

SCHEDULE 26

FAIR VALUE

1. INTRODUCTION

- 1.1 If the Authority and the Contractor are unable to reach agreement on the Fair Value of the Asset pursuant to Clause 33.12 within 10 Business Days following the date of the Authority Termination Notice, the Fair Value of the Asset shall be referred to Independent Accountants for determination.

2. INDEPENDENT ACCOUNTANTS

- 2.1 If and whenever any item in dispute relating to the valuation of the Asset falls to be referred, in accordance with paragraph 1 of this Schedule 26, to Independent Accountants for determination, it shall be referred to the firm of chartered accountants:

- (a) as the Authority and the Contractor may agree in writing within five Business Days after the date of the Authority Termination Notice; or
- (b) failing such agreement, as shall be nominated for this purpose on the application of the Authority or the Contractor by the President of the Institute of Chartered Accountants in England and Wales for the time being.

- 2.2 The Authority and the Contractor shall co-operate in good faith to do everything necessary to procure the effective appointment of the Independent Accountants. The Authority and the Contractor shall agree terms of engagement with the Independent Accountants as soon as reasonably practicable after the Independent Accountants are nominated and shall not withhold or delay their consent to those terms if they are reasonable and consistent with the provisions of this Agreement. Each of the Authority and the Contractor shall counter-sign the terms of appointment as soon as they are agreed.

- 2.3 The parties agree that the Independent Accountants shall act on the following basis:

- (a) the Independent Accountants shall act as experts and not as arbitrators;
- (b) the Asset in dispute shall be notified to the Independent Accountants in writing by the Authority within 10 Business Days after the Independent Accountants' appointment;
- (c) the Independent Accountants shall decide the procedure to be followed in the Fair Value determination;
- (d) the Authority and the Contractor shall each provide the Independent Accountants promptly with all access to premises, information, assistance (including assistance from employees) and access to (including the ability to take copies of) books and records of account, documents, files, working papers and information stored electronically which they reasonably require, and the Independent Accountants shall be entitled (to the extent they consider it appropriate) to base their determination on such information and on the accounting and other records of the Authority and the Contractor;

- (e) the determination of the Independent Accountants shall (in the absence of manifest error) be final and binding on the parties; and
- (f) the costs of the Fair Value determination, including fees and expenses of the Independent Accountants, shall be borne equally as between the Authority and the Contractor.