

Model Terms and Conditions of Contracts for Services for Local Authorities

Local Authorities should consider these model terms and conditions in consultation with the accompanying Guidance issued by the Office of Government Commerce. These terms and conditions are specific to contracts for services. They may need to be amended depending on the specific nature of the services to be provided or where the contract being let is for the provision of both goods and services. When considering any amendments and the overall suitability of these terms for any particular contract, Local Authorities should seek advice from their legal team. Clauses which require particularly careful consideration before they are used have been italicised. In addition, some clauses have been highlighted in red where special reference to the accompanying guidance should be made to ascertain whether they should be included, alternative wording used or before any amendments are made.

These model terms and conditions are drafted assuming that the Transfer of Undertakings (Protection of Employment) Regulations 2006 will not be applicable to the subject matter of the Agreement. Please confirm with your Personnel Department that this is the case before using these model terms and conditions.

Date [2006]

[Authority Logo]

(1) [THE AUTHORITY]

-and-

(2) [THE CONTRACTOR]

AGREEMENT

relating to the provision of [services]

[Borough Solicitor]

[Local Authority]

[Address]

[Address]

[Lawyer Ref]

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THIS AGREEMENT is made on [date in manuscript]

BETWEEN

- (1) **[NAME OF LOCAL AUTHORITY]** of **[ADDRESS OF LOCAL AUTHORITY]** (the "Authority"); and
- (2) **[CONTRACTOR] LIMITED** (company registered number [] whose registered office is at [] (the "Contractor").

RECITALS:

- (A) The Authority [recite power used and service to be delivered]
- (B) The Authority and the Contractor have agreed that the Contractor shall provide and the Authority shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.
- (C) The Authority is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure are Best Value functions.
- (D) [Recite brief details of Tender process/OJEU notice number etc.]

OPERATIVE PROVISIONS:

Part 1 - Preliminary

1. Definitions and Interpretations

- 1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"1976 Act" means the Race Relations Act 1976

"1999 Act" means the Local Government Act 1999

"Agreement" means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender,

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[the Contractor's Tender] [and any other documents (or parts thereof) specified by the Authority].

"Annual Service Plan" has the meaning given in clause 62.4

"Annual Service Report" has the meaning given in paragraph 62.1

"Annual Services Improvement Plan Date" means the [] 200[] and each [] thereafter in each year of the Term.

"Approval" and "Approved" means the written consent of the Contract Manager.

"Authority Property" means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement

"Best Value Duty" means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.

"Best Value Inspector" means an officer or employee of the Audit Commission or other Regulatory Body empowered to inspect the Authority's compliance with Part 1 of the 1999 Act.

"Best Value Performance Indicators" means the Best Value Performance Indicators, Audit Commission Performance Indicators and Local Performance Indicators for the Services as specified in *[complete as appropriate]*.

"Best Value Performance Plans" means the best value performance plans which are required to be published by the Authority in accordance with section 6 of the 1999 Act.

"Best Value Review" means the review which is required to be conducted by the Authority in accordance with section 5 of the 1999 Act.

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“Best Value Review Date” the [second] anniversary date of the Commencement Date of the Agreement and each [fifth] anniversary date thereafter during the Term

“Best Value Review Improvement Plan” has the meaning given to it in clause 63.6.

“Commencement Date” means [the date of the Agreement] [] 200[].

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

(a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Comprehensive Performance Assessment” means any comprehensive performance review of the Authority’s services (including the Services) undertaken by the Audit Commission or any other Regulatory Authority pursuant to Section 99 of the Local Government Act 2003 or otherwise.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

“Contract Manager” means the person for the time being appointed by the Authority as being authorised to administer the Agreement on behalf of the

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Authority or such person as may be nominated by the Contract Manager to act on its behalf.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority.

“Contractor’s Representative” means the individual authorised to act on behalf of the Contractor for the purposes of the Agreement.

