

- 34.4.5 to the extent it is able to do so notwithstanding the occurrence of the Force Majeure Event, provide all such assistance to the Authority and/or such other persons as the Authority may request in connection with the Authority securing an alternative supply of those Services which the Service Provider is delayed in or prevented from supplying due to the Force Majeure Event (including by providing and permitting the use by the Authority or its nominee of assets, equipment and personnel).
- 34.5 A Party will not be in breach of this Contract or otherwise liable to the other Party for any failure to perform or delay in performing its obligations under this Agreement to the extent that this is due to a Force Majeure Event affecting the other Party. In particular, if the Service Provider is the Party affected by the Force Majeure Event the Authority will have no liability to pay Charges to the Service Provider in respect of any Services which the Service Provider does not supply due to the Force Majeure Event.
- 34.6 Nothing in Clause 34.3 will relieve the Service Provider from its obligations under this Contract to create, implement and operate the Major Incident Plan. Accordingly, if a Force Majeure Event affecting the Service Provider occurs which is an event or circumstance that is within the scope of the Major Incident Plan, or would have been had the Service Provider and/or Major Incident Plan complied with Clause 9 (Major Incident Management) and Schedule 8 (Service Management), then Clause 34.3 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure would have arisen even if the Major Incident Plan had complied with, and had been fully and properly implemented and operated in accordance with, Clause 9 and Schedule 8, and the terms of the Major Incident Planning respect of that Force Majeure Event.
- 34.7 Without prejudice to the Authority's right to terminate the Contract under Clause 34.1 or to terminate at common law, the Authority may terminate the Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1 (Key Contract Information), provided that this Clause 34.7 may be disapplied by notice to that effect in Schedule 1.
- 34.8 Without prejudice to the Authority's right to terminate the Contract under Clauses 34.1, 34.7 or at common law, the Authority may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 38.
- 34.9 To the extent that the Authority has a right to terminate the Contract under this Clause 34 then, as an alternative to termination, the Authority may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the Authority's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted in accordance with the Variation procedure proportionately or if in the Authority's opinion a proportionate adjustment would not be reasonable in such manner as the Authority may determine.
- 34.10 The Service Provider may by providing not less than three (3) months' written notice, terminate this Contract if the Authority fails to pay any undisputed sum in accordance with Clause 11 which is in excess of £10,000 (ten thousand

pounds sterling) and has subsequently failed to remedy such breach within sixty (60) days of written notice of such breach from the Service Provider provided that in the case of such termination:

- 34.10.1 the Authority shall be responsible for making such payments to the Service Provider as have accrued and are properly payable in respect of the period prior to the Expiry Date but;
- 34.10.2 in no circumstances shall the Authority have any other liability to the Service Provider in respect of or connected with such termination, including (without limitation) any loss of anticipated profit.

## **35 CONSEQUENCES OF TERMINATION OR EXPIRY**

- 35.1 Notwithstanding termination of this Contract pursuant to Clause 34 or expiry in accordance with Clause 2, any applicable Handback Period shall apply pursuant to Schedule 11 (Handback of Service) and the provisions of this Contract shall continue until the Expiry Date.
- 35.2 [Not used].
- 35.3 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 35.4 Upon expiry or termination of the Contract (howsoever caused):
  - 35.4.1 the Service Provider shall, at no further cost to the Authority:
    - 35.4.1.1 in accordance with Schedule 11 (Handback of Service) take all such steps as shall be necessary for the orderly handover of Services to the Authority (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Authority and to effect such handover; and
    - 35.4.1.2 on receipt of the Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
  - 35.4.2 the Authority shall (subject to Clauses 25, 35.1 and 35.5 and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with the Contract up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 7 (Pricing Schedule) or otherwise reasonably determined by the Authority.
- 35.5 On termination of all or any part of the Contract, the Authority may enter into any agreement with any Third Party or parties as the Authority thinks fit to provide any or all of the Services and (save where terminated by the Authority under Clauses 34.3, 34.7, 34.8) the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct

such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.

