

12.2 Each warranty and obligation in this Clause 12 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of the Contract.

12.3 Where a Bond Provider Downgrade occurs, the Service Provider shall within 30 Business Days:

12.3.1 deliver the Authority another bond in the form set out in the Framework Agreement or as the Authority may in its absolute discretion determine for a bond amount at the date of replacement equal to the bond amount under the then current bond (or, as the case may be, equal to the bond amount under the previous performance bond if such performance bond has expired or terminated) which complies with the requirements of the Framework Agreement and the requirements of the Authority in relation to this Call-Off Contract; or

12.3.2 procure that alternative cash collateral or other security acceptable to the Authority in an amount equal to the bond amount from time to time under the affected performance bond is made available to the Authority on such terms and conditions as the Authority shall, in its absolute discretion, consider appropriate,

and, if the Service Provider fails to deliver such replacement bond or replacement security by this deadline it shall constitute a material breach by the Service Provider of the terms of this Contract and the Authority shall be entitled to make demand under that bond for the bond amount at that time, which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Authority and the Service Provider for application in or towards amounts in respect of which the Authority would have been entitled to make any demand under the bond. Any interest accruing in such account and any balance remaining at the expiry or earlier termination of this Agreement or such other date as the Authority shall determine following application by the Authority in accordance with this Clause 12.3 shall, subject to the Authority's rights of set-off, belong to the Service Provider. If the Service Provider subsequently delivers a replacement or extended bond complying with the provisions of this Contract and the Framework Agreement, the balance standing to the credit of the account (including any amount in respect of interest accrued) shall belong to the Service Provider and the Authority shall promptly take such steps as are reasonably requested by the Service Provider to ensure release of such balance to the Service Provider.

12.4 Unless a different basis has been approved by the Authority in writing, the Service Provider shall maintain the continuing validity and effectiveness of the performance bond provided in respect of this Contract renewable on an annual basis until the expiry of this Contract in accordance with the following provisions:

12.4.1 the performance bond procured must be issued by a financial institution meeting the requirements of the Framework Agreement and have an expiry date which is no less than 364 days from the date of issue of the bond.

- 12.4.2 where the bond is due to expire then the Service Provider shall replace it with another performance bond in each case in the same form as the bond it is replacing and with a validity period of not less than 364 days from the date of issue of the bond and with a bond amount at the date of replacement which is equal to the amount originally required by the Authority in respect of the original Performance Bond.
- 12.4.3 if the Service Provider fails to deliver such replacement bond by 10 Business Days prior to the expiry of the then current performance bond it shall constitute a material breach by the Service Provider of the terms of the Contract and the Authority shall be entitled to make demand under that performance bond for the full amount at that time.
- 12.5 The Service Provider will be regarded as being in material breach of this Contract in the event that any Parent Company Guarantee and/or Performance Bond (as the case may be) is or becomes invalid or otherwise unenforceable.
- 12.6 The Service Provider will give notice to the Authority within 10 Business Days where there is any change in the ownership of the guarantor of the parent company guarantee where such change relates to 50% or more of the issued share capital of the guarantor. The Authority will have the right to terminate this Agreement within sixty (60) calendar days of receipt of the required notice from the Service Provider, or in the event that the Service Provider fails to give the required notice, within sixty (60) calendar days of the Authority becoming aware of such event, unless the Service Provider has within such period provided a parent company guarantee or other appropriate security from a replacement guarantor having obtained the Authority's prior approval of the replacement guarantor (such approval not to be unreasonably withheld) and on terms that are reasonably acceptable to the Authority.