“Criminal Records Bureau” means the bureau established pursuant to Part V of the Police Act 1997.

“Customer Satisfaction Survey” has the meaning given to it in clause 61.1.

“Customer Satisfaction Survey Date” means the [] in each year of the Term.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Equipment” means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement.

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“Extension” means the extension of the duration of the Agreement agreed in accordance with clause 48.

“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 issued by the Information Commissioner in relation to such legislation.

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“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor’s Staff or any staff of any sub-contractor.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

“Good Industry Practice” means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means an invitation for Contractors to bid for the Services required by the Authority.

“Key Personnel” mean those persons named in the Specification as being key personnel.

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“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Named Employee” has the meaning given to it in clause 32.1

“Party” means a party to the Agreement and “Parties” shall be construed accordingly.

“Performance Standard Benchmarking Exercise” means any benchmarking exercise undertaken or to be undertaken in accordance with the Authority’s Best Value Performance Plan for the purposes of the creation of an objective comparator (as at the Best Value Review Date) against which to revise the delivery of the Service or Services as appropriate.

“Premises” means the location where the Services are to be performed, as specified in the Specification.

“Price” means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 24.

“Pricing Schedule” means the Schedule containing details of the Price.

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“Quality Standards” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.

“Regulatory Bodies” means those government departments and regulatory statutory and other entities, committees, 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 the Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party Contractor appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Authority internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to the Agreement.

“Services” means the services to be provided as specified in the Specification.

“Services Improvement Notice” has the meaning given in clause 62.3.

“Specification” means the description of the Services to be provided under the Agreement and attached as the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

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“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

“Staff” means all persons employed by the Contractor to perform the Agreement together with the Contractor’s servants, agents and sub-contractors used in the performance of the Agreement.

“Tax” means value added tax.

“Tender” means the Contractor’s response to the Invitation to Tender (as subsequently clarified in []).

“Term” means the period of duration of the Agreement in accordance with clause 2.1.

“Users” means a reasonably representative sample of those users who consume or benefit from the Services

“Variation” has the meaning given to it in 43.1

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

1.2 In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;

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- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2 Term

- 2.1 The Agreement shall take effect on the Commencement Date and shall, subject to clause 2.2, expire automatically on [..... 20--], unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.
- 2.2 The Authority may seek to extend the duration of the Agreement in accordance with clause 48. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) or adjustment to the Price pursuant to clause 24 until the expiry of the period specified in accordance with clause 48.

3 Contractor’s Status (Principal)

- 3.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Authority.
- 3.2 Accordingly:

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- (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and
- (b) nothing in the Agreement shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Authority, the Authority's employees, servants or agents.

4 Authority's Obligations

- 4.1 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the 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 the Agreement (howsoever arising) on the part of the Authority to the Contractor.

[Insert further clauses as required for the delivery of the Services]

5 Entire Agreement

- 5.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 5.2 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, [Contractor's Tender] [and other documents referred to or attached to the Agreement], the conflict shall be resolved in accordance with the following order of precedence:
 - (1) the body of the Agreement shall prevail over;

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- (2) the Schedules;
- (3) the Invitation to Tender;
- [(4) the Contractor's Tender]
- [(5) any other document referred to in the Agreement.]

Unless expressly agreed, a document varied pursuant to clause 43 shall not take higher precedence than specified here.

- 5.3 The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

6 Scope of Agreement

- 6.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor.

7 Notices

- 7.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.
- 7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was posted, or [4] hours, in the case of electronic mail or facsimile transmission or sooner where the

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other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

7.3 For the purposes of clause 7.2, the address of each Party shall be:

(a) For the Authority:

[]

[Address:]

[]

For the attention of:

Tel:

Fax:

E-mail:

(b) For the Contractor:

[]

[Address:]

[]

For the attention of:

Tel:

Fax:

E-mail:

7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

8 Mistakes in Information

8.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

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9 Conflicts of Interest

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of the Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of [two] years after its termination.