### **36 HANDBACK OF SERVICES.**

36.1 The Service Provider will comply with the Service Provider's obligations under Schedule 11 (Handback of Services) in order to ensure, amongst other things, Service continuity and minimisation of disruption to customers at the end of the Contract and during the Handback Period.

#### **36.2 Cooperation in Relation to Handback of Services**

Without limiting the Service Provider's TUPE obligations and Clauses 24 (Records, Audit and Inspection) and 37 (Transfer of Employees on Expiry or Termination), the Service Provider shall pro-actively co-operate and work with the Authority Group and/or any Successor Operator(s):

36.2.1 from the earliest of:

36.2.1.1 12 months prior to the expiry of the Initial Term; or

36.2.1.2 the date on which any notice to terminate this Contract is issued by the Authority or the Service Provider,

until the Expiry Date ;

36.2.2 by providing such services, advice, assistance, support, information, documentation, data, access and taking such steps as are reasonably requested by the Authority including;

36.2.2.1 as described in the Handback Plan;

36.2.2.2 in respect of the provision of the Services (or services which are substantially similar to the Services);

36.2.2.3 in respect of the Service Levels;

36.2.2.4 in relation to any Intellectual Property Rights within the scope of Clause 29 and subject always to Clause 31;

36.2.2.5 to enable the Authority (and/or another member of the Authority Group and/or any Successor Operator(s)) to understand how to replace Proprietary Tools and how to transfer Data from Proprietary Tools to replacement tools and;

36.2.2.6 in respect of the Authority otherwise drafting any notice, invitation, request or other tender or negotiation process and/or providing any due diligence or other information for recipients of such a notice, invitation, request or other process,

whether or not the Service Provider or a member of the Service Provider Group is a recipient of or invited by the Authority Group to be involved in such process; and

36.2.3 in order to:

36.2.3.1 facilitate (i) the invitation of bids from, (ii) the selection of, and (iii) the appointment of, any Successor Operator(s)

- 36.2.3.2 prepare for an orderly and smooth transfer to any member of the Authority Group and/or any Successor Operator(s) of the provision of the Services (or services substantially similar to the Services) or any relevant part thereof;
- 36.2.3.3 minimise disruption, inconvenience or any risk to the Services (or services substantially similar to the Services) and any interfacing systems and Services.,

### 36.3 Handback Plan and Service End Dates

- 36.3.1 The Authority anticipates that the transfer of the Services to a Successor Operator may take place on the basis of a transition on a single “End Date” (which in those circumstances would also be the Expiry Date) or alternatively, on a phased step down of Services with completion of each phase or service being an “End Date” (and the last of such dates being the Expiry Date).
- 36.3.2 The Authority may, in its absolute discretion and by giving written notice in the form of a Variation to the Service Provider:
  - 36.3.2.1 specify an End Date in relation to the termination of any particular Service having regard for the proper management and transitioning of the relevant Service and any phasing of various individual End Dates; and/or
  - 36.3.2.2 revise or delay the relevant End Date for any reason including where the Authority Group and/or any Successor Operator is not ready to take over responsibility for the Service (or any replacing service) or any part thereof, provided that the Authority shall not specify or require as an End Date any date which is a) prior to the effective date of any notice to terminate this Contract or any part thereof taking effect in relation to any termination of that Service pursuant to Clause 34 or b) otherwise (where no such notice to terminate has been given) prior to the end of the Initial Term (or, where extended in accordance with Clause 2.2, the end of the relevant Extension Year). The Service Provider shall continue to provide the relevant Service and any other required activities pursuant to this Contract until the relevant End Date.

### 36.4 Handback Procedure

- 36.4.1 The Authority shall provide to the Service Provider as much information as is reasonably practicable regarding the Authority’s proposed arrangements for the performance of the Services (or services similar to the Services) by the Successor Operator(s) and/or any member of the Authority Group (as the case may be) (the “Successor Plan”). If there are changes to the Successor Plan, the Authority shall update such information and shall provide such updated information to the Service Provider.
- 36.4.2 The Service Provider shall prepare and provide the following in accordance with Schedule 11 (Handback of Services):
  - 36.4.2.1 the Handback Plan and any updates thereto.
  - 36.4.2.2 NOT USED
  - 36.4.2.3 NOT USED.