy deposit protection and ensure that any organisations it works with are a positive influence on the private rented sector.

Returning Deposits

- 6.5 The Scheme shall ensure that the Deposit is returned to the relevant party inclusive of any interest generated on that Deposit, provided that interest shall not be payable on any Deposits returned prior to 1 April 2017. In case the Deposit is not claimed by the tenant and/or Landlord, the Housing Act 2004 (as amended) does not permit the Service Provider (Scheme administrator) to access the Deposit amounts. The

unclaimed Deposits shall remain in custody unless otherwise directed by the Authority.

Business Continuity Planning and Disaster Recovery Plan

6.6 The Service Provider shall develop and maintain a robust Business Continuity Plan and Disaster Recovery Plan in accordance with Schedule 8 (Disaster Recovery) to this Agreement.

6.7 The Service Provider shall ensure that the Services are available as set out in the Disaster Recovery Plan following the declaration of a Disaster. The Service Provider shall ensure the Services have minimal downtime through effective back up services, systems and procedures.

7. IMPLEMENTATION

7.1 The Service Provider shall work with the Authority to ensure a seamless transition of all deposits in the Legacy Custodial Deposit Pool to its Scheme under this Agreement.

7.2 The Service Provider shall provide a detailed Implementation Plan to demonstrate how its Scheme will be fully operational as at the Service Commencement Date.

8. KEY DATES

8.1 Implementation Period;

8.2 Service Commencement Date; and

8.3 ADR cases commencing from the Service Commencement Date to be delivered by the Service Provider's Scheme under this Agreement.

SCHEDULE 4 - SERVICE PROVIDER METHOD STATEMENT