10 Fraud

10.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

Part 2 – The Provision of the Services

11 The Services

11.1 The Contractor shall provide the Services during the Term in accordance with the Authority's requirements as set out in the Specification and the terms of the Agreement in consideration of the payment of the Price. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

11.2 The Contractor shall at all times deliver the Services in accordance with the Law.

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- 11.3 In the event that the Authority notifies the Contractor of the Authority's reasonably held opinion that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.
- 11.4 *Subject to the Authority providing Approval in accordance with clause 12.2, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.*
- 11.5 Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor's delay in the performance of its obligations under the Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Contractor's obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 12.2.

12 Manner of Carrying Out the Services

- 12.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.
- 12.2 *The Contractor shall make no delivery of Equipment nor commence any work on the Authority's Premises without obtaining the Authority's prior Approval.*
- 12.3 All Equipment brought onto the Authority's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Contractor.

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- 12.4 The Contractor shall maintain all items of Equipment within the Authority's Premises in a safe, serviceable and clean condition.
- 12.5 All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.
- 12.6 The Authority shall have the power at any time during the performance of the Services to order in writing that the Contractor:
- (a) remove from the Authority's Premises any Equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Agreement; and
 - (b) if the Authority has ordered the Contractor to remove any item of Equipment in accordance with clause 12.6 (a) above, to replace such item with a suitable substitute item of Equipment.
- 12.7 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the services in order to leave the Authority's Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Authority's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.
- 12.8 Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor's suppliers as are necessary to perform the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require.

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13 Standard of Work

- 13.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to the delivery of the Services, and the Contractor shall undertake its obligations in accordance with Good Industry Practice.
- 13.2 The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services
- 13.3 The introduction of new methods or systems which adversely affect the provision of the Services shall be subject to prior Approval.
- 13.4 The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Agreement.

14 Key Personnel

- 14.1 Key Personnel shall not be released from providing the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 14.2 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 14.3 The Authority shall not unreasonably withhold its agreement under clause 14.1 or clause 14.2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.

15 Contractor's Staff

15.1 The Authority reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:

(a) any member of the Staff; or

(b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.

15.2 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Authority may reasonably desire.

15.3 The Contractor's Staff, engaged within the boundaries of any of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

15.4 The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.

15.5 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this clause.

16 Inspection of Premises

16.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

17 Licence to occupy Authority's Premises

17.1 Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Agreement, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Agreement. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.

17.2 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services.

17.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

17.4 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

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17.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Authority retains the right at any time to use in any manner the Authority sees fit any premises owned or occupied by it.

18 Authority Property

18.1 Where the Authority for the purpose of the Agreement issues Authority Property free of charge to the Contractor such property shall be and remain the property of the Authority. The Contractor shall not in any circumstances have a lien on the Authority Property and the Contractor shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.

18.2 Any Authority Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

18.3 The Contractor shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Agreement and for no other purpose without prior Approval.

18.4 The Contractor shall ensure the security of all Authority Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Agreement, in accordance with the Authority's reasonable security requirements as required from time to time.

18.5 The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority. The Contractor's liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or

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default of the Authority. The Contractor shall inform the Contract Manager within [2] Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Agreement.

19 Sub-Contracting for the delivery of the Services

19.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

20 Offers of Employment

20.1 For the duration of the Agreement and for a period of 12 months thereafter neither of the Authority or the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior Approval.

Part 3 – Payment and Price

21 Price

21.1 In consideration of the performance of the Contractor's obligations under the Agreement by the Contractor, the Authority shall pay the Price in accordance with clause 22.

21.2 In the event that the cost to the Contractor of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of clause 26 shall apply.

21.3 The Authority shall pay the Contractor, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Agreement.

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22 Payment and Tax

- 22.1 The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the reasonable satisfaction of the Authority.
- 22.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.
- 22.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- 22.4 The Authority may, in accordance with clause 45.2 (a), reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 22.5 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement under clause 54.3 for failure to pay undisputed charges.