### 13 OPERATIONAL MANAGEMENT

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

- 13.4.4 help to ensure that the obligations in the Services Schedules are met;
- 13.4.5 attend Service Review Meetings as set out in Schedule 8 (Service Management) and other meetings as otherwise requested by the Authority (acting reasonably); and
- 13.4.6 ensure delivery to the Authority of the reports required to be delivered to the Authority under this Contract, and, at the Authority's request, provide to the Authority at no additional cost to the Authority, such additional reports on the provision of the Services as the Authority may reasonably request.
- 13.5 The Service Provider shall appoint an incident manager (the “**Service Provider Incident Manager**”). The Service Provider shall notify the Authority of the identity of the Service Provider Incident Manager on or before the Date of Contract. The Service Provider Incident Manager may (but need not) be the same person as the Service Provider Contract Manager.
- 13.6 The Service Provider shall ensure that the Service Provider Incident Manager shall act as the principal point of contact between the Parties in connection with the management of Incidents arising in respect of the Services.

#### **14 SERVICE PROVIDER PERSONNEL**

##### **14.1 NOT USED**

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

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

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

**“Applicable Transfer Date”** means the Contract Commencement Date except where the Services (or any of them) do not commence on the Contract Commencement Date in which case it means (as regards any person) the date on which the Services transfer to the Service Provider such as to effect a transfer of relevant Transferring Staff in accordance

with TUPE). The detailed Transition planning to be undertaken in accordance with paragraph 3.2 of Schedule 3 (Transition) shall include the assessment and determination of the Applicable Transfer Date for each relevant person;

<b>“Contractual Costs”</b>	<b>Redundancy</b>	means enhanced redundancy payments which the Specific Staff are entitled to under their contracts of employment and that are in fact incurred by the Service Provider in relation to the Specific Staff whose effective date of termination is within 90 days of the Applicable Transfer Date;
<b>“Employment Costs”</b>		means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);
<b>“Employment Liabilities”</b>		means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);
<b>“Final Staff List”</b>		has the meaning set out in Clause 37.4;
<b>“Further Transfer Date”</b>		means the date on which the Services (or any part of them) cease to be provided by the Service Provider and start to be performed by the Authority or any Successor Operator when the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Authority or any Successor Operator occurs;
<b>“Relevant Period”</b>		means the period starting on the earlier of: a) the date falling 6 calendar months before the date of expiry of the Contract; or b) if the Contract is terminated by either Party in accordance with Clause 34.3 or by the Authority in accordance with Clause 34.1, 34.2, 34.7 or 34.8, the date of the relevant termination notice; and ending on the Further Transfer Date;

<b>“Re-Transferring Personnel”</b>	means any Service Provider Personnel who are assigned (for the purposes of TUPE) to the relevant Services immediately before the Further Transfer Date and whose employment contract will transfer to the Authority or the Successor Operator pursuant to TUPE with effect from the Further Transfer Date;
<b>“Specific Staff”</b>	means the following two employees of Serco: employee with job title of Programme Director and payroll number 42121; and employee with job title Contact Centre Manager and payroll number 10075595;
<b>“Staff List”</b>	has the meaning set out in Clause 37.1;
<b>“Staffing Information”</b>	has the meaning set out in Clause 37.1;
<b>“Sub-Contractor”</b>	means any sub-contractor to the Existing Provider, the Service Provider or a Successor Operator as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or part of them);
<b>“Transfer of Services”</b>	means the transfer of the provision of the Services from the Existing Service Provider and any Sub-Contractor to the Service Provider and any Sub-Contractor;
<b>“Transferring Staff”</b>	means such employees of the Existing Service Provider(s) (and any Sub-Contractors) as are assigned (for the purposes of TUPE) to the Services the names of whom as at the date of this Contract are listed in Appendix 1 to this Clause 14;and
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006

14.3 It is understood and acknowledged by the Parties that TUPE may apply to the Transfer of Service and accordingly, pursuant to TUPE, the contracts of employment between the Existing Service Provider (or any Sub-Contractor of the Existing Service Provider) and Transferring Staff will have effect from the Applicable Transfer Date as if originally made between the Service Provider and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be subject to the provisions of Clause 14.4).

14.4 The Service Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of