23 Recovery of Sums Due

- 23.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.
- 23.2 Any overpayment by either Party, whether of the Price or of Tax, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

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23.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

24 Price adjustment on Extension

24.1 Subject to clause 22.4 the Price shall remain fixed for the Term.

24.2 In the event of a possible Extension, the Authority reserves the right to review any charges payable to the Contractor for the provision of services beyond the Term.

24.3 If the Authority approaches the Contractor in accordance with clause 48 concerning an Extension, the Authority must agree the Price to be payable to the Contractor for the provision of any services during the Extension, at least [3 months] prior to the end of the Term.

24.4 Any claim for an increase in the charges during an Extension will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (or another such index as notified to the Contractor in writing) between the Commencement Date and the date [3 months] before the end of the Term.

25 Euro

25.1 Any legislative requirement to account for the services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

25.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 25.1.

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26 Change of Law

26.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:

(a) a General Change in Law; or

(b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

26.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 26.1) or during any extension agreed pursuant to clause 24, the Contractor shall notify the Authority of the likely effects of that change, including:

(a) whether any change is required to the Services, the Price or the Agreement; and

(b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

26.3 As soon as practicable after any notification in accordance with clause 26.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

(a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;

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- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.
- 26.4 Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause 26 shall be implemented in accordance with clause 43.

Part 4 - Statutory Obligations, Codes of Practice and Regulations

27 Prevention of Corruption

- 27.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- 27.2 The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Authority by the Contractor or on the Contractor's behalf.
- 27.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 27.1 or 27.2 in relation to this or any other contract with the Authority, the Authority has the right to:

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- (a) terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Term; or
- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Agreement has been terminated.

28 Discrimination

- 28.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 28.2 The Contractor shall take all reasonable steps to secure the observance of clause 28.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

29 The Contracts (Rights of Third Parties) Act 1999

- 29.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Authority or the Contractor) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause 29. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

30 Environmental Requirements

30.1 The Contractor shall, when working on the Authority's Premises, perform the Agreement in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

31 Health and Safety

31.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Agreement.

31.2 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those Premises.

31.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Agreement on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

31.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.

31.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

32 CRIMINAL RECORDS BUREAU

32.1 *The Contractor shall procure that in respect of all potential Staff or persons performing any of the Services (each a "Named Employee") before a Named Employee begins to attend any Authority premises to perform any of the Services:*

(a) each Named Employee is questioned as to whether he or she has any convictions; and

(b) the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in accordance with Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:

(i) a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children; and/or

(ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act).

(c) a copy of the results of such check are notified to the Authority.

32.2 *The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Criminal Records Bureau check, is employed or engaged by the Contractor or on the Contractor's behalf without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).*

32.3 *The Contractor shall procure that the Authority is notified of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services). The Parties agree that where such notification is made it shall be reasonable for the Authority to withhold access to any premises occupied for the*

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purposes of the Services from the member of Staff concerned, pursuant to clause 15.1.

Part 5 - Protection of Information

33 Data Protection Act

33.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.

33.2 Notwithstanding the general obligation in clause 33.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Authority (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

(a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

(b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 33.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

33.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

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34 Confidentiality

34.1 Each Party:-

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

34.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

34.3 *[Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.] [The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under the Agreement.]*

34.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Agreement.

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34.5 The provisions of clauses 34.1 to 34.4 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 35.

34.6 Nothing in this clause shall prevent the Authority:

- (a) disclosing any Confidential Information for the purpose of:
 - (i) the examination and certification of the Authority's accounts; or
 - (ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:
 - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be

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disclosed to a third party which is not part of any government department or any Contracting Authority; or

(ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

34.7 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

35 Freedom of Information

35.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.

35.2 The Contractor shall and shall procure that its sub-contractors shall:

(a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;

(b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time

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for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

35.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

(b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

35.4 The Contractor acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

(a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

35.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

35.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 35.4.

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36 Security of Confidential Information

- 36.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Contractor undertakes to maintain security systems approved by the Authority.
- 36.2 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clause 34. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

37 Publicity and Media

- 37.1 Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 37.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by its sub-contractors.

38 Security

- 38.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

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38.2 *The Authority shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.*

39 Intellectual Property Rights

39.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

39.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.

39.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses

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and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

- (a) designs furnished by the Authority;
- (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Agreement.

39.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Authority; and
- (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

39.5 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 39.3(a) and (b),

39.6 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of the Agreement.

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39.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

(b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

39.8 At the termination of the Agreement the Contractor shall at the request of the Authority immediately return to the Authority all materials, work or records held, including any back-up media.

39.9 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

40 Audit and the Audit Commission

40.1 The Contractor shall keep and maintain until [six years] after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives or the Audit Commission such access to those records as may be required by the Authority or the Audit Commission in connection with the Agreement.

Part 6 – Control of the Contract

41 Assignment and Sub-Contracting

- 41.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.
- 41.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 41.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority within [2] Working Days of such request.

42 Waiver

- 42.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 42.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 7.
- 42.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

43 Variation of the Services

- 43.1 The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or

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specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever PROVIDED THAT such addition, omission or variation does not amount to a material change to the Specification. Such a change is hereinafter called "a Variation".

43.2 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor's Representative in accordance with the notice provisions of clause 7. All Variations shall be in the form of an addendum to the Agreement.

43.3 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Authority and agreed in writing with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 65.

43.4 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

44 Severability

44.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

45 Remedies in the event of inadequate performance

45.1 Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold

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the complaint, or take further action in accordance with the provisions of clause 54 of the Agreement.

45.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 54 of the Agreement, do any of the following:

(a) make such deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;

(b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services in accordance with the Agreement;

(c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or

(d) terminate, in accordance with clause 54, the whole of the Agreement.

45.3 The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

45.4 If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall

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instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [10] Working Days or such other period of time as the Authority may direct.

45.5. In the event that:

(a) the Contractor fails to comply with clause 45.4. above and the failure, is materially adverse to the interests of the Authority or prevent the Authority from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause 45.4 above,

the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

46 Remedies Cumulative

46.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

47 Monitoring of Performance

47.1 The Contractor shall comply with the monitoring arrangements set out in Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Agreement.

48 Possible Extension of Term

48.1 Subject to satisfactory performance by the Contractor during the Term, the Authority may wish to extend the Agreement for a further period of up to [] year(s). The Authority may approach the Contractor if it wishes to do so before

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the end of the Term. The clauses in the Agreement will apply throughout any such extended period unless otherwise stated to the contrary.

49 Novation

49.1 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, private sector body or any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Agreement.

49.2 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Agreement.

49.3 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Agreement by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

Part 7 - Liabilities

50 Indemnity and Insurance

50.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

50.2 The Contractor shall indemnify and keep indemnified the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the

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Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.

50.3 *Subject always to clause 50.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this clause 50.3.*

(a) The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed [words] (figures).

(b) The annual aggregate liability under the Agreement of either Party for all Defaults (other than a Default governed by clause 39.3 or clause 50.3(a)) shall in no event exceed the greater of [words] (figures) or [words] per cent ([figures]%) of the amount paid or payable by the Authority for the Services (as determined at the date on which the liability arises) to the Contractor for the Service performed in that Year.

50.4 *Subject always to clause 50.1, in no event shall either Party be liable to the other for:*

(a) loss of profits, business, revenue or goodwill;

(b) loss of savings (whether anticipated or otherwise); and/ or

(c) indirect or consequential loss or damage.

50.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, including death or personal injury, loss of or

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damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

50.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

50.7 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

50.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

50.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 50.2.

51 Professional Indemnity

51.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause 51.1, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than [] for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

52 Warranties and Representations

52.1 The Contractor warrants and represents that:

- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
- (c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

Part 8 – Default, Disruption and Termination

53 Termination on change of control and insolvency

53.1 The Authority may terminate the Agreement by notice in writing with immediate effect where:

- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the

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firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or

(c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

53.2 The Contractor shall notify the Contract Manager immediately when any change of control occurs. The Authority may only exercise its right under clause 53.1(a) within six months of:

(a) being notified that a change of control has occurred; or

(b) where no notification has been made the date that the Authority becomes aware of the change of control;

but shall not be permitted to do so where an Approval was granted prior to the change of control of the Contractor.

53.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act

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1983, the Authority shall be entitled to terminate the Agreement by notice to the Contractor or the Contractor's Representative with immediate effect.

54 Termination on Default

54.1 The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of the Agreement.

54.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.

54.3 The Contractor may terminate the Agreement if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days notice specifying the breach and requiring its remedy. The Contractor's right of termination under this clause 54.3 shall not apply to non payment of the charges or Price where such non payment is due to the Authority exercising its rights under clauses 23.1 and 45.2(a).

55 Break

55.1 The Authority shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving three Months' written notice to the Contractor.

56 Consequences of Termination

56.1 Where the Authority terminates the Agreement under clause 54, or terminates the provision of any part of the Agreement under that clause 54, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term or any Extension. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 54, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

56.2 Where the Authority terminates the Agreement under clause 55, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under 55.

56.3 The Authority shall not be liable under clause 56.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Term.

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57 Disruption

- 57.1 The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 57.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.
- 57.3 In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek the Authority's Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.
- 57.4 If the Contractor's proposals referred to in clause 57.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Agreement may be terminated by the Authority by notice in writing with immediate effect.

58 Recovery upon Termination

- 58.1 Save as otherwise expressly provided in this Agreement and notwithstanding the provisions of ;
- (a) termination of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under clause 13 (Standard of Work), 23 (Recovery of Sums Due), 27 (Prevention of Corruption), 33 (Data Protection Act), 34 (Confidentiality), 37 (Publicity and Media), 38 (Security), 39 (Intellectual Property Rights), 40 (Audit), 46 (Remedies Cumulative), 50

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(Indemnity and Insurance), 51 (Professional Indemnity), 52 (Warranties and Representations), 54 (Termination on Default), 56 (Consequences of Termination), 58 (Recovery on Termination) and 64 (Governing Law).

58.2 At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the Authority upon request all the Authority's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Contractor grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

58.3 At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Contractor's default, the Contractor shall provide such assistance free of charge. Otherwise the Authority shall pay the Contractor's reasonable costs of providing the assistance, and the Contractor shall take all reasonable steps to mitigate such costs.

59 Force Majeure

59.1 *Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.*

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59.2 *Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.*

59.3 *Clause 59 does not affect the Authority's rights under clause 58.*

59.4 *If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 59.2 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.*

59.6 *For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.*

Part 9 – Best Value Duty

60 Authority's Best Value Duty

60.1 The Contractor acknowledges that:

- a) the Authority is subject to the Best Value Duty; and
- b) the provisions of this clause 60 are intended to assist the Authority in discharging its Best Value Duty in relation to the Services.

60.2 The Contractor shall, throughout the Term, but only to the extent of its obligations in the Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

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60.3 The Contractor shall undertake or refrain from undertaking such actions as the Authority shall reasonably request to enable the Authority to comply with Part 1 of the 1999 Act, including:

- (a) supporting and assisting the Authority in preparing Best Value Performance Plans and conducting Best Value Reviews in relation to the [] services of which the Services form part;
- (b) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:
 - i) enable the Authority to prepare a Best Value Performance Plan;
 - ii) enable the Authority to conduct a Best Value Review;
 - iii) facilitate the audit of the Authority's Best Value Performance Plan by the Authority's auditor pursuant to Section 7 of the 1999 Act;
 - iv) facilitate the Authority preparing any statement, in response to an Authority's auditor's report, pursuant to Section 9 of the 1999 Act;
 - v) facilitate any inspection undertaken by any Best Value Inspector in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
 - vi) assist the Authority in relation to any action taken by the Secretary of State under Section 15 Local Government Act 1999;
 - vii) enable the Authority to comply with any Government Departmental Direction;
 - viii) enable the Authority to report on the Best Value Performance Indicators;
 - ix) assist the Authority in any Comprehensive Performance Assessment;
 - x) enable the Authority to comply with the Publication of Information Direction 2000 (England and Wales);

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- (c) complying with all requests by the Authority to procure the attendance of specific officers or employees of the Contractor or any sub-contractor (or any of its or their sub-contractors) at any meetings of the Authority at which the Services are to be discussed (but not, otherwise in exceptional circumstances, more than twice in any one year);
- (d) permitting any Regulatory Body, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - i) the [Authority Property];
 - ii) any document or data relating to the Services; and
 - iii) any sub-contractor, agent or employee of the Contractor.

61 **Customer Satisfaction Survey**

- 61.1 The Contractor shall, on each Customer Satisfaction Survey Date, undertake (or procure the undertaking of) a customer satisfaction survey (“Customer Satisfaction Survey”) the purpose of which shall include:
- (a) assessing the level of satisfaction among users of Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services;
 - (b) assisting in the preparation of the Contractor’s Annual Service Report and Annual Service Plan;
 - (c) assisting the Authority in the preparation of its Best Value Performance Plans and the conduct of its Best Value Reviews.
- 61.2 The Customer Satisfaction Survey shall be undertaken by means of distributing to users of the Services within 10 Working Days of each Customer Satisfaction Survey Date a questionnaire [or other survey method as agreed between the Parties] in a form to be agreed with the Authority (acting reasonably).

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- 61.3 The content of the questionnaire [or other material to be used for any other survey method] referred to in clause 61.2 and the method of undertaking the Customer Satisfaction Survey shall comply with all Law.
- 61.4 The Authority shall provide reasonable assistance and information to the Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.
- 61.5 Within [one month] of each Customer Satisfaction Survey Date, the Contractor shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor) as the Authority shall reasonably require.

62 Annual Service Report and Annual Service Plan

- 62.1 Without prejudice to any other provision in the Agreement the Contractor shall at its own cost, provide to the Authority a written report (the "Annual Service Report") to the reasonable satisfaction of the Authority.
- 62.2 The Contractor shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
- 62.3 If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Authority may serve a written notice upon the Contractor (a "Services Improvement Notice") stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires.
- 62.4 The Contractor shall, within 10 Working Days of the date of receipt of the Services Improvement Notice, provide the Authority at its own cost with a written statement (the "Annual Service Plan") containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice.

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- 62.5 As soon as practicable after the Authority receives the Annual Service Plan, the Parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Authority may modify the Services Improvement Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than 10 Working Days after the receipt of such modification, notify the Authority of any consequential changes to the Annual Service Plan.
- 62.6 If the Parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with the clause 65.
- 62.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the clause 65 the Authority shall:
- a) confirm in writing the Annual Service Plan; or
 - b) withdraw the Services Improvement Notice.
- 62.8 If the Authority does not confirm the Annual Service Plan within 10 Working Days of the Annual Service Plan having been agreed or otherwise determined pursuant to the clause 65 then the Annual Service Plan shall be deemed to have been withdrawn.
- 62.9 If the Authority confirms the Annual Service Plan the Authority shall propose a change in the Services in accordance with clause 43
- 62.10 The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Services Improvement Notice and an Authority Notice of Change served pursuant to clause 62.9

63 Best Value Reviews and Comprehensive Performance Assessment

- 63.1 On or before each Best Value Review Date the Authority may instigate a Best Value Review in relation to such of its services or functions of which the Services forms part and thereafter the following provisions of this clause 63.1 shall apply.
- 63.2 The Parties agree that any such Best Value Review shall be carried out in accordance with the applicable Law.
- 63.3 The Authority shall carry out the Best Value Review at its own cost.

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63.4 In carrying out the Best Value Review, the Authority may take into account the results of any:

- (a) Annual Service Reports;
- (b) Customer Satisfaction Survey; and/or
- (c) Performance Standard Benchmarking Exercise

and shall consult with the Contractor on any proposals to change the Services to enable the Authority to comply with its Best Value Duty.

63.5 If in the Authority's reasonable opinion the results of the Best Value Review or Comprehensive Performance Assessment disclose that the provision, performance or delivery of the Services (or any part) may be more efficient, effective or economic having regard to the Best Value Duty, then the Authority may serve a Services Improvement Notice on the Contractor stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires.

63.6 The Contractor shall, within [10] Working Days of the date of receipt of a Services Improvement Notice, at its own cost provide the Authority with a written statement (the "Best Value Improvement Plan") containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice.

63.7 As soon as practicable after the Authority receives the Best Value Improvement Plan the Parties shall discuss and agree the issues set out in the Best Value Improvement Plan. In such discussions the Authority may modify the Services Improvement Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than 10 Working Days after the receipt of such modification, notify the Authority of any consequential changes to the Best Value Improvement Plan.

63.8 If the Parties cannot agree on the contents of the Best Value Improvement Plan then the dispute will be determined in accordance with the clause 65.

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63.9 As soon as practicable after the content of the Best Value Improvement Plan has been agreed or otherwise determined pursuant to the clause 65 the Authority shall:

- a) confirm in writing the Best Value Improvement Plan; or
- b) withdraw the Services Improvement Notice.

63.10 If the Authority does not confirm the Best Value Improvement Plan within [10] Working Days of the Best Value Improvement Plan having been agreed or determined in accordance with the clause 65 then the Services Improvement Notice shall be deemed to have been withdrawn.

63.11 If the Authority confirms the Best Value Improvement Plan the Authority shall propose a Variation in the Services (or any part of the Services) in accordance with clause 43.1.

63.12 To the extent that the implementation of the proposals contained in the Best Value Improvement Plan will result in a decrease in the costs of the Contractor, the Price shall thereafter be adjusted downwards in accordance with clause 43.3.

63.13 To the extent that if the implementation of the proposals contained in the Best Value Improvement Plan will result in an increase in the costs of the Contractor, the Price shall thereafter be adjusted upwards in accordance with clause 43.3.

The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Services Improvement Notice and Variation pursuant to clause 43.

Part 10 – Dispute and Law

64 Governing Law

64.1 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of [England][Wales].

65 Dispute Resolution

- 65.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within [20] Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the [finance director] (or equivalent) of each Party.
- 65.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 65.3 If the dispute cannot be resolved by the Parties pursuant to clause 65.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 65.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 65.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.
- 65.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the *[specify relevant mediation provider]* to appoint a Mediator.
 - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant

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information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from *[specify relevant mediation provider]* to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

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IN WITNESS whereof the Agreement has been signed and delivered as a deed on the date and year stated at the beginning of this deed.

THE COMMON SEAL of [NAME)
OF LOCAL AUTHORITY][confirm)
the correct form of attestation for)
Authority] : [Authorised] Signatory

THE COMMON SEAL of)
[CONTRACTOR] LIMITED was)
affixed in the presence of:)

Director/Company Secretary

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SPECIFICATION SCHEDULE

[insert specifications as appropriate]

-----page-----

PRICING SCHEDULE

[insert pricing provisions as appropriate]

-----page-----

MONITORING SCHEDULE

[insert monitoring provisions as appropriate]

-----page-----

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

[insert commercially sensitive information schedule as appropriate